



## Water Policy Interim Committee

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### 66th Montana Legislature

#### SENATE MEMBERS

JILL COHENOUR  
BRUCE (BUTCH) GILLESPIE  
JON SESSO  
JEFF WELBORN

#### HOUSE MEMBERS

BOB BROWN  
ZACH BROWN  
CARL GLIMM  
BRADLEY MAXON HAMLETT  
SHANE MORIGEAU  
WALT SALES

#### COMMITTEE STAFF

JASON MOHR, Research Analyst  
CORINA HACH, Staff Attorney  
NADINE SPENCER, Secretary

# MINUTES LOG

December 11, 2019  
Room 102, Capitol Building  
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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#### **COMMITTEE MEMBERS PRESENT VIA TELEPHONE CONFERENCE**

REP. ZACH BROWN, Chair  
SEN. JEFF WELBORN, Vice Chair

SEN. JON SESSO

REP. CARL GLIMM  
REP. BRADLEY MAXON HAMLETT  
REP. WALT SALES

#### **COMMITTEE MEMBERS EXCUSED**

SEN. JILL COHENOUR  
SEN. BRUCE (BUTCH) GILLESPIE

REP. BOB BROWN  
REP. SHANE MORIGEAU

## **STAFF PRESENT IN HELENA**

JASON MOHR, Research Analyst  
CORINA HACH, Staff Attorney  
NADINE SPENCER, Secretary

## **VISITORS' LIST (Attachment 1)**

## **AGENDA (Attachment 2)**

### **CALL TO ORDER AND ROLL CALL**

09:01:40 Jason Mohr, research analyst, Legislative Services Division, called the meeting to order at 9:01 a.m. The secretary called the roll. **(Attachment 3)**

### **GEOCODING AND THE WATER RIGHTS DATABASE**

#### **Staff Review**

- 09:03:12 Mr. Mohr said the committee received public comments before the meeting. **(Exhibit 1)**
- 09:03:37 Mr. Mohr said the committee requested a summary of comments from the Water Court from the November 21 meeting, **(Exhibit 2)** an updated solutions document from the Department of Natural Resources and Conservation (DNRC), **(Exhibit 3)** and a copy of the information that was provided by Jean Bergeson. **(Exhibit 4)**
- 09:04:43 Mr. Mohr provided a review of how geocode is part of a water right.
- 09:06:04 Mr. Mohr said the DNRC provided information at the last meeting laying out what the department does with geocodes. **(Exhibit 5)**
- 09:10:02 Mr. Mohr said the committee asked for solutions and that a lot of the suggestions center on access to and better use of information.
- 09:13:25 Sen. Sesso joined the meeting.
- 09:14:10 Rep. Z. Brown said the Water Policy Interim Committee is meeting for its second scheduled conference call in order to gather information and determine how to approach issues related to geocodes before its meeting in January.
- 09:16:15 Rep. Hamlett joined the meeting.

#### **Responsibilities of Buyers and Sellers for Water Rights Information**

- 09:16:51 Liane Taylor, real estate broker, Montana Association of Realtors, explained the process when there is a water right involved in a real estate transaction and provided a copy of a buy-sell agreement. **(Exhibit 6)**
- 09:20:39 William Gowen, past president, Montana Land Title Association, provided information on the process for updating water right information.

#### Committee questions:

- 09:25:48 Rep. Hamlett asked if title insurance insures against false claims or mistakes made by the DNRC. Mr. Gowen said it exempts any coverage for water and mineral rights.

09:26:44 Rep. Hamlett asked Mr. Gowen if the transfer of a water right includes the point of diversion, conveyance, and point of use.

09:27:41 Rep. Hamlett asked Mr. Gowen about property that is divided into different parcels and when the point of diversion, conveyance, and point of use are sold in separate transactions.

09:30:11 Rep. Z. Brown asked Mr. Gowen about making the buyer responsible for updates to the water right instead of the seller.

09:32:31 Rep. Z. Brown asked Mr. Gowen about accountability in the process.

09:34:24 Rep. Z. Brown asked Mr. Gowen about requiring updates to be submitted and finalized before the deed is completed.

09:37:02 Rep. Hamlett said the State Library records and documents the information and enters it on the state website. He asked Mr. Gowen about problems if the State Library is not properly funded and there is a delay in entering information.

09:39:39 Rep. Hamlett said proper funding for the State Library is essential for the timely flow of materials and documents.

09:40:56 Ms. Taylor said there are penalties in the buy-sell agreement if the water right update is not done.

09:41:54 Rep. Z. Brown asked Ms. Taylor about the penalties. Mr. Mohr said the DNRC may assess a penalty against the transferee.

09:43:06 Rep. Sales asked Mr. Gowen about shifting the burden for making updates to the buyer and the seller's interest when a water right is divided or severed from the land.

09:45:21 Rep. Sales asked Mr. Gowen about the intent in the buy-sell agreement to document the water right.

09:47:38 Rep. Sales asked Mr. Gowen about strengthening the wording in the water right disclosure information forms.

09:49:47 Rep. Hamlett asked if staff can provide information on how many water rights transfers are done per year over the last decade. Rep. Z. Brown asked Mr. Mohr to provide the information from the DNRC.

09:51:09 Rep. Z. Brown thanked Ms. Taylor and Mr. Gowen and asked that the agencies stay engaged in the discussion.

#### **Need for Fee Letter for Water Right Ownership Update**

09:51:51 Rep. Z. Brown provided an introduction and said there is concern regarding the fee letters sent out by the DNRC.

09:52:30 Kathy Olsen, program manager, Kalispell Regional Office, Water Resources Division, DNRC, provided information on the fee letters.

09:56:52 Rep. Z. Brown asked Ms. Olsen to provide a written copy of her testimony.

#### Committee questions:

09:57:31 Rep. Hamlett asked Ms. Olsen about the money collected by the DNRC and if it is directed into the general fund or stays within the department. Ms. Olsen redirected the question to Millie Heffner, Water Rights Bureau chief, DNRC.

09:58:58 Sen. Sesso asked Ms. Olsen about keeping the Department of Revenue (DOR) involved in the process.

09:59:54 Rep. Sales asked Ms. Olsen about how often a year the DNRC implements a penalty. Ms. Olsen redirected the question to Ms. Heffner.

10:00:59 Rep. Sales asked Ms. Heffner about the wording in statute.

10:01:27 Rep. Z. Brown commented on the fee.

### **Removing Department of Revenue from Water Right Geocoding Process**

10:02:30 Rep. Z. Brown provided an introduction.

10:03:16 Kory Hofland, deputy administrator, Property Assessment Division, DOR, provided information on the process for ownership and water right transfers.

#### Committee questions:

10:06:03 Rep. Z. Brown asked Mr. Hofland about the process without the DOR involvement.

10:07:09 Sen. Sesso asked Rep. Z. Brown about the motivation to remove DOR from the process.

10:09:35 Rep. Hamlett asked Mr. Hofland about problems that some counties may have to get the information to the DOR in a timely fashion.

10:11:17 Rep. Sales asked Mr. Hofland about problems associated with the size or growth of a county.

### **Requiring Realty Transfer Updates from Counties to DNRC Within 30 Days**

10:13:16 Rep. Z. Brown provided an introduction.

10:14:10 Regina Plettenberg, Ravalli County clerk and recorder, Montana Association of Clerk and Recorders, provided information on requiring a timeframe for clerks on recording documents.

#### Committee questions:

10:18:58 Rep. Hamlett commented on the timelines for the DOR.

10:19:56 Sen. Sesso commented on resistance to using geocodes.

10:22:50 Rep. Z. Brown said there is some discussion in the public comments and summarized some of the confusion on using geocodes.

10:24:34 Rep. Hamlett said geocodes are a way to facilitate information back and forth between agencies in a more timely fashion.

### **How DNRC Regional Offices Handle Water Right Ownership Transfers**

10:25:29 Brief recess while the telephone connection was reestablished.

10:29:39 Rep. Z. Brown reconvened the meeting.

10:29:50 Ms. Olsen provided information on how the DNRC regional offices handle ownership updates.

#### Committee questions:

10:35:43 Rep. Z. Brown asked Ms. Olsen about the statistics she presented on the processing timeline for ownership updates.

10:36:29 Rep. Z. Brown asked Ms. Olsen to provide the information to staff.

10:36:59 Rep. Hamlett asked Ms. Olsen if geocodes provide a legal description of the land.

10:37:55 Rep. Sales asked Rep. Z. Brown about geocoding and HB 110 (2017).

#### Public comment:

10:40:18 Abigail St. Lawrence, attorney

10:45:57 Jim Gilman, Blake Creek Project Management ([Exhibit 7](#))  
10:49:20 Jan Langel, administrator, Water Resources Division, DNRC  
10:51:01 Jean Bergeson, attorney  
10:58:41 Holly Franz, NorthWestern Energy

Committee discussion, questions, and action:

10:59:16 Rep. Z. Brown opened discussion on next steps and asked about setting up a working group or subcommittee.  
11:01:44 Rep. Sales asked about meeting before the January meeting.  
11:02:19 Rep. Z. Brown said he recommends not meeting again until January.  
11:03:56 Rep. Hamlett agreed and asked to have staff find out when the DNRC started adding owners onto another person's water right and the reason.  
11:05:18 Rep. Z. Brown gave Mr. Langel an opportunity to respond. Mr. Mohr said there were no comments at this time.  
11:05:55 Sen. Welborn said he agreed with the need to get the information requested by Rep Hamlett from the DNRC.  
11:07:04 Mr. Langel said the DNRC is doing the ownership update process in accordance with HB 39 (2007).  
11:09:19 Rep. Hamlett said he recommends obtaining information on when the errors started to occur.  
11:10:16 Rep. Sales said he agrees with the recommendation to follow up at the January meeting and to look at the language in the DNRC fee notice.  
11:11:20 Rep. Glimm commented on the need to focus on the update process and eliminating errors.  
11:12:57 Rep. Z. Brown asked Rep. Glimm about meeting before January.  
11:13:32 Rep. Z. Brown said he will work with staff on the January agenda.  
11:14:31 Mr. Mohr provided a summary for the January meeting.  
11:15:02 Rep. Z. Brown thanked the public, committee members, and staff.

**ADJOURN**

11:16:22 Rep. Z. Brown adjourned the meeting at 11:16 a.m.

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