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WATER POLICY INTERIM COMMITTEE
67th Montana Legislature

SENATE MEMBERS

Jill Cohenour
Bruce Gillespie
Jon Sesso
Jeffrey Welborn

HOUSE MEMBERS

Bob Brown
Zach Brown
Carl Glimm
Bradley Hamlett
Shane Morigeau
Walt Sales

COMMITTEE STAFF

Corina Hach - Attorney
Jason Mohr - Research Analyst
Nadine Spencer - Secretary

MINUTES LOG

January 06, 2020
Capitol Building, Room 172
Helena, Montana

Please note: This document is a Minutes Log and provides annotation 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 recording 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 the 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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Please contact the Legislative Services Division at 406-444-3064 for more information.

ROLL CALL

Members Present:

Rep. Zach Brown, Chair (D)
Sen. Jeffrey Welborn, Vice Chair (R)
Rep. Bob Brown (R)
Sen. Jill Cohenour (D)
Sen. Bruce Gillespie (R)
Rep. Carl Glimm (R)
Rep. Bradley Hamlett (D)
Rep. Walt Sales (R)
Sen. Jon Sesso (D)

Members Excused:

Rep. Shane Morigeau (D)

Staff Present:

Corina Hach, Attorney
Jason Mohr, Research Analyst
Nadine Spencer, Secretary

AGENDA ([Attachment 1](#))**VISITORS' LIST** ([Attachment 2](#))**Committee Business Summary**

The Water Policy Interim Committee (WPIC):

- Voted to draft legislation on weather modification technology;
- Voted to establish a working group on geocodes and the water rights database.

CALL TO ORDER/ROLL CALL

09:04:05 Rep. Z. Brown called the meeting to order at 9:04 a.m. The secretary called the roll. ([Attachment 3](#)) Rep. Morigeau was excused with Rep. Z. Brown holding his proxy. ([Attachment 4](#))

Instream Leasing Report (85-2-436, MCA)

09:05:16 Stephen Begley, water conservation specialist, Department of Fish, Wildlife, and Parks (FWP), presented the biennial instream leasing report ([Exhibit 1](#)) and provided a copy of an article describing FWP's leasing program that was published in Montana Outdoors. ([Exhibit 2](#))

Public comment

None

Committee questions

09:15:06 Sen. Cohenour asked Mr. Begley about the effect of SB 247 (2019) on the number of changes.

09:17:18 Sen. Cohenour asked Mr. Begley what the program does for landowners and how important it is for their success.

09:19:02 Rep. Sales asked Mr. Begley if the department provides the data it gathers on instream flows to the stream gauge oversight work group.

09:22:41 Rep. Hamlett asked Mr. Begley about the amount that FWP pays for the leases and if it is part of the public record.

09:24:48 Rep. Hamlett asked Mr. Begley about the priority date for the landowner when FWP completed the permanent change to instream flow for Cedar Creek.

09:26:48 Rep. Hamlett said more information is needed on the landowner's water right and the priority date for drilling new wells. Rep. Z. Brown agreed and asked Mr. Begley to provide the information to staff.

- 09:28:47 Rep. B. Brown asked Mr. Begley if FWP determined that the new well would have no effect on the stream and if FWP retained the full water right on Cedar Creek.
- 09:30:49 Rep. B. Brown commented on the water right application process handled between two state agencies, and said it should not be more difficult for a private citizen.
- 09:31:27 Sen. Cohenour commented on the process and transparency of the agencies along with oversight by the WPIC.
- 09:32:10 Rep. Sales asked Mr. Begley about the change process set in statute.
- 09:32:58 Rep. Sales asked Mr. Begley if most of the requests are from interested landowners or from the FWP looking for a lease.
- 09:34:52 Rep. Z. Brown asked Sen. Cohenour about changes that were made to SB 247 during the legislative session.
- 09:38:01 Rep. Hamlett said it is important for the committee to know what happened to the appropriation date and asked staff to find out what the priority date was to begin with, what the priority date of FWP is now, and the priority date for the well.
- 09:38:37 Rep. Glimm said Rep. Hamlett also requested a report on the dollar amount and date for leases.
- 09:39:06 Rep. Hamlett commented on Little Belt Creek and the effect of a beaver dam on the health of the stream.
- 09:40:14 Rep. Z. Brown thanked Mr. Begley.

U.S. Forest Service Water Reservations (85-20-1401, MCA)

- 09:40:45 Ethan Mace, hydrologist, Water Management Bureau, Department of Natural Resources and Conservation (DNRC), presented an overview of the U.S. Forest Service (USFS) water rights compact and provided a report summarizing the DNRC implementation of portions of the compact. ([Exhibit 3](#))

Public comment

None

Committee questions

- 09:55:42 Rep. Hamlett asked Mr. Mace to provide an example of a valid objection.
- 09:58:50 Sen. Gillespie asked Mr. Mace about the spike in valid and invalid objections in 2013 and 2014.
- 10:00:31 Mr. Mace said the DNRC works with the USFS in advance to resolve any deficiencies in the applications.
- 10:00:54 Rep. Sales asked Mr. Mace if any of the protected reaches go past USFS boundaries.
- 10:02:31 Rep. Hamlett said he would like to receive information in the future on the effect on subdivisions and examples of any potential issues.

- 10:03:43 Sen. Cohenour asked Mr. Mace about priority for a subdivision that was put in before the date of the water reservation.
- 10:04:21 Rep. Hamlett commented that the USFS will object to some water rights in the future.

Update from Stream Gauge Oversight Work Group (2-15-3308, MCA)

- 10:05:02 Paul Azevedo, Water Management Bureau chief, DNRC, provided an update on the stream gauge oversight work group.

Public comment

- 10:09:52 Jim Hagenbarth, Dillon, Big Hole Watershed committee member. ([Exhibit 4](#))

Committee questions

- 10:11:44 Sen. Cohenour asked Mr. Azevedo about stakeholder involvement.
- 10:13:13 Rep. Hamlett asked Mr. Azevedo if stream gauges are a priority for the current administration and if funding will be included in the next budget.
- 10:14:34 Rep. Hamlett asked Mr. Hagenbarth about his opinion regarding funding.
- 10:16:03 Rep. Hamlett asked Mr. Hagenbarth about the importance of having a public and private partnership.
- 10:16:28 Rep. Z. Brown asked Mr. Begley about the types of funding that FWP uses for stream gauges.
- 10:17:59 Rep. Hamlett said he is interested in learning about what technology will allow in the future with solar powered visual reading.

Follow up on HB 286 Lawsuit

- 10:19:28 Jason Mohr, research analyst, Legislative Services Division (LSD), provided an update on the lawsuit filed by the Advocates for School Trust Lands.

Public comment

None

Committee questions

- 10:21:25 Rep. Glimm asked Mr. Mohr if the lawsuit will be defended by the Attorney General's office or the DNRC.
- 10:21:43 Rep. Hamlett asked Mr. Mohr about the change application pending on Cow Creek for instream flow and if the lawsuit will affect negotiations between FWP and the water right owners.
- 10:22:44 Rep. Hamlett requested more information on the issues.
- 10:23:07 Rep. Z. Brown thanked Mr. Mohr and requested another update in March.

HJ40: Study of Weather Modification

10:23:20 Rep. Z. Brown provided an introduction.

Review of HJ40 Study Progress

10:23:38 Mr. Mohr provided a summary of what the committee has done to date. He said today the committee will receive a legislative history of SB 72 and the DNRC's perspective on weather modification technology and the requirements in state law. He said the committee also sought input from the public.

Legislative History of SB72 (1993)

10:25:10 Mr. Mohr discussed SB 72 and said the committee received a copy of the minutes from the Senate Natural Resources standing committee hearing and a summary of the legislative history. **(Exhibit 5)** He said the entire history is available online.

10:30:02 Rep. Z. Brown commented on the proponents for SB 72.

10:30:31 Rep. Hamlett said he would like more information on the cancer-causing effects of silver iodide.

Water Planner Perspective on Weather Modification Technology

10:31:07 Paul Azevedo, bureau chief, Water Management Bureau, DNRC, said the DNRC has not been active in weather modification in Montana and has not put any resources into weather modification.

Perspective on \$10 Million Financial Responsibility Requirement for Weather Modification Permit

10:33:18 Mr. Azevedo provided information on the \$10 million financial responsibility requirement.

Review of Input from Stakeholders

10:35:45 Mr. Mohr said the committee requested and received public comment on the study. **(Exhibit 6)** He said Mr. Hagenbarth provided information and there are three scientific studies available online.

Public comment

10:36:55 Jim Hagenbarth, vice chair, Big Hole Watershed Committee.

10:40:56 Sen. Sesso entered the meeting.

Committee questions

10:42:33 Sen. Cohenour commented on the carcinogenic properties of silver iodide.

10:43:18 Rep. Sales asked Mr. Azevedo about the rule on financial responsibility and the discretion given to the DNRC.

10:44:18 Rep. Sales asked Mr. Azevedo about the difference in monetary value between an Environmental Assessment (EA) versus an Environmental Impact Statement (EIS).

10:45:28 Rep. Sales asked Mr. Hagenbarth to provide his comments.

10:53:20 Sen. Welborn asked Mr. Hagenbarth about the diversity of the individual members of the Big Hole Watershed Committee.

10:57:30 Rep. Z. Brown asked John Youngberg, Montana Farm Bureau Federation (MFBF), about MFBF's position on SB 72 in 1993 and its current policy. Rep. Z. Brown asked Mr. Youngberg to keep the committee updated on any changes to the policy.

10:59:54 Rep. B. Brown asked Mr. Azevedo about the amount of funding the DNRC needs to study weather modification.

11:01:23 Rep. B. Brown asked Mr. Azevedo about the extent of resources needed to do a study.

11:03:14 Sen. Gillespie asked Mr. Youngberg to provide his perspective on the amount of interest at the MFBF annual meeting for education on cloud seeding and weather modification.

11:04:59 Sen. Gillespie asked Mr. Hagenbarth about the need for public education on cloud seeding.

11:09:41 Rep. Glimm asked Mr. Hagenbarth about Idaho Power's budget for cloud seeding.

11:10:41 Rep. Glimm asked Mr. Hagenbarth about the cost of a \$10 million insurance policy.

11:11:26 Rep. Hamlett asked Mr. Youngberg to explain the difference between the MFBF and the insurance company and how they work together.

11:12:47 Rep. Hamlett asked Mr. Youngberg if Mountain West Mutual Farm Bureau Insurance Company sells crop insurance.

11:13:10 Rep. Hamlett asked Mr. Hagenbarth if the state of Idaho or Idaho Power have ever been sued by anyone in the state of Montana over cloud seeding.

11:13:40 Rep. Hamlett asked Mr. Hagenbarth about the support by insurance companies for cloud seeding in order to reduce the size of hail.

11:14:40 Rep. Hamlett commented on the benefits of cloud seeding in reducing hail damage and insurance claims.

11:15:55 Rep. Z. Brown said insurance companies in Canada are helping to finance the weather modification program and said he would be interested in having someone from the insurance industry provide information at the next meeting.

11:17:09 Rep. Z. Brown asked about a programmatic EIS and what it would cost the DNRC and about direction needed from the committee and in statute to initiate the process.

- 11:17:52 Sen. Cohenour said she would be interested in finding out if there is any information available from the DEQ on silver in the waterways in western Montana as a result of cloud seeding in Idaho.
- 11:20:16 Sen. Sesso asked if there is broad consensus from the agricultural community and water users. Rep. Z. Brown said there has not been any broad opposition.
- 11:22:03 Sen. Sesso commented on the study and asked if it is to determine if the technology is right for Montana or if the law should be changed to accommodate the technology.
- 11:24:18 Rep. Z. Brown commented on the study and said he believes there is value in initiating the process of drafting legislation sooner rather than later.
- 11:25:28 Sen. Cohenour commented on being able to hear from stakeholders and people who may be opposed to cloud seeding.
- 11:27:58 Sen. Welborn commented on moving forward and drafting legislation.

Motion

- 11:28:45 Sen. Welborn moved to have staff draft legislation for weather modification technology.

Discussion on the Motion

- 11:29:09 Sen. Gillespie said he supports drafting legislation, but that more work needs to be done to educate the public.
- 11:30:00 Rep. Glimm said he recommends getting more information before moving forward on drafting legislation.
- 11:31:39 Rep. B. Brown commented on the value of cloud seeding, but said there needs to be more information on its effects before moving forward.
- 11:33:44 Rep. Hamlett said he recommends drafting legislation and that it will prompt public comment.
- 11:36:43 Rep. Z. Brown said the committee has not heard from the opposition yet and hopefully will as the process moves forward.
- 11:37:06 Sen. Sesso commented on the process and drafting legislation.
- 11:40:54 Rep. Sales said he supports the motion.
- 11:41:35 Rep. Z. Brown asked Sen. Welborn to clarify the motion.
- 11:42:34 Sen. Sesso said he recommends starting with the content of HJ 40 and to look at what neighboring states are doing.
- 11:44:48 Rep. Z. Brown said he recommends looking at the EIS and whether there needs to be a change in statute. He asked about continuing with fact finding for the next meeting or going ahead with a bill draft.
- 11:45:31 Sen. Sesso said he recommends doing both.

- 11:46:41 Sen. Cohenour said she agreed and commented on the need for additional information.
- 11:47:38 Mr. Mohr said the committee did ask for information on other states laws and that he will provide the information. He said he can draft legislation to address the barriers that are in statute and commented on the interim process.
- 11:49:57 Rep. Z. Brown asked about any other suggestions for staff.
- 11:50:19 Rep. Hamlett said cloud seeding does not stop a storm from coming, but reduces the size of hail. He said he supports the motion.
- 11:51:13 Rep. Sales asked Mr. Mohr if he will include the laws from Wyoming.

Vote

- 11:52:01 The motion carried 8-2 by roll vote with Rep. B. Brown and Rep. Glimm voting no. Rep. Morigeau voted aye by proxy. **(Attachment 5)**
- 11:53:30 Rep. Hamlett said he recommends that staff provide information from Calgary and the province of Alberta.

Adjudication Update (85-2-281, MCA)

Department of Natural Resources and Conservation

- 11:54:20 Matt Murphy, water conservation specialist, DNRC, said the committee received a copy of the adjudication update. **(Exhibit 7)**
- 11:55:52 Rep. Z. Brown left the meeting.
- 11:57:54 Rep. Sales asked Mr. Murphy about the ownership updates.
- 11:58:44 Rep. Sales asked Mr. Murphy about HB 110 claims (2017) and what the effective date May 7, 2017 to May 30, 2019 designates.
- 11:59:12 Rep. Z. Brown entered the meeting.
- 11:59:42 Rep. Sales asked Mr. Murphy why the department is using the date May 30, 2019.
- 12:00:32 Rep. Sales asked Mr. Murphy about the claim filing ending period.
- 12:01:26 Sen. Sesso asked Mr. Murphy about the exempt claims from SB 355.

Water Court

- 12:02:51 Hon. Russ McElyea, chief water judge, Montana Water Court, provided information on claim closings by month. **(Exhibit 8)**
- 12:03:22 Mr. McElyea discussed claim closure by type. (see exhibit 8)
- 12:03:41 Mr. McElyea discussed compact status. **(Exhibit 9)**
- 12:04:17 Mr. McElyea discussed issuance of decrees and discussed the list of objectives. **(Exhibit 10)**

Public comment

12:08:13 Krista Lee Evans, Blake Creek Management Corp.

Committee questions

12:15:09 Rep. Glimm asked Mr. McElyea about the issue of the stay on the Confederated Salish and Kootenai Tribes (CSKT) claims.

Lunch

12:19:58 Recess

13:28:13 Reconvene

Geocoding and the Water Rights Database

13:28:28 Mr. Mohr provided a review.

13:29:17 Mr. Mohr said after the conference call in December the committee asked for copies of a realty buy-sell agreement ([Exhibit 11](#)), realty transfer certificate ([Exhibit 12](#)), the DNRC ownership update form ([Exhibit 13](#)), specific annual numbers of ownership transfers by year ([Exhibit 14](#)), a sample fee letter ([Exhibit 15](#)), an update on technical improvements to a water right information system ([Exhibit 16](#)), and ownership update information that the department provided at the December meeting. ([Exhibit 17](#))

13:32:52 Mr. Mohr said the committee also received copies of public comment. ([Exhibit 18](#))

Committee questions

None

Public comment

13:34:39 Steve Brown, associate judge, Montana Water Court.

13:44:43 Jan Langel, administrator, Water Resources Division, DNRC.

13:46:45 William Gowen, Montana Land Title Association.

Committee discussion and determination of next steps

13:48:12 Rep. Z. Brown opened discussion on forming a working group.

13:48:58 Sen. Sesso commented on forming a working group and said it should focus on increasing accuracy when a property and its associated water right is transferred and not on geocodes.

13:53:37 Rep. Z. Brown said he recommends every member of the committee have the opportunity to participate.

13:54:07 Rep. Z. Brown asked Mr. Mohr about other stakeholders that have expressed an interest in participating in the working group. Mr. Mohr also said documents that the Water Court gave to the committee at each of the conference calls are available on the committee website.

- 13:55:43 Rep. Z. Brown asked for the committee members who do not support creating a working group to provide their opinion.
- 13:56:04 Sen. Cohenour said she supports the working group and wants to participate in the process. She recommended including the Montana Association of Counties (MACO). Rep. Z. Brown and Sen. Welborn agreed.
- 13:58:29 Sen. Sesso asked Mr. Langel about the Water Rights Mapping Tool.
- 14:01:20 Sen. Sesso asked Holly Franz, attorney, representing NorthWestern Energy, about the Water Rights Mapping Tool.
- 14:04:47 Sen. Sesso asked Mr. Brown about his recommendations to increase accuracy and speed.
- 14:07:11 Rep. Z. Brown asked Mr. Brown about using the Water Rights Mapping Tool to determine place of use and point of diversion.
- 14:11:12 Rep. Z. Brown asked the committee about broadening the scope of the working group and asked Mr. Mohr about committee resources.
- 14:13:31 Rep. Z. Brown asked Mr. Mohr about timing and when the working needs to have a recommendation in order for the WPIC to take action.

Motion/Vote

- 14:14:29 Sen. Cohenour moved to establish a working group on water rights and ownership transfer deeds. The motion carried unanimously by voice vote of those present and voting.

Committee discussion

- 14:15:08 Rep. Z. Brown said he recommends that the working group allow phone participation and to formally include the DNRC, the Water Court, the Montana Land Title Association, the Montana Association of Realtors, the Montana Association of Counties, and the Montana State Library as voting members.
- 14:16:22 Sen. Cohenour said she recommends including the Montana Association of Clerk and Recorders.
- 14:17:05 Rep. Z. Brown asked committee members about their interest in participating in the working group.
- 14:17:41 Rep. Sales said he would like to participate and asked Rep. Z. Brown about directives for the working group.
- 14:18:16 Sen. Gillespie said he would like to participate.
- 14:18:21 Sen. Welborn asked Rep. Z. Brown about committee member participation.
- 14:19:14 Sen. Sesso said the working group can have a discussion at the first meeting to decide goals and how many times to meet.
- 14:21:39 Rep. Z. Brown said he recommends compiling a list of the ideas that have already been presented and not to allow proxies.

14:22:42 Rep. B. Brown said decisions made by the working group will be presented as recommendations to the full committee.

14:23:12 Sen. Cohenour said she hopes that stakeholder groups will get together and bring their recommendations to the working group.

14:24:13 Rep. Z. Brown asked staff about direction. Mr. Mohr asked about the presiding officer and the first meeting date.

14:25:45 Mr. Mohr said the committee will need to give a 10-day notice for the meetings.

14:26:18 Rep. Z. Brown said he will work with Sen. Welborn and the working group can decide on the scope and process at its first meeting.

14:26:46 Rep. Sales said the working group should also include the Department of Revenue.

14:27:02 Sen. Sesso agreed.

14:27:43 Rep. Z. Brown asked Mr. Mohr to provide a link to the materials before the first meeting.

14:28:52 Sen. Welborn said cupcakes are available for the committee and members of the public.

Recess

14:29:50 Brief recess

14:51:13 Reconvene

Examination of HB110 Claims

14:51:39 Rep. Z. Brown provided an introduction.

14:52:13 Matt Murphy, DNRC, provided information on HB 110 claims.

Public comment

14:58:47 Ms. Evans.

15:11:31 Mr. McElyea.

15:15:40 Ms. Franz.

15:16:21 Mr. Langel.

Committee questions

15:18:14 Sen. Gillespie asked Mr. McElyea about eliminating benchmarks.

15:21:13 Rep. Z. Brown asked Mr. McElyea about his idea for eliminating or modifying the benchmarks.

15:22:33 Rep. Z. Brown asked Mr. Langel about the concept presented by Mr. McElyea and if he had any other proposals for eliminating or modifying benchmarks.

15:23:51 Rep. Z. Brown asked Mr. Langel to respond to the memo from Ms. Evans about inconsistencies between regional offices.

15:26:50 Rep. Z. Brown asked Mr. Langel about inconsistencies on how claims are entered into the database and whether or not they can be accessed in the water rights query.

15:27:13 Mr. Langel introduced Laura Rennick, deputy administrator, DNRC, and said her position has oversight of the regional offices. He redirected Rep. Z. Brown's question to Mr. Murphy.

15:33:57 Sen. Cohenour asked Mr. Murphy about the person hired to work on the database and the quality control position.

15:35:57 Sen. Cohenour asked Mr. Murphy about the global updates being done on the issue remarks.

15:37:51 Sen. Cohenour asked Mr. McElyea about the Water Court process for placing issue remarks on water rights claims.

15:41:49 Sen. Cohenour asked Mr. McElyea about issuing notice remarks moving forward.

15:42:27 Rep. Sales asked Mr. McElyea about issue remarks.

15:49:27 Rep. Hamlett commented on adjudication and exempt-from-filing claims.

15:54:30 Rep. Sales commented on the benchmarks.

15:56:18 Rep. Hamlett commented on the benchmarks.

15:57:01 Sen. Sesso asked Mr. Mohr what will happen if the benchmarks are not met.

15:58:22 Sen. Sesso asked Mr. McElyea if the law defines what a claim examined means.

15:59:30 Sen. Sesso asked Mr. Mohr the same question and if the work being done under the HB 110 filings count towards the work being done by the DNRC and the Water Court.

16:01:13 Rep. Z. Brown asked Mr. McElyea if there is anything in the current statute that prevents the department from including HB 110 claims in their benchmark numbers and if so what is the barrier.

16:02:26 Sen. Sesso asked Mr. Langel the same question.

16:03:27 Sen. Sesso asked Mr. Murphy about reexamination of HB 110 claims.

16:04:56 Mr. McElyea clarified his earlier statement and said examination benchmarks pertain to verified claims.

16:06:05 Rep. Z. Brown commented on making the bill effective upon passage and said it can be discussed at the March meeting.

16:06:34 Rep. Hamlett provided his perspective.

16:07:54 Sen. Sesso discussed next steps and provided his recommendation for legislation.

16:08:41 Rep. Z. Brown said he recommends that the Water Court and the DNRC bring a proposal for a committee bill to the March meeting.

16:09:25 Rep. Hamlett asked Mr. Langel to clarify the information he provided earlier about the fees DNRC pays in certain counties for access to deeds.

16:11:57 Rep. Z. Brown said the Montana Association of Counties emailed information to the committee, and that it will probably be discussed at the first working group meeting.

16:12:15 Rep. Hamlett asked Mr. McElyea about the county books of record that were used to record a water right.

16:13:49 Rep. Hamlett asked Mr. McElyea if the Water Court has full access to the books of record.

16:14:51 Rep. Hamlett asked Mr. McElyea about reconstructing records if they are destroyed in a fire.

16:16:33 Rep. Hamlett asked Mr. McElyea if records are kept anywhere other than the county.

ADJOURNMENT

16:18:49 Rep. Z. Brown adjourned the meeting at 4:18 p.m.