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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

July 13, 2020
Capitol Building, Remote Room 172
Helena, Montana

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Please contact the Legislative Services Division at 406-444-3064 for more information.

ROLL CALL

Members Present Remotely:

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. Shane Morigeau (D)
Rep. Walt Sales (R)
Sen. Jon Sesso (D)

Staff Present:

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

Committee Business Summary

The Water Policy Interim Committee (WPIC):

- Voted to put the study of climate and water rights draft report out for public comment;
- Voted to put the HJ14 draft report out for public comment;
- Voted to put the HJ40 draft report out for public comment;
- Voted to put PD 0006 out for public comment.

AGENDA (Attachment 1)**Call to Order/Roll Call**

- 13:02:24 Rep. Z. Brown called the meeting to order at 1:02 p.m. The secretary called the roll. **(Attachment 2)**
- 13:03:43 Jason Mohr, research analyst, Legislative Services Division (LSD), provided an overview of the meeting.
- 13:04:29 Mr. Mohr said the committee received a copy of the hydroelectric potential report **(Exhibit 1)** and the Renewable Resource Grant and Loan (RRGL) program update **(Exhibit 2)**. He said the adjudication update from the Department of Natural Resources and Conservation (DNRC) **(Exhibit 3)** and the Water Court **(Exhibit 4)** are available online.
- 13:04:54 Mr. Mohr discussed the procedure for the Zoom meeting.
- 13:05:14 Mr. Mohr said the committee has one more meeting scheduled before the interim ends on September 15. He said for this meeting the WPIC will consider committee legislation and review draft reports

Nutrient Standards Update (75-5-313, MCA)

- 13:06:13 Mr. Mohr provided an introduction and said the committee will receive reports from the Department of Environmental Quality (DEQ) on nutrient standards and variances, total maximum daily loads (TMDL), and rulemaking related to SB 325 (2105). **(Exhibit 5)**
- 13:08:57 Tim Davis, Water Quality Division administrator, DEQ, provided an update and information on nutrient standards for phosphorus and nitrogen.
- 13:12:03 Sen. Welborn entered the meeting.
- 13:15:40 Mr. Davis said the DEQ has reconvened the Nutrient Work Group (NWG) and the next meeting is scheduled for August 19.

Public comment

- 13:17:15 Tammy Johnson, executive director, Montana Mining Association. **(Exhibit 6)**
- 13:22:23 Rep. Hamlett entered the meeting.

- 13:23:56 Kelly Lynch, deputy director and legal counsel, Montana League of Cities and Towns (MLCT).
- 13:28:52 Peggy Trenk, Treasure State Resources Association.
- 13:30:50 Amanda McInnis, MLCT and city of Billings.
- 13:33:03 Rep. Z. Brown said the committee received a video from Ms. Lynch on behalf of the city of Billings.
https://www.youtube.com/watch?v=4mRsCGG_h2g&feature=youtu.be
- 13:33:25 Dave Galt, Montana Petroleum Association.

Committee discussion

- 13:34:28 Sen. Sesso asked Mr. Davis about permits that are renewed and if the DEQ provides assurance that the variances granted to individual dischargers will be continued until there is another resolution.
- 13:40:58 Sen. Sesso asked Mr. Davis about future work on standards for nonpoint source pollution.
- 13:43:48 Sen. Welborn asked Mr. Davis about the number of discharge permits that are currently in the renewal process. Mr. Davis said he will get that information.
- 13:44:46 Sen. Welborn asked Mr. Davis how a lack of numeric water quality standards currently impacts the renewal process.
- 13:46:09 Sen. Welborn asked Mr. Davis about slowing down the nutrient standard process until a new process is developed.
- 13:48:41 Rep. Z. Brown asked Mr. Davis when the numeric nutrient standards were first adopted.
- 13:49:10 Sen. Cohenour asked Ms. McInnis about the suggestion for a new approach for the use of data.
- 13:51:52 Sen. Cohenour asked Mr. Davis how the narrative standards would be changed with additional data.
- 13:55:33 Sen. Cohenour asked Mr. Davis about holding nonpoint source dischargers to regulatory standards.
- 13:58:00 Sen. Cohenour commented about the burden that is placed on point source dischargers and developing regulatory standards for nonpoint source discharge.
- 13:58:51 Rep. Hamlett asked Mr. Davis about meeting water quality standards and taking into consideration an increase in water quantity over time.
- 14:00:22 Rep. Hamlett asked Mr. Davis where discharge samples are taken.
- 14:01:28 Rep. Hamlett asked Mr. Davis about the variance of taking samples and the impact of low stream flow and high stream flow.
- 14:02:24 Rep. Sales asked Mr. Davis to include information on the additional applications being received with the information that was requested by Sen. Welborn.

- 14:03:38 Rep. Sales asked Mr. Davis to provide a list of the people participating in the NWG. Mr. Davis said he will.
- 14:04:16 Rep. Z. Brown asked Mr. Davis if the NWG will propose draft legislation and asked about the role for the WPIC. He requested that Mr. Davis provide an update on the progress of the NWG at the September meeting.

Total Maximum Daily Loads (TMDLs) for Impaired and Threatened Water Bodies (75-5-703, MCA)

- 14:06:07 Mr. Davis provided information on TMDLs.
- 14:07:46 Mr. Davis said he submitted the most recent TMDL report to the committee. ([see exhibit 5](#))

Public comment

None

Committee discussion

- 14:09:34 Sen. Cohenour asked Mr. Davis about the designated use for a stream.
- 14:13:11 Rep. Z. Brown asked Mr. Davis about the sources of pollution for TMDLs and how many are naturally occurring versus human-caused.
- 14:14:56 Rep. Z. Brown asked Mr. Davis for an example of a TMDL project and funding source.
- 14:18:00 Rep. Z. Brown asked Mr. Davis about the interaction between discharge permits and point source polluters.
- 14:20:06 Rep. Hamlett asked Mr. Davis about measuring pharmaceuticals in water.

Update on SB325 Rulemaking

- 14:22:26 Mr. Davis provided an update on SB325 rulemaking.

Public comment

None

Committee discussion

- 14:26:39 Sen. Sesso asked Mr. Davis if the rules are currently in place.
- 14:27:10 Sen. Sesso asked Mr. Davis about any relationship to what the court said about nutrient standards with the department's pursuit of implementing SB325 and granting the variances.
- 14:27:54 Sen. Sesso asked Mr. Davis if the department will be adopting a standard based on the data collected and that it will not be classified as a variance.

Study of Climate and Water Rights: Review of Draft Report

- 14:29:16 Mr. Mohr provided information on the draft report. ([Exhibit 7](#))
- 14:34:23 Mr. Mohr said the committee will need to make a motion to put the draft report out for public comment.

Study of Climate and Water Rights: DNRC Storage Options

14:35:17 Ann Schwend, water resource planner, DNRC, discussed natural water storage. ([Exhibit 8](#))

Public comment

14:49:31 Richard Roth, IX Ranch

Study of Climate and Water Rights: Committee Recommendations

14:54:27 Rep. Z. Brown asked Mr. Mohr about next steps.

Motion/Vote

14:55:36 Sen. Cohenour moved to put the study of climate and water rights draft report out for public comment. The motion carried unanimously by voice vote.

Committee discussion

14:56:43 Rep. Sales asked Ms. Schwend about her perception of how natural storage impacts water rights.

15:01:20 Rep. Sales asked Ms. Schwend if the DNRC is considering setting up a program to encourage agriculture producers to keep the efficiencies of sprinkler versus flood irrigation.

15:04:23 Rep. Sales asked Mr. Roth if he wanted to respond.

15:06:55 Sen. Cohenour said she recommends adding a comment in the report indicating that the committee will continue to monitor the topic over time.

15:08:50 Rep. Hamlett said he is concerned about downstream states and recommended putting a mechanism in statute that allows for adjustments for time of use.

15:10:18 Sen. Gillespie asked Mr. Roth about working cooperatively with members of the Montana Stockgrowers Association.

15:13:25 Rep. Sales said he recommends including information on the value of the Montana Bureau of Mines and Geology, Surface Water Assessment and Monitoring program (SWAMP).

15:14:22 Rep. Z. Brown agreed.

15:14:56 Rep. Z. Brown commented on the RRGL program ([see exhibit 2](#)) and said there were a couple of projects listed on the infrastructure ranking that included water storage investments.

15:16:40 Rep. Z. Brown said he recommends incorporating the discussion that the committee had with the Montana Water Bar on the potential unintended consequences and considerations around a flexible period of use policy.

15:17:30 Rep. Z. Brown recommended including information on investments being made in beaver mimicry and reintroduction in the West at the end of the section on increased storage.

- 15:18:33 Sen. Cohenour said she recommends adding at the beginning of the report that the reason for the study was to address issues regarding senior water rights.
- 15:20:12 Rep. Z. Brown said it can also be added in findings and recommendations along with information on SWAMP and the RRGL program.
- 15:20:45 Rep. Z. Brown asked Mr. Mohr if he needed any additional information.

Recess

- 15:21:48 Recess
- 15:50:03 Reconvene
- 15:50:20 Sen. Gillespie left the meeting.

HJ14: Review of Draft Report

- 15:50:43 Mr. Mohr provided a review of the HJ14 draft report on the future of the Water Court. ([Exhibit 9](#))

Motion

- 15:56:55 Sen. Cohenour moved to put the HJ14 draft report out for public comment.

Discussion on the Motion

- 15:57:04 Sen. Sesso
- 15:57:12 Rep. Z. Brown
- 15:57:30 Sen. Sesso
- 15:58:54 Mr. Mohr
- 15:59:44 Sen. Sesso
- 16:00:57 Rep. Z. Brown
- 16:01:05 Sen. Cohenour
- 16:02:47 Sen. Cohenour withdrew her motion.
- 16:02:54 Rep. Z. Brown
- 16:03:15 Mr. Mohr
- 16:04:01 Rep. Z. Brown

HJ14: Cost and Process for New Ross Report

- 16:04:36 John Tubbs, director, DNRC, provided information on the original appropriation and process for the Ross Report and cost and process for a new report.
- 16:17:00 Rep. Z. Brown thanked Mr. Tubbs and commented on the cost for a new report.

Public comment

- 16:17:34 Krista Lee Evans, Association of Gallatin Agricultural Irrigators (AGAI); Senior Water Rights Coalition.

Motion

16:19:09 Sen. Cohenour moved to draft a committee bill to fund a new independent report on the Water Court and the water adjudication process and the process in the future with an appropriation of \$175,000.

Discussion on the Motion

16:22:13 Rep. Sales
16:23:44 Rep. Hamlett
16:26:52 Sen. Sesso
16:27:12 Rep. Z. Brown
16:27:42 Sen. Sesso
16:28:51 Rep. Z. Brown
16:29:06 Sen. Cohenour
16:32:13 Rep. Hamlett
16:33:09 Sen. Cohenour
16:33:52 Rep. Z. Brown
16:35:24 Sen. Cohenour withdrew her motion.
16:36:09 Rep. Z. Brown

Committee discussion

16:36:53 Rep. Z. Brown asked Mr. Mohr to add on page 10 that district court judges are elected.
16:37:29 Rep. Z. Brown asked Mr. Tubbs about the lawsuit that was filed by the Department of Fish, Wildlife, and Parks.
16:39:07 Rep. Hamlett said he recommends adding how a water court judge is selected and that it is not a permanent appointment.
16:40:45 Rep. Z. Brown agreed and suggested adding an additional section outlining how current judges are nominated, selected, and confirmed and how it is done in other states.
16:41:25 Rep. Z. Brown recommended reiterating the constitutionality finding. He said he also recommends adding a finding emphasizing that the permanent existence of the Water Court is not a statutory question, but rather a question of jurisdiction, scope, and funding.
16:42:59 Sen. Sesso asked Mr. Mohr about including an option to do a study under the section on findings, recommendations, and legislation.
16:45:10 Sen. Sesso asked Mr. Mohr about adding additional information regarding the public comments made during the interim.
16:48:06 Rep. Z. Brown said the appointment versus election of judges can be put under the section on findings, recommendations, and legislation.
16:49:03 Rep. Hamlett said he supports moving forward and adding additional meetings to get more public opinion.
16:49:50 Rep. Z. Brown agreed.

- 16:50:14 Rep. Sales asked about the timing for putting the draft report out for public comment. Rep. Z. Brown said the committee discussion today will be incorporated into the draft before it is put out for comment.
- 16:50:49 Mr. Mohr said he will plan to have the draft report ready by early August.
- 16:52:11 Rep. Z. Brown asked Rep. Sales if his question had been answered.
- 16:52:33 Rep. Z. Brown said at the end of the meeting tomorrow the committee can outline a plan for additional meetings and the schedule moving forward.

Motion

- 16:52:59 Sen. Cohenour moved to put the HJ14 draft report out for public comment and to include the findings and recommendations discussed by the committee today.

Discussion on the Motion

- 16:53:25 Rep. Glimm
- 16:55:50 Rep. Z. Brown
- 16:56:13 Rep. Hamlett
- 16:57:07 Rep. Z. Brown

Vote

- 16:57:18 The motion carried 5 - 4 by roll call vote with Rep. B. Brown, Rep. Glimm, Rep. Hamlett, and Sen. Welborn voting no. Sen. Gillespie was excused. [\(Attachment 3\)](#)
- 16:58:48 Rep. Z. Brown said the report will be put out for public comment and noted that there is some opposition to the recommendation about the Ross Report in the findings.

Public comment

None

HJ40: Review of Draft Report

- 17:00:24 Mr. Mohr said the agenda item on the insurance company perspective on weather modification technology will be presented at a future date.
- 17:01:00 Mr. Mohr provided information on the HJ40 draft report. [\(Exhibit 10\)](#)

Public comment

- 17:04:23 Jim Hagenbarth.
- 17:06:01 Ms. Evans, AGAI.

Committee discussion

- 17:07:22 Rep. Z. Brown asked Mr. Mohr about needing a motion to include the draft legislation in the report as a recommendation or finding or doing it separately.

17:08:16 Rep. Z. Brown said the motion for the draft report and legislation will be done separately and opened discussion on the draft report.

17:08:46 Rep. Glimm said he supports the report but not the legislation.

17:09:27 Rep. Hamlett said he supports the legislation and moving it forward.

17:10:33 Sen. Welborn commented on the benefits of cloud seeding and said he supports the draft legislation.

17:12:04 Rep. Z. Brown asked for a motion on the draft report.

Motion

17:12:24 Sen. Welborn moved to put the HJ40 draft report out for public comment.

Discussion on the Motion

17:12:40 Sen. Sesso

17:13:45 Mr. Mohr

17:14:38 Sen. Sesso

17:14:48 Rep. Z. Brown

17:15:08 Rep. Hamlett

Vote

17:15:34 The motion carried unanimously by voice vote of those present and voting.

HJ40: Review and Consideration of Committee Bill Draft

17:16:33 Cori Hach, staff attorney, LSD, provided information on the committee bill draft. ([Exhibit 11](#))

Public comment

17:22:19 Laura Rennick, Water Resources Division deputy administrator, DNRC.

17:23:24 Mr. Hagenbarth.

17:25:38 Ms. Evans, AGAI.

HJ40: Committee Recommendations

Motion

17:27:38 Sen. Cohenour moved to put PD 0006 out for public comment.

Discussion on the Motion

17:28:28 Rep. Glimm

17:29:03 Ms. Hach

17:29:05 Rep. Morigeau left the meeting.

17:30:17 Rep. Z. Brown

Vote

17:30:43

The motion carried 6 - 2 by roll call vote with Rep. B. Brown and Rep. Glimm, voting no. Rep. Morigeau voted yes by proxy. Sen. Gillespie and Rep. Hamlett were excused. ([Attachment 4](#))

ADJOURNMENT

17:33:48

Rep. Z. Brown adjourned the meeting at 5:30 p.m.