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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

March 09, 2020
Room 172, Capitol Building
Helena, Montana

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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. Bradley Hamlett (D)
Rep. Walt Sales (R)
Sen. Jon Sesso (D), by telephone

Members Excused:

Rep. Carl Glimm (R)
Rep. Shane Morigeau (D)

Staff Present:

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

AGENDA ([Attachment 1](#))**VISITORS' LIST** ([Attachment 2](#))**CALL TO ORDER/ROLL CALL**

- 13:05:23 Rep. Z. Brown called the meeting to order at 1:05 p.m. The secretary called the roll. Rep. Glimm and Rep. Morigeau were excused.
([Attachment 3](#))
- 13:06:10 Rep. Z. Brown opened the discussion on concerns by some members of the public that have issues pending before the Water Court and the Department of Natural Resources and Conservation (DNRC) about giving their comments on the HJ 14 study.
- 13:08:07 Sen. Cohenour said she has heard from people who are concerned about the openness of the committee forum and the position it puts them in on issues they have pending before the Water Court. She said she believes everyone's information is valuable and that it needs to be honest and straightforward.
- 13:09:55 Sen. Gillespie said he agreed, and that people may not want to get involved.
- 13:11:02 Rep. Sales said the committee needs to be cognizant of the mood in the room, the openness of the forum, and to find a way for people who are hesitant to come forward.
- 13:12:20 Rep. Hamlett said based on the Freedom of Information Act anyone should be able to raise their concerns publicly.
- 13:14:45 Rep. B. Brown said the study of the future of the Water Court is a process and encouraged the public to bring their ideas forward so the committee can make informed decisions.
- 13:17:30 Rep. Z. Brown said there has to be an open conversation and the committee needs to get feedback from the water users and practitioners on the ground. He said it could put them in an awkward position to reflect openly on a proposal they may have pending before the DNRC or the Water Court.
- 13:18:36 Rep. B. Brown said steps can be taken if someone feels they are being discriminated against because of their comments.
- 13:20:05 Sen. Cohenour said it is an uncomfortable topic, and the internal dynamics could make it difficult for the legislature to get the information it needs to make good and clear decisions.

- 13:21:24 Rep. B. Brown said he agreed, and people will not be discriminated against because of their comments.
- 13:22:57 Rep. Z. Brown said the committee needs to hear candid comments from the public and hear about the issues.
- 13:23:49 Rep. Hamlett said it is important to listen to and hear every opinion in order to make better policy, and everyone should be able to speak freely.
- 13:25:47 Rep. Z. Brown asked Sen. Sesso to provide his comments.

Public comment

- 13:26:04 Abigail St. Lawrence, Montana Building Industry Association and Rocky Mountain Stockgrowers Association.

HJ 14: Study of the Future of the Water Court

Review of Study Progress

- 13:27:57 Jason Mohr, research analyst, Legislative Services Division, provided a review of the committee's work.
- 13:31:18 Mr. Mohr said the committee received proposals from the Judicial Branch and the DNRC for changes to the administration of water rights.

Proposal by Montana Water Court

- 13:31:50 Hon. Judge Steve Brown, associate water judge, Montana Water Court, provided a summary of the Judicial Branch proposal. [\(Exhibit 1\)](#)
- 13:33:19 Mr. Brown said appeals to a DNRC decision should be made exclusively to the Water Court.
- 13:34:34 Mr. Brown said the Water Court should have exclusive jurisdiction to decide the boundaries of irrigation districts.
- 13:36:08 Mr. Brown said the Water Court should have concurrent jurisdiction to decide cases regarding ditch easements.
- 13:37:44 Mr. Brown said the Water Court should have concurrent jurisdiction to administer its own decrees.
- 13:39:19 Sen. Welborn entered the meeting.
- 13:40:06 Mr. Brown provided a summary of answers to committee questions about allowing the Water Court to have jurisdiction to administer its own decrees.

Proposal by Department of Natural Resources and Conservation

- 13:42:24 Laura Rennick, deputy administrator, Water Resources Division, DNRC, provided an overview of the department's proposal for a water distribution pilot project. [\(Exhibit 2\)](#)

Public comment

- 13:44:07 John Bloomquist, attorney.

13:53:22 Hertha Lund, attorney.

14:01:24 Krista Lee Evans, Association of Gallatin Agricultural Irrigators and Senior Water Rights Coalition.

14:07:49 Ryan McLane, attorney.

14:11:19 Holly Franz, water attorney, representing NorthWestern Energy.
[\(Exhibit 3\)](#)

14:23:12 Brian Ohs, Montana Stockgrowers Association (MSGA).

14:26:53 Mike Murphy, Montana Water Resources Association (MWRA).

14:29:59 John Tubbs, director, DNRC.

Committee discussion

14:36:58 Sen. Cohenour asked Mr. Tubbs about the amount of funding needed to do a study.

14:37:47 Sen. Cohenour asked Mr. Tubbs about the timeline for losing the adjudication staff.

14:39:14 Rep. Sales asked Mr. Tubbs about a conveyance and the water rights versus the property rights.

14:43:51 Sen. Welborn asked Mr. Tubbs about setting up another court.

14:45:56 Rep. Hamlett asked Mr. Tubbs about dealing with issues administratively rather than using enforcement.

14:51:52 Rep. Sales asked Mr. Tubbs about the number of water user complaints the DNRC receives in a year.

14:52:57 Rep. Sales asked Mr. Tubbs about mediation that can be done by water commissioners.

14:53:47 Rep. B. Brown asked Mr. Brown about the best way to replace the Water Court.

14:58:25 Rep. B. Brown asked Mr. Brown about a process to help educate district court judges on how to handle water issues.

15:02:01 Rep. Z. Brown thanked Mr. Brown for the report and asked about the assumption that the Water Court will not need additional funding or staff.

15:04:16 Rep. Z. Brown asked Mr. Brown about the water commissioner statute and people currently employed as independent contractors by the district courts and how to reconcile the proposal within the existing structure.

15:08:21 Sen. Gillespie asked Ms. Lund about Mr. Tubbs comments regarding next steps.

15:11:27 Rep. Z. Brown asked Ms. Lund about electing versus appointing judges and how it is done in other states.

15:14:11 Rep. Hamlett asked Ms. Lund if a ditch right is a private property right.

15:15:09 Rep. Hamlett asked Ms. Lund if changing jurisdiction over ditch rights to the Water Court needs to be done by statute.

15:15:51 Rep. Hamlett asked Mr. Bloomquist about the importance for the state to adjudicate the post-1973 rights.

15:20:01 Rep. Hamlett asked Mr. Bloomquist about the importance of adjudication of the HB 110 (2017) claims for Montana and potential challenges from downstream states.

15:21:32 Rep. Hamlett asked Mr. Bloomquist for his opinion on whether water right holders have the right to use the full amount of water they first applied for, even if technology makes using that same quantity of water more efficient.

15:24:56 Rep. Sales asked Mr. Bloomquist about treating water users that went through the change process in a fair and equitable manner compared to those that did not.

15:29:39 Rep. Sales asked Mr. Bloomquist about accurate and timely access to the water right database for the DNRC and the Water Court.

15:32:55 Rep. Z. Brown asked Mr. Murphy about the proposals from the Judicial Branch regarding ditch easements and irrigation district boundaries and if members of the MWRA have looked at the proposals.

15:35:41 Rep. Hamlett asked Hon. Judge Russ McElyea, chief water judge, Montana Water Court, about the process for appointing water judges.

15:42:50 Rep. Sales asked Mr. McElyea about funding for the Water Court.

15:45:11 Recess

16:01:43 Reconvene

HJ 40: Study of Weather Modification

Review of Study Progress

16:02:02 Mr. Mohr provided an introduction and reviewed the committee's work to date. He said today he will provide a review of the laws in neighboring states, the DNRC will present information on program start-up costs and the cost for an environmental analysis, the Department of Environmental Quality (DEQ) will provide information on silver iodide in the state waterways, and the committee will review draft legislation.

Weather Modification Laws in Other States

16:04:27 Mr. Mohr discussed regional weather modification laws in neighboring states. ([Exhibit 4](#))

16:08:09 Mr. Mohr discussed federal law related to weather modification.

Committee discussion

16:08:41 Rep. Z. Brown thanked Mr. Mohr for the information.

- 16:08:56 Sen. Gillespie asked Mr. Mohr about hailstorms and weather modification in Calgary and Alberta.
- 16:09:58 Sen. Sesso asked Mr. Mohr about ongoing activity in Idaho.
- 16:11:33 Sen. Cohenour left the meeting.

Weather Modification Program Start-up Costs

- 16:11:57 Michael Downey, Water Planning Section supervisor, DNRC, provided information on possible startup costs for a project.
- 16:15:08 Rep. Z. Brown asked Mr. Downey to provide a copy of his information. [\(Exhibit 5\)](#)

Cost of Programmatic EIS

- 16:15:28 Mr. Downey presented information on the estimated cost for a programmatic Environmental Impact Statement (EIS).

Committee discussion

- 16:17:09 Rep. Hamlett asked Mr. Downey if the EIS would be a one-time cost.
- 16:17:54 Rep. Hamlett asked Mr. Downey about the time span for a license application.
- 16:18:32 Rep. Hamlett asked Mr. Downey about the permitting process in other states.
- 16:19:39 Sen. Gillespie asked Mr. Downey about data from other states and the rate of return.
- 16:22:49 Rep. Z. Brown asked Mr. Downey to provide a copy of the information he presented for the meeting tomorrow. [\(Exhibit 6\)](#)

Presence of Silver Iodide in Montana Waterways

- 16:23:40 Kevin Smith, acting administrator, Water Quality Division, DEQ, provided information on the presence of silver in Montana waterways.

Committee discussion

- 16:28:45 Sen. Gillespie asked Mr. Smith about the studies.

Draft Legislation

- 16:30:27 Mr. Mohr said the committee received a copy of HB 399 (2005) and a copy of a committee bill draft. [\(Exhibit 7\)](#)
- 16:32:07 Mr. Mohr said the committee also received a bill draft from Jim Hagenbarth. [\(Exhibit 8\)](#)
- 16:32:59 Rep. Z. Brown asked about HB 399.

Public comment

- 16:33:28 Mr. Hagenbarth [\(Exhibit 9\)](#).

16:41:29 Brian Ohs, MSGA.

Committee discussion

16:42:52 Rep. Z. Brown asked Mr. Mohr about the difference between the two bill drafts.

16:44:13 Rep. Hamlett asked Mr. Mohr if he has contacted any insurance companies to find out about their interest and if they see any value in cloud seeding.

16:44:55 Rep. B. Brown asked Mr. Hagenbarth about the balance between the benefits of cloud seeding for businesses versus what the public wants.

16:47:03 Rep. B. Brown asked Mr. Hagenbarth about the danger of over-cloud seeding and having too much moisture.

16:50:01 Rep. B. Brown asked Mr. Hagenbarth about the number of years the state has fallen below average snowpack.

16:51:17 Rep. Sales asked Mr. Hagenbarth about averages and the lookback cycle.

16:52:26 Rep. Sales asked Mr. Hagenbarth about his bill draft and the decision to go with a license instead of a permit.

16:55:21 Rep. Sales asked Mr. Hagenbarth about allowing the department suspension guidelines. Mr. Hagenbarth said he will provide a list of the issues to staff.

16:56:16 Rep. Sales asked Mr. Hagenbarth about the reaction he received at the Montana Water Summit on his weather modification proposal.

16:59:02 Rep. Hamlett said weather is different now than it use to be and asked Mr. Hagenbarth what time period is most important to cloud seed for snowpack.

17:01:14 Rep. Z. Brown said the committee will discuss further direction for the study tomorrow.

ADJOURNMENT

17:01:53 Rep. Z. Brown adjourned the meeting at 5:01 p.m.