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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

May 19, 2020
Capitol Building, Remote Room 172
Helena, Montana

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ROLL CALL

Members Present Remotely:

Rep. Zach Brown, Chair (D)
Sen. Jeffrey Welborn, Vice Chair (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)

Members Excused:

Rep. Bob Brown (R)

Staff Present in Helena:

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

AGENDA ([Attachment 1](#))**Committee Business Summary**

The Water Policy Interim Committee (WPIC):

- Voted to have staff finalize PD 0002 as amended;
- Voted to have staff combine the two bill drafts from the geocodes working group and finalize PD 0003;
- Voted to send a letter to Montana's Congressional delegation requesting funds to repair recent damage to the Milk River Project.

Call to Order/Roll Call

09:05:39 Rep. Z. Brown reconvened the meeting at 9:05 a.m. The secretary noted the roll. ([Attachment 2](#))

Next Steps for HJ14

09:06:01 Rep. Z. Brown opened discussion on next steps for HJ14. He said some of the committee members have expressed a desire to wait on making any decisions until the WPIC meeting in July.

Committee discussion

09:06:40 Sen. Welborn said he recommends waiting until July to give staff direction on drafting legislation.

09:07:24 Sen. Sesso agreed.

09:08:57 Rep. Z. Brown said taking more time will not short-change the process. He said there should be additional committee resources available for a working group or subcommittee meeting if necessary.

09:09:43 Rep. Z. Brown asked Jason Mohr, research analyst, Legislative Services Division (LSD) about the next meeting. Mr. Mohr said the meeting is scheduled for July 13-14.

09:10:53 Sen. Cohenour agreed and said it will allow more time to talk to the water users.

09:12:01 Rep. Sales said he also agreed.

09:12:40 Sen. Sesso said he recommends moving forward on the draft legislation from the geocodes working group.

09:13:45 Rep. Z. Brown said the committee can decide after the presentation later today.

09:14:21 Sen. Gillespie said he agrees with the earlier discussion and having more time to talk to people.

09:15:26 Rep. Z. Brown thanked the committee members.

HJ40: Study of Weather Modification

09:15:45 Mr. Mohr said there was a discussion in March about the Alberta Severe Weather Management Society and the committee was supposed to hear from some Montana insurers about their view on weather modification activities. He said he was unable to nail anyone down but expects to have it on the agenda for July. He said the committee will also get the formalized bill draft, proposed by Jim Hagenbarth, on changes to the weather modification statutes at the July meeting.

09:17:17 Rep. Z. Brown said it will allow enough time for feedback and public comment.

Committee discussion

None

Reexamined and HB110 Water Right Claims: Proposed Benchmarks

09:17:44 Rep. Z. Brown provided an introduction and said the committee received a memo from legal staff providing a history and background. [\(Exhibit 1\)](#)

09:18:20 Cori Hach, staff attorney, LSD, said at the meeting in March the Water Court and the Department of Natural Resources and Conservation (DNRC) presented a set of proposed revised benchmarks for completing the examination and reexamination phases of the adjudication. She said Rep. Z. Brown decided more background information was needed in order to make an informed discussion. [\(Exhibit 2\)](#)

09:26:53 Matt Murphy, Water Adjudication Bureau chief, DNRC, said the additional 25,000 exempt from filing claims no longer makes it possible for the department to finish the reexamination work by the 2023 statute date. He said that the department worked with the Water Court to develop a proposed benchmark timetable.

09:29:51 Hon. Stephen Brown, Montana Water Court associate judge, said when the benchmarks were initially laid out, the exempt from filing rights were not rolled in. He said the Water Court has tried to work with the DNRC to come up with benchmarks in a way to do decrees with as many rights as possible.

09:32:40 Hon. Russ McElyea, Montana Water Court chief judge, said if action is not taken by the committee, the current statute creates disincentives for claims examination. He said the impact will delay adjudication by about 5-7 years.

Public comment

09:36:23 Krista Lee Evans, Association of Gallatin Agricultural Irrigators (AGAI) and Senior Water Rights Coalition (SRWRC).

09:38:51 Ms. Hach discussed the bill draft and the concern about removing the DNRC from any reporting requirements.

Committee discussion

- 09:40:15 Sen. Cohenour asked Ms. Hach about the bill draft and the time frame for adjudication.
- 09:42:40 Sen. Cohenour redirected her question to Mr. McElyea.
- 09:45:48 Sen. Cohenour asked Mr. McElyea about the rationale for extending the reexamination work until 2033.
- 09:49:12 Sen. Cohenour asked Mr. Murphy about 2033 date.
- 09:51:21 Sen. Cohenour asked Mr. Murphy about waiting to push the adjudication date out.
- 09:53:25 Mr. McElyea said the most important parts of the legislation are changes to the language rather than the dates.
- 09:56:07 Sen. Cohenour commented on the deadline dates and extending the dates only if necessary.
- 09:56:53 Rep. Z. Brown asked Sen. Cohenour if all the changes she is opposed to are in section 3.
- 09:57:33 Rep. Glimm commented on the public's perception and setting a realistic date for the timeline. He said an expectation will be that more FTE will be needed to speed up the work within a shorter timeline.
- 10:00:43 Rep. Sales asked Mr. Murphy about the HB110 claims and the average time spent per claim.
- 10:03:04 Rep. Sales asked Mr. Murphy about the benchmarks in the bill.
- 10:06:52 Sen. Sesso asked Mr. Murphy about the number of claims that have been completed.
- 10:08:43 Sen. Sesso asked Mr. Murphy about the number of claims that need to be examined by 2022 and the subsequent number of claims for each two-year period going forward.
- 10:12:36 Sen. Sesso asked Mr. Murphy if changing the benchmarks is effectively a request by the department for more FTE and more money.
- 10:13:23 Sen. Sesso said he supports changing the benchmarks in order to make them sync with the flow of work, but said he does not support changing the overall deadline beyond 2028. He asked Mr. Murphy about leaving the 2028 deadline in the bill and if it creates an automatic demand from the department for more FTE.
- 10:16:12 Sen. Sesso commented on the bill draft and said he recommends changing the language, changing the benchmarks so that they are in sync with the workflow, and leaving the overall deadline of 2028 in place for now.
- 10:17:05 Rep. Z. Brown asked Mr. Murphy about the bill and the emphasis on changing the date from 2023 to 2028.

- 10:18:02 Rep. Z. Brown asked Ms. Evans about her concern regarding the DNRC reporting requirements, and if she was satisfied with the explanation from staff.
- 10:19:54 Rep. Sales asked Mr. Murphy about the reporting requirements including post decree work.
- 10:21:16 Sen. Cohenour asked Mr. Murphy about changing the dates.
- 10:25:15 Rep. Z. Brown said he recommends making a motion to move the bill forward and discussing any amendments. He asked Sen. Cohenour about her rationale for the proposed alternate dates.

Motion

- 10:28:23 Sen. Cohenour moved to have staff finalize PD 0002 and to have the Water Court and the DNRC work on the benchmark claim numbers and time frame.
- 10:29:00 Mr. Mohr said the motion is to amend the bill draft with the new dates for consideration by the committee in July.
- 10:29:22 Rep. Z. Brown said the first motion is to move the bill draft and the second motion is to amend the dates. He asked Mr. Mohr if he needed clarification on the dates.
- 10:29:59 Ms. Hach asked Sen. Cohenour about the need to eliminate section 3 and 4 from the subsequent bill draft.

Motion

- 10:30:44 Sen. Cohenour moved to amend PD 0002.

Discussion on the motion

- 10:31:03 Rep. Z. Brown
- 10:32:39 Mr. Mohr
- 10:33:09 Sen. Hamlett
- 10:34:00 Sen. Cohenour
- 10:35:34 Rep. Z. Brown
- 10:36:04 Rep. Hamlett

Vote

- 10:36:54 The motion carried 5-4 by roll call vote with Sen. Welborn, Rep. Glimm, Rep. Hamlett, and Rep. Z. Brown voting no. Rep. Bob Brown was excused. ([Attachment 3](#))
- 10:38:41 Rep. Z. Brown asked if there was any discussion on the motion to finalize PD 0002 as amended.

Vote

10:39:35 The motion carried 9-0 by roll call vote. Rep. Bob Brown was excused. ([Attachment 4](#))

Recommendations from the Geocodes Working Group

10:40:45 Mr. Mohr said there are three recommendations from the geocodes working group. He provided information on the administrative recommendations. ([Exhibit 3](#))

10:42:46 Mr. Mohr discussed the two bill drafts. ([Exhibit 4](#))

10:44:41 Rep. Z. Brown commented on the working group and the vote to move the bill drafts forward.

Public comment

10:46:32 Ms. Evans, SRWRC, AGAI.

10:49:59 Jan Langel, Water Resources Division administrator, DNRC.

10:52:44 Mr. Brown.

10:55:28 William Gowen, Montana Land Title Association.

Committee discussion

None

Motion

10:56:55 Sen. Sesso moved to finalize PD 0003.

Discussion on the motion

10:57:31 Rep. Z. Brown

10:57:44 Sen. Sesso

10:57:58 Rep. Z. Brown

10:58:27 Sen. Sesso revised his motion to have staff combine the bill drafts for consideration by the WPIC in July.

Vote

10:59:23 The motion carried unanimously by voice vote of those present and voting.

10:59:42 Rep. Z. Brown asked Mr. Langel about the department's ability to enact the administrative recommendations and provide a report to the WPIC in September.

11:01:03 Rep. Hamlett said he recommends contacting Mary Sexton, the former director of the DNRC, and Dan Bucks, the former director of the Department of Revenue, to get a historical perspective on promoting the use of geocodes.

11:02:11 Rep. Z. Brown asked Rep Hamlett if he was making a request to staff.

11:03:21 Rep. Z. Brown thanked the members of the working group for their time and effort.

Administrative Rule Review

11:03:44 Ms. Hach said the committee received a memo on two rules noticed for public hearing by the Department of Environmental Quality. **(Exhibit 5)**

11:05:23 Rep. Z. Brown said the rule on the nutrient variance standard will be on the July meeting agenda.

11:05:52 Mr. Mohr said there are a couple of reports that must come from the department related to nutrients.

Public comment

None

Committee discussion

None

Other Business

11:06:30 Sen. Gillespie said a concrete drop structure failed on the St. Mary Canal causing damage to the Milk River Project that could impact water users.

11:07:55 Rep. Z. Brown said the committee may want to get an update in July.

11:08:15 Sen. Cohenour said she recommends drafting a letter to Montana's Congressional delegation asking that assistance be provided to the farmers and ranchers that will be impacted.

Motion

11:08:55 Sen. Cohenour moved to have the WPIC draft a letter to Montana's Congressional delegation asking for assistance related to the failure at the Milk River Project.

Discussion on the motion

11:09:22 Rep. Glimm

Vote

11:10:06 The motion carried unanimously by voice vote of those present and voting.

11:10:27 Rep. Z. Brown said Sen. Cohenour and Rep. Glimm can work with staff on drafting the letter. He asked Mr. Mohr if he needed any additional information.

11:11:25 Rep. Sales said he recommends sending the letter as soon as possible.

11:11:56 Rep. Hamlett commented on the timeline for sending the letter.

Public Comment on any Issue Within the Jurisdiction of the WPIC

11:12:29 Mr. Langel

11:19:18 Rep. Z. Brown thanked the committee and staff.

ADJOURNMENT

11:19:53 Rep. Z. Brown adjourned the meeting at 11:19 a.m.