



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

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

GEOCODES WORKING GROUP MINUTES LOG

May 6, 2020
Capitol Building, Remote 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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://legmt.gov>. From the home page, select the "Committees" drop down menu at the top, then select Administrative or Interim, and the appropriate committee. The written minutes log can be located by expanding the accordion menu for the date of the meeting. Links to the audio/video files can be located by selecting the Video/Audio button on the same page, then the "past/current recordings" button. From there, use the calendar to select the date of the meeting you wish to view/listen to. The written Minutes Log, along with links to the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed. Please contact the Legislative Services Division at 406-444-3064 for more information.

ROLL CALL

Members Present Remotely:

Rep. Zach Brown, Chair (D)
Sen. Bruce Gillespie (R)
Rep. Walt Sales (R)
Sen. Jon Sesso (D)
Rep. Shane Morigeau (D)

Public Members Present Remotely:

James Ferch, Department of Natural Resources and Conservation (DNRC)
Kathy Olsen, DNRC
Bill Gowen, Jr., Montana Land Title Association
Evan Hammer, Natural Resources Information Service
Bryce Kaatz, Department of Revenue
Hon. Russ McElyea, Montana Water Court
Hon. Steve Brown, Montana Water Court
Tara DePuy, Montana Association of Counties
Krista Lee Evans, Association of Gallatin Agricultural Irrigators, Senior Water Rights Coalition

Public Members Absent:

Liane Taylor, Montana Association of Realtors
Shantil Siaperas, Montana Association of Clerk and Recorders

Staff Present in Helena:

Jason Mohr, Research Analyst
Nadine Spencer, Secretary

Staff Present Remotely:

Corina Hach, Attorney

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

- 10:01:31 Rep. Z. Brown called the meeting to order at 10:01 a.m. The secretary called the roll. **(Attachment 2)**
- 10:04:30 Jason Mohr, research analyst, Legislative Services Division, provided information for the zoom meeting. He said Tara Depuy is representing the Montana Association of Counties; Bryce Kaatz is substituting for Kory Hofland, Department of Revenue (DOR); and both Judge Russ McElyea and Judge Steven Brown are present from the Water Court.

Discussion of Proposed Framework**Review of Working Group Actions**

- 10:05:17 Mr. Mohr provided information on the working group meeting from last Friday and said the group settled on three actions items. He said a subgroup was formed to take care of a couple of those items and a request was made to staff for a bill draft. Mr. Mohr said the agenda today will cover the three action items and further suggestions for the framework that was provided by Krista Lee Evans.

Discussion of April 1 Action Items**Bill Draft Related to Delays and Penalties**

- 10:06:27 Mr. Mohr discussed the bill draft. **(Exhibit 1)**

Refine Language Related to "chain of title" Concept/Rules for When DNRC Processes Ownership Updates

- 10:08:07 Mr. Mohr said the subgroup was led by Mr. McElyea. and included Mr. Brown; Bill Gowen, Montana Land Title Association; Kathy Olsen, Water Resources Office regional manager, DNRC; and Krista Lee Evans, Association of Gallatin Agricultural Irrigators, Senior Water Rights Coalition. He said the charge to the subgroup group was to refine language related to the idea of using the chain of title concept and rules for when DNRC processes ownership updates.
- 10:09:22 Mr. McElyea discussed the proposed draft legislation submitted by the subgroup. **(Exhibit 2)**
- 10:13:03 Mr. Gowen commented on the meeting and the collaborative effort to address the problems and preserve the successes that geocodes have made in updating the database. He recommended increasing the penalty for someone who fails to update their ownership.
- 10:15:01 Rep. Z. Brown said a key point for future legislation will be the cost for the penalty and fee versus the amount to file a new appropriation. He thanked the members of the subgroup.
- 10:15:32 Ms. Evans discussed the changes made in statute and said the draft proposal is for ownership updates going forward.
- 10:19:38 Rep. Z. Brown asked Ms. Evans about the Realty Transfer Certificate (RTC).
- 10:19:58 Ms. Olsen commented on the subgroup meeting.
- 10:20:26 Jim Ferch, New Appropriations Program manager, Water Resources Division, DNRC, commented on the legislation and some of the department's concerns.
- 10:25:41 Ms. Evans asked Mr. Ferch about updating the ownership database on a court order.
- 10:29:13 Rep. Z. Brown asked Mr. Ferch about his concerns.
- 10:30:43 Ms. Olsen asked about sending the fee request letter and allowing 30 days to pay. Mr. Ferch said he assumed that the department would continue to send the letter. Ms. Olsen asked if that was the general assumption.
- 10:31:30 Mr. McElyea provided his comments and recommendation on the fee.
- 10:33:48 Sen. Gillespie asked about problems that prevent collecting the fee.
- 10:34:59 Mr. McElyea said raising the fee, allowing collection, and keeping the attorney fee provision will add more enforceability than what is currently in statute. He said he recommends updating the forms and modifying the communication between the DNRC and the water users.
- 10:38:19 Rep. Z. Brown asked Mr. McElyea about increasing the fee from \$50 to \$200 and whether it should be done in statute or by rule.

10:39:06 Mr. Gowen said the penalty is being increased, not the fee.

10:39:34 Rep. Z. Brown said he recommends making the increase by rule and asked Ms. Evans for her opinion.

10:42:07 Sen. Gillespie commented on the fee.

10:43:15 Rep. Sales asked about the fee, the \$200 penalty, and adding language in statute to allow for collection of attorney fees.

10:44:01 Rep. Z. Brown asked Mr. Mohr about revising the draft legislation.

10:45:42 Rep. Z. Brown asked about next steps and the concerns from the DNRC. Mr. Ferch said the department will send a written response with suggestions.

10:46:41 Rep. Z. Brown asked about allowing staff to work on the bill draft and incorporating the feedback received from the DNRC.

10:47:04 Ms. Evans commented on being able to have a bill draft ready for the WPIC meeting. She asked about changing the language on modifying or terminating ownership of a water right, and changing an order from a court of competent jurisdiction to an order from the Water Court.

10:48:16 Rep. Z. Brown asked the other members of the working group about changing the language in statute.

10:48:29 Mr. McElyea agreed. He said the language in the proposal from the subgroup on the fee was put in as a placeholder in order to allow the DNRC to describe a penalty and a collection process through rule.

10:50:10 Rep. Z. Brown commented on moving forward and said the WPIC has oversight over the rulemaking process as well.

10:50:33 Rep. Sales said he thought it was already in statute and only the amount needs to be increased.

10:51:06 Mr. Gowen agreed. He commented on making the changes discussed by the working group.

10:52:08 Rep. Sales said when the bill draft is presented to the WPIC it will bring other ideas, and that he will be interested in the department's position. He asked about having other DNRC staff present at future meetings.

10:52:59 Mr. McElyea said he is concerned about agreement by the staff with decision-making authority at the DNRC.

10:54:43 Ms. Olsen agreed and said someone else in the department needs to step in and be part of the negotiations.

10:55:04 Rep. Z. Brown said the appropriate person from the DNRC will be part of the discussion at the WPIC meeting.

10:56:04 Ms. Evans said Ms. Olsen's work and insight on the working group has been very informative. She said it would be appropriate to have someone from the DNRC with decision-making authority at the table.

10:58:03 Mr. Ferch said the decision makers have been involved and provided input on the information submitted to the working group.

10:58:46 Rep. Z. Brown said he will follow up with the DNRC after the meeting.

10:59:13 Rep. Z. Brown commented on next steps and allowing staff to incorporate aspects of the memo and the discussion today into the bill draft. He asked Mr. Mohr about having a bill draft ready for the working group meeting next week.

11:00:56 Rep. Sales asked about updating language in the form. Ms. Evans and Mr. McElyea said they can work on it.

11:02:36 Rep. Z. Brown said he received confirmation from Jan Langel, Water Resources Division administrator, DNRC, that he or Laura Rennick, deputy administrator, DNRC, will participate in the working group meeting next week.

11:02:56 Rep. Sales thanked the members of the working group from the DNRC and said he appreciates their work.

11:03:16 Sen. Sesso thanked the members of the working group and the subgroup for their efforts.

11:04:19 Rep. Z. Brown agreed and asked about further discussion on refining the language related to the chain of title concept.

11:04:50 Mr. McElyea said by modifying the language in the statute the issues have been fixed.

11:05:01 Ms. Evans agreed.

Further Discussion of Framework Suggestions

No. 6: DNRC shall keep all records, maps, and research used to determine ownership in each water right claim file

11:05:16 Rep Z. Brown opened discussion on suggestion 6.

11:05:41 Ms. Evans commented on the suggestion and taking out the word "claim".

11:06:33 Mr. Ferch said the DNRC has no issues with suggestion 6.

11:07:38 Ms. Evans asked Mr. Ferch about the ability to have access to the information electronically.

11:08:35 Ms. Evans asked Mr. Ferch if having access electronically would require a statutory change

11:09:05 Ms. Olsen said she puts as much information as she can in a claim file.

11:09:39 Rep. Z. Brown said the path forward is internal DNRC communications and asked about any further questions or suggestions.

11:09:57 Mr. McElyea said he agrees the work is currently being done by the DNRC and no statutory change is required.

11:10:24 Rep. Sales asked about the definition of "the file" and if the paper file and the electronic file are the same.

11:10:51 Mr. Ferch said the DNRC considers that they are the same.

11:11:04 Mr. McElyea agreed.

11:11:15 Ms. Evans said from an adjudication standpoint there is a difference between a claim file and a case file within the courts.

11:12:16 Rep. Z. Brown commented on the importance of having a record in the minutes log and in the report to the WPIC that this is an action step that the working group has chosen and outlined and does not require legislative action.

11:12:52 Ms. Evans said the DNRC agreed with suggestion 15 and updating their 1993 ownership policy. She recommended that in the process of updating the policy the DNRC include language specific to what was included in suggestion 6. Mr. Ferch agreed.

No. 8: Water Court shall provide a map and marked up abstract when submitting the result of a court order to DNRC

11:13:31 Rep. Z. Brown opened discussion on suggestion 8.

11:14:00 Mr. McElyea commented on some of the issues associated with maps and said the Water Court would oppose any requirement that it produce them.

11:15:06 Ms. Evans said the intention was not to ask the Water Court to produce maps, but to scan and include any maps that were used to assist in their decision to the DNRC.

11:16:27 Mr. Ferch said maps are imperative to properly geocode a water right.

11:18:35 Mr. McElyea said there is not always a map associated with a change in place of use.

11:20:09 Mr. Ferch said he does not understand how it is possible to change a place of use without having some sort of visual representation.

11:22:00 Mr. McElyea said it is not unusual for the Water Court to modify places of use by changing a legal description. He said the problem is the DNRC's need to convert the place of use to a geocode.

11:23:38 Ms. Evans said it may be a policy discussion for the Water Court to determine what is a quality map. She asked if the ownership update process is started behind the scenes before a master's report is issued.

11:24:28 Mr. McElyea said it can be.

11:24:45 Ms. Evans said if a map is available it can be included in instances when the ownership update happens before a master's report or an order from the court. She said the court can be asked to share any high-quality information to help inform the DNRC processes.

11:25:46 Mr. McElyea said the Water Court already does provide the information and that it is not a statutory fix.

11:26:51 Ms. Evans said if the DNRC does not have a map, and if there is any doubt, a geocode should not be added to a water right.

11:27:21 Mr. Ferch said that is the current process, and if there is a question it is marked as unresolved.

- 11:30:01 Ms. Evans said the subgroup's proposal has reduced the instances when the department can only use the DOR geocode.
- 11:30:44 Mr. Gowen said the department needs to try to assign geocodes even in instances when they are unsure because that is the process. He said any place of use must be describable.
- 11:32:31 Mr. McElyea agreed and said converting every place of use to a geocode does not need to be an objective. He said there is no reason why aliquot parts cannot be used to describe the place of use for a water right.
- 11:34:16 Ms. Evans provided a summary of the recommendations made by the working group.

No. 11: Provide for a "correct and complete" form during ownership transfer process

- 11:35:19 Rep. Z. Brown opened discussion on suggestion 11.
- 11:35:40 Ms. Evans provided additional information on the suggestion.
- 11:36:38 Mr. Ferch said the DNRC agrees with the suggestion.
- 11:37:09 Ms. Evans commented on providing the department with a release of responsibility when it receives an incomplete form.
- 11:38:09 Rep. Sales asked if "correct and complete" is defined in statute.
- 11:39:30 Rep. Z. Brown said another term could be used to define this aspect of the process.
- 11:39:47 Ms. Evans said there is a general definition for "correct and complete" in statute. Rep. Sales said that it might be fine.
- 11:40:28 Mr. Gowen commented on the DNRC form and said if it is not complete it does not meet the standard already set in statute.
- 11:41:01 Ms. Evans asked about the incomplete forms that are received and if the department must act on the incomplete forms if they are put in a position to fail.
- 11:41:48 Ms. Olsen said when the DNRC receives an ownership update form it must have enough information to be able to process the correct water right into the new person's name. She said to her that is "correct and complete".
- 11:42:47 Rep. Z. Brown asked about next steps.
- 11:43:10 Mr. McElyea said the DNRC should not be held accountable for failing to process a form that does not have complete information. He said he is satisfied with having people in the field office get the information needed.
- 11:44:21 Ms. Evans said she agrees and recommended that when the department updates its policy all field offices should be processing an incomplete form the same.
- 11:45:06 Mr. Ferch said the concern is valid and making the change in statute would help.
- 11:45:59 Ms. Olsen said by having it in statute it would provide justification for requesting more information to make the form correct and complete.

- 11:46:16 Rep. Z. Brown asked about moving forward with the recommendation from the DNRC.
- 11:46:28 Mr. Gowen said he agrees with adding it into statute.
- 11:46:41 Mr. McElyea said he agrees. He said he is concerned that it could become an excuse for not processing ownership updates, and that it may be better to reshape the form to more clearly explain the information that is required and have the DNRC update its policies.
- 11:47:34 Rep. Z. Brown asked Mr. Mohr about the ability to have a bill draft ready for next week.
- 11:48:53 Rep. Z. Brown opened discussion on other issues.
- 11:49:10 Ms. Evans asked about sharing a portion of what is disclosed in the RTC with the DNRC. Rep. Z. Brown said it can be discussed offline and brought to the WPIC for consideration.
- 11:50:10 Rep. Z. Brown said there are at least three action items for the working group to consider at its next meeting.
- 11:50:54 Mr. Mohr asked for clarification regarding the action items.

Public comment

None

Additional working group discussion, questions, and action

- 11:53:09 Rep. Z. Brown opened discussion on next steps.
- 11:53:20 Mr. Mohr said the next working group meeting is scheduled for Wednesday at 10:00 a.m.
- 11:53:51 Rep. Z. Brown said he will work with Mr. Mohr to identify the action items and asked for a member of the working group to be ready to make the necessary motions to discuss each one individually. He said the recommendations will be submitted to the WPIC at its meeting on May 18.

ADJOURNMENT

- 11:55:13 Rep. Z. Brown adjourned the meeting at 11:55 a.m.