



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

October 13, 2020
Zoom Videoconference
Helena, Montana

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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 REMOTELY:

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

COMMITTEE ACTION

The Water Policy Interim Committee (WPIC):

- Voted to preintroduce SB47, as amended, as a committee bill;
- Voted to preintroduce PD14 as a committee bill;
- Voted to preintroduce PD0006, as amended, as a committee bill.

AGENDA ([Attachment 1](#))

CALL TO ORDER/ROLL CALL

09:04:00 Rep. Zach Brown-D called the meeting to order at 9:04 AM. The committee secretary took roll. ([Attachment 2](#))

09:05:11 Jason Mohr, research analyst, Legislative Services Division (LSD), provided an introduction and said the three reports on HJ14, HJ40, and climate and water rights have been finalized. He said today the committee will finalize legislation and receive information on Board of Environmental Review rules for selenium standards in the Kootenai River.

PROPOSED LEGISLATIVE AUDIT DIVISION AUDIT OF WATER RIGHTS INFORMATION SYSTEM

09:05:11 Mr. Mohr said the Legislative Audit Division (LAD) will provide information on the priority list of performance audits for the coming fiscal year.

09:07:07 Will Soller, deputy legislative auditor, LAD, provided information on the performance audit process and said the water rights data base is at the top of the priority list. ([Exhibit 1](#))

09:08:47 Rep. Hamlett joined the meeting.

Public comment

None

Committee questions and discussion

09:09:40 Rep. Z. Brown thanked Mr. Soller for providing the update.

09:09:57 Rep. Sales asked Mr. Soller to let the committee know when the audit is assigned.

DISCUSSION OF SB47 (2019): CLARIFYING USE OF RIVER BASIN COUNCILS

09:10:58 Mr. Mohr said at the last WPIC meeting the committee requested information on SB47 (2019) that proposed to create basin councils in each of the three major river basins. ([Exhibit 2](#))

Committee questions and discussion

09:12:32 Sen. Cohenour encouraged the committee to move the bill forward.

09:14:14 Rep. B. Brown said adding “water management issues” on page 2 line 7 may begin to politicize the groups. He asked about the language on line 24 and who makes the decision regarding the members of the basin advisory councils.

09:15:37 Rep. Z. Brown asked Rep. B. Brown about working with staff on clarifying the language and postponing committee action until the end of the meeting.

Motion

09:17:08 Sen. Cohenour moved to preintroduce SB47 as a committee bill.

09:17:30 Sen. Cohenour moved to amend SB47 to remove "and water management issues" on page 2, line 7.

Discussion on the Motion

09:18:06 Sen. Gillespie

09:18:58 Rep. Z. Brown

09:21:30 Sen. Cohenour

09:23:41 Rep. B. Brown

09:24:29 Sen. Sesso

09:26:37 Rep. Sales

Vote

09:27:30 The motion carried unanimously by roll call vote. Rep. Hamlett's vote is recorded at timestamp 09:29:27. ([Attachment 3](#))

09:29:02 Sen. Cohenour said she hopes the committee votes to move the bill forward in order to address the issues.

09:29:27 Rep. Hamlett said his vote on the previous motion was "aye."

Motion/Vote

09:29:40 The motion to preintroduce SB47 as a committee bill, as amended, carried unanimously by voice vote.

DRAFT LANGUAGE FOR BERKELEY PIT EXEMPTION

09:30:22 John Tubbs, director, Department of Natural Resources and Conservation (DNRC), said he provided information on core language of an exception for draft language. ([Exhibit 3](#))

09:37:55 Mr. Tubbs discussed the draft language.

09:44:31 Rep. Z. Brown asked Mr. Tubbs to clarify the process for legislation and the role of the WPIC.

Public comment

09:46:32 Clayton Elliott, Montana Trout Unlimited.

Committee questions and discussion

09:47:36 Sen. Sesso thanked Mr. Tubbs and the DNRC for the idea and finding a way to facilitate the beneficial use of the water. He asked the committee to do whatever it can to move the language drafted by the DNRC forward in the next legislative session.

09:52:59 Sen. Cohenour thanked Mr. Tubbs for the information and said it will help the committee members educate the rest of the legislature on the issue.

- 09:53:48 Rep. Z. Brown asked Mr. Mohr about the process and if the committee voted to pre-introduce legislation at the last meeting.
- 09:54:30 Rep. Z. Brown asked Mr. Mohr if he will work with the department on drafting legislation and assigning a bill sponsor from the WPIC.
- 09:55:08 Sen. Sesso asked Mr. Tubbs what would happen if there was no exception.
- 10:01:22 Rep. Sales thanked Mr. Tubbs and said he hopes the information on the new language and site-specific information will be made available to the stakeholders quickly.
- 10:02:23 Sen. Gillespie said this could lay a pathway for the future.
- 10:03:14 Rep. Hamlett said he hopes the legislation moves forward. He said there needs to be an in-depth investigation into where the groundwater is going other than filling the pit.
- 10:05:50 Mr. Tubbs said the Montana Bureau of Mines and Geology received funding to do a groundwater investigation around the entire operable unit.
- 10:07:31 Rep. Z. Brown thanked Mr. Tubbs.

PD0009: AMENDING WATER RIGHT OWNERSHIP UPDATE PROCESS

- 10:08:00 Mr. Mohr provided an overview of the bill draft. He said the committee considered the bill draft for preintroduction at the September meeting and directed the geocodes working group to do further refinement.
- 10:09:03 Mr. Mohr said the committee also asked about the fiscal impact of the bill and the DNRC provided draft fiscal assumptions. [\(Exhibit 4\)](#)
- 10:09:09 Mr. Mohr said the committee received a copy of the modified bill draft from the working group. [\(Exhibit 5\)](#) He said the committee also received a memo with further options to refine the bill. [\(Exhibit 6\)](#)
- 10:10:25 Mr. Mohr discussed the options for refining the bill draft.

Summary of GWG Discussion

None

Public comment

None

Committee questions and discussion

- 10:14:55 Sen. Gillespie asked about sending two extra notices to people instead of having something complicated and hard to administer.

Motion

- 10:15:52 Sen. Cohenour moved to preintroduce PD14 as a committee bill.

Discussion on the Motion

10:16:10 Rep. Z. Brown
10:16:51 Mr. Mohr
10:18:10 Rep. Z. Brown

Vote

10:18:24 The motion carried unanimously by roll call vote. Sen. Welborn will carry the bill. Rep. Sales will be the backup sponsor. **(Attachment 4)**
10:21:32 Rep. Z. Brown thanked the members of the geocodes working group.

PD0006: REVISE WEATHER MODIFICATION AND CONTROL STATUTES

Summary of Bill Draft

10:22:40 Mr. Mohr said the committee began consideration of PD0006 at the last meeting. He provided an overview of the bill draft. **(Exhibit 7)**
10:23:42 Mr. Mohr said the committee asked to have more discussion about the Montana Environmental Policy Act (MEPA) process and insurance. **(Exhibit 8)**
10:24:24 Rep. Z. Brown said the bill draft was left on the table so there is no need to make another motion.

MEPA 101

10:24:37 Hope Stockwell, research analyst, LSD, provided information on the MEPA process. **(Exhibit 9)**
10:27:34 Ms. Stockwell said the committee was emailed links with detailed references about procedural and substantive differences between Environmental Assessments (EA) and Environmental Impact Statements (EIS).

Public comment

10:31:09 Mr. Elliott.
10:34:22 Jim Hagenbarth. **(Exhibit 10)**

Committee questions and discussion

10:35:40 Rep. Z. Brown asked Mr. Mohr if the current version of the bill just requires an EA.
10:36:42 Sen. Cohenour asked about receiving a copy of the DNRC language change. **(Exhibit 11)**
10:37:02 Rep. Z. Brown thanked Mr. Hagenbarth for his expertise and said if he is comfortable making the changes than he supports requiring a full EIS.
10:37:42 Cori Hach, legal staff, LSD, discussed the language change.

Motion

10:38:27 Sen. Cohenour moved to amend PD0006.

Discussion on the Motion

10:38:38 Rep. Z. Brown
10:38:46 Ms. Hach
10:38:51 Rep. Z. Brown
10:39:01 Ms. Hach

Vote

10:39:50 The motion carried unanimously by voice vote.

Motion/Vote

10:40:12 Rep. Z. Brown moved to preintroduce PD0006, as amended, as a committee bill. The motion carried 8-2 by roll call vote. **(Attachment 5)** Rep. B. Brown and Rep. Glimm voted no. Rep. Morigeau voted yes by proxy. Sen. Gillespie will carry the bill.

UPDATE ON PROPOSED WATER QUALITY STANDARDS FOR SELENIUM

10:42:47 Rep. Z. Brown said individual public comments will be limited to three minutes.

10:43:40 Ms. Hach said the committee received a summary of the proposed rule from the Board of Environmental Review to establish limitations for selenium in Lake Kootenai and the Kootenai River. **(Exhibit 12)**

10:46:43 Rep. Z. Brown asked Ms. Hach to clarify the 2016 EPA recommendations.

10:48:07 Tim Davis, Water Quality Division administrator, Department of Environmental Quality (DEQ), discussed the selenium standard setting process for Lake Kootenai and the Kootenai River. He said the committee received a copy of today's PowerPoint presentation **(Exhibit 13)** and a copy of information that the Environmental Quality Council requested in September 2019 on Lake Kootenai selenium standards. **(Exhibit 14)**

10:56:27 Myla Kelly, Water Quality Standards and Modeling Section supervisor, DEQ, provided information on the background, framework, and process for the proposed selenium standards.

11:08:06 Lauren Sullivan, water quality scientist, DEQ, provided information on the technical and scientific aspects.

Public comment

11:26:46 Rep. B. Brown asked to have proponent's testimony followed by opponent's testimony

11:29:32 Dave Hadden, Big Fork.

11:31:48 Mr. Elliott. **(Exhibit 15)**

11:32:42 Shelly Fyant, tribal council chairwoman, Confederated Salish and Kootenai Tribes (CSKT). **(Exhibit 16)**

11:35:55 Randal Macnair, Elk Valley conservation coordinator.

11:38:36 Brad Smith, North Idaho director, Idaho Conservation League. **(Exhibit 17)**

11:41:49 Erin Sexton, University of Montana.

11:44:49 Ayn Schmit, senior water policy advisor, EPA Region 8.

11:47:07 Lars Sander-Green, Wildsight, British Columbia. **(Exhibit 18)**

11:50:36 Alec Underwood, Montana Wildlife Federation.
11:52:08 Michael Jamison, National Parks Conservation Association. **(Exhibit 19)**
11:55:55 Bill Hanlon, past chair, Backcountry Hunters and Anglers.
11:59:55 Gen Hoyle, Kootenai Tribe of Idaho.
12:01:43 Dave Blackburn, Kootenai Anglers, Libby. **(Exhibit 20)**
12:02:58 Josh Letcher, Lincoln County commissioner.
12:07:28 Tim Linehan, Linehan Outfitting. **(Exhibit 21)**
12:10:30 Stu Levit, legal department, CSKT.
12:15:20 Sen. Mike Cuffe, SD 1.
12:20:19 Rep. Steve Gunderson, HD 1.
12:23:20 Vicki Marquis, Holland Hart law firm.

The WPIC received additional written public comment. **(Exhibit 22)**

Committee questions and discussion

12:26:59 Sen. Cohenour asked Ms. Kelly about the timeline.

12:28:53 Sen. Cohenour asked Ms. Kelly about the site-specific criteria and how it works with the EPA requirements in the Montana Administrative Procedure Act (MAPA).

12:31:09 Sen. Cohenour asked Ms. Kelly about impacts to aquatic life.

12:33:14 Rep. Z. Brown asked Ms. Kelly to clarify when the impacts happen during the reproductive stage in fish. Ms. Kelly redirected the question to Ms. Sullivan.

12:34:26 Sen. Cohenour asked Ms. Sullivan about the methodology used for fish tissue analysis and data.

12:36:41 Sen. Cohenour asked Ms. Sullivan about deformities to fish gill tissue observed by outfitters in the area.

12:39:16 Sen. Cohenour asked Ms. Sullivan about the need for a more restrictive number for selenium criteria.

12:40:54 Rep. Glimm asked Ms. Schmit about EPA's recommended value for site-specific criteria for Lake Koochanusa versus other areas.

12:43:15 Rep. Glimm asked Ms. Schmit about the reason for a higher standard than the federal standard.

12:45:27 Rep. Glimm asked Ms. Kelly about differences in readings depending on the time of the year when tests are taken.

12:47:18 Rep. Glimm asked Ms. Kelly about the average of readings throughout the year.

12:48:34 Rep. Glimm asked Mr. Davis about the timing for bringing the rule forward.

12:53:12 Sen. Welborn asked Mr. Davis about the reason for needing to exceed the federal standards.

- 12:56:43 Sen. Welborn asked Mr. Davis about guaranteeing that the rule will only apply to Lake Kooconusa and the Kootenai drainage and will not inadvertently affect industries or jobs in other areas of Montana without a public process.
- 12:59:21 Sen. Welborn asked Mr. Davis about the responsibility for enforcing the rules across international borders.
- 13:02:33 Rep. Morigeau asked Mr. Davis about Idaho listing the Kootenai River as impaired and what it means for Montana's responsibility to adopt protective criteria.
- 13:04:52 Rep. Sales asked Mr. Davis about the reasoning behind the rule and the work of the stakeholders and the science. He also asked about the technical subcommittee.
- 13:08:17 Ms. Sullivan provided information on the selenium technical subcommittee members.
- 13:10:03 Rep. Sales asked Ms. Sullivan if the members of the subcommittee that requested more time were given the ability to share their comments.
- 13:11:02 Rep. Sales asked Rep. Gunderson about the missing data he referenced.
- 13:15:07 Rep. Sales asked Rep. Gunderson about the timeframe for the treatments that took place.
- 13:15:51 Rep. Sales asked Mr. Davis if the treatments were included in the study.
- 13:18:31 Sen. Cohenour asked Mr. Davis why the treatment data is not used when setting the standard.
- 13:20:54 Sen. Cohenour asked Ms. Sullivan about the increased protections provided under the new standard and the effect on Montana businesses and industries. Ms. Sullivan redirected the question to Ms. Kelly.
- 13:23:05 Sen. Cohenour asked Ms. Kelly if there is long-term data showing there are no selenium discharges happening to Montana waters from any Montana permitted entity.
- 13:23:37 Rep. Z. Brown asked about next steps for public input and implementation now that there is a proposed site-specific selenium standard. Mr. Davis said the public comment period opened on October 9 and will go until November 23.
- 13:25:45 Rep. Hamlett asked Sen. Cuffe if the Pacific Economic Northwest Region (PENWR) should give direction on the issue.
- 13:29:39 Rep. Hamlett asked Sen. Cuffe about concern regarding a site-specific standard and that an international decision could affect what is going on in Lake Kooconusa and impact new businesses moving forward.

- 13:33:54 Rep. Hamlett asked Sen. Cuffe about receiving data from the Canadian government on water quality above Elk River and below Elk River.
- 13:35:29 Rep. Hamlett said it is an international issue and there are things that the state cannot control unless it is through a treaty.
- 13:38:04 Rep. Hamlett asked Shaun McGrath, director, DEQ, about the impetus for the rule.
- 13:43:03 Rep. Hamlett asked Mr. McGrath if the dam on the Kootenai River adds to selenium accumulation in the lake.
- 13:44:45 Rep. Hamlett asked Mr. McGrath if the selenium levels in the lake will increase over time if nothing changes.
- 13:46:20 Rep. Morigeau asked Mr. McGrath about text proposed treatment and if the treatment has been proven to be effective and is at the scale necessary to deal with the contamination.
- 13:48:37 Rep. Morigeau asked Mr. McGrath about setting the standards to meet the regulations.
- 13:50:32 Sen. Cohenour asked Mr. McGrath why it is imperative to set this standard for Montana and about the impact from Canada.
- 13:52:54 Sen. Cohenour asked Mr. McGrath about the putting the state on the hook for perpetual water treatment to protect Idaho, because Montana didn't set a standard that protected its beneficial uses and put the onus on the company that caused the problem.
- 13:54:58 Sen. Welborn said there needs to be standards and protections in place for water flowing in and out of Montana. He commented on the timing and rulemaking process and asked about allowing more time for people to comment.
- 13:56:43 Sen. Welborn asked about making a motion to send a letter to the DEQ requesting that they delay the process.
- 13:57:25 Rep. Z. Brown asked Sen. Welborn to clarify the motion. Sen. Welborn asked staff about the process to delay the rule.
- 13:58:49 Sen. Welborn said he recommends formally delaying the comment period for six months.
- 13:59:12 Ms. Hach provided information on the informal objection process.

Motion

- 14:00:09 Sen. Welborn moved to informally object to the rule.

Discussion on the Motion

- 14:00:20 Sen. Cohenour
14:02:01 Sen. Sesso

14:04:57 Rep. B. Brown
14:06:24 Rep. Morigeau
14:08:10 Rep. Glimm
14:10:08 Rep. Z. Brown

Vote

14:13:27 The motion failed 5-5 by roll call vote. **(Attachment 6)** Sen. Cohenour, Sen. Sesso, Rep. Hamlett, Rep. Morigeau, and Rep. Z. Brown voted no. Sen. Gillespie voted aye by proxy.

14:14:29 Rep. Z. Brown thanked the committee and the members of the public for their participation.

UPDATE ON PROPOSED WATER QUALITY STANDARDS FOR NUTRIENTS

14:15:22 Mr. Davis said at the last WPIC meeting the committee asked the department to talk to the nutrient standards work group about the proposed water quality standards for nutrients and brief the committee on how the discussion went.

Public comment

None

Committee questions and discussion

None

PROPOSE AREAS OF STUDY FOR 2021-22 WPIC

14:19:20 Rep. Z. Brown opened discussion on proposed areas of study for the 2021-22 WPIC. He said Ron Stoneberg submitted written public comment regarding an issue regarding the BLM taking vested water rights from Montana ranchers and grazing their federal allotments. **(Exhibit 23)**

14:20:50 Mr. Stoneberg, Ravalli County Conservation District supervisor.

Committee questions and discussion

14:26:39 Rep. Hamlett said it is an issue that needs to be looked at.

14:27:33 Rep. Z. Brown asked Mr. Stoneberg if the issue has been brought before the Water Court.

14:29:58 Rep. Z. Brown said it seems like a structural water dispute accusation that would be best handled by the Water Court. He said he would also support a study bill.

14:31:12 Sen. Welborn said he recommends that a member of the committee sponsor a study bill.

14:32:47 Rep. Z. Brown asked Mr. Stoneberg about working with Sen. Welborn on a study resolution.

14:33:33 Rep. Z. Brown said the WPIC needs to continue to keep tabs on the nutrient variance issue. He said the WPIC also needs to track the lawsuit related to DNRC state trust land water rights lease claims.

14:34:38 Rep. Hamlett said he recommends that the WPIC look at the adjudication of post-1973 water rights.

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

None

OTHER BUSINESS

14:36:02 Rep. Z. Brown said Sen. Cohenour will carry SB47.

14:36:30 Ms. Hach asked about updating the committee on any proposed rules.

14:37:27 Rep. Z. Brown said he recommends that the committee receive regular updates and asked staff to keep the committee updated on the proposed rule on selenium standards.

14:38:30 Sen. Welborn thanked Mr. Davis for continuing to provide updates for the committee.

14:39:16 Sen. Cohenour said she recommends adding breaks on the agenda for Zoom meetings.

14:40:09 Rep. Z. Brown agreed.

14:40:59 Rep. Sales said he agreed with Sen. Welborn and receiving updates from the DEQ. He thanked Rep. Z. Brown for his leadership.

14:42:13 Rep. Hamlett thanked Rep. Z. Brown and Sen. Welborn for their leadership and thanked staff.

14:42:58 Rep. Z. Brown wished Sen. Gillespie a happy birthday.

14:43:19 Rep. Z. Brown said it was an honor to lead the committee and said he is proud of work that the WPIC and stakeholders have done.

ADJOURNMENT

14:44:31 Rep. Z. Brown adjourned the meeting at 2:44 PM.