

August 23, 2019

Water Policy Interim Committee

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2019-20 WPIC WORK PLAN

Introduction and background

This is the work plan for the Water Policy Interim Committee (WPIC) for the 2019-20 interim. This document is meant to be comprehensive, yet flexible. Invariably, topics of interest will rise and fall away during the next 15 months. The work plan approved by the committee is designed to provide direction to staff.¹

The WPIC was created in 2009 to study water policy. During the legislative interim, the WPIC may focus on the study topics assigned to it as well as any water policy issue. In 2015, the Montana Legislature expanded and focused WPIC duties to include oversight of issues **"where the primary concern is the quality or quantity of water."**

The WPIC establishes a work plan at the beginning of the interim. The work plan and the accompanying work plan decision matrix (beginning on page 11) are decision-making tools to help the committee set priorities and decide how and where to spend the WPIC's time and resources. The committee's presiding officer, in consultation with the committee, works with staff to determine specific agenda items. (See **Appendix A** on page 6 for a list of past presiding officers.)

The primary constraints limiting the agenda for the interim are the number of issues that can be effectively addressed within the available time and resources of the committee and staff. However, the work plan is constructed with enough flexibility to accommodate emerging topics.

This work plan is a road map for the 2019-20 interim. Staff develops detailed plans and timetables for each task. A work plan timeline, which illustrates the overall schedule that these work plans will fit, is summarized on page 3 and specified on page 9 of this document.

WHAT DOES WPIC DO?

Conducts interim studies

Monitors agencies

Reviews administrative rules

Reviews councils, reports

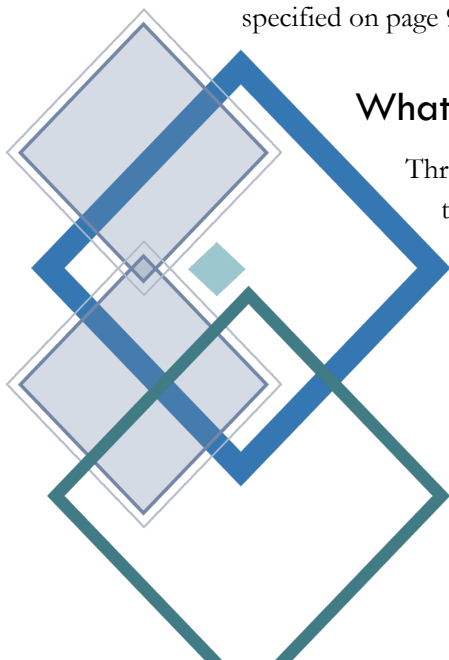
Determines water policies to examine

Proposes and reviews legislation

What does statute require?

Three statutes provide primary guidance for interim committees. (See **Appendix B** on page 7 for these sections of law.)

¹ See page 15 for a staff list and contact information.



For water issues, WPIC provides oversight of the ...

Department of Environmental Quality

Department of Natural Resources and Conservation

Department of Fish, Wildlife, and Parks

Department of Environmental Quality (DEQ), the Department of Fish, Wildlife, and Parks (FWP); and the Department of Natural Resources and Conservation (DNRC). The WPIC may determine what issues it examines and to conduct program evaluations of programs under its oversight. The program evaluation process allows for an in-depth and contextual review of a program, including applicable laws, rules, funding, and implementation. (The 2019-20 WPIC did not designate any specific performance evaluations.)

And finally, a third section of law provides for additional statutory duties, such as analyzing the state water plan, water-related research, and the water information system.⁴

Interim studies

The Legislative Council referred two studies passed by the 2019 Legislature to the WPIC. The committee subsequently agreed to conduct both studies.

House Joint Resolution 14 (HJ14) proposes a study of the Water Court to review the court’s future role in the administration of water rights in Montana. The court is primarily concerned with adjudication of pre-1973 water rights, although district courts rely on the Water Court’s expertise to resolve water rights controversies. And, after a 2017 legislative change, at least one applicant has appealed a DNRC determination on a change of water right to the Water Court for resolution.

HJ40 proposes a study of weather modification “to review current state laws...and to propose changes in order to encourage use of this scientific technique.” Weather modification research was pioneered in the 1940s; Montana state laws on the subject date back to then. The DNRC may investigate, use, and coordinate weather modification efforts for the state of Montana. The department must also license and permit private weather modification activities. County residents may also petition to form their own weather modification authority.

The study resolutions may be found beginning on page 19.

2 studies assigned to WPIC

HJ14	Study of future of the Water Court
HJ40	Study of weather modification

² Section 5-5-215, MCA.

³ Section 5-5-231, MCA.

⁴ Section 85-2-105, MCA.

Administrative rules

The Legislature often authorizes administrative agencies to carry out the Legislature’s intent by adopting administrative rules. These rules have the full force and effect of law. These rules may be adopted and revised throughout the year. Administrative rule functions are governed by the Montana Administrative Procedures Act (MAPA).

MAPA and court opinions govern the procedures and requirements for administrative rulemaking. However, only the Legislature may delegate the authority to an agency to adopt rules.

State law allows the WPIC to review and monitor administrative rules promulgated by the DNRC, FWP, and DNRC, where the primary concern is the quality or quantity of water. The committee may participate in the rulemaking process, ranging from offering comments or suggestions to objecting and delaying a rule implementation. (See attached memo beginning on page 16 for a more-thorough explanation of administrative rulemaking and the committee’s role.)

During the 2017-18 interim, the WPIC reviewed 4 notices of administrative rulemaking. The committee objected to one notice related to exempt groundwater wells, delaying its implementation.

THE INTERIM IS COMPRISED OF 7 MEETINGS.

June 10, 2018	Sept. 10-11 (Dillon)	Jan. 6-7, 2019	March 9-10	May 18-19	July 13-14	Sept. 14-15
Draft work plan	Finalize work plan	Revise work plan, as necessary				
Begin statutory duties	Continue statutory duties					
Consider study resolutions	Begin studies	Gather background	Identify options		Consider draft findings, recommendations	Finalize findings, recommendations
Prioritize member topics	Explore member topics					
				Propose draft legislation	Review draft legislation	Approve legislation for preintroduction
						Approve agency legislation for preintroduction

Monitor agencies

The 2015 Legislature delegated certain oversight duties to the WPIC. Following the passage of Senate Bill 82, the WPIC reviews administrative rules and draft legislation, conducts program evaluations and monitor the functions of the Water Resources Division (DNRC) and the Water Quality Division (DEQ).

The committee’s oversight duties do not stop there, however, as issues of “the quality or quantity of water” may arise in the Department of Fish, Wildlife, and Parks—or even other agencies, such as the Department of Agriculture’s groundwater monitoring program. Additionally, certain agencies have reporting requirements to the WPIC, which are listed in the table at right. For example, the DNRC is required to consult the committee as it updates the state water plan.

Review legislation

As stated earlier, the committee’s duties include reviewing and preintroducing legislation. In 2018, the WPIC approved 8 bills for preintroduction: 6 for the DNRC and 2 for the DEQ (see **Appendix C** on page 8 for more details).

The 2017-18 WPIC proposed 8 pieces of legislation, which were preintroduced at the 2019 session. This legislation was a result of the committee’s studies and discussion over the interim. Six of these bills passed the 2019 Legislature (see **Appendix C**). Unique to other interim committees, the 2019-20 WPIC requires 7 votes (of 10) to advance as a committee bill to the next legislative session.

Member topics, emerging issues

Committee member suggestions and emerging issues drive much of the WPIC’s work. These usually cover a variety of water topics and may be answered with a single memo or presentation. Other topics may need a more-comprehensive review. The committee will prioritize member topics and emerging issues as the biennium progresses. Committee member topics submitted to staff (as of July 17, 2019) include:

- Geocoding and water right transfers
- Formation of stream gauge oversight work group (SB32)
- Milk River Project infrastructure
- Effects of basin transfers of water
- Use of greywater

13 laws require 13 reports to WPIC

Summary of numeric nutrient standards and variances (DEQ)

Total maximum daily loads (TMDLs) for impaired and threatened water bodies

Consultation on the State Water Plan

Economic and environmental feasibility of small-scale hydroelectric power generating facility on a state water project (DEQ)

The status of the Renewable Resource Grant and Loan Program (DNRC)

Progress of the adjudication of pre-1973 water rights (DNRC and Water Court)

A review of state water reservations by 2026 (DNRC)

Upper Clark Fork River Basin Steering Committee report to the Legislature

Clark Fork River Task Force annual report

Appropriation rights changed to instreamflow (FWP)

US Forest Service state water reservation applications (DNRC)

Ground Water Investigation Program (MBM)

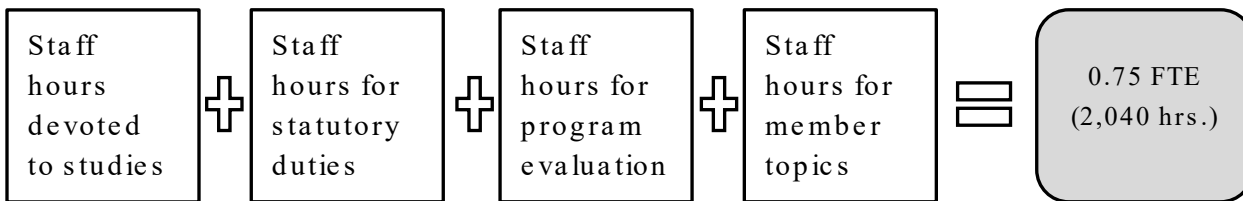
Stream gauge oversight work group (DNRC)

- The role of carry water in irrigation systems
- Water commissioner powers and duties
- Use of eminent domain for municipal water rights
- Watershed tour
- Follow-up on the effects of HB286 (Revise water right laws related to state water claims)
- Funds for the Surface Water Assessment and Monitoring Program (MBMG)

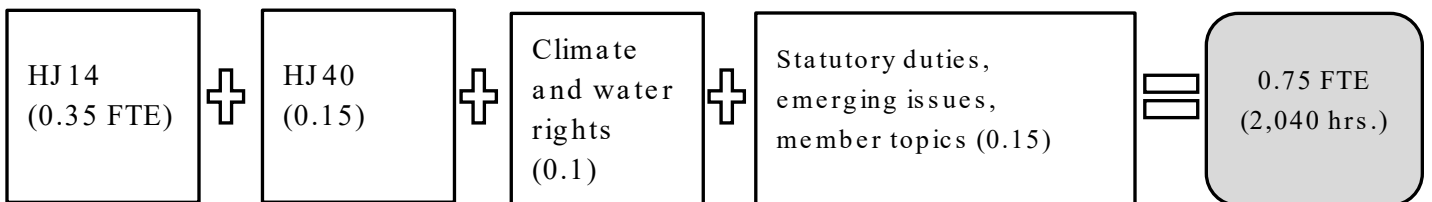
Time allocation for committee work

As indicated in the graphic on page 5, the WPIC meets 7 times during an interim to work on studies, statutory duties, and member topics. At the end of the 7 meetings, the committee will have developed findings and recommendations for one or more reports. The committee may have also drafted legislation. The work plan timeline (see **Appendix D** on page 9) plots out a general idea of the committee’s agenda at each meeting. This agenda will change once the committee identifies specific studies and member topics.

The WPIC’s workload is limited only by the number of meetings and hours of available staff time. There is approximately 0.75 FTE of staff time available to conduct the work identified by the committee. Please keep in mind the basic workload equation:



This equation is computed by referring to the Work Plan Decision Matrix (**Appendix E** on page 11). This matrix allows the committee to select an appropriate level of review, analysis, and discussion for studies, member topics, statutory duties, and anything else. **The WPIC chose the following workload distribution for the 2019-20 biennium:**



APPENDIX A: WPI LEADERSHIP HAS ALTERNATED BY POLITICAL AFFILIATION

	Presiding officer	Vice Presiding officer
2007-08	Sen. Jim Elliott (D)	Sen. Gary Perry (R)
2009-10	Rep. Walt McNitt (R)	Sen. Dave Wenzelried (D)
2011-12	Sen. Brad Harlett (D)	Rep. Walt McNitt (R)
2013-14	Sen. Chas Vincent (R)	Rep. Kathleen Williams (D)
2015-16	Sen. Brad Harlett (D)	Rep. Carl Ginn (R)
2017-18	Sen. Pat Connell (R)	Rep. Zach Brown (D)
2019-20	Rep. Zach Brown (D)	Sen. Jeffrey Welborn (R)

Appendix B Laws that guide WIC's interim work

5-5-215. Duties of interim committees. (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
- (b) subject to 5-5-217(3), conduct interim studies as assigned;
- (c) monitor the operation of assigned executive branch agencies with specific attention to the following:
 - (i) identification of issues likely to require future legislative attention;
 - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
 - (iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

(d) review, if requested by any member of the interim committee, the statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;

(e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and

(f) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

5-5-231. Water policy committee. (1) There is a water policy committee. The committee shall:

(a) determine which water policy issues it examines;

(b) conduct interim studies as assigned pursuant to 5-5-217;

(c) subject to the provisions of 5-5-202(4), coordinate with the environmental quality council and other interim committees to avoid duplication of efforts;

(d) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210; and

(e) in accordance with 5-5-215, for issues where the primary concern is the quality or quantity of water, perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

(i) department of environmental quality;

(ii) department of fish, wildlife, and parks; and

(iii) department of natural resources and conservation.

(2) At least two members of the committee must possess experience in agriculture.

85-2-105. Water policy committee duties. (1) The water policy committee established in 5-5-231 shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the water policy committee may:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;

(c) assist with interagency coordination related to Montana's water resources; and

(d) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the water policy committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and

(e) report to the legislature as provided in 5-11-210.

APPENDIX C: WATER-RELATED BILLS AT 2019 LEGISLATURE

6 OF 8 WPICBILLS PASS 2019 LEGISLATURE

Bill No.	Short title	Status
HB5	Clarify criteria for water right permit relying on waiver of adverse effect	Passed, signed by governor
HB4	Clarify criteria for water rights change applications	Passed, signed by governor
SB2	Create streamgauge oversight work group	Passed, signed by governor
SB1	Extend deadline to correct an application for water right permit or change	Passed, signed by governor
SB5	Revise certain water right adjudication processes	Tabled in House Natural Resources Committee
SB6	Revise laws related to distribution lists	Passed, signed by governor
SB7	Revise laws related to river basin councils	Tabled in House Natural Resources Committee
SB2	Revising supplemental notice laws in the Montana Administrative Procedure Act	Passed, signed by governor

2019 LEGISLATURE PASSES 6 OF 8 AGENCY BILLS

Bill No.	Short title (and proposing agency)	Status
SB9	Amend method for measuring water for aquifer recharge or mitigation (DNR)	Passed, signed by governor
HB14	Amend process to appoint water mediator (DNR)	Missed deadline for general bill transmittal
HB7	Clarify placement of definitions in water law (DNR)	Passed, signed by governor
HB18	Create grant program to remove lead from school water supplied (DEQ)	Tabled in House Natural Resources Committee
SB4	Revise hearings process for change of water right application (DNR)	Tabled in House Natural Resources Committee
HB8	Revise report requirement from drought and water supply advisory committee (DNR)	Passed, signed by governor
SB8	Revise variances to water quality standards (DEQ)	Passed, signed by governor
HB0	Revise water reservation process in Missouri, Little Missouri rivers (DNR)	Tabled in House Natural Resources Committee

Appendix D WPIC's work plan time line (as of Aug 23, 2019)

Tasks	
June 10, 2019	<ul style="list-style-type: none"> ▪ Hect officers ▪ Review 2017 water legislation ▪ Discuss and adopt draft work plan ▪ Identify committee studies ▪ Identify and prioritize committee member topics ▪ Adopt committee rules ▪ Review budget ▪ Adopt meeting dates ▪ Agency/program overviews - DEQ, DNR, FWP, Ag, MBMG ▪ Nutrient standards update (75-5-313, MCA) – DEQ ▪ Adjudication update (85-2-281, MCA) – DNR, WC ▪ Update on drought, water supply, wildfires
Sept. 10-11, 2019 (Dillon)	<ul style="list-style-type: none"> ▪ Adoption of final work plan ▪ Committee studies: Receive background information ▪ Finalize list of committee member topics ▪ Adjudication update (85-2-281, MCA) - DNR, WC ▪ Update from stream gauge oversight work group (2-15-3308) ▪ Water supply/fire update – DNR ▪ Agency rulemaking update – ISD staff
Jan. 6-7, 2020	<ul style="list-style-type: none"> ▪ Committee studies: <ul style="list-style-type: none"> ○ Receive additional background information ○ Identify further issues and options ▪ Committee member topics ▪ Adjudication update (85-2-281, MCA) - DNR, WC ▪ Water studies - MBMG ▪ Instream leasing report, (85-2-436, MCA) – FWP ▪ US Forest Service water reservations (85-20-1401, MCA) – DNR, USFS ▪ GWP report (85-2-525) ▪ Clark Fork River Basin Task Force update (85-2-350, MCA) ▪ Implementation of State Water Plan (85-1-203, MCA) – DNR ▪ Agency rulemaking update – ISD staff
March 9-10, 2020	<ul style="list-style-type: none"> ▪ Committee studies: Identify further issues and options ▪ Committee member topics ▪ Renewable Resource Grant and Loan Program update, (85-1-621, MCA) – DNR ▪ Analyze and comment on water-related research (85-2-105, MCA) ▪ Agency rulemaking update – ISD staff

Tasks	
May 18-19, 2020	<ul style="list-style-type: none"> ▪ Committee studies: <ul style="list-style-type: none"> ○ Discuss options ○ Propose recommendations ▪ Committee member topics ▪ State Water Plan update, (85-1-203, MCA)– DNRC ▪ Adjudication update (85-2-281, MCA)– DNRC, WC ▪ Nutrient standards update (75-5-313, MCA)– DEQ ▪ Water studies – MBMG ▪ Update on drought, water supply– DNRC ▪ Agency rulemaking update – LSDstaff
July 13-14, 2020	<ul style="list-style-type: none"> ▪ Committee studies: <ul style="list-style-type: none"> ○ Draft recommendations, legislation ○ Discuss draft report(s) ▪ Committee member topics ▪ Nutrient Work Group– biennial summary report (75-5-313, MCA) ▪ TMDLlist update (75-5-703, MCA)– DEQ ▪ Hydroelectric potential report (85-1-501, MCA) ▪ Temporary leasing report (85-2-427, MCA) ▪ Clark Fork River Basin Task Force update (85-2-350, MCA) ▪ Clark Fork River Basin Steering Committee update (85-2-338, MCA) ▪ Water and Wastewater Operators’ Advisory Council (2-15-2105, MCA) ▪ Water Pollution Control Advisory Council (2-15-2107, MCA) ▪ Drought, water supply, wildfire update – DNRC ▪ Agency rulemaking update – LSDstaff
Sept. 14-15, 2020	<ul style="list-style-type: none"> ▪ Committee studies: <ul style="list-style-type: none"> ○ Review public comment on draft report, committee legislation ○ Revise draft report, committee legislation, if necessary ○ Approve final report(s) ▪ Consider proposed agency legislation - DNRC, DEQ FWP ▪ Approve other WPI report(s), if necessary ▪ Adjudication update (85-2-281, MCA)– DNRC, Water Court ▪ Agency rulemaking update – LSDstaff ▪ Consider/propose areas of study for 2021-22 interim

Appendix E: 2019-20 WPIC work plan decision matrix

	Full review	Medium review	Minimum review	Resources Allocated
Sample study	0.3 FIE • All components of medium review • In-depth legal analysis of study issues Deliverables: • Final report with recommendations • Legislation	0.2 FIE • All components of minimum review • Field trip(s) • Analyze relevant laws, actions, policies, legal decisions, and experiences in other states • Create work group of interested parties to suggest options Deliverables: • Report • Legislation	0.1 FIE • Review relevant laws, policies, and legal decisions • Summarize related information in other states • Panel discussion Deliverables: • Legislation • Brief report	

	Full review	Medium review	Minimum review	Resources Allocated
Statutory duties	<p>0.25 FIE</p> <ul style="list-style-type: none"> • All components of medium review • Participate in water-related meetings (agencies, outside groups) • Accept reports and select some for WPIC review, analysis, and comment • Background summaries and legal analysis • Review and discuss applicability of statutory responsibilities related to water policy issues <p>Deliverables:</p> <ul style="list-style-type: none"> • Recommendations or WPIC position letters • Legislation to address statutory responsibilities 	<p>0.1 FIE</p> <ul style="list-style-type: none"> • All mandatory duties • Water issues identified during 2017-18 interim • Public involvement through WPIC meetings • Basic involvement and oversight <p>Review reports related to:</p> <ul style="list-style-type: none"> • Nutrient standards • TMDs • State Water Plan • Small scale hydro on state water projects • Renewable Resource grants and loans • Water rights adjudication • State water reservations • Upper Clark Fork River Basin Steering Committee • Clark Fork River Task Force • FWP instream flow rights • USFS water reservations • Temporary leases of water rights <p>Deliverables:</p> <ul style="list-style-type: none"> • Recommendations or WPIC position letters • Legislation to address statutory responsibilities 		

	Full review	Medium review	Minimum review	Resources Allocated
Program evaluation <i>(*the 2019-20 WPIC selected no programs for evaluation)</i>	0.2+ FIE(per programevaluated) <ul style="list-style-type: none"> • Multiple staff reports on issues within program, including history, overview of applicable laws and rules, and summary of timely issues • Interview with program personnel • Possible multiple staff site visits • Multiple agency presentations • Multiple regulated community panels • Staff summaries on related audits, fiscal analyses, court decisions • Possible presentations from LAD IHD on issues of interest • Possible legal review of specific issues • Additional staff research in particular areas • Additional information from agency and staff analysis • Possible subcommittees or work groups • One or more field trips Deliverables: <ul style="list-style-type: none"> • Staff report(s) • Recommendations • Legislations 	0.06-0.2 FIE(per program evaluated) <ul style="list-style-type: none"> • Staff report on program, including history, overview of applicable laws and rules, and summary of timely issues within program • Interview with program personnel • Possible staff site visit • Multiple agency presentations • Multiple regulated community panels • Staff summaries on related audits, fiscal analyses, court decisions • Possible presentations from LAD IHD on issues of interest • Possible legal review of specific issue • Additional staff research in particular areas • Additional information from agency and staff analysis • Possible field trip Deliverables: <ul style="list-style-type: none"> • Staff report • Recommendations • Legislation 	0.02-0.06 FIE(per program evaluated) <ul style="list-style-type: none"> • Staff summary of program May include interview with program lead • Agency presentation • Regulated community panel • Bibliography or related materials, including audits, fiscal analyses, court decisions • Limited follow up by WPIC staff Deliverables: <ul style="list-style-type: none"> • Recommendations • Legislation 	

	Full review	Medium review	Minimum review	Resources Allocated
Member topics (as selected by the committee)		0.1 FIE(per issue selected) <ul style="list-style-type: none"> • All components of minimum review • Review of relevant laws, policies, legal decisions • Panel discussion • Possible field trip Deliverables: <ul style="list-style-type: none"> • Report • Legislation 	0.03 FIE(per issue selected) <ul style="list-style-type: none"> • Agency or expert presentation on member issue Deliverables: <ul style="list-style-type: none"> • Short report or “white paper” • Legislation 	

Hourly breakdown of WPI interim FIE

- 0.02 FIE= 54 hours
- 0.03 FIE= 82 hours
- 0.05 FIE= 136 hours
- 0.06 FIE= 163 hours
- 0.1 FIE= 272 hours
- 0.2 FIE= 544 hours
- 0.25 FIE= 680 hours
- 0.3 FIE= 816 hours
- 0.75 FIE= 2,040 hours

2019-20 Work Plan
Water Policy Interim Committee

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