



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

## MINUTES LOG

September 15, 2020

9:02 AM

Zoom Videoconference

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. Jeffrey Welborn, Vice Chair (R)  
Sen. Jill Cohenour (D)  
Rep. Carl Glimm (R)  
Sen. Bruce Gillespie (R)  
Rep. Bradley Hamlett (D)  
Rep. Shane Morigeau (D)  
Rep. Walt Sales (R)

**Members Excused:**

Rep. Bob Brown (R)  
Sen. Jon Sesso (D)

**Staff Present Remotely:**

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

**Committee Business Summary**

The Water Policy Interim Committee (WPIC):

- Voted to adopt the HJ14 study final report as amended;
- Voted to adopt the HJ40 study final report;
- Voted to adopt the study of climate and water rights final report;
- Voted to amend PD0006;
- Voted to pre-introduce PD0010 as a committee bill;
- Voted to accept the legislative proposal from the Department of Natural Resources and Conservation for pre-introduction;
- Voted to accept the legislative proposal from the Department of Environmental Quality for pre-introduction.

**Agenda (Attachment 1)****CALL TO ORDER/ROLL CALL**

09:02:57 Rep. Z. Brown called the meeting order at 9:02 a.m. The secretary noted the roll. [\(Attachment 2\)](#)

**FINAL COMMITTEE REPORTS**

09:03:22 Jason Mohr, research analyst, Legislative Services Division (LSD), provided an introduction and said he will go through the changes the committee requested to the reports in July and a synopsis of the public comments. He said if the committee is satisfied a motion can be made to approve the reports.

**HJ14**

09:04:36 Mr. Mohr discussed the changes made to the HJ14 report, the study of the future of the Water Court. [\(Exhibit 1\)](#)

09:06:38 Mr. Mohr said the committee received a copy of the public comments. [\(Exhibit 2\)](#)

**Public comment**

09:08:03 John Tubbs, director, Department of Natural Resources and Conservation (DNRC).

09:09:35 Krista Lee Evans, Senior Water Rights Coalition (SRWRC); Association of Gallatin Agricultural Irrigators (AGAI). [\(Exhibit 3\)](#)

09:11:16 Hon. Russ McElyea, chief water judge, Montana Water Court.

### **Committee questions and discussion**

09:18:42 Sen. Cohenour said she does not believe the study had the in-depth focus that allowed stakeholders to have input into the decisions being made and that funding should be a priority. She said she recommends doing a deep dive study and having a third-party entity look at the system to eliminate duplication of effort and identify opportunities for improvement and gains in efficiency.

### **Motion**

09:21:11 Sen. Cohenour moved to adopt the HJ14 study final report.

09:21:25 Rep. Glimm said funding will be an issue and believes stakeholders have had an opportunity to provide input on the study during the interim. He said he does not support the recommendation for a third-party study.

09:23:36 Sen. Welborn said he feels that the committee hasn't done all that it could, but the time to move forward is now and he will support the study reluctantly. He said he hopes that doing another study does not lose an opportunity for funding.

09:26:54 Rep. Hamlett said he believes the current executive branch wants to have as much DNRC control over water as possible and commented on elected district court judges versus appointed water court judges. He said he does not support doing another study.

09:35:11 Rep. Sales said he supports another study and recommends moving the report forward.

09:36:34 Rep. Z. Brown commented on the study and said he supports the motion to accept the report.

09:40:58 Rep. Hamlett said he believes there would be better consensus if the vote on advancing the report noted there was not full agreement on the value of another study.

09:43:05 Sen. Cohenour said she will accept Rep. Hamlett's recommendation as a friendly amendment to the report.

### **Substitute Motion**

09:43:47 Sen. Hamlett made a substitute motion to amend the report and include language to indicate there was not unanimous agreement on the value of another study and to also include concerns about available funding to support a robust study in the immediate future.

### **Discussion on the Motion**

09:44:02 Mr. Mohr

09:44:29 Rep. Z. Brown

09:44:41 Rep. Hamlett

09:45:12 Mr. Mohr restated the motion.

09:45:29 Rep. Sales

09:46:39 Rep. Hamlett

09:47:59 Rep. Z. Brown said there is consensus to add language regarding COVID-19 and the budget. He said the substitute motion was accepted as a friendly amendment to Sen. Cohenour's motion and without objection the report will be amended to include the language from Rep. Hamlett and the recommendation from Rep. Sales that concerns regarding COVID -19 may affect the budget.

09:48:07 Sen. Gillespie joined the meeting.

09:48:50 Sen. Welborn asked Ms. Evans about reaching out to SRWRC and AGAI to provide input on a robust study.

09:56:57 Rep. Hamlett said he does not want future legislation to be compromised by the perception that a study must be completed first.

#### **Vote**

09:57:40 The motion carried 8 - 1 by roll call vote. Rep. Glimm voted no. Sen. Sesso voted yes by proxy. Rep. B. Brown was excused.

#### **HJ40**

09:59:39 Mr. Mohr said HJ40 is the study of weather modification and includes draft legislation that will be discussed later. He said he was not directed to make any changes to the report, and it is the same as what was presented to the WPIC in July. [\(Exhibit 4\)](#)

10:00:02 Mr. Mohr said the committee received 11 public comments. [\(Exhibit 5\)](#)

#### **Committee Action**

##### **Motion**

10:00:28 Sen. Cohenour moved to adopt the HJ40 study final report.

##### **Discussion on the Motion**

10:00:49 Rep. Z. Brown thanked Jim Hagenbarth for his work and the information he provided to the committee.

10:01:08 Sen. Cohenour commented on the public comments received and said the committee is also concerned about the environmental impacts. She thanked the insurance industry for providing their perspective.

10:02:10 Rep. Hamlett commented on the results in Idaho to increase snowpack and said it is essential for irrigation water.

##### **Vote**

10:03:15 The motion carried unanimously by roll call vote. Sen. Sesso voted yes by proxy. Rep. B. Brown was excused.

## **Climate**

### **Motion**

- 10:04:19 Sen. Cohenour moved to adopt the study of climate and water rights final report.
- 10:04:39 Mr. Mohr discussed the report and the changes requested by the committee. **(Exhibit 6)**
- 10:06:22 Mr. Mohr said the committee received six public comments. **(Exhibit 7)**
- 10:06:49 Rep. Z. Brown said he appreciates receiving comments from the public and getting their opinion.
- 10:07:21 Sen. Cohenour thanked Sen. Welborn for hosting the meeting last September and said the field trip to the wetland area was valuable time spent by the committee.
- 10:07:48 Rep. Z. Brown asked for public comment on the climate and water rights report. There were no public comments.

### **Vote**

- 10:08:26 The motion carried unanimously by roll call vote. Sen. Sesso voted yes by proxy. Rep. B. Brown was excused.

### **Public comment on the HJ 40 report**

None

## **COMMITTEE CONSIDERATION OF DRAFT LEGISLATION**

- 10:10:49 Mr. Mohr said the WPIC has three committee bill drafts to consider for pre-introduction. He explained the process.
- 10:12:15 Mr. Mohr provided an overview of PD 0009. **(Exhibit 8)**
- 10:15:33 Mr. Mohr said the WPIC received 4 public comments. **(Exhibit 9)**

### **Public comment**

- 10:16:55 Mr. McElyea.
- 10:19:23 Laura Rennick, Water Resources Division deputy administrator, DNRC.

### **Committee questions and discussion**

- 10:22:34 Sen. Cohenour asked Millie Heffner, Water Division administrator, DNRC, about the costs to the department and the effect of not delaying ownership updates based on non-payment of the transfer fee.
- 10:25:03 Rep. Glimm asked Ms. Heffner about the amount of time it takes to process an ownership update.
- 10:26:12 Rep. Sales asked about section 1(3)(b) and substituting “parties” for “owners.”
- 10:27:52 Ms. Evans said she agrees with making the change.

10:28:46 Rep. Sales redirected his question to the other members of the geocodes working group.

10:29:04 Mr. McElyea said he also agrees with making the change.

10:29:22 Rep. Z. Brown asked Mr. Mohr if a motion is needed to make the change.

10:29:46 Ms. Rennick said the DNRC also agrees with making the change.

10:29:56 Rep. Z. Brown said another WPIC meeting may be needed before moving forward with a committee bill. He asked the committee members for their opinion.

10:30:56 Sen. Welborn agreed.

10:31:56 Sen. Cohenour asked about addressing some of the issues now.

10:32:29 Rep. Z. Brown said he recommends waiting until there is an amended bill.

10:33:53 Sen. Cohenour said she is concerned about the cost to the DNRC.

10:34:44 Rep. Hamlett said he recommends waiting to take any action.

10:35:29 Rep. Z. Brown asked about requesting a draft fiscal note before the next working group meeting. Mr. Mohr said a fiscal note was not possible, but the department could provide information on the costs.

10:36:19 Rep. Z. Brown asked Ms. Rennick about putting together information on the fiscal impact for the committee.

10:36:50 Rep. Z. Brown said he recommends scheduling another geocodes working group meeting before the next WPIC meeting.

### **WEATHER MODIFICATION**

10:37:57 Mr. Mohr discussed PD 0006 ([Exhibit 10](#)). He said the committee received two comments in support of the bill draft and received comments from the DNRC. ([Exhibit 11](#))

### **Public comment**

10:40:14 Ms. Evans.

### **Committee questions and discussion**

10:41:07 Rep. Hamlett said he supports the bill draft to control hail in the summer and to increase snowpack in the winter.

10:41:55 Sen. Cohenour asked about the substantive changes proposed by the DNRC. Ms. Hach discussed the comments from the DNRC.

10:46:11 Rep. Z Brown asked about committee action on the non-controversial items in the bill draft.

### **Motion**

10:46:39 Sen. Cohenour moved to accept PD0006 for pre-drafting as a committee bill.

10:46:52 Sen. Cohenour moved to amend PD0006 with the non-substantive changes proposed by the DNRC.

**Discussion on the Motion**

10:47:13 Mr. Mohr

10:47:28 Rep. Z. Brown

**Vote**

10:47:38 The motion carried unanimously by voice vote. Sen. Sesso voted aye by proxy. Rep. B. Brown was excused.

10:48:18 Rep. Z. Brown asked Ms. Hach to provide information on the three substantive amendments.

10:48:35 Ms. Hach discussed Amendment 1 and the provision in 85-3-202 that requires not more than an environmental assessment and the proposal from the DNRC to conduct an environmental analysis pursuant to the MEPA process.

10:50:19 Rep. Z. Brown asked the DNRC about the amendment.

10:50:32 Paul Azevedo, Water Management Bureau chief, DNRC, discussed the amendment.

**Motion**

10:51:51 Sen. Cohenour moved to amend PD0006 with Amendment 1.

**Discussion on the Motion**

10:52:15 Rep. Hamlett

10:52:37 Mr. Azevedo

10:53:48 Rep. Z. Brown

10:54:16 Mr. Azevedo

10:54:59 Mr. Tubbs

10:57:09 Rep. Sales

10:57:55 Mr. Tubbs

10:58:13 Ms. Hach

10:58:58 Rep. Sales

10:59:20 Mr. Tubbs

11:01:35 Rep. Sales

11:02:05 Mr. Tubbs

11:02:51 Rep. Z. Brown

11:03:48 Mr. Tubbs

11:04:40 Rep. Z. Brown

11:05:15 Rep. Hamlett

11:06:37 Rep. Sales

11:07:45 Rep. Z. Brown  
11:08:02 Sen. Cohenour  
11:09:42 Rep Z. Brown  
11:09:49 Sen. Cohenour  
11:10:00 Rep. Z. Brown  
11:11:35 Sen. Cohenour withdrew her motion.  
11:12:13 Rep. Z. Brown said this will be something that the committee will consider and want input on.  
  
11:12:29 Ms. Hach discussed Amendment 2 regarding license renewal.  
  
11:13:41 Sen. Cohenour said it is a good addition.  
11:14:31 Rep. Sales agreed.

### **Motion/Vote**

11:15:18 Sen. Cohenour moved to amend PD0006 with Amendment 2. The motion carried unanimously by voice vote. Sen. Sesso voted aye by proxy. Rep B. Brown was excused.  
  
11:15:59 Ms. Hach discussed Amendment 3 and the proposal from the DNRC to increase the minimum required amount of liability insurance from \$100,000 to \$1 million.  
  
11:16:33 Rep. Z. Brown asked about the origin of the \$100,000 minimum requirement. Ms. Hach said the amount was in the original bill draft from Mr. Hagenbarth.  
  
11:16:58 Rep. Z. Brown asked about the cost for an insurance policy with \$1 million liability coverage, and if it would prohibit someone from doing the work.  
  
11:17:22 Rep. Sales asked why the policy was set at \$1 million.  
  
11:17:42 Mr. Azevedo said it would offer more financial protection for the applicant and is a standard amount.  
  
11:18:58 Rep. Glimm asked if the policy will be defined as per occurrence or as an aggregate amount. He said he is concerned about the unintended consequences of cloud seeding.  
  
11:20:55 Rep. Z. Brown said he recommends including the amendment and getting public comment at the next meeting.  
  
11:21:24 Rep. Sales agreed.  
  
11:22:05 Rep. Z. Brown asked about committee action.  
  
11:22:21 Sen. Cohenour asked about directions to staff and putting the draft bill out for public comment.  
  
11:22:45 Rep. Z. Brown said the committee will continue its discussion in October.  
  
11:23:00 Sen. Cohenour asked about withdrawing her motion on the bill. Rep. Z. Brown said the changes can stand and be folded into the process moving forward.



## **BENCHMARKS**

- 11:23:51 Mr. Mohr discussed PD0010. ([Exhibit 12](#))
- 11:25:45 Mr. Mohr said the committee received a copy of the written public comments. ([Exhibit 13](#))

## **Public comment**

- 11:26:17 Ms. Evans.
- 11:27:27 Hon. Stephen Brown, associate judge, Montana Water Court.
- 11:28:45 Clayton Elliott, Montana Trout Unlimited.
- 11:29:22 Matt Murphy, Adjudication Bureau chief, DNRC.

## **Committee questions and discussion**

### **Motion**

- 11:30:17 Sen. Cohenour moved to pre-introduce PD0010 as a committee bill.

### **Discussion on the Motion**

- 11:30:35 Rep. Hamlett
- 11:30:55 Rep. Sales
- 11:31:41 Mr. Brown
- 11:32:38 Rep. Sales

### **Vote**

- 11:33:06 The motion carried unanimously by voice vote. Sen. Sesso voted aye by proxy. Rep. B. Brown was excused. Sen. Cohenour will carry the bill.
- 11:33:56 Sen. Gillespie left the meeting.

## **OVERVIEW OF PROPOSED AGENCY LEGISLATION**

### **DNRC**

- 11:35:08 Mr. Tubbs provided information on the proposed legislation from the DNRC. ([Exhibit 14](#))
- 11:42:40 Rep. Z. Brown asked Mr. Mohr about the process for accepting the legislation.

## **Committee questions and discussion**

### **Motion**

- 11:43:27 Rep. Hamlett moved to accept the proposed legislation from the DNRC for pre-drafting as a committee bill.

### **Discussion on the Motion**

11:44:48 Rep. Glimm  
11:45:01 Mr. Tubbs  
11:47:11 Rep. Glimm  
11:48:12 Mr. Tubbs  
11:51:00 Rep. Sales  
11:52:14 Sen. Cohenour  
11:52:36 Mr. Mohr  
11:53:36 Mr. Tubbs  
11:54:47 Rep. Hamlett withdrew his motion and asked that the DNRC provide a bill draft to be considered by the WPIC at its next meeting.  
11:55:17 Rep. Z. Brown asked about a motion to allow the bill to move forward as an agency bill for pre-introduction.

### **Motion**

11:55:28 Sen. Hamlett moved to pre-introduce the proposed legislation on behalf of the DNRC.

### **Discussion on the Motion**

11:55:42 Rep. Z. Brown

### **Vote**

11:56:01 The motion carried 7-1 by vote voice. Rep. Glimm voted no. Sen. Sesso voted aye by proxy. Rep. B. Brown and Sen. Gillespie were excused.

### **DEQ**

11:56:53 Myla Kelly, Standards and Modeling Section supervisor, Department of Environmental Quality (DEQ), provided information on proposed legislation. ([Exhibit 15](#))

### **Public comment**

None

### **Committee questions and discussion**

#### **Motion**

12:01:05 Sen. Cohenour moved to accept the legislative proposal from the DEQ for pre-drafting as a committee bill.

### **Discussion on the Motion**

12:01:18 Rep. Z. Brown  
12:01:33 Ms. Kelly

12:01:53	Rep. Z. Brown
12:02:15	Rep. Hamlett
12:04:00	Rep. Z. Brown
12:04:51	Ms. Kelly
12:06:44	Rep. Hamlett
12:08:02	Mr. Mohr
12:09:30	Rep. Glimm
12:10:23	Ms. Kelly
12:11:45	Rep. Glimm
12:12:00	Ms. Kelly

### **Vote**

12:12:45            The motion carried 8-0 by vote voice. Sen. Sesso voted aye by proxy. Rep. B. Brown and Sen. Gillespie were excused.

### **Public comment on DNRC proposed legislation**

12:13:40            Mr. Elliott

### **STAFF EVALUATIONS**

12:16:28            Mr. Mohr asked the committee to complete and return the staff evaluation forms they received.

### **PROPOSE AREAS OF STUDY FOR 2021-22 WPIC**

12:17:22            Rep. Z. Brown said he recommends asking for input and comments on the proposed areas for study for the 2021-22 WPIC at the next meeting.

12:17:46            Mr. Mohr asked about a discussion on SB47 regarding river basin councils at the next meeting.

12:18:25            Rep. Z. Brown said he recommends including it on the agenda for discussion in October and asking for public comment. He also asked to get public comment on the weather modification bill.

### **DISCUSSION OF FUTURE WPIC MEETING DATES**

12:19:00            Mr. Mohr asked about scheduling a geocodes working group meeting during the week of September 28 and a WPIC meeting in October.

12:20:27            Rep. Z. Brown said he recommends scheduling the WPIC meeting for October 13.

12:20:56            Rep. Z. Brown said staff will move forward with scheduling the geocodes working group meeting for the week of September 28. He said the WPIC will reconvene on October 13.

### **Public comment**

None

## **PUBLIC COMMENT ON ANY MATTER WITHIN THE JURISDICTION OF THE WPIC**

None

### **DIRECTIONS TO STAFF**

- 12:22:36 Sen. Welborn said he recommends inviting DEQ to the next meeting to provide information on proposed water quality standards for selenium in Lake Koocanusa and water quality standards for nutrients.
- 12:24:25 Rep. Z. Brown said he recommends that the meeting in October be held from 9:00 a.m. to noon.

## **PUBLIC COMMENT ON ANY MATTER WITHIN THE JURISDICTION OF THE WPIC**

- 12:25:13 Ron Stoneberg, supervisor, Valley County conservation district, commented on stock water rights. **(Exhibit 16)**
- 12:29:18 Rep. Z. Brown asked Mr. Stoneberg about taking the issue through the Montana Association of Conservation District process.
- 12:31:01 Rep. Z. Brown said he recommends submitting the topic as a proposal for an area of study for the 2021-22 WPIC.
- 12:31:47 Rep. Hamlett asked staff to examine what the laws were for the Bureau of Land Management on water.
- 12:33:06 Mr. Stoneberg said federal law gives the water to the user. He said there have been several Supreme Court rulings that the user of the water and not the owner of the land owns the water right.
- 12:33:57 Rep. Hamlett asked Mr. Stoneberg if someone who had a lease, no longer has that lease, if the water belongs to Montana.
- 12:35:40 Rep. Z. Brown thanked Mr. Stoneberg. He said the next WPIC meeting will be on October 13 from 9 a.m. to noon and staff will update the committee on the geocodes working group meeting.
- 12:36:26 Sen. Welborn thanked the committee members, staff, and the public for their participation.

### **ADJOURNMENT**

- 12:36:59 Rep. Z. Brown adjourned the meeting at 12:36 p.m.