



WATER POLICY INTERIM COMMITTEE

67th Montana Legislature

SENATE MEMBERS

Jill Cohenour
Shane Morigeau
Walt Sales
Jeffrey Welborn

HOUSE MEMBERS

Willis Curdy
Robert Farris-Olsen
Tom France
Rhonda Knudsen
Marty Malone
Bob Phalen

COMMITTEE STAFF

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

MINUTES LOG

January 18, 2022
State Capitol Building Room 137 and Zoom
Helena, Montana

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MEMBERS PRESENT:

Sen. Jeffrey Welborn, Presiding Officer (R)
Rep. Willis Curdy, Vice Presiding Officer (D)
Sen. Jill Cohenour (D)
Rep. Robert Farris-Olsen (D)
Rep. Tom France (D)
Rep. Rhonda Knudsen (R)
Rep. Marty Malone (R)
Sen. Shane Morigeau (D)
Rep. Bob Phalen (R)
Sen. Walt Sales (R)

STAFF PRESENT:

Joe Carroll, Attorney
Jason Mohr, Research Analyst
Nadine Spencer, Secretary

AGENDA [\(Attachment 1\)](#)

VISITORS' LIST [\(Attachment 2\)](#)

CALL TO ORDER/ROLL CALL

- 13:00:10 Sen. Jeffrey Welborn called the meeting to order at 1:00 PM. The committee secretary took roll.
- 13:01:12 Jason Mohr, research analyst, Legislative Services Division (LSD), said the committee received copies of the PowerPoint presentations for the meeting.

A BACKGROUND ON WATER RIGHTS: WHERE TO GO FOR RELEVANT INFORMATION

- 13:01:43 Sen. Welborn asked Mr. Mohr to provide information on the purpose of the presentation.
- 13:02:01 Mr. Mohr said the committee will review where to find relevant information about the water right process.
- 13:03:09 Mr. Mohr provided information on water policy in Montana.
- 13:05:55 Mr. Mohr said the committee received information on legislative resources. [\(Exhibit 1\)](#)
- 13:06:13 Mr. Mohr said the [water rights handbook](#) is a primary resource and provides a comprehensive overview of water rights.
- 13:11:02 Anna Pakenham Stevenson, Water Division administrator, Department of Natural Resources and Conservation (DNRC), provided a background on water rights. [\(Exhibit 2\)](#)
- 13:20:32 Ms. Pakenham Stevenson said the committee received a fact sheet on water right ownership changes. [\(Exhibit 3\)](#)
- 13:30:02 Hon. Steve Brown, associate water judge, Montana Water Court, provided an overview of what the Water Court does and what resources are available for the public. [\(Exhibit 4\)](#)

Public comment

None

Committee discussion

- 13:48:10 Sen. Cohenour asked Mr. Brown about access and availability for the public to get free information online.
- 13:51:31 Sara Calkins, court administrator, Montana Water Court, provided additional information.
- 13:53:08 Rep. Curdy asked Ms. Calkins about finding a way to link the Supreme Court library with the Montana State Library, so the public to access all documents.
- 13:54:47 Rep. Knudsen asked Ms. Pakenham Stevenson about meeting the examination benchmark goals.
- 13:56:37 Rep. Knudsen asked Ms. Pakenham Stevenson about digitizing the water rights query system and processing payments online.
- 13:57:16 Rep. Knudsen asked Ms. Pakenham Stevenson about requesting a change on a water right and the ability for someone to visit a regional office and pay with a bank check.

- 13:58:18 Rep. Knudsen asked Ms. Pakenham Stevenson if the goal is to get away from any payment that is not electronic.
- 13:58:53 Sen. Sales asked Ms. Pakenham Stevenson about meeting future benchmarks.
- 14:00:57 Sen. Sales commended the DNRC on meeting the benchmarks and commented on moving forward.
- 14:01:26 Rep. Malone asked Ms. Pakenham Stevenson about processing ownership updates for subdivisions.

ADJUDICATION UPDATE (85-2-281, MCA)

- 14:04:56 Laura Hinck, Water Adjudication Bureau acting chief, DNRC, provided an update on the DNRC adjudication process. [\(Exhibit 5\)](#)
- 14:12:18 Mr. Mohr said the updated Water Court report is in the meeting day folder and is posted online.
- 14:12:55 Ms. Calkins presented the adjudication report for the Water Court. [\(Exhibit 6\)](#)
- 14:19:01 Mr. Brown provided additional information.

Public comment

None

Committee discussion

- 14:23:13 Sen. Cohenour asked Ms. Calkins how a water user can access information associated with their water right.
- 14:26:09 Sen. Cohenour asked Ms. Pakenham Stevenson about finding a way for water users to access the entire claim history on a water right.
- 14:27:46 Sen. Cohenour asked Ms. Pakenham Stevenson to keep the committee updated and when all scanned documents are available through the water right query system.
- 14:28:01 Sen. Sales asked Ms. Calkins about reopening a decree.
- 14:30:55 Rep. Curdy asked Mr. Brown if a final decree issued by the Water Court can be amended by a new decree process.

CSKT WATER RIGHTS COMPACT: ESTABLISHMENT OF FLATHEAD RESERVATION WATER MANAGEMENT BOARD

- 14:36:09 Lt. Gov. Kristen Juras provided information on the progress in implementing the Confederated Salish and Kootenai Tribe (CSKT) water rights compact. [\(Exhibit 7\)](#)
- 14:42:02 Ms. Pakenham Stevenson provided additional information on processing applications and the work accomplished to date.

Public comment

- 14:45:40 Donna Pridmore, Flathead Conservation District, asked about the second Governor appointee to the Water Management Board.
- 14:46:23 Lt. Gov. Juras said it is Kenneth Pitt.

Committee discussion

14:47:18 Rep. Curdy asked Ms. Pakenham Stevenson about the relationship between the Flathead Water Management Board and the irrigation district. Ms. Pakenham Stevenson redirected the question to Arne Wick, Compact Implementation Program manager, DNRC.

14:48:47 Mr. Mohr said non-irrigation rights will be the primary job for the management board.

14:49:45 Recess

15:13:43 Reconvene

COMPREHENSIVE REVIEW OF WATER ADMINISTRATION AND MANAGEMENT: DRAFT KEY WATER CHALLENGES AND PROPOSED ACTION PLANS

15:14:09 Lt. Gov. Juras provided an update on the work being done by the Governor's office on a comprehensive review of the water laws in Montana. [\(Exhibit 8\)](#)

15:21:18 Ms. Pakenham Stevenson continued the presentation.

15:22:51 Ms. Pakenham Stevenson discussed the different challenges that have been identified based on feedback received from stakeholders. [\(Exhibit 9\)](#)

Public comment

None

Committee discussion

15:37:00 Rep. France asked Ms. Pakenham Stevenson about developing instream flow minimums for cold water fisheries. He also asked whether there is a scientific or biological component for the drought plan that will look at defining what minimum amounts of water are needed, or what minimum or maximum temperatures streams can sustain for fish and wildlife resources.

15:39:42 Rep. France asked Ms. Pakenham Stevenson if the Department of Environmental Quality (DEQ) will be involved.

15:40:15 Sen. Welborn asked Ms. Pakenham Stevenson about the members of the stakeholder groups and how decision points are arrived at.

15:42:25 Sen. Welborn asked Ms. Pakenham Stevenson about the DNRC website overhaul and the budget available to help offset some of the costs.

15:43:58 Kerry Davant, deputy director, DNRC, provided additional information.

15:44:54 Sen. Sales asked Ms. Pakenham Stevenson about water storage.

15:46:39 Rep. Curdy said that storage needs to be addressed. He said he participated in the Zoom videoconference for the initial stakeholder meeting.

15:47:34 Rep. Curdy asked Ms. Pakenham Stevenson to provide the WPIC with an overview of the stakeholder comments.

15:49:49 Sen. Cohenour asked Ms. Pakenham Stevenson how the stakeholder groups will incorporate the work WPIC and the DNRC have already done together.

15:52:00 Rep. Phalen asked Ms. Pakenham Stevenson about ownership of the land being proposed for water storage facilities.

15:53:56 Rep. Phalen asked Ms. Pakenham Stevenson about the different options for storage facilities.

15:55:20 Sen. Welborn said the Wyoming Water Development Office will present next on the agenda.

WATER STORAGE IN WYOMING: WYOMING WATER DEVELOPMENT OFFICE

- 15:55:57 Mr. Mohr said the committee received a copy of the presentation. ([Exhibit 10](#))
- 15:56:07 Sen. Welborn welcomed the participants.
- 15:56:32 Jason Mead, deputy director, Wyoming Water Development Office, said Brandon Gebhardt, director, Water Development Office and interim state engineer, is also present on the call. He provided information on the dam and reservoir program at the Wyoming Water Development Commission. ([Exhibit 11](#))

Committee discussion

- 16:23:46 Rep. Malone commented on the Buffalo Bill Dam in Park County, Wyoming.
- 16:24:15 Rep. France said most of the feasible sites for water storage have been developed. He asked how many projects have been brought forward in the last 16 years through the process and asked for a description of some of the projects that have been completed. Mr. Gebhart provided the information.

Public comment

None

INSTREAM LEASING REPORT (85-2-436, MCA)

- 16:30:32 Stephen Begley, water conservation specialist, Lands Division, Department of Fish, Wildlife, and Parks (FWP), presented the biennial instream leasing report. ([Exhibit 12](#))

Public comment

- 16:40:16 Clayton Elliott, Trout Unlimited

Committee discussion

- 16:42:07 Sen. Cohenour asked Mr. Begley about public oversight and working with willing landowners.
- 16:45:15 Sen. Cohenour asked Mr. Begley what the program provides for landowners.
- 16:47:21 Rep. Malone asked Mr. Begley if FWP looks at the impact to other water right holders.
- 16:48:49 Rep. France asked Mr. Begley if FWP is the only entity that can lease and hold instream water rights.
- 16:49:38 Rep. France asked Mr. Begley how many instream leases FWP holds, what is the budget for FWP's water leasing program, and where do the funds come from.

U.S. FOREST SERVICE WATER RESERVATIONS (85-20-1401, MCA)

- 16:52:30 Arne Wick, manager, Compact Implementation Program, DNRC, presented the biennial report. ([Exhibit 13](#))

Public comment

None

Committee discussion

- 16:56:08 Rep. Malone asked Mr. Wick for the link to the interactive map.
- 16:56:38 Sen. Welborn said the link will be provided.

16:57:04 Sen. Welborn thanked Mr. Wick for his report.
16:57:25 Rep. Phalen asked about receiving a copy of the water rights handbook and about the article and sections in the Montana constitution regarding the centralization of water records.
16:58:20 Mr. Mohr said he will provide the information.
16:59:29 Sen. Welborn thanked the committee.

ADJOURNMENT

17:00:19 Sen. Welborn adjourned the meeting at 5:00 p.m.