



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

July 14, 2021
State Capitol Building, 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.

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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. Rhonda Knudsen (R)
Rep. Marty Malone (R)
Sen. Shane Morigeau (D)
Rep. Bob Phalen (R)
Sen. Walt Sales (R)

MEMBERS EXCUSED:

Rep. Tom France (D)

STAFF PRESENT:

Corina Hach, attorney
Jason Mohr, research analyst
Nadine Spencer, secretary

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

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

COMMITTEE ACTION

The Water Policy Interim Committee (WPIC):

- Voted to adopt the rules of procedure as amended;
- Voted to elect Sen. Welborn as presiding officer and Rep. Curdy as vice-presiding officer.

CALL TO ORDER/ROLL CALL

13:09:05 Sen. Jill Cohenour called the meeting to order at 1:09 PM. The committee secretary took roll. [\(Attachment 3\)](#)

Committee Member Introductions

13:10:13 Sen. Cohenour
13:11:15 Sen. Welborn
13:12:18 Rep. Phalen
13:13:01 Rep. Curdy
13:13:44 Rep. Knudsen
13:14:57 Sen. Morigeau
13:16:26 Rep. Farris-Olsen
13:17:05 Rep. Malone
13:18:23 Sen. Sales

Staff Introductions

13:19:27 Cori Hach, staff attorney, Legislative Service Division (LSD)
13:20:05 Jason Mohr, research analyst, LSD
13:20:31 Nadine Spencer, committee secretary
13:20:47 Sen. Cohenour asked the public members in the audience to introduce themselves and indicate who they represent.

COMMITTEE OVERVIEW

13:23:23 Mr. Mohr provided an overview of the Water Policy Interim Committee (WPIC).

ADOPTION OF RULES

13:25:57 Sen. Cohenour said the committee received a copy of the general rules, procedures, and guidelines for interim committees. [\(Exhibit 1\)](#)
13:26:13 Mr. Mohr provided an overview of the interim rules and procedures adopted by Legislative Council.
13:28:33 Mr. Mohr said previous interim committees have amended the rules to require a super majority vote to pass committee legislation and to allow written and electronic proxies.

Committee Discussion

13:29:44 Rep. Malone asked Mr. Mohr about using Zoom video conferencing.

13:30:46 Sen. Morigeau commented on using Zoom and ability for the public to participate.

13:32:11 Sen. Cohenour said Zoom also provides an opportunity for legislators who are on other committees to participate.

13:32:41 Rep. Knudsen asked if the requirement that the presiding officer and the vice-presiding officer not be of the same political party is in rule. Mr. Mohr said he will find out. Sen. Cohenour said she thought it was.

13:34:00 Sen. Sales asked Mr. Mohr if previous WPIC committees have allowed electronic proxies.

Motion

13:35:07 Rep. Curdy moved to adopt the rules as written.

Motion/Vote

13:36:14 Rep. Knudsen moved to amend the rules to include both written and electronic proxies. The motion carried unanimously by voice vote of those present and voting.

Motion/Vote

13:36:52 Sen. Cohenour moved to adopt the rules as amended. The motion carried unanimously by voice vote of those present and voting.

ELECTION OF WPIC PRESIDING OFFICER AND VICE-PRESIDING OFFICER

13:37:35 Sen. Sales moved to nominate Sen. Welborn as presiding officer.

Motion/Vote

13:38:20 Sen. Morigeau moved to accept the nomination of Sen. Welborn as presiding officer. The motion carried unanimously by voice vote of those present and voting.

Motion/Vote

13:39:58 Sen. Welborn moved to nominate Rep. Curdy as vice-presiding officer. The motion carried unanimously by voice vote of those present and voting.

13:40:27 Sen. Welborn assumed the position as presiding officer.

13:41:30 Sen. Welborn commented on committee procedures.

13:43:44 Mr. Mohr provided information on the process for public participation by Zoom.

REVIEW OF 2021 WATER LEGISLATION

13:44:31 Mr. Mohr said the committee received a list of natural resource legislation passed during the 2021 Legislative session. ([Exhibit 2](#))

13:45:00 Mr. Mohr said three committee bills from the 2019-20 WPIC were passed during the session He discussed SB 13.

13:46:15 Mr. Mohr discussed SB 20.

13:48:12 Mr. Mohr discussed SB 55.

13:50:15 Mr. Mohr provided information on other water policy bills passed during the legislative session.

Committee Discussion

13:54:04 Rep. Knudsen asked Mr. Mohr about the members of the numeric nutrient work group.

13:54:40 Rep. Malone commented on SB 358 (2021).

AGENCY OVERVIEWS OF WATER-RELATED PROGRAMS

13:55:28 Mr. Mohr provided an introduction.

Department of Environmental Quality

13:56:10 Chris Dorrington, director, Department of Environmental Quality (DEQ), provided an overview. Mr. Dorrington said the department is in the process of implementing legislation passed during the 2021 session.

13:58:43 Mr. Dorrington introduced the DEQ staff.

Department of Fish, Wildlife, and Parks

13:59:41 Hank Worsch, director, Department of Fish, Wildlife, and Parks (FWP), provided an overview.

14:00:29 Mr. Worsch introduced the FWP staff.

Department of Natural Resources and Conservation

14:02:00 Amanda Kaster, director, Department of Natural Resources and Conservation (DNRC), discussed DNRC's role in the management of water in the state and provided an overview of the Water Resources Division.

14:03:48 Ms. Kaster introduced the DNRC staff.

14:05:21 Ms. Kaster provided information on legislation passed during the 2021 session.

14:06:05 Ms. Kaster provided information on DNRC's effort to review the Water Use Act.

Committee Discussion

14:10:22 Rep. Malone asked Mr. Mohr about the history and reason for the information contained on the DNRC water rights adjudication forms.

14:12:13 Sen. Sales asked Rep. Malone about the form and what information he was referring to.

14:15:08 Rep. Knudsen asked about public comment.

Public Comment

None

14:15:59 Rep. Phalen asked Mr. Mohr about the water right transfer process.

14:17:51 Ms. Kaster said the DNRC can work directly with Rep. Phalen.

DISCUSSION OF LITIGATION RELATED TO HB 286 (REVISE WATER RIGHT LAWS RELATED TO STATE WATER CLAIMS (2019))

14:18:26 Ms. Hach provided an overview and update on HB 286. ([Exhibit 3](#))

14:22:25 Sen. Welborn asked Ms. Hach to provide the committee with updates as they become available. He asked Ms. Hach if the case was in Helena District Court and if the judge's opinion is being appealed to the Montana Supreme Court.

Public Comment

None

Committee Discussion

14:23:17 Sen. Cohenour said the committee needs to keep track of the litigation as it moves forward and asked Ms. Hach about the motivation behind HB 286.

14:26:22 Krista Lee Evans said she recommends that committee members watch testimony given during the 2019 Legislative session.

14:26:48 Sen. Welborn agreed and said Rep. Alan Redfield carried the legislation.

14:27:09 Rep. Curdy asked Ms. Hach if she anticipates the court may undermine or establish a new precedent as a result of the decision.

14:28:52 Rep. Phalen commented on the bill and asked about the reason for the lawsuit.

14:30:00 Sen. Welborn commented on the legislation.

14:30:17 Sen. Sales commented on the legislative support for the bill.

14:31:49 Mr. Mohr said the committee is ahead of schedule and the remote meeting coordinator is checking on public participation for the next agenda item.

14:32:35 Recess

15:00:07 Reconvene

DISCUSSION OF 2021-22 INTERIM PRIORITIES

Overview of Work Plan

15:00:58 Mr. Mohr said the committee received a copy of the draft work plan. [\(Exhibit 4\)](#) He said it lays out what the WPIC is required to do by law and what the committee might choose to do.

15:01:26 Mr. Mohr provided information on what the WPIC does.

15:03:07 Mr. Mohr said Legislative Council assigned the WPIC two studies.

15:03:48 Mr. Mohr discussed HJ 37, the study of Lake Koocanusa selenium standard.

15:06:15 Rep. Malone said Rep. Steve Gunderson (HD 1), the sponsor of HJ 37, is online and has questions about why the study was assigned to the WPIC. Sen. Welborn said he can ask questions during public comment.

15:06:30 Mr. Mohr provided information on SJ 28, the study of Flathead River erosion.

15:07:05 Mr. Mohr discussed the amount of time the committee can decide to assign to each study.

15:08:09 Mr. Mohr discussed WPIC's function in monitoring agencies.

15:09:58 Mr. Mohr discussed oversight and review of administrative rules.

15:10:17 Mr. Mohr said interim committees review reports and councils.

15:10:53 Mr. Mohr discussed member topics and emerging issues.

15:13:13 Mr. Mohr said the WPIC reviews legislation for pre-introduction for the next legislature.

Overview of Administrative Rulemaking

15:13:51 Ms. Hach provided an overview.

15:16:21 Ms. Hach said the committee received a memo on the different authorities the committee can become involved including informal and formal objections. [\(Exhibit 5\)](#)

15:19:21 Ms. Hach discussed new laws passed in 2021 affecting the rule review process.

Committee Discussion

15:23:40 Sen. Sales asked Ms. Hach about receiving updates from the American Rescue Plan Act Infrastructure Advisory Commission on water and sewer.

15:24:22 Sen. Cohenour said she recommends receiving an update on the drought at each meeting from DNRC and FWP and on fires and water storage for fire response.

15:25:45 Rep. Curdy said he would like information from the DNRC on fire use of water storage and the impact on local property owners. He asked if staff reviews state law in order to be ready at the next session with legislation to update laws that are sunset. Mr. Mohr said he will add it to the list.

15:28:13 Rep. Malone said Bureau of Land Management (BLM) water rights on Taylor Grazing Act lands is listed under "member topics and emerging issues" and asked about including U.S. Forest Service water rights on federal lands. He also said he encourages prepositioning fire assets on private land.

15:29:12 Sen. Cohenour said she recommends tracking water restrictions for domestic use because of the drought.

Public Comment

15:30:55 Rep. Gunderson commented on Legislative Council's decision to assign HJ 37 to the WPIC. Sen. Welborn said Rep. Gunderson can provide his input during committee discussion.

15:34:19 Rebecca Boslough, Montana Association of Conservation Districts, commented on SJ 28.

15:35:49 Hailey Graf, resource conservationist, Flathead Conservation District, commented on SJ 28. ([Exhibit 6](#))

15:38:30 Ron Stoneberg, supervisor, Valley County Conservation District, commented on the 1934 Taylor Grazing Act. ([Exhibit 7](#))

Committee Discussion

15:55:07 Rep. Phalen asked Mr. Stoneberg if atmospheric water is considered Waters of the U.S.

15:55:56 Rep. Malone asked Mr. Stoneberg about U.S. Forest Service land.

15:57:37 Rep. Phalen asked Ms. Graf where most of the erosion is taking place on the Flathead River and how recreation is damaging the stream banks.

15:59:14 Sen. Sales asked Ms. Graf if there is baseline knowledge regarding erosion caused by wake boats.

16:00:40 Rep. Malone said the committee may want to consider objections that a person cannot irrigate land that was not historically irrigated even though equipment has changed.

16:01:40 Sen. Welborn said it can be added to the work plan discussion tomorrow.

16:02:03 Rep. Malone asked if HB 37 is under the purview of the WPIC.

16:02:21 Sen. Cohenour said she is a member of Legislative Council and commented on the decision to assign the study to the WPIC.

16:04:11 Rep. Knudsen said she is also a member of Legislative Council and the motion to move the study back to the Environmental Quality Council (EQC) failed on a tie vote.

16:04:50 Rep. Curdy asked Ms. Graf if the Flathead Conservation District and local landowners petitioned FWP to restrict the use of motorized boats on the Flathead River.

16:06:25 Sen. Cohenour asked Ms. Graf about the statewide proposal and if it would have allowed local areas to petition for changes in watercraft use or if it took it out of the hands of the local jurisdiction.

16:07:40 Donna Pridmore, Flathead Conservation District, commented on the public comment that was given regarding enforcement of a statewide no wake zone or no motorized boats.

16:08:33 Sen. Cohenour said it would be valuable to have the information regarding the discussion on statewide versus local control.

16:09:02 Rep. Phalen asked Ms. Graf about other plans for stopping erosion on the lower Flathead River.

16:11:16 Rep. Phalen asked Ms. Graf about methods being used to stabilize the stream banks.

16:13:01 Rep. Phalen asked Ms. Graf about the number of miles of stream bank that needs attention.

16:13:27 Sen. Sales asked Mr. Mohr about the process for SJ 28.

16:14:52 Rep. Malone asked Ms. Graf about the number of miles of stream bank with riparian habitat.

16:16:22 Rep. Knudsen asked Ms. Graf about an ideal outcome for the study.

16:17:41 Rep. Knudsen asked Ms. Graf if the conservation district is looking to prevent or to mitigate erosion.

16:18:32 Ms. Pridmore commented on ways to mitigate the erosion and the goals for the conservation district.

16:22:33 Mr. Mohr provided information on how the 2019-20 WPIC allotted its time.

16:24:48 Sen. Welborn said decisions about the work plan can be made at the meeting tomorrow. He opened discussion on HJ 37 and said WPIC may want to consider forming a select committee with members from both the WPIC and the EQC.

16:27:04 Rep. Malone commented on HB 37 and asked Mr. Mohr if EQC has a larger staff to commit time to the study.

16:29:02 Rep. Gunderson commented on the reason for the study and assigning it to the EQC.

16:33:16 Sen. Sales asked Rep. Gunderson about keeping the study in WPIC and moving forward with a select committee.

16:35:37 Sen. Welborn asked Rep. Gunderson about setting up the select committee.

16:37:46 Sen. Welborn asked Rep. Gunderson who will decide the members on the select committee if the study is assigned to EQC.

16:38:39 Sen. Cohenour commented on the decision made by Legislative Council to assign HJ 37 to the WPIC. She said she would like to keep the study in WPIC and agreed with the idea of forming a select committee with members from both the WPIC and the EQC.

16:41:42 Sen. Welborn said during the last interim the WPIC scheduled an additional meeting to discuss water quality standards for selenium in Lake Koocanusa. Mr. Mohr said it was discussed at the October 2020 meeting.

16:42:37 Sen. Welborn commented on the ability for the 2019-20 WPIC to add the topic as an agenda item and on moving forward with the study.

16:44:49 Rep. Gunderson commented on the intent of the study bill to include the WPIC.

ADJOURNMENT

16:45:49 Sen. Welborn adjourned the meeting at 4:46 p.m.