

Water Policy
Interim
Committee

2021-
2022

FINAL Work Plan
for the 2021-22
Interim (updated
Jan. 2022)



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2021-22 WPIC WORK PLAN

INTRODUCTION

This is the work plan for the Water Policy Interim Committee (WPIC) for the 2021- 22 interim. This document is meant to be comprehensive, yet flexible. Invariably, topics of interest will rise and fall away during the next 14 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."**

HOW THE WPIC PLANS ITS WORK

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 13) 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** for a list of past and current officers.)

The primary constraint 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 2021-22 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 9 and specified beginning on page 12 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

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

WHAT DOES STATUTE REQUIRE?

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

First, all interim committees² are expected to review administrative rules, conduct interim studies, monitor assigned executive branch agencies, review advisory councils and reports, review agency legislation and ballot initiatives, and provide any other relevant information.

Second, the WPIC is established by law to provide oversight “for issues where the primary concern is the quality or quantity of water”³ in programs of the 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. 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

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

Department of Environmental Quality

Department of Natural Resources and Conservation

Department of Fish, Wildlife, and Parks

INTERIM STUDIES

The Legislative Council referred two studies passed by the 2021 Legislature to the WPIC. The committee subsequently agreed to conduct both studies.⁵

House Joint Resolution 37 (HJ 37) proposes a study of the data used by the Department of Environmental Quality for a 2020 administrative rule, setting selenium limits for Lake Koocanusa and the Kootenai River for fish tissue and the water column.

2 studies assigned to WPIC:

HJ 37	Study of Lake Koocanusa selenium standard
SJ 28	Study of Flathead River erosion

The Environmental Policy Agency approved these standards in early 2021, pursuant to the federal Clean Water Act.

Senate Joint Resolution 28 also examines water quality on a specific stretch of river. Lands along the lower Flathead River in Flathead County have been subject to increasing erosion, which is affecting

streambanks and phosphorus and nitrogen loading of Flathead Lake.

The study resolutions may be found beginning on page 19.

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).

² Section 5-5-215, MCA.

³ Section 5-5-231, MCA.

⁴ Section 85-2-105, MCA.

⁵ On July 15, 2021, the committee voted to form a HJ37 special committee with members from the Environmental Quality Council.

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 DEQ, 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 24 for a more-thorough explanation of administrative rulemaking and the committee's role.)

During the 2019-20 interim, the WPIC...

reviewed 3 notices of administrative rulemaking

objected to 0 notices

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. Beginning this interim,⁶ the committee will also review proposed ballot initiatives within the committee's subject area.

12 reports to WPIC

Appropriation rights changed to instream flow (FWP, 85-2-436, MCA)
Consultation on state water plan (DNRC, 85-1-203)
Economic and environmental feasibility of small-scale hydroelectric power generating facility on a state water project (DEQ, 85-1-501)
Ground Water Investigation Program (MBMG, 85-2-525)
Prioritization of water storage projects (Governor's office, 85-1-704)
Progress of the adjudication of pre-1973 water rights (DNRC and Water Court, 85-2-281)
Status of the Renewable Resource Grant and Loan Program (DNRC, 85-1-621)
Stream gauge oversight work group (DNRC, 2-15-3308—expires July 1, 2023)
Review of state water reservations by 2026 (DNRC, 85-2-316)
Total maximum daily loads (TMDLs) for impaired and threatened water bodies (DEQ, 75-5-703)
Upper Clark Fork River Basin Steering Committee (85-2-338)
U.S. Forest Service state water reservation applications (DNRC, 85-20-1401)

The 2019-20 WPIC proposed 4 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. Three of these bills passed the 2019 Legislature (see

⁶ HB 651 (Generally revise ballot initiative laws).

Appendix C for more details). Unique to other interim committees, the WPIC requires 7 votes (of 10) to advance as a committee bill to the next legislative session.

MEMBER TOPICS, EMERGING ISSUES

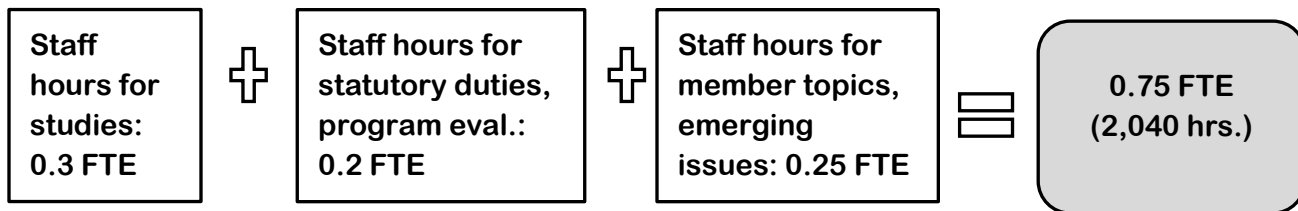
Committee member suggestions and emerging issues drive much of the WPIC's work. These usually cover a variety of water topics and may be answered with a single memo or presentation. Other topics may need a more-comprehensive review. The committee will prioritize member topics and emerging issues as the biennium progresses. The committee tentatively agreed to the following member topics (updated Sept. 24, 2021):

- BLM water rights on Taylor Grazing Act lands
- Impacts to water from proposed Great Falls meatpacking plant
- Development of narrative nutrient standards for water quality (SB 358)
- Weather modification (SB 29)
- Impact of WPIC's geocode bill (SB 55—Revise the process for water right ownership updates)
- Water projects and the American Rescue Plan Act of 2021 (ARPA)
- Litigation related to HB 286 (2019)
- Legislative audit of Water Right Information System (DNRC)
- LIDAR mapping technology
- Processing of HB110 claims
- Water storage and the State Water Plan
- Issues of drought: wildfires, water storage, local water restrictions, and repeat water supply updates (DNRC, FWP)
- Sunsetting water laws
- Repair and regulation of BLM stockwater ponds/DNRC trust lands
- Mechanical irrigation
- Court decisions on expanded places of use for a water right
- Restrictions on a water right to an original decree
- Missouri River Headwaters Basin Study
- CSKT compact implementation

TIME ALLOCATION FOR COMMITTEE WORK

As indicated in the graphic on page 9, the WPIC is scheduled to meet 7 times during an interim to work on studies, statutory duties, and member topics. At the end of these 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**) 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. In July 2021, the committee tentatively distributed this staff workload as:



This equation is computed by referring to the Work Plan Decision Matrix (**Appendix E**). 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 INTERIM IS COMPRISED OF 7 MEETINGS.

July 14-15, 2021	Oct. 12-13	Jan. 18-19, 2022	March 15-16	May 17-18	July 12-13	Sept. 20-21
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

APPENDIX A: WPIC 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 McNutt (R)	Sen. Dave Wanzonried (D)
2011-12	Sen. Brad Hamlett (D)	Rep. Walt McNutt (R)
2013-14	Sen. Chas Vincent (R)	Rep. Kathleen Williams (D)
2015-16	Sen. Brad Hamlett (D)	Rep. Carl Glimm (R)
2017-18	Sen. Pat Connell (R)	Rep. Zach Brown (D)
2019-20	Rep. Zach Brown (D)	Sen. Jeffrey Welborn (R)
2021-22	Sen. Jeffrey Welborn (R)	Rep. Willis Curdy (D)

APPENDIX B: LAWS THAT GUIDE WPIC'S INTERIM WORK⁷

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.

⁷ These statutes were modified by SB 57, which modified reports, and HB 651, which added requirement to review ballot initiatives.

APPENDIX C: WATER-RELATED BILLS AT 2019 LEGISLATURE

3 OF 4 WPIC BILLS PASS 2021 LEGISLATURE

Bill No.	Short title	Status
SB 13	Revise DNRC adjudication benchmarks	Passed, signed by governor
SB 20	Clarifying use of river basin councils	Passed, signed by governor
SB 29	Review weather modification and control laws	Failed to pass House of Representatives
SB 55	Revise the process for water right ownership updates	Passed, signed by governor

2021 LEGISLATURE PASS 1 AGENCY BILL

Bill No.	Short title (and proposing agency)	Status
SB 37	Permit exemption for Berkeley Pit water	Failed in Senate Natural Resources Committee

APPENDIX D: WPIC'S WORK PLAN TIME LINE (AS OF AUGUST 10, 2021)

Tasks	
July 14-15, 2021	<ul style="list-style-type: none"> *—Elect officers *—Review 2019 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, DNRC, FWP, Ag, MBMG *—Adjudication update (85-2-281, MCA)—DNRC, WC *—Update on drought, water supply, wildfires *—Review litigation related to HB 286 (2019) *—Update from Nutrient Work Group (SB 358) *—Update on aquatic invasive species *—Water research (85-2-105, MCA): Montana Water Center, Montana Bureau of Mines and Geology
Oct. 12-13	<ul style="list-style-type: none"> *—Adoption of final work plan *—Committee studies: Receive background information; appoint members to HJ37 special committee and set meeting date *—Finalize list of committee member topics *—Adjudication update (85-2-281, MCA)—DNRC, WC ▪ Stream gauge oversight work group (2-15-3308, MCA)—DNRC *—Member topics and emerging issues: <i>court decisions on expanded place of use</i> *—Update from Nutrient Work Group (SB 358) *—Prioritization of water storage projects (85-1-704, MCA) *—Agency rulemaking update—LSD staff ▪ Water research (85-2-105, MCA): Water Information System (State Library)
Jan. 18-19, 2022	<ul style="list-style-type: none"> *—Committee studies: <ul style="list-style-type: none"> ○—Receive additional background information ○—Identify further issues and options *—Member topics and emerging issues: <i>water rights background; Wyoming water storage; CSKT compact</i> *—Adjudication update (85-2-281, MCA)—DNRC, WC *—Instream leasing report, (85-2-436, MCA)—FWP *—U.S. Forest Service water reservations (85-20-1401, MCA)—DNRC, USFS *—GWIP report (85-2-525) ▪ Implementation of State Water Plan (85-1-203, MCA)—DNRC ▪ <i>Other: ARPA, management review</i> *—Agency rulemaking update—LSD staff
March 15-16	<ul style="list-style-type: none"> ▪ Committee studies: Identify further issues and options, <i>HJ37 special committee report</i> ▪ Committee member topics: <i>BLM water rights, Adj. Adv. Cmte legislation</i> ▪ Renewable Resource Grant and Loan Program update, (85-1-621, MCA)—DNRC ▪ <i>Stream gauge oversight work group (2-15-3308, MCA)—DNRC</i> ▪ <i>Water research (85-2-105, MCA): Water Information System (State Library)</i> ▪ <i>Implementation of State Water Plan (85-1-203, MCA)—DNRC</i> ▪ <i>Other: drought plan. Management review, nutrients</i> ▪ Agency rulemaking update—LSD staff

Tasks	
May 17-18	<ul style="list-style-type: none"> ▪ Committee studies: <ul style="list-style-type: none"> ○ Discuss options ○ Propose recommendations ▪ Committee member topics ▪ Adjudication update (85-2-281, MCA) — DNRC, WC ▪ Update on drought, water supply — DNRC ▪ Agency rulemaking update — LSD staff
July 12-13	<ul style="list-style-type: none"> ▪ Committee studies: <ul style="list-style-type: none"> ○ Draft recommendations, legislation ○ Discuss draft report(s) ▪ Committee member topics ▪ TMDL list update (75-5-703, MCA) — DEQ ▪ Hydroelectric potential report (85-1-501, MCA) ▪ Temporary leasing report (85-2-427, 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 — LSD staff
Sept. 20-21	<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 WPIC report(s), if necessary ▪ Adjudication update (85-2-281, MCA) — DNRC, Water Court ▪ Agency rulemaking update — LSD staff ▪ Consider/propose areas of study for 2021-22 interim

APPENDIX E: 2021 -22 WPIC WORK PLAN DECISION MATRIX

	Full review	Medium review	Minimum review	Resources Allocated
Sample study	<p>0.3 FTE</p> <ul style="list-style-type: none"> •All components of medium review •In-depth legal analysis of study issues <p>Deliverables:</p> <ul style="list-style-type: none"> •Final report with recommendations •Legislation 	<p>0.2 FTE</p> <ul style="list-style-type: none"> •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 <p>Deliverables:</p> <ul style="list-style-type: none"> •Report •Legislation 	<p>0.1 FTE</p> <ul style="list-style-type: none"> •Review relevant laws, policies, and legal decisions •Summarize related information in other states •Panel discussion <p>Deliverables:</p> <ul style="list-style-type: none"> •Legislation •Brief report 	0.3 FTE for HJ37, SJ28 studies

	Full review	Medium review	Minimum review	Resources Allocated
Statutory duties	<p>0.25 FTE</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 FTE</p> <ul style="list-style-type: none"> •All mandatory duties •Water issues identified during 2019-20 interim •Public involvement through WPIC meetings •Basic involvement and oversight <p>Review reports related to:</p> <ul style="list-style-type: none"> •Nutrient standards •TMDLs •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 •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 		0.2 FTE for statutory duties, including program evaluation

	Full review	Medium review	Minimum review	Resources Allocated
Program evaluation <i>(*the 2019-20 WPIC selected no programs for evaluation)</i>	0.2+ FTE (per program evaluated) <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, LFD 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 FTE (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, LFD 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 FTE (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 	0.2 FTE for statutory duties, including program evaluation

Full review		Medium review	Minimum review	Resources Allocated
Member topics (as selected by the committee)		0.1 FTE (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 FTE (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 	0.2 FTE for member topics and emerging issues

Hourly breakdown of WPIC interim FTE:

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

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