



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

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

MINUTES LOG

May 17, 2022

State Capitol Building Room 137 and Zoom
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. 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 [\(Attachment 1\)](#)

NO VISITORS' LIST

CALL TO ORDER/ROLL CALL

13:00:36 Sen. Jeffrey Welborn called the meeting to order at 1:00 PM. The committee secretary took roll. **(Attachment 3)**

MEETING OVERVIEW—MR. MOHR

13:01:24 Jason Mohr, research analyst, Legislative Services Division (LSD).

ADJUDICATION UPDATE (85-2-436, MCA)

Laura Hinck, supervisor, Adjudication Bureau (Department of Natural Resources and Conservation)

13:04:09 Ms. Hinck. **(Exhibit 1)**

13:05:39 Sen. Morigeau entered the meeting.

13:07:28 Ms. Hinck provided a copy of the newly formatted map that will be included in future adjudication reports. **(Exhibit 2)**

Water Court

13:11:52 Russ McElyea, chief judge, Montana Water Court. **(Exhibit 3)**

13:16:32 Mr. McElyea introduced Sara Calkins, court administrator, and Julia Nordlund, senior water master.

Public comment

None

Committee discussion and action, if necessary

13:17:40 Rep. Malone asked Mr. McElyea if there have been any changes made in the statutes, over the last 10 years, regarding water commissioner appointments.

13:18:26 Rep. Malone asked Mr. McElyea if the Department of Natural Resources and Conservation (DNRC) is going to begin taking over water commissioner duties.

13:18:49 Rep. Curdy asked Mr. McElyea about the Confederated Salish and Kootenai Tribe (CSKT) compact status completion.

13:20:18 Rep. Curdy asked Ms. Hinck about the department's enforcement action.

13:22:04 Sen. Sales asked Ms. Hinck about the source for enforcement requests.

13:22:51 Sen. Sales asked Ms. Hinck if she has heard whether the state will be taking over water commissioner appointments.

CLARIFICATION OF COMBINED APPROPRIATION GUIDANCE

13:23:42 Mr. Mohr said the committee received information in the meeting day folder in addition to the material sent before the meeting. **(Exhibit 4)**

13:24:24 Nate Ward, Water Rights Bureau chief, DNRC, presented information on guidance clarification for combined appropriations.

Public comment

None

Committee discussion and action, if necessary

- 13:30:07 Rep. Knudsen asked Mr. Ward about the participants involved in the review working group.
- 13:31:19 Sen. Sales asked Mr. Ward about subdivision of property and what is meant by phasing.
- 13:32:33 Sen. Cohenour asked Mr. Ward about permit exceptions.
- 13:34:08 Rep. Curdy asked Mr. Ward if the effort to provide consistency across the state will depend on the availability of groundwater.
- 13:36:49 Rep. Curdy asked Mr. Ward about the timeline for potential policy changes and if the legislature will be asked to put some of the policy requests into statute.
- 13:38:55 Rep. Knudsen asked Mr. Ward if the working group meeting scheduled for next week is open to the public.
- 13:40:35 Anna Pakenham Stevenson, Water Resources Division administrator, DNRC, provided additional information.
- 13:41:17 Ms. Pakenham Stevenson provided information on the members of the Changes, Mitigation and Exceptions working group and the members of the Final Decree Transition working group.
- 13:42:42 Ms. Pakenham Stevenson addressed concerns regarding whether the DNRC will take over water commissioner training.
- 13:43:29 Sen. Welborn said Mr. Mohr keeps track of and is a good resource for the working group meetings.

DISCUSSION OF LITIGATION RELATED TO H.B. 286 (REVISE WATER RIGHT LAWS RELATED TO STATE WATER CLAIMS)

- 13:44:14 Brian Bramblett, chief legal counsel, DNRC, provided an update on litigation regarding HB 286 (2019). **(Exhibit 5)**

Public comment

- 13:53:09 Krista Lee Evans, Association of Gallatin Agricultural Irrigators and Senior Water Rights Coalition.

Committee discussion and action, if necessary

- 13:54:20 Sen. Sales asked how the department will know that the state's name has been removed from the post-1973 water rights at issue in the case. Ms. Pakenham Stevenson provided the information.
- 13:55:31 Sen. Sales asked Ms. Pakenham Stevenson if the department will send letters to notify the 141 individual water right owners.

DROUGHT AND WATER SUPPLY ADVISORY COMMITTEE REPORT TO THE GOVERNOR

- 13:56:39 Michael Downey, Water Planning Section supervisor, DNRC, provided a PowerPoint presentation **(Exhibit 6)** and discussed the water supply outlook report. **(Exhibit 7)**

Public comment

None

Committee discussion and action, if necessary

- 14:11:56 Rep. Phalen asked Mr. Downey how not irrigating helps.
- 14:13:14 Sen. Sales asked Mr. Downey about the comprehensive water review and update on the process for the drought management plan.

- 14:15:50 Sen. Sales asked Mr. Downey about storage, and if stakeholders are looking at ways to mitigate risk to individuals.
- 14:18:19 Sen. Sales encouraged members of the committee to tell their constituents that stakeholders can get involved and bring what works in their areas to the DNRC.
- 14:18:42 Mr. Downey said the website address is <https://www.mtdroughtinfo.org/>.
- 14:19:07 Rep. Malone asked Mr. Downey if the DNRC is working to get some of the manual read sites, abandoned by the U.S. Forest Service, back online.
- 14:20:33 Rep. Malone asked Mr. Downey about using volunteers to help read gauge sites and gather data to keep stations up to date.
- 14:22:11 Rep. Malone commented on using volunteer citizens to read snow gauges.
- 14:22:41 Recess
- 14:42:12 Reconvene

UPDATE ON WATERS OF THE UNITED STATES RULEMAKING

- 14:42:24 Mr. Mohr provided an update on rulemaking for defining “Waters of the United States.” **(Exhibit 8)**
- 14:54:25 Mr. Mohr said the committee received a copy of comments from the Governor’s office. **(Exhibit 9)**
- 14:57:21 Mr. Mohr said he provided a link for *A Guide to Montana’s Water Quality Regulation* published by the Legislative Environmental Policy Office. **(Exhibit 10)**

Public comment

- 14:58:15 Rachel Meredith, legal counsel, Governor’s office
- 15:03:54 Nicole Rolf, Montana Farm Bureau Federation (MFBF)
- 15:06:00 Sen. Welborn asked Ms. Rolf to let the committee know if time should be added to the July meeting for an update from the MFBF.

Committee discussion and action, if necessary

- 15:07:00 Sen. Sales asked Mr. Mohr to provide the links to the regional round table discussions.
- 15:07:32 Rep. Malone asked Ms. Meredith about the significant nexus test and if “physical” means dewatering.
- 15:09:39 Sen. Cohenour said she recommends keeping the topic on the agenda.

TEST FLOWS FROM FORT PECK DAM

- 15:10:30 Sen. Welborn said information was sent to the committee. **(Exhibit 11)**

Joe Bonneau, manager, Missouri River Recovery Program (U.S. Army Corps of Engineers)

- 15:10:59 Mr. Bonneau **(Exhibit 12)**

Missouri River Conservation Districts Council

- 15:22:14 Karl Christians, supervisor, Lewis and Clark Conservation District and vice chair, Missouri River Conservation District Council (MRCDC).
- 15:25:37 Mr. Christians said the committee received information on Fort Peck Dam test flow information. **(Exhibit 13)**
- 15:28:23 Dick Iverson, Missouri River Conservation Districts Council, Richland County. **(Exhibit 14)**

- 15:44:12 Dana Berwick, irrigated and dryland farmer, Bainville and Roosevelt County conservation district representative, MRCDC. **(Exhibit 15)**
- 15:47:54 Dave Garland, general manager, Sidney Sugars. **(Exhibit 16)**
- 15:56:31 Molly Masters, coordinator, MRCDC, discussed five potential solutions for moving forward. **(Exhibit 17)**

Public comment

- 15:59:36 Jeff Ryan, chairman, Lewis and Clark Conservation District
- 16:04:04 Mike Ames, Valley County **(Exhibit 18)**
- 16:18:26 Jeff Tiberi, former director, Montana Association of Conservation Districts
- 16:19:02 Mike Murphy, Montana Water Resources Association
- 16:21:35 Liv Holt, Montana Farm Bureau Federation

Additional public comment received
(Exhibit 19)

Committee discussion and action, if necessary

- 16:25:15 Sen. Cohenour asked Mr. Bonneau about continuing to work with stakeholders on a solution.
- 16:29:07 Sen. Cohenour asked Mr. Bonneau about the recommendations from the stakeholders.
- 16:33:21 Rep. France asked Mr. Bonneau about mitigation funding.
- 16:35:15 Rep. France asked Mr. Bonneau if the Corps has the authority to buy dredging equipment or harden pump sites to withstand higher flows.
- 16:36:42 Rep. France said financial mitigation should be part of the test.
- 16:37:18 Rep. Malone said there will be significant adverse effects and asked Doug Hardy about significant impacts for hydro power.
- 16:41:15 Sen. Sales asked Mr. Garland about the effect on the contracts they have with growers.
- 16:45:07 Sen. Sales asked Mr. Bonneau about the impacts and uncertainty for the agriculture industry.
- 16:47:20 Sen. Sales asked Mr. Bonneau about the ability to put in hard infrastructure to help enhance and protect diversion points.
- 16:49:00 Rep. Phalen asked Mr. Bonneau about the endangered species list.
- 16:50:16 Rep. Phalen asked Mr. Bonneau about removing Fort Peck dam.
- 16:51:13 Rep. Phalen asked Mr. Garland about the number of acres they have negotiated contracts for this year.
- 16:52:39 Rep. France asked Mr. Berwick if there have been any flows, resembling what the Corps proposes, that have occurred in the last 40 or 50 years.
- 16:54:57 Rep. France asked Mr. Berwick about damage to pumps and the ability to irrigate when flows were at 17,000 or 18,000 cfs.
- 16:56:27 Rep. Phalen asked Mr. Ames about the pallid sturgeon that use the bypass on the Powder River through Glendive.
- 16:57:29 Rep. Knutsen asked Mr. Bonneau about the environmental impacts of the test flow experiment and if it was evaluated in the environmental impact statement.
- 16:59:48 Rep. Knutsen asked Mr. Bonneau about the number of miles of riverbank between Fort Peck Reservoir and the confluence of the Yellowstone and Missouri rivers.

- 17:00:19 Rep. Knutsen asked Mr. Bonneau about the cost per mile or per foot for stone riprap.
- 17:01:02 Sen. Welborn thanked the presenters.

AGENCY RULEMAKING UPDATE

- 17:01:33 Joe Carroll, staff attorney, LSD, provided information on the administrative rule pertaining to the Board of Water Well Contractors. **(Exhibit 19)**

Public comment

None

Committee discussion and action, if necessary

- 17:03:07 Rep. Phalen asked Mr. Carroll about the rule.
- 17:04:19 Rep. Phalen asked Mr. Carroll about the cost to the well driller.
- 17:04:47 Sen. Cohenour said the rule increasing fees is a proposal from the well drillers.
- 17:05:00 Mr. Carroll said the rule is from the Board of Water Well Contractors.
- 17:05:10 Sen. Welborn said members of the Board are water well drillers that have been appointed to the Board.
- 17:05:38 Rep. Knudsen asked about legislation that increased the number of members on the Board.
- 17:05:47 Sen. Cohenour said the legislation passed during the 2021 Legislative Session increased the number of contractors on the Board.
- 17:06:04 Mr. Mohr said the bill increased the number of Board members from five to seven and the number of licensed water well contractors from two to four.
- 17:06:37 Rep. Knudsen asked about taking committee action. Mr. Carroll said no action is necessary and allows the agency to continue with the rule making process.
- 17:07:23 Sen. Sales asked Mr. Carroll about the process and timeline for adopting the rule. He also asked about taking public comment at the WPIC meeting tomorrow.

ADJOURNMENT

- 17:10:10 Sen. Welborn recessed the meeting at 5:10 p.m.