



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 18, 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)
Rep. Bob Phalen (R)
Sen. Walt Sales (R)

MEMBERS EXCUSED:

Sen. Shane Morigeau (D)

STAFF PRESENT:

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

AGENDA (Attachment 1)

NO VISITORS' LIST

COMMITTEE ACTION

The Water Policy Interim Committee:

- Voted to support sending a letter to the interim infrastructure committee to reimburse schools that have proactively sampled and begun their remediation work for lead in school water fixtures if it is appropriate under the ARPA funds.

CALL TO ORDER/ROLL CALL

08:33:00 Sen. Jeffrey Welborn called the meeting to order at 8:33 AM. The committee secretary noted the roll. **(Attachment 3)** Sen. Morigeau was excused and gave his proxy to Sen. Cohenour. **(Attachment 4)**

STUDY OF FLATHEAD RIVER EROSION (SJ28)

Operation of the Selis Ksanka Qlispe Dam

08:33:43 Travis Togo, chief commercial officer, Energy Keepers Inc.

Committee discussion and action, if necessary

08:44:19 Sen Cohenour asked Mr. Togo about local discussions to address erosion issues.

08:44:42 Mr. Togo asked about the area of most concern. Mr. Mohr provided information regarding the study and asked Mr. Togo to provide information about factors regarding operation of the dam.

Recommendations from the Flathead Conservation District

08:51:30 Samantha Tappenbeck, resource conservationist, Flathead Conservation District and representing the Flathead River Commission, provided information on potential recommendations and outcomes. **(Exhibit 1)**

Review of study progress: Draft report findings

09:02:35 Mr. Mohr. **(Exhibit 2)**

Public comment

09:11:41 Jeff Ryan, chairman, Lewis and Clark Conservation District

09:15:48 Jeffrey Tiberi, former executive director, Montana Association of Conservation Districts

Committee discussion and action, if necessary

09:16:55 Sen. Cohenour asked Mr. Togo about finding a solution for that area of the river that can also be used in other areas of the state.

09:26:21 Sen. Cohenour said it is important for local stakeholders to be at the table to continue to have discussions so solutions can be developed locally. She recommended that Mr. Togo continue to be a part of the conversation.

09:28:29 Mr. Togo provided a recommendation to help the shoreline ecosystem and environmental issues.

09:31:10 Rep. Curdy asked Mr. Togo when the dam was built and if the operation of the dam changed after it was transferred to the tribes.

09:33:29 Rep. Malone asked Ms. Tappenbeck what happens to the level of the river when the dam is lowered from 10 feet to full pool.

09:38:34 Rep. Malone asked Ms. Tappenbeck when the dam is empty if the level of the river is at its natural state.

09:39:07 Rep. Malone asked Ms. Tappenbeck if the conservation districts have an approved method of bank stabilization for landowners.

09:41:42 Rep. France asked Ms. Tappenbeck about comparing the study of erosion rates with unrestricted powerboat operations this summer to a summer of temporary wake restrictions.

09:43:45 Sen. Welborn left the meeting and Rep. Curdy took over the duty as presiding officer.

09:45:58 Rep. Phalen asked Ms. Tappenbeck about a 200-foot wake restriction and the average width of the river.

09:47:33 Rep. Phalen asked Ms. Tappenbeck if there is netting available that can stop wake from going all the way to the bank.

09:49:26 Rep. Knudsen asked Mr. Togo about the primary use for the Selis Ksanka Qlispe (SKQ) Dam.

09:52:20 Rep. Knudsen asked Mr. Togo how the dam was funded and who built it.

09:55:29 Rep. Knudsen asked Mr. Togo if any recreation funds were used in the construction of the project.

09:55:53 Sen. Cohenour asked Mr. Togo about the inundation from the dam back up the river and work that has been done in the Fresno Dam area.

09:58:32 Rep. France said there will be a celebration this Saturday when the bison range is formally turned back to the Confederated Salish and Kootenai Tribes (CSKT).

09:59:52 Sen. Sales asked Ms. Tappenbeck about the lack of public participation by recreation and agricultural groups.

10:02:09 Mr. Togo recommended reaching out to the Flathead Lakers to represent recreational users.

10:02:39 Rep. Curdy asked Ms. Tappenbeck if the pictures that were shown to the committee in January of vegetation along the Flathead river were taken before or after the dam was built.

10:03:30 Rep. Curdy asked Ms. Tappenbeck if there are any photos showing the streambank after the SKQ dam was built.

10:08:04 Rep. Knudsen asked Ms. Tappenbeck about the potential outcome of the study and recommendations moving forward. She also asked about the cost for river bank hardening.

10:09:50 Rep. Knudsen asked Ms. Tappenbeck about a tax incentive or rebate to offset the cost of river hardening done by landowners.

10:11:04 Sen. Welborn asked Ms. Tappenbeck about stakeholder involvement.

10:13:51 Sen. Welborn asked Ms. Tappenbeck about the representative from the Flathead County Commission.

10:14:12 Sen. Welborn commented on the opportunity for local control and said there needs to be more solutions from the local community. He said the committee may not be able to come up with a one size fits all solution.

10:17:01 Ms. Tappenbeck responded to Sen. Welborn's comments.

10:19:36 Rep. Malone asked Sen. Welborn if the Flathead County Commission has jurisdiction over state waters.

10:20:27 Rep. Malone said only the Department of Fish, Wildlife, and Parks (FWP) has jurisdiction over the Yellowstone River in Park County.

10:20:59 Rep. Curdy thanked Mr. Togo and Ms. Tappenbeck for their participation.

- 10:21:08 Sen. Welborn resumed the position as presiding officer.
- 10:21:20 Rep. France provided his input on the findings and facts.
- 10:23:12 Sen. Welborn commented on the study and the role for the WPIC.
- 10:23:52 Sen. Sales commented on the draft findings and recommended including a possible working group.
- 10:24:49 Sen. Sales asked Mr. Mohr how other FWP working groups are formed.
- 10:27:07 Sen. Welborn said every FWP region has a citizen's advisory committee and could include someone from the boating community.

LEAD IN SCHOOL WATER FIXTURES

- 10:29:18 Greg Montgomery, Lead in School Drinking Water Rule manager, Department of Environmental Quality (DEQ). **(Exhibit 3)**

Public comment

- 10:45:08 Tara Boulanger, Office of Public Instruction (OPI) **(Exhibit 4)**

Committee discussion and action, if necessary

- 10:46:05 Rep. Curdy asked Ms. Boulanger if OPI is providing information on funding to every school district in the state. Ms. Boulanger redirected the question to Jay Phillips, chief financial officer, OPI.
- 10:49:05 Rep. Curdy asked Cody Ferguson, Community Planning Program manager, Department of Commerce, if the department is working with OPI and school districts to make sure they are aware of all available funding options.
- 10:51:36 Sen. Cohenour asked Mr. Ferguson if schools that allocated some of the American Rescue Plan Act (ARPA) funding for lead remediation will be reimbursed.
- 10:52:44 Mr. Montgomery provided additional information
- 10:54:36 Sen. Cohenour said one of the interim budget committees voted to support using some of the available ARPA funds. She asked Mr. Montgomery if the department takes into consideration changes in the ability to use some of the funds or if the issue needs to be addressed by the interim budget committee.
- 10:55:26 Sen. Cohenour asked Mr. Montgomery about the ability for the WPIC to send a letter to the interim budget committee asking them to consider reimbursement for schools that were being proactive in using their ARPA funds.
- 10:56:00 Rep. France asked Mr. Montgomery if there is a schedule for fixing schools that have a lead pipe problem.
- 10:57:43 Sen. Sales asked Mr. Montgomery about cases where the DEQ would reach out to students and parents and not the schools.
- 10:59:07 Sen. Cohenour asked about sending a letter to the interim infrastructure budget committee.

Motion

- 11:00:35 Sen. Cohenour moved that the WPIC send a letter to the interim infrastructure committee requesting reimbursement to schools that have proactively begun the remediation process.

Discussion on the Motion

- 11:01:10 Sen. Sales
- 11:01:52 Sen. Cohenour clarified her motion.

- 11:02:22 Rep. Phalen
- 11:02:40 Sen. Cohenour
- 11:03:06 Mr. Montgomery
- 11:04:38 Sen. Cohenour restated her motion that the WPIC support sending a letter to the interim infrastructure committee to reimburse those schools that have proactively sampled and begun their remediation work, if it is appropriate under ARPA.

Vote

- 11:04:54 The motion carried 9-1 by voice vote. Rep. Phalen voted no. Sen. Morigeau voted aye by proxy.

UPDATE ON NARRATIVE NUTRIENT RULEMAKING

- 11:06:07 Amy Steinmetz, Water Quality Division administrator, DEQ, said the focus of her remarks will be on the letter received from the EPA which acted on four parts of SB358 (2021). **(Exhibit 5)**

Public comment

- 11:16:45 Kelly Lynch, executive director, Montana League of Cities and Towns
- 11:19:03 Peggy Trenk, Treasure State Resources Association, Montana Mining Association, Montana Petroleum Association

Committee discussion and action, if necessary

- 11:21:06 Sen. Sales asked Ms. Steinmetz about the no-justification step.

STUDY OF SELENIUM STANDARDS FOR LAKE KOOCANUSA (HJ37): WRITTEN FINDINGS IN RESPONSE TO BER STRINGENCY REVIEW (75-5-203, MCA)

DEQ

- 11:23:19 Kirsten Bowers, attorney, DEQ. **(Exhibit 6)**

Public comment

- 11:38:26 Vicki Marquis, attorney, Holland and Hart, Billings, representing Teck Coal
- 11:41:25 Sen. Mike Cuffe, SD 1
- 11:54:29 Clayton Elliott, Montana Trout Unlimited
- 11:56:04 Rep. Steve Gunderson, HD 1

Committee discussion and action, if necessary

- 12:00:20 Sen. Cohenour commented on the levels of selenium and other metals.
- 12:01:45 Sen. Cohenour asked Ms. Bowers to comment on the DEQ process.
- 12:03:24 Sen. Sales asked Ms. Bowers when DEQ's report and findings will be available.
- 12:04:11 Sen. Sales asked Ms. Bowers if new material was added to the review.
- 12:05:15 Sen. Sales commented on a future meeting date for the HJ37 special committee.
- 12:08:48 Sen. Welborn said he agreed with Sen. Sales summary and on waiting to schedule a special committee meeting until after DEQ's report and findings are available.

REVIEW OF STUDY PROGRESS: DRAFT REPORT FINDINGS

12:09:55 Mr. Mohr (**Exhibit 7**)

Committee discussion and action, if necessary

12:11:29 Rep. Phalen asked Ms. Bowers what selenium is. Ms. Bowers redirected the question to Ms. Steinmetz.

12:13:21 Sen. Cohenour provided additional information.

12:16:33 Rep. Phalen asked Sen. Cohenour about the standard for selenium for Lake Koochanusa.

12:18:12 Rep. Malone asked Ms. Steinmetz about concern of selenium from irrigated agriculture.

12:20:13 Rep. Malone asked Ms. Steinmetz if Gardiner and Three Forks treat their water to eliminate arsenic and selenium.

12:21:27 Sen. Sales asked Ms. Marquis if she provided public comment during DEQ's hearings in April and May regarding the draft written findings.

12:22:32 Sen. Sales asked Ms. Marquis about her public comment.

12:27:53 Sen. Sales asked Ms. Marquis about the stringency review and the HJ37 review to look at data and process.

12:30:07 Rep. Knudsen said she recommends that the HJ37 special committee continue to meet and make a final recommendation.

12:31:26 Rep. Knudsen asked Ms. Bowers about her statement regarding irrigation and that there are no significant geologic sources of selenium in Montana around Lake Koochanusa.

12:32:39 Rep. Knudsen asked Ms. Bowers if there are natural significant geologic sources of selenium in Canada around Lake Koochanusa.

12:33:36 Sen. Cohenour commented on the maximum contaminate level set by the EPA for selenium.

12:35:10 Sen. Cohenour asked Ms. Bowers about DEQ's legal requirement for the review.

12:36:45 Rep. Phalen asked Ms. Bowers about DEQ's goal.

12:38:41 Sen. Cohenour said Montana has a legal liability to set a protective standard.

12:40:17 Rep. Phalen asked Sen. Cohenour about her solution to reduce the selenium levels.

ADMINISTRATIVE MATTERS

Future meeting dates

12:42:47 Mr. Mohr said the next meeting is scheduled for July 12-13 in Helena. He provided information on the agenda items.

12:44:49 Rep. Malone asked Mr. Mohr about the SJ28 findings.

12:46:18 Sen. Cohenour asked Mr. Mohr about draft report findings.

12:47:26 Sen. Cohenour asked about changing the date for the July meeting.

12:48:26 Sen. Welborn said staff can poll the committee regarding meeting dates.

12:48:57 Sen. Sales said he recommends allowing time before the next meeting for the HJ37 special committee to meet and provide a report back to the WPIC.

12:49:37 Sen. Welborn thanked the committee members and staff.

ADJOURNMENT

12:49:43 Sen. Welborn adjourned the meeting at 12:49 p.m.