Appendix C

Water Policy Interim Committee 2007-2009

When was the WPIC created?

House Bill 304 in 2007 established the WPIC with a termination date of July 2009.

Why was the WPIC created?

The creation of the Water Policy Interim Committee was the result of several things coming to a head between 2005 and 2007. In 2005, the Legislature approved a measure to rejuvenate water rights adjudication. In 2006, the state Supreme Court ruled that the use of groundwater wells in the Smith River Basin was affecting senior water rights holders on the river, and the system of permitting used by the state failed to recognize the connection of groundwater and surface water. To address that situation, the 2007 Legislature passed House Bill 831 regulating groundwater appropriations in closed basins.

Who is on the WPIC?

As with other interim committees subject to 5-5-211, MCA, the WPIC has eight members - two from each party in each chamber. House Bill 304 also said the WPIC members may be selected from the following standing committees:
may be selected from the following standing committees:

* senate natural resources and energy;
* house natural resources;
* senate agriculture, livestock, and irrigation;
* house agriculture;
* senate local government; and
* house local government.

How much did the WPIC cost?

Originally, $50,000 was appropriated. Later, another $15,000 was allocated to the WPIC. The WPIC is on schedule to spend most of the money allocated.

What did the WPIC do?

The WPIC met 10 times over the interim and ventured into closed basins to hear comments from some of the Montanans most affected by water management policies. In addition to Helena meetings, the WPIC held meetings in Dillon, Bozeman, Thompson Falls, Choteau, and Hamilton.

The Legislature mandated that the WPIC study a wide range of water issues in order to develop a clear policy direction and necessary legislation to guide Montana's water policy that ensures fair and reasonable use of Montana's water resource as demands on water increase while supplies remain the same or decrease. House Bill 304 assigned a bevy of specific tasks. Those tasks are summarized below.

House Bill 831 created a closed basin case study to be conducted by the Montana Bureau of Mines and Geology, with reporting to the appropriate interim committee. That has been WPIC.

House Bill 831 also required "The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation." That has been the WPIC.

The 2007 Legislature also included in HB2 funding for an Economic Analysis of Irrigated Agriculture, the final report of which must be provided to the WPIC.

Through various panel presentations and committee debate, the WPIC also discussed opencut mining as it relates to water quality and permitting; enforcement of water rights, including adjudication, local government in relation to subdivision review, instream flow and the use of fishing closures by FWP; irrigation as a component of water quantity, but also as part of agricultural policy

The WPIC is currently debating proposed recommendations and possibly legislation.

Assigned Study Tasks

1. Study Task: Review current Montana law related to mitigation, augmentation, or aquifer recharge.

WPIC Response: Reviewed staff research on HB831 issues and legal analysis of related cases. Received regular updates from the DNRC on rulemaking and implementation of HB831 provisions. Heard public comment on HB831 provisions, including presentations from applicants dealing with the new law.

2. Study Task: Analyze other states' laws and rules related to mitigation, augmentation, or aquifer recharge and the other states' experiences with applying and using mitigation, augmentation, and aquifer recharge.

WPIC Response: Reviewed staff comparison of water management in Arizona, Colorado, Idaho, and Washington. Panel discussion in July 2007 included presentations from DNRC, DEQ, consultants, hydrologists and attorneys involved in various aspects of water use in Montana. In September 2007, a review of aquifer storage and recovery in Washington by Linton Wildrick of the Pacific Ground Water Group. John Metesh in March 2008 presented a summary of an aquifer storage, recovery and recharge seminar he attended.

3. Study Task: Compare mitigation, augmentation, and aquifer recharge options and alternatives for applying the concepts in Montana water law.

WPIC Response: Panel discussion in July 2007 included presentations from John Tubbs of DNRC, David Schmidt of Water Rights Solutions, hydrologist Jim Potts of HKM Engineering, and Cindy Younkin, a water rights attorney. In September 2007, Kirk Waren of the MBMG discussed the feasibility of aquifer storage and recovery in Montana.

4. Study Task: Analyze water quality testing requirements to ensure that the use of mitigation, augmentation, or aquifer recharge does not adversely affect ground water quality.

WPIC Response: Panel presentations in August 2007 from Tom Reid of the DEQ, Julie DalSoglio of the EPA, John Tubbs of the DNRC, MSU geologist Steve Custer, Kate Miller of the DEQ, MSU microbiologist Tim Ford, MSU civil engineer Warren Jones, research hydrologist Gary Icopini of MBMG, John Metesh of MBMG, and Tom Patton of MBMG.

5. Study Task: Analyze data developed to determine the type and amount of research, data, and analysis necessary to develop a scientifically defensible hydrogeologic assessment to be used in making informed decisions with regard to mitigation, augmentation, or aquifer recharge activity in Montana.

WPIC Response: Multiple presentations from the MBMG study regarding potential ground water withdrawal impacts on surface water and the adequacy of any additional recommended minimum standards and criteria for hydrogeologic assessments.

6. Study Task: Study appropriate monitoring requirements to determine the effectiveness of mitigation, augmentation, or aquifer recharge plans.

WPIC Response: Presentations in September 2007 from Dr. William Woessner, professor of hydrology at the University of Montana, Russell Levens, a DNRC hydrologist, Kate Miller from the DEQ, and a water user, Randy Overton of RLK Hydro. Presentation on cumulative impact on water quantity in September 2007 from Mike Roberts, a DNRC surface water hydrologist, Steve Fry of Avista, a senior appropriator, and an applicant, Marc Spratt of RLK Hydro, Inc.

7. Study Task: Identify gaps in data necessary to determine appropriate locations to conduct artificial recharge of ground water.

WPIC Response: Presentations from various experts.

8. Study Task: Examine other issues related to mitigation, augmentation, or aquifer recharge in Montana to facilitate continued economic development and growth while providing reasonable protections to senior appropriators and water quality of surface and ground water resources.

WPIC Response: Panel presentations in August 2007 from attorney Russ McElyea of Moonlight Basin Ranch Moonlight Basin Ranch, Gallatin County Planner Greg Sullivan, Tim Roark, the Gallatin County director of environmental health, and Holly Franz of PPL Montana.

Multiple presentations from the MBMG study regarding potential ground water withdrawal impacts on surface water and the adequacy of any additional recommended minimum standards and criteria for hydrogeologic assessments.

9. Study Task: Study methods for the management of water to ensure compliance with closed basin law, including the artificial recharge of ground water.

WPIC Response: Reviewed staff research on the history of closed basins and legal issues, including implications of Trout Unlimited decision. Presentations in July 2007 from Rich Moy of the DNRC, Steve Kilbreath of the DEQ, consultant John Westenberg of PBS&J, hydrologist Michael Nicklin and attorney Bill Hritsco. Presentation in March 2008 from Michelle Bryan-Mudd, a UM law professor, on land use and water law.

10. Study Task: Review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for the purposes of aquifer recharge and mitigation.

WPIC Response: Presentations in September from Randy Overton of RLK Hydro, Kate Miller from the DEQ.

11. Study Task: Identify research necessary, if any, to determine alternatives and options for conducting water management through artificial recharge of ground water.

WPIC Response: Presentation in August 2007 by Tom Reid of the DEQ. Presentations in September from Randy Overton of RLK Hydro, Kate Miller from the DEQ.

12. Study Task: Conduct a water quality analysis associated with storage or introduction of surface water to ground water resources.

WPIC Response: Panel presentations in August 2007 from Tom Reid of the DEQ, Julie DalSoglio of the EPA, John Tubbs of the DNRC, MSU geologist Steve Custer, Kate Miller of the DEQ, MSU microbiologist Tim Ford, MSU civil engineer Warren Jones, research hydrologist Gary Icopini of MBMG, John Metesh of MBMG, and Tom Patton of MBMG..

13. Study Task: Identify the extent to which cumulative impacts are analyzed from a water quantity and a water quality perspective and whether or not the two findings are assessed jointly and determine the appropriate level of coordination.

WPIC Response: Presentations in September 2007 from Dr. William Woessner, professor of hydrology at the University of Montana, Russell Levens, a DNRC hydrologist, Kate Miller from the DEQ and a water user, Randy Overton of RLK Hydro. Presentation on cumulative impact on water quantity in September 2007 from Mike Roberts, a DNRC surface water hydrologist, Steve Fry of Avista, a senior appropriator and an applicant, Marc Spratt of RLK Hydro, Inc.

14. Study Task: Determine an appropriate, accurate, and time-efficient process for coordinating water quality requirements with the water appropriations process.

WPIC Response: Presentations in September 2007 from Bonnie Lovelace of the DEQ, land use attorney Myra Shults, Sanders County sanitarian Barbara Woodbury, Jim Carlson, the environmental health director for Missoula County. Multiple presentations from DEQ and DNRC. Convened a work group of interested parties.

15. Study Task: Evaluate how the department of environmental quality and the department of natural resources and conservation issue permits that affect ground water or surface water quality and whether or not the water appropriation process and the water quality process are coordinated.

WPIC Response: Presentations in September 2007 from Bonnie Lovelace of the DEQ, land use attorney Myra Shults, Sanders County sanitarian Barbara Woodbury, Jim Carlson, the environmental health director for Missoula County. Multiple presentations from DEQ and DNRC. Convened a work group of interested parties.

16. Study Task: Determine if potential applicants are provided with a clear process to follow that ensures the protection of water quality and prior appropriators while allowing development in Montana.

WPIC Response: Panel presentations in August 2007 from attorney Russ McElyea of Moonlight Basin Ranch Moonlight Basin Ranch, Gallatin County Planner Greg Sullivan, Tim Roark, the Gallatin County director of environmental health, and Holly Franz of PPL Montana. A January 2008 presentation from Lee Wolfe of East Gate Village in East Helena. Multiple presentations from DEQ and DNRC. Convened a work group of interested parties.

17. Study Task: Determine the number of exempt wells in Montana and estimate of the number of exempt wells expected to be developed by 2020.

WPIC Response: Presentation in September 2007 from Curt Martin of the DNRC as well as presentations from other DNRC staff, DEQ, the Montana Association of Realtors and the Montana Building Industry Association.

18. Study Task: Determine the types of beneficial uses to which water from exempt wells is applied.

WPIC Response: September 2007 report from Curt Martin of the DNRC.

19. Study Task: Evaluate the hydrogeologic analysis necessary to determine consumptive use on a per-acre or fraction of an acre basis and on a per-use basis.

WPIC Response: October 2007 presentations by John LaFave of the Montana Bureau of Mines and Geology and Bill Uthman, a DNRC hydrogeologist

20. Study Task: Analyze the amount of water reasonably necessary for the various beneficial uses and compare the reasonable use standard with current statutory limits, including volume, flow rate, and other criteria that the committee determines are necessary to provide for accurate and adequate measurement of water use through exempt wells.

WPIC Response: Presentations in October 2007 from Eric Regensburger of the DEQ, Larry Dolan of the DNRC and Dr. Steve Custer, professor of geology at MSU.

21. Study Task: Examine options and alternatives for enforcing statutory limitations regarding exempt well usage.

WPIC Response: October 2007 presentations from Tim Hall, DNRC legal counsel, Dustin Stewart of the Montana Building Industry Association and John Youngberg of the Montana Farm Bureau.

22. Study Task: Determine the necessity and reasons for providing a process that is exempt from the permitting.

WPIC Response: October 2007 presentations from Dustin Stewart of the Montana Building Industry Association, Glenn Oppel of the Montana Association of Realtors, John Youngberg of the Montana Farm Bureau Federation, Rich Moy of the DNRC, and Laura Ziemer of Trout Unlimited.

23. Study Task: Analyze water marketing and water reallocation options available in Montana, including the leasing water rights, water banking, water trading, and water sales; the lease-to-sale ratio of water rights; the number of market purchases completed; the purposes for which water trades or sales; the feasibility of creating and operating a water bank; and the administrative procedures and costs necessary to establish and operate a water bank.

WPIC Response: Reviewed staff research on applicable Montana laws as well as overview of water banking options. Presentations from the departments of Natural Resources and Conservation and Fish, Wildlife and Parks as well as from Property and Environment Research Center, the Montana Water Trust, Trout Unlimited, the Farm Bureau and the Bureau of Reclamation.

24. Study Task: Gather appropriate information that the committee determines is necessary to make sound and well-reasoned policy decisions to guide the management and use of Montana's ground water resource into the future.

WPIC Response: The WPIC held 10 meetings over the interim. In addition to Helena meetings , the WPIC visited Dillon, Bozeman, Thompson Falls, Choteau, and Hamilton. Each meeting included testimony from various water experts, agency personnel and interested members of the public. The WPIC addressed each study task assigned by the Legislature and delved into other areas not specifically referenced by the enabling legislation.

25. Study Task: Present long-term goals and policy proposals for water management related to ground water resources.

WPIC Response: The WPIC held 10 meetings over the interim. In addition to Helena meetings , the WPIC visited Dillon, Bozeman, Thompson Falls, Choteau, and Hamilton. Each meeting included testimony from various water experts, agency personnel and interested members of the public. The WPIC addressed each study task assigned by the Legislature and delved into other areas not specifically referenced by the enabling legislation.

26. Study Task: Submit a report to the 61st legislature that provides clear policy direction and necessary legislation to guide Montana's water policy and that ensures fair and reasonable use of Montana's water resource as demands on water increase while supplies remain the same or decrease.

WPIC Response: Held meetings in closed basins where demands on water supplies are highest in an effort to elicit concerns about water management from those who deal with the issue daily. Reviewed research, solicited expert opinions and debated policy options throughout the interim.

Other Issues Examined

1. General Enforcement of Water Rights

WPIC Response: Presentations in April 2008 from Water Court Judge Bruce Loble, DNRC legal counsel Candy West, Sarah Bond of the attorney general's office, Gallatin County Attorney Marty Lambert and Lezlie Kinne, a water commissioner.

2. The Growing Communities Doctrine

WPIC Response: Presentations in March 2008 from Greg Petesch, WPIC attorney, Elaina Zlatnik of Mountain Water, and Candy West, DNRC legal counsel.

3. Instream Flows and Fishing Closures

WPIC Response: Presentation in January 2008 from Bill Schenk of the Department of Fish, Wildlife and Parks.

4. Opencut Mining

WPIC Response: The WPIC discussed opencut mining as it relates to water quality as well as permitting.