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Water Policy Interim Committee

60th Montana Legislature

SENATE MEMBERS

JIM ELLIOTT--Chair
GARY PERRY--Vice Chair
LARRY JENT
TERRY MURPHY

HOUSE MEMBERS

SCOTT BOGGIO
JILL COHENOUR
BILL MCCHESENEY
WALTER MCNUTT

COMMITTEE STAFF

JOE KOLMAN, Lead Staff
GREG PETESCH, Staff Attorney

MINUTES

Approved August 12, 2008

June 11, 2008

Room 152
State Capitol Building

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

SEN. JIM ELLIOTT, Chair
SEN. GARY PERRY, Vice Chair
SEN. LARRY JENT
SEN. TERRY MURPHY
REP. SCOTT BOGGIO
REP. JILL COHENOUR
REP. BILL MCCHESENEY
REP. WALTER MCNUTT

STAFF PRESENT

JOE KOLMAN, Lead Staff
GREG PETESCH, Staff Attorney
CYNTHIA A. PETERSON, Committee Secretary

Visitors

Visitors' list ([Attachment 1](#))
Agenda ([Attachment 2](#))

COMMITTEE ACTION

There was no action taken by the WPIC.

CALL TO ORDER AND ROLL CALL

00:00:08 Sen. Jim Elliott, Chairman of the Water Policy Interim Committee (WPIC), called the meeting to order at 8:02 a.m. The secretary called the roll ([Attachment 3](#)).

AGENDA

REPORT FROM WPIC/EQC SUBCOMMITTEE--Chairman Elliott

00:02:22 Chairman Elliott reported on the outcome of the Joint Environmental Quality Council (EQC) and WPIC meeting. The Joint Subcommittee will be holding another meeting to address jurisdictional issues that will be difficult to separate.

00:03:25 Mr. Kolman added the options for creating a permanent WPIC include: (1) doing nothing and letting the WPIC terminate in July 2009; (2) having water policy be a stand alone committee without agency oversight; (3) separate agency oversight on water issues from the EQC; or (4) create a standing subcommittee of the EQC that would deal solely with water issues.

00:04:54 Rep. McNutt commented that creating a standing subcommittee would require changing the statute. Rep. McNutt noted that EQC membership has a term limit of six years and that would need to be eliminated. Rep. McNutt recalled the legislatively mandated subcommittee of EQC that addressed split estates and thought the jurisdictional overlap would be reduced by taking that approach.

Questions from the WPIC

00:07:20 Sen. Jent commented on the burden on legislators' time, particularly with two-day meetings. Sen. Jent stated he is currently on three interim committees. Sen. Jent leaned toward having the EQC take on the role by creating a water policy subcommittee.

Public Comment

No public comment was offered.

WPIC Discussion and Action, if any

The committee took no action.

DRAFT REPORT - FINDINGS AND OPTIONS

WPIC Discussion

- 00:09:50 Mr. Kolman directed the WPIC members to the WPIC Findings and Options for Recommendations (Exhibit 16, June 10, 2008). Mr. Kolman read each finding and the various options to the WPIC.
- 00:13:21 Rep. Cohenour addressed Finding 1, Option A, and stated she did not believe the WPIC taking no action was a viable option. Rep. Cohenour voiced her support for Option B, expanding the Montana Bureau of Mines and Geology (MBMG) study. Chairman Elliott suggested consensus on the findings would be assumed unless objections or concerns were raised by the WPIC members. The WPIC members agreed and no concerns or opposition was raised to Finding 1, Option B.
- 00:15:19 Rep. Boggio failed to see the value in Option C and requested more information.
- 00:15:41 Eric Regensburger, Department of Environmental Quality (DEQ), explained the theory behind Option C was that when a larger subdivision applies to the DEQ, the DEQ would ask the MBMG if it would like to have a monitoring well that MBMG could use in perpetuity. The specified monitoring well would be part of the application approval process, and an easement would be provided for the monitoring well.
- 00:17:29 Rep. Cohenour thought Option C was a good idea and most subdivisions may want to monitor water quantity and water quality. Rep. Cohenour believed a monitoring well may have helped avoid some of the issues experienced in Manhattan.
- 00:18:29 Sen. Perry disagreed and suggested a monitoring well would not have done anything for the Manhattan situation. Rep. Cohenour clarified monitoring for water quality would have been performed, which would have been useful in Manhattan. Mr. Regensburger agreed water level and quality would be monitored.
- 00:19:20 Larry LuLoff has a subdivision and has had heated conversations with the DEQ. Mr. LuLoff pointed out a monitoring well would need to be specially drilled and constructed.
- 00:20:44 Chairman Elliott suggested the WPIC could always revisit issues.
- 00:20:52 Rep. Cohenour asked Mr. Metesh, MBMG, to describe the needs of the MBMG for monitoring wells.
- 00:21:16 Mr. Metesh responded most monitoring programs are at the whim of well owners. Mr. Metesh stated MBMG rarely has an opportunity to monitor a well that is not actually being pumped. Mr. Metesh stated construction would be similar to

domestic wells. Mr. Metesh stated having the monitoring well would allow the MBMG to see changes over time.

- 00:22:50 Rep. Cohenour asked what things are normally tested for. Mr. Metesh responded tests would be for water levels and would include a basic standard water chemistry.
- 00:23:58 Sen. Perry commented on the use of "require" in Option C, which means mandating a fee on developers and increasing the cost of doing business for the developer, but the MBMG would have the ability to decide whether to construct a monitoring well. Sen. Perry objected to the proposed method. Sen. Perry supported having monitoring wells for the MBMG but suggested it should be done fairly.
- 00:26:31 Rep. Cohenour suggested the word "require" could be removed. Rep. Cohenour depicted the idea as great, and suggested the DEQ could be required to ask whether MBMG would like a monitoring well. Rep. Cohenour thought the concept was good and should be supported.
- 00:27:38 Mr. Kolman commented the various options could be changed as decided by the WPIC.
- 00:29:18 Chairman Elliott proposed allowing a motion to table with the understanding an issue could be removed from the table at any time.
- 00:30:07 Rep. Cohenour believed a motion to table was not necessary, and the WPIC could just determine it wants more input or discussion.
- 00:30:39 Rep. McChesney pointed out some options would create controversy and discussion.
- 00:31:15 Sen. Perry emphasized the WPIC had the current day to address the findings and time is running out.
- 00:31:38 Mr. Kolman outlined the time line for the WPIC and stated some findings may result in bill drafts while some may just be included in the WPIC draft report. Mr. Kolman explained the WPIC's next three meetings are for addressing the findings, getting public comment, and working toward a final product.
- 00:33:32 Rep. Boggio supported only Option B, but did not believe WPIC action was appropriate on the other options.
- 00:34:04 Sen. Perry agreed with Rep. Cohenour that Option C would be appropriate if it were not "required." Sen. Perry believed it was important to spell out that the monitoring well was not just for the benefit of the MBMG or the state, but would be for the protection of the people in the subdivision. Sen. Perry moved the WPIC draft a bill regarding Finding 1, Option C.

- 00:35:00 Sen. Murphy addressed Mr. Metesh and thought water levels would be easy to check, but a well that is not being pumped would have impurities. Mr. Metesh explained there is a sampling procedure utilized for sampling a well that is not regularly pumped and enough water will be removed to ensure the aquifer is being sampled.
- 00:36:51 Rep. Cohenour asked whether legislation would be needed or whether asking the DEQ to make the request of developers would be enough.
- 00:37:30 Steve Kilbreath, DEQ, responded access and easement to allow access to monitoring wells would have to be done at the time of final plat approval. Mr. Kilbreath suggested a monitoring well for a specified number of lots in a closed basin could be made mandatory. Mr. Kilbreath believed if monitoring wells were optional, they would not occur.
- 00:38:39 Rep. Cohenour asked whether it would be feasible to make monitoring wells optional and see if developers comply. Mr. Kilbreath stated it would be easier to have legislative support.
- 00:39:11 Rep. McNutt asked for Abigail St. Lawrence, Montana Association of Realtors, to address the issue. Ms. St. Lawrence explained that access was the problem and requiring easements would not be the problem. Ms. St. Lawrence opposed the idea of asking the MBMG whether they would like a different well and asking the developer to put in another well just for monitoring. Ms. St. Lawrence reiterated easements would not be as much of an issue.
- 00:41:13 Chairman Elliott asked Ms. St. Lawrence whether she believed purchasers would be thrilled if they were told the state has an easement to the well on the property and could come in and test anytime. Ms. St. Lawrence stated specific easements are often on property that is sold and would probably not affect the sale. Ms. St. Lawrence suggested focusing the requirement on the easement rather than the monitoring well. The WPIC agreed that would be appropriate.
- 00:43:04 Mr. Kolman summarized the WPIC would like to see a hybrid of Options C and D stating the DEQ is encouraged to enlist developers to participate in a ground water monitoring system, and the DEQ is encouraged to explore through rule requiring easements to ground water testing wells.
- 00:44:07 Chairman Elliott disagreed and thought it would be best to place the requirement in statute. Ms. St. Lawrence stated she would need an opportunity to discuss any specific proposal with the realtors but, generally, it is better to have the requirement spelled out in statute.
- 00:45:09 Rep. Boggio thought putting the provision in statute would be an infringement on private property rights.
- 00:45:47 Rep. Cohenour reminded the WPIC it would optional to participate and then the easement would be there if they want to participate.

00:46:35 Rep. Boggio asked why the provision would need to be in statute if it is optional.

00:46:52 Chairman Elliott asked would happen when the property sells and access is lost. Chairman Elliott suggested the WPIC revisit the issue and requested Ms. St. Lawrence discuss the idea with the people she represents.

Finding Nos. 2-5

00:48:13 Mr. Kolman explained Findings 2-5 address why the continued study of water policy is important.

00:48:55 Rep. Cohenour addressed Finding No. 3 and suggested removing the reference to "piecemeal." Rep. Cohenour believed all the WPIC members agree there is a responsibility to pursue the issue on behalf of the citizens of Montana.

00:49:57 Rep. McNutt summarized the question as whether there should be a permanent interim committee and how that committee should be structured. Rep. McNutt stated the issue will be addressed by the joint subcommittee with the EQC. Chairman Elliott agreed.

00:50:54 Sen. Jent agreed and stated the decision should be addressed after the Joint Subcommittee meeting.

00:51:24 Rep. Cohenour clarified she was addressing Finding 3. Rep. Cohenour agreed with Finding 5. Rep. Cohenour suggested removing the reference to "piecemeal" and adding "continuous and comprehensive manner."

General Water Quantity & Quality, Finding No. 1

00:52:53 Mr. Kolman addressed General Water Quantity & Quality, Finding 1. Mr. Kolman suggested the finding could guide the MBMG where it could conduct future studies. Mr. Kolman explained one of the limiting factors in the controlled ground water statutes is that controlled ground water areas can be created by petition of a local public health agency for identified public health risks, which limits local governments.

00:54:18 Rep. Cohenour asked whether citizens could petition for a controlled ground water area. Mr. Kolman agreed that is an option and added the Department of Natural Resources and Conservation (DNRC) had specific ideas.

00:55:03 John Tubbs, DNRC, stated the DNRC is working on revisions and the current process predates the 1972 Constitution. Mr. Tubbs explained the current statute allows citizens to petition for a controlled ground water area simply by the allegation of a problem, and 20 people are required to sign a petition. Mr. Tubbs depicted the statute as unworkable and stated the DNRC will be attempting to change the statute. Mr. Tubbs thought this may be a chance for more local control by moving the citizens' petition process to the local level.

- 00:58:32 Ms. St. Lawrence explained the Montana Association of Realtors recently met with the DNRC to decide how best to revise the controlled ground water statutes. Ms. St. Lawrence identified the realtors' concerns as: (1) the requirements for the valid petition; (2) the process for how a petition is heard; and (3) how the decision is made. Ms. St. Lawrence stated the current ad hoc procedure is causing frustration for all parties. Ms. St. Lawrence expressed a desire to have the petition process go through the county. Ms. St. Lawrence stated the realtors support revision of the statutes and are encouraged by discussions with the DNRC.
- 01:02:05 Rep. Cohenour asked whether the statute might be better received if it came through the WPIC. Ms. St. Lawrence suggested if the revisions came through the WPIC, it would bolster the proposal.
- 01:02:53 Mr. Tubbs stated the DNRC is drafting a proposal but would assist the WPIC if it decided to move forward.
- 01:03:14 Mr. Kolman commented that departments are drafting agency bills on various issues and, if the WPIC wanted to proceed, he would work with the appropriate department.
- 01:04:38 Myra Shults, consulting land use attorney for the Joint Powers Insurance Authority for MACo, provided a history on subdivision approval. Ms. Shults explained § 76-3-622, MCA, provides an opportunity for local governments to collect information on water and septic and the information is sent to the DEQ. Ms. Shults explained there are counties that do not have sanitarians or share sanitarians with other counties. Ms. Shults stated moving citizen petitions regarding controlled ground water areas to the local level across the board will not accomplish anything, and the DNRC has the technology and expertise not found at the local level. Ms. Shults thought it would be fine for local governments to gather information, but that the decision-making process needs to occur at the state level. Ms. Shults recalled the WPIC would like to see more interaction between local and state governments. Ms. Shults thought there should be a liaison from local governments to coordinate with state government.
- 01:10:35 Chairman Elliott requested Holly Franz, PPL Montana, to comment on controlled ground water areas and the petition process. Holly Franz, PPL Montana, recalled controlled ground water areas were quite an issue in the 2007 session. Ms. Franz stated controlled ground water areas consist of highly technical issues and the petition process causes arguments. Ms. Franz stated petitioners like to be heard. Ms. Franz believed the procedure could use updating, but identified the problem as being never having enough information. Ms. Franz stated 20 citizens cannot possibly gather enough data to support a petition. Ms. Franz did not know whether it would be desirable to have the MBMG take on the responsibility, and that it would be necessary to have some type of comprehensive monitoring characterization program in place.
- 01:15:22 Sen. Jent suggested deferring to agency expertise.

01:15:41 Rep. McNutt suggested letting the EQC review the agency legislation.

01:15:52 Rep. Cohenour suggested the WPIC could have a finding stating the controlled ground water issue needs to be addressed.

General Water Quantity and Quality, Finding Nos. 3 and 4

01:16:29 Mr. Kolman explained the Montana Department of Transportation (MDT) needs a reservation or water right permit to protect a wetland and comply with the federal Clean Water Act.

01:17:50 Rep. McChesney stated he has been in contact with legal counsel for the MDT, and the MDT, FWP, and the DNRC are attempting to resolve their differences. Rep. McChesney suggested the WPIC revisit the issue.

General Water Quantity and Quality, Finding Nos. 5-6

01:18:49 Mr. Kolman explained the findings address water quality in closed basins. Mr. Kolman stated that LC 5009 requires that any aquifer recharge plan or mitigation plan that would involve a discharge to state waters be required to obtain a discharge permit through the DEQ.

01:19:42 Sen. Murphy stated he was not at the meeting in Hamilton and asked why aquifers would be recharged with surface waters. Mr. Kolman explained under HB 831, if it is determined a net depletion results in an adverse effect, then the net depletion must be mitigated.

01:20:56 Sen. Perry explained the WPIC toured sites where aquifer recharge plans included using water rights from an irrigation ditch, moving the water into a drainfield, and allowing the water to soak into the aquifer. Sen. Murphy recalled someone commenting on the possibility of putting surface water into wells. Sen. Perry explained direct injection was not being addressed.

01:22:52 Bonnie Lovelace, DEQ, stated current law puts tight water-quality requirements on mitigation plans for injection. The new proposal would expand the requirements to any discharge, and there are a number of exemptions for discharge permits to ground water. The proposal would eliminate the exemptions. Ms. Lovelace stated the intent is to ensure water going into the ground water is clean. Individual septic and drainfields would remain exempt from the permitting process.

01:25:41 Rep. Cohenour recalled past discussions about taking surface water rights and injecting them and commented the intent was to ensure surface water is cleaned up before injection.

01:26:20 Rep. McNutt was concerned about situations where a person is going to mitigate aquifer recharge by infiltrating surface water into the ground water, and that a discharge permit should not be required in that situation.

- 01:27:30 Sen. Perry agreed with Rep. McNutt.
- 01:27:39 Ms. Lovelace explained the proposal would allow the DEQ to look at the normal listing and considerations of what needs a permit, and that the current cutoffs for who needs a permit would still be in place. Ms. Lovelace clarified the DEQ is not looking for new triggers for permits.
- 01:29:57 Rep. Boggio asked Ms. Lovelace whether she could think of any situation that would currently need a discharge permit that is not covered under law. Ms. Lovelace stated some drainfields or leaking situations exist, but could not think of any new industry. Ms. Lovelace believed if surface water is going to be put into the ground water, there is a need to look at the water quality. Rep. Boggio asked whether there are any situations where people are injecting into ground water aquifers. Ms. Lovelace stated injection wells are not used much in Montana. Rep. Boggio thought assumptions were being made that all aquifers are not contaminated. Rep. Boggio believed HB 831 covered the necessary permitting for treated sewage water, and that further permitting is unnecessary.
- 01:32:45 Rep. Cohenour asked Mr. Tubbs to address the importance of water quality. Mr. Tubbs stated in the Gallatin the concern is the discharge of waste water through non-permitted drainfields. Mr. Tubbs was concerned about the first mitigation that uses the Madison River as its source since the Madison is high in arsenic. Mr. Tubbs stated Three Forks is moving its city water supply since flood irrigation in the Three Forks area has contaminated the city's drinking water.
- 01:35:46 Rep. McNutt read the language and asked how the language in the proposal would be interpreted. Mr. Tubbs did not know whether the draft language was appropriate as proposed.
- 01:36:43 Mr. Kolman noted the difference between treated sewage and raw sewage. Mr. Kolman explained the bill draft would place other options for recharge and mitigation into the statute that says the Board of Environmental Review (BER) shall adopt rules governing application to discharge sewage, industrial waste, or other wastes into state waters.
- 01:38:20 Sen. Perry expressed his concern about recharge and mitigation plans without any review and suggested improving the language in LC 5009. The WPIC members agreed.

General Water Quantity and Quality, Finding No. 7

- 01:39:27 Mr. Kolman explained the WPIC's past discussion regarding Finding 7.
- 01:40:23 Rep. Cohenour suggested adding a statement regarding conducting a state-wide hydrogeological study. Rep. Cohenour supported both Options B and C. The WPIC members agreed.

(BREAK)

Water Use Enforcement

- 02:00:02 Mr. Kolman explained the draft Findings. Sen. Perry addressed Finding No. 5 and asked Mr. Kolman to provide a history of the draft finding. Sen. Perry cautioned the WPIC to choose its words carefully and not to make too broad of a statement that could be twisted in the future.
- 02:00:47 Sen. Murphy pointed out the first half directly quotes the Constitution. Sen. Murphy believed the statement was clear and stated he liked the language.
- 02:01:13 Rep. Cohenour thought the Finding could cite the Constitution.
- 02:01:32 Chairman Elliott suggested adding language that says the water belongs to the people of the state of Montana.
- 02:01:42 Sen. Perry disagreed and emphasized the Constitution states that the water is the property of the state of Montana for the use of its people. Sen. Perry suggested not making a broad statement.
- 02:02:31 Sen. Jent explained a finding of fact by the Committee is a correct statement of the law. Sen. Jent explained people often take legal action to enforce their property rights or try to create a property right where one does not exist. Sen. Jent identified the question as water use enforcement, who is going to do enforcement, and how enforcement will be paid for.
- 02:04:41 Rep. Boggio thought Option C already existed and explained a current situation in Carbon County. Rep. Boggio addressed Option B and stated generally when the DNRC finds people using water illegally to build ponds, the DNRC brings them into compliance, rather than stopping the illegal use. Rep. Boggio asked the WPIC to address the issue with ponds. Rep. Boggio also asked the WPIC to change the statute so that a senior water right holder can take his case in front of the water court to save time and expense. Rep. Boggio stated the water court is willing to hear enforcement cases. Rep. Boggio asked the WPIC to consider adding his recommendation as an option.
- 02:08:22 Rep. Cohenour asked Rep. Boggio whether he wanted to eliminate the reference to "allow the district court." Rep. Boggio clarified he would like to see a senior water user have the ability to directly petition the water court. Rep. Cohenour suggested more information was needed about the issue. Rep. Boggio requested permission to work with the water court and Mr. Kolman to prepare a bill draft for the WPIC's consideration as a committee bill.
- 02:10:22 Sen. Jent agreed a district court should appoint a water master to address water right enforcement cases. Sen. Jent commented the water court was not set up to give injunctive relief and was set up for the sole purpose of adjudicating water rights. Additionally, the water court was never meant to be permanent. Sen. Jent believed the statute allows district courts to appoint special masters.

- 02:11:39 Rep. Boggio responded the water court has procedures in place to work with conflicts in filings and, many times, a water master appointed by the district court will advise district judges. Rep. Boggio believed this would help water commissioners address specific issues.
- 02:13:17 Sen. Jent cited a series of provisions contained in Title 3, chapter 5, about agreeing to try a case in front of a special master. Sen. Jent explained the water master would conduct the hearing and prepare findings of fact and conclusions of law for approval by the district judge. Sen. Jent emphasized the water court can only do certain things. Sen. Jent suggested the WPIC state the district courts are encouraged to utilize water masters as standing masters.
- 02:15:37 Rep. Boggio explained how going through a district court currently causes delay and suggested the water court could act more timely. Rep. Boggio explained there would still be an ability to file in district court, but the water court would be the first place to file a complaint. Sen. Jent agreed with Rep. Boggio's idea. Sen. Jent noted the need for someone with expertise to prosecute illegal water use cases and supported funding the Attorney General's Office to assist county attorneys with investigating illegal water use and asked whether the Attorney General already had the authority in statute.
- 02:17:52 Mr. Kolman believed the ability to assist county attorneys with illegal water use investigation already existed in statute. Sen. Jent suggested the WPIC request that the funding be included in the Executive budget.
- 02:18:21 Rep. Boggio and Sen. Jent agreed to work with the water court and submit a bill draft for consideration by the WPIC.

Water Use Enforcement, Finding No. 6

- 02:20:27 Rep. Cohenour recalled past legislation requiring the water court to prioritize in a different manner. Rep. Cohenour stated she would also like to include a statement saying that anything else that gets added to the water court's duties should not interfere with the adjudication process.
- 02:21:45 Mr. Kolman clarified the conclusion was that any new duties added to the water court should not take precedence over adjudication, and any new duties should also include the necessary resources.

Government Issues, Finding Nos. 4-6

- 02:23:07 Mr. Kolman reviewed Finding No. 4 which addressed incentives for applications that utilize public water and sewer. Mr. Kolman explained the work group did not submit any solid suggestions for incentives.
- 02:25:45 Rep. Cohenour recalled past discussion about changing the way applications are prioritized, and that the incentives could be in expediting applications through the permitting process.

- 02:26:54 Mr. Kolman explained Finding No. 5 requires the DEQ and the DNRC to coordinate and work with each other more closely.
- 02:27:49 Rep. Cohenour stated she supported including Finding No. 5, Option B, in the WPIC's report.
- 02:28:07 Mr. Kolman explained there is no conclusive number on how many exempt wells exist.
- 02:29:32 Sen. Perry recalled the WPIC had previously discussed having well drillers submit information on exempt wells to the DNRC. Rep. Cohenour recalled the information would also be submitted to the MBMG.
- 02:30:36 Mr. Tubbs explained that, currently, well drillers are required to submit all well logs to the MBMG. Mr. Tubbs explained one problem is that the well driller is not the well user, and the property owner files the notice of completion. Mr. Tubbs stated the DNRC is working with the MBMG and comparing data bases. Mr. Tubbs explained that monitoring wells and dry holes do not need a water right.
- 02:32:46 Rep. Cohenour recalled past discussion about accessing the Department of Revenue's (DOR) information as well. Mr. Tubbs responded on July 1, 2008, the DNRC will have access to DOR's property ownership information. Mr. Tubbs explained there is a new procedure being implemented to keep the databases current. Mr. Tubbs explained that if no well log is filed by the driller, it would create a problem. Mr. Tubbs did not believe the problem is prevalent, but acknowledged it does happen. The DNRC is also requiring that the notice of completion must specify flow rate and volume.
- 02:36:39 Mr. Metesh commented most of the well logs for exempt wells received by the MBMG are through the Internet, and the well logs also assist drillers with their billing. Mr. Metesh pointed out that when his personal well was drilled, he did not receive any indication from the driller that anything else had to be done.
- 02:38:20 Chairman Elliott clarified the WPIC would pursue Finding No. 6, Option B, and the WPIC members agreed.

(BREAK)

Water Supply and Sewage Disposal, Options A - P

- 03:07:38 Mr. Kolman reviewed the options regarding water supply and sewage disposal with the members of the WPIC.
- 03:13:41 Chairman Elliott addressed Option D and suggested creating an exemption, similar to the municipal exemption, for subdivisions that have a water and sewer district in place.
- 03:14:43 Rep. McNutt thought the avenue should be investigated and a system for an accelerated permitting process should be considered. Rep. McNutt thought

getting a handle on domestic wells would assist in getting a handle on septic systems. Rep. McNutt thought it should be necessary to show senior water users would not be impacted. Rep. McNutt believed there should be a way for developers to not have to spend a substantial amount of money and years of time going through the permitting process. Rep. McNutt would like to facilitate the development of domestic water systems and still protect senior water users. Rep. McNutt summarized the question as how is water going to be extracted and how will it be permitted.

- 03:18:50 Rep. Cohenour agreed and stated there is no way to track the cumulative effects. Rep. Cohenour agreed it is the same water being taken from the same place over the same amount of time. Rep. Cohenour noted in some areas it does not matter, but the issue needs to be addressed in high-growth areas. Rep. Cohenour envisioned a need to consider the consequences of the totality of the water use of the entire subdivision and the way it impacts senior water rights.
- 03:21:02 Rep. McNutt suggested the WPIC may need to focus on high-growth areas in closed basins.

Public Comment

- 03:21:51 Ms. St. Lawrence commented she believed the idea of including subdivisions with a water and sewer district in the municipal exemption was a workable proposal and agreed to discuss the concept with the people she represents. Ms. St. Lawrence suggested separating quality issues from quantity issues. Ms. St. Lawrence referred to Dr. Nicklin's report which indicated there has not been a measurable impact on availability of water to senior water users in closed basins.
- 03:23:38 Dustin Stewart, Montana Building Industry Association (MBIA), liked the municipal exemption and agreed he would need to discuss the proposal with the MBIA. Mr. Stewart referenced the Governor's white paper on housing which estimated that by 2020 there would be substantial growth in Ravalli County. Mr. Stewart identified exempt wells in Ravalli County as an issue and thought the municipal exemption could help address the issue.
- 03:26:06 Mr. Tubbs thought Chairman Elliott's suggestion was an intriguing option, but stated there are concerns. Mr. Tubbs suggested the WPIC should discuss the issue of senior rights with its legal counsel. Mr. Tubbs clarified the municipal exemption in closed basins merely allowed municipalities to apply for a permit prior to HB 831. Mr. Tubbs emphasized it was not that the municipalities were exempted from the permitting process, but that they were allowed into the permitting process.
- 03:28:23 Don MacIntyre, Utility Solutions, thought the idea was not only intriguing, but was a good idea. Mr. MacIntyre stated the DNRC is proposing if there is net depletion, you need to develop a mitigation plan, and DNRC will issue a permit without any further process. Mr. MacIntyre believed due process could still be achieved through the Montana Administrative Procedure Act and the allegedly

affected party would be able to challenge the action. Mr. MacIntyre suggested beginning with a model program for closed basins.

- 03:32:30 Mr. Franz stated she would need to see the exact proposal before she could offer comment.
- 03:33:13 Ms. Shults stated she would also like to see the proposal and run it by MACo before commenting
- 03:33:40 Chairman Elliott summarized the proposal as being if a subdivision forms a water and sewer district, it would be entitled to an extraordinary expedited permitting process. Chairman Elliott stated the details of the proposal would need to be developed.
- 03:35:56 Sen. Perry suggested several of the options are inter-related and could be tied together. Sen. Perry suggested changing the rate or volume for exempt wells. Sen. Perry suggested reducing the volume availability in a permit. Sen. Perry also suggested an allowance could be made for summer sprinkling of a lawn. Sen. Perry commented the amount of water being addressed is minuscule. Sen. Perry thought the process should be accountable, but easier and less costly.
- 03:39:46 Chairman Elliott envisioned the wells as being metered and measurable, and stated the water is already being taken by exempt wells.
- 03:40:49 Sen. Jent agreed with Chairman Elliott and emphasized exempt wells pose a dissipation problem and a water-quality problem in the Gallatin area.
- 03:41:52 Sen. Perry explained that subdivisions in the Bozeman area recently flooded
- 03:42:18 Rep. McNutt addressed subdivision size and stated a developer could undercut any number that is set in statute, so people would need to be educated. Rep. McNutt stated the consumption rate of exempt wells is small, but quality is becoming evident. Rep. McNutt saw a need to be able to filtrate water back in to mitigate for the senior water right holder. Rep. McNutt cautioned there is a need to look much further down the road.
- 03:45:29 Rep. Cohenour suggested flushing out options at the next WPIC meeting. Rep. Cohenour believed lot size and density should also be considered.
- 03:46:34 Chairman Elliott stated he, Sen. Perry, and Rep. McNutt would be back in Helena for the July EQC meeting, and they could meet with Rep. Cohenour and Sen. Murphy and any other WPIC members and report back to the WPIC.
- 03:48:05 Mr. Kolman noted the EQC meets in early July and the draft report and legislation will need to be out for public comment on June 30.
- 03:49:19 Rep. Cohenour suggested the WPIC could provide direction to staff at the present meeting and a bill draft could be reviewed in July.

- 03:50:04 Chairman Elliott reviewed the status of the various options. Rep. Cohenour stated she is working with staff on a bill draft that may address Options B and C. Rep. Cohenour addressed Option E, which would give local governments more authority, and thought the Option should continue to be addressed. Rep. Cohenour addressed Option H and asked what "water supply" would mean.
- 03:52:44 Ms. Shults clarified that currently no Environmental Assessment is required for minor subdivisions. Ms. Shults believed it may be a requirement in § 76-3-622, MCA.
- 03:54:34 Rep. McNutt addressed Option M and stated he thought the DEQ already had the authority in relation to mixing zones.
- 03:55:00 Rep. Cohenour thought there may be some limiting factors and there may need to be some parameters.

Government Issues

- 03:56:17 Mr. Kolman explained Findings 1-3 and Options A - E.
- 03:57:53 Rep. McNutt addressed Options A and B, and the proposal to simplify HB 831. Rep. McNutt explained that prior to the completion of HB 831, he was bombarded with suggestions that the procedure needed to be in statute and not in rules. Rep. McNutt was adamant that net depletion does not always result in adverse effect, and that net depletion and adverse effect are not synonymous. Rep. McNutt did not have a problem with the proposed change in the permitting process, but would not agree to any changes to HB 831. Rep. McNutt suggested the DNRC should implement HB 831 and move forward. Rep. McNutt believed it was too early in the game to make changes.
- 04:01:45 Rep. Cohenour had questions with Options D and E and requested more information.
- 04:01:57 Mr. MacIntyre explained the DEQ currently allows for contracting of certain services leading up to permitting, but does not have specific statutory language. Mr. MacIntyre stated Option D would allow for negotiation of a permit that would take place between all of the parties in closed basins. Mr. MacIntyre agreed the Option could be included under Chairman Elliott's proposal.
- 04:04:00 Mr. Kolman explained Finding No. 4 was the time line suggested by the DEQ. Chairman Elliott believed the finding would be taken care of in his proposal.
- (LUNCH)
- 05:11:04 Mr. Kolman addressed Item 14 and the various options to be considered by the WPIC. Mr. Kolman explained the WPIC had addressed some of the issues with the municipal exemption bill, but the WPIC would still need to address the remaining options.

- 05:12:12 Rep. Cohenour stated she has a bill draft that would facilitate residential development in Montana by offering an incentive for the implementation of public water and sewer systems in new subdivisions instead of individual wells. Rep. Cohenour stated she will be working with Anna Miller to make statutory changes or add to existing programs to fill in the gaps. Rep. Cohenour stated the bill draft may allow for the state to bond for funding. Rep. Cohenour will bring the bill draft back to the WPIC for consideration.
- 05:14:38 Mr. Kolman clarified a copy of Rep. Cohenour's bill draft, LC 5015, is available. Rep. Cohenour added the WPIC had discussed requiring a water and sewer district or association to be the responsible party and stated she will work through that issue.
- 05:16:16 Sen. Perry expressed reservations about LC 5015 and the request for funding since the current funding for programs is inadequate. Rep. Cohenour stated that the bill will authorize bonding and creation of debt and agreed there could be a need to support existing programs to clear waiting lists.
- 05:18:37 Mr. Kolman explained LC 5014 (Option E).
- 05:19:25 Rep. McChesney asked whether local governments already have the ability to provide tax incentives. Mr. Kolman could not directly answer the question but explained the bill draft mostly referred to time lines in the approval process.
- 05:20:20 Rep. Cohenour added nobody knew how to provide incentives. Rep. Cohenour recommended removing the incentives in LC 5014. Rep. Cohenour recommended moving forward with clarifying the role of local governments.
- 05:21:45 Ms. Shults, MACo, recalled her previous testimony and thought it may have been too technical. Ms. Shults asked for clarification of § 76-3-511, MCA, and wanted to ensure the cross reference to 501 is to 501(7).
- 05:23:10 Mr. Stewart understood the purpose of getting local governments involved but thought the bill could unintentionally put all new subdivisions into a HB 831-like process. Mr. Stewart suggested a county could say unless you can prove you are not going to harm senior water users through a HB 831-like process, you cannot have exempt wells.
- 05:24:20 Rep. Cohenour responded the intent of the legislation was to firm up language regarding health and safety and to grant the county the ability to have control over some of the processes.
- 05:26:20 Rep. Cohenour addressed Option G and stated she hoped the effects of exempt wells would be revealed by the state-wide hydrogeological study.
- 05:27:10 Mr. Kolman explained Options H and I may not accomplish more than what is already in statute. Sen. Perry suggested dropping Options H and I.

- 05:28:34 Ms. Shults suggested retaining Option I and stated contemplation would have to be given to what is meant by "water consumption." Ms Shults also directed the WPIC to the primary criteria contained in § 76-3-608, MCA, and whether the specific authorization would be something the WPIC would like considered all around the state in every subdivision.
- 05:29:55 Rep. Cohenour requested additional information be presented at the next WPIC meeting.
- 05:30:26 Mr. Kolman explained Options J and K. Chairman Elliott addressed Option K and suggested tightening up rate and volume would result in a stiffer law that would not be enforced.
- 05:31:13 Rep. Cohenour thought Options J and K should be considered within the scope of Chairman Elliott's new proposal.
- 05:31:44 Mr. Kolman explained Option L. Mr. Kolman explained the DNRC's interpretation is two wells from same source is that the two wells are physically connected by a pipe.
- 05:32:35 Mr. Kilbreath clarified a community public water supply has to have two public water supply wells. Mr. Kilbreath explained the definition of a "public water supply system" is 25 people, 60 days out of the year, or 15 service connections, whichever is arrived at first. Mr. Kilbreath explained there are three classes of public systems: community, nontransient/noncommunity (like a school), and transient systems.
- 05:33:44 Rep. Cohenour asked whether the two wells would have to be connected. Mr. Kilbreath explained the two wells have to be connected by the distribution system. Rep. Cohenour asked whether the issue was about different definitions between the DEQ and the DNRC.
- 05:35:19 Mr. Tubbs addressed "combined appropriation" provided in statute and explained a combined appropriation is two wells or more that are manifolded together. Exempt wells into the same aquifer are not considered a combined appropriation. Mr. Tubbs cautioned a change in rule could represent a major change in policy.
- 05:37:59 Rep. Cohenour suggested leaving the issue for discussion at a later date.
- 05:38:23 Mr. Kolman explained Option M.
- 05:38:51 Sen. Perry stated he would like to formulate questions which need to be answered. Sen. Perry asked what the minimum lot size for an exempt well and septic system should be.
- 05:39:43 Mr. Kilbreath responded the DEQ has draft rules to change the minimum lot size. Mr. Kilbreath explained lot size has to accommodate mixing zones. Sen. Perry asked whether the new rule would only apply to subdivisions. Mr. Kilbreath

responded the rule would apply to subdivisions from the date the rule is created forward.

- 05:42:47 Rep. Cohenour suggested the information should be passed on to Mr. Kolman, so the information can be included in Chairman Elliott's discussion draft.
- 05:43:33 Rep. McNutt suggested a note could be included in the report that it was a finding and that during the WPIC's investigation, it was determined the DEQ is addressing lot size in its rules, and the WPIC does not need to take any action.
- 05:44:16 Mr. Kolman explained Option P.
- 05:44:45 Mr. Schenk, FWP, explained FWP would like the WPIC to limit the use of exempt wells for fish ponds. Mr. Schenk would like the option reworded and suggested eliminating the words "well" and "fish." Mr. Schenk agreed with exempting legitimate ponds for stock use. Sen. Perry asked whether a person could claim the pond was going to some day be used for stock. Mr. Schenk urged caution in drafting the legislation and believed the proposal was a step in the right direction. Sen. Perry requested a list of currently permitted uses for exempt wells for ponds.
- 05:49:26 Mr. Tubbs addressed the issue of exempt wells for ponds and stated there was not a long list of uses. Mr. Tubbs explained stock was the original use, but over the last twenty years, there has been an increase in the development of ponds. Mr. Tubbs stated DNRC has a list of permitted ponds. Mr. Tubbs stated the DNRC is also concerned about the development of ponds in the Bitterroot. Mr. Tubbs identified surface water in ponds as the highest evaporative way to disperse water and that ponds are very popular in Montana's high-growth counties. Mr. Tubbs stated there is already a definition of stock pond contained in statute.
- 05:53:13 Mike Murphy, Montana Water Resources Association, worked on the pond issue prior to the last legislative session. Mr. Murphy cautioned against jeopardizing the legitimate and legal uses of ponds by stock producers. Chairman Elliott asked Mr. Murphy how he would protect stock ponds. Mr. Murphy responded it would be difficult to determine which are legitimate livestock operations and that there are definitions currently in statute, but Mr. Murphy recalled there were issues last session. Chairman Elliott wondered if it would be better to list the prohibitive uses of ponds, and Mr. Murphy acknowledged the difficulty of the pond issue.
- 05:55:33 Rep. Boggio stated the number of gallons to keep a pond in good shape for fish does not meet the description of an exempt well. Rep. Boggio suggested the issue could be addressed through the permitting process. Rep. Boggio emphasized that ponds cannot impact senior appropriators.
- 05:56:58 Rep. Cohenour pointed out the more holes that are drilled into the ground, the greater the potential for ground water contamination. Rep. Cohenour suggested a need for the WPIC to review the issue and asked Mr. Kolman to draft language.

Government

- 05:59:04 Mr. Kolman reviewed Option C, Exhibit 16.
- 05:59:33 Mr. Tubbs explained the DNRC has a concept regarding changing the process but has not moved forward with drafting legislation.
- 06:00:20 Rep. Cohenour suggested the WPIC should move forward with discussion and draft legislation.
- 06:01:01 Rep. McNutt agreed the concept was worth considering and suggested the DNRC should work with Mr. Kolman and put in a bill draft request to change the process.
- 06:02:14 Rep. Cohenour addressed No. 4, Government, and suggested language stating the WPIC recognized timing is an issue, and the WPIC finds it important to reduce time lines where possible. Chairman Elliott agreed.
- 06:04:17 Chairman Elliott identified the issues as the size of lots, number of lots, density of lots, and hypothesized that above a certain number, a public water supply system could be required and below that number, a public water and sewer system would be optional. Chairman Elliott identified another question as whether a permit should be functionally issued.
- 06:05:38 Rep. Cohenour added there should be a cutoff point since there needs to be more data collected in order to protect senior water rights. Rep. Cohenour also envisioned a need for monitoring or at least an easement made available.
- 06:07:38 Mr. Tubbs asked how a municipality would factor into the proposal as it tries to expand its service area. Mr. Tubbs explained municipalities were an exception prior to the last session, but are now included in the HB 831 process. Mr. Tubbs noted many Montana communities are expanding and in need of water.
- 06:09:56 Mr. MacIntyre explained HB 831 removed municipalities and restricted the ability of cities and towns to access surface water.
- 06:10:42 Rep. McNutt wondered what would happen if a municipality applied for a permit and satisfied the HB 831 requirements, and the municipality says it will offset depletion. The question would be whether the municipality would still have to go through the 311 permitting process or whether the municipality would be exempt.
- 06:11:23 Mr. Tubbs noted the DNRC is attempting to improve the permitting process and understood the desire to make it easier for municipalities to develop a public water system rather than utilize exempt wells. Mr. Tubbs identified the question as how to modify the 311 criteria and still protect senior water users. Mr. Tubbs thought there could be an expedited process if a municipality has a hydrogeologic assessment that includes mitigation. Rep. McNutt agreed a permit could be granted if a municipality has a hydrogeologic assessment and offsets depletion in a way that is satisfactory to the DNRC.

- 06:14:05 Rep. Cohenour asked what would happen if there were objectors. Mr. Tubbs clarified the proposal would not include going through the 311 process, so there would be no public comment and just a determination by the DNRC. Mr. Tubbs stated the WPIC had not addressed well interference between wells, but thought a state-wide hydrogeologic assessment would address well interference.
- 06:15:40 Sen. Elliott stated depending on the size of a subdivision and the geology of an area, you cannot tell whether a well will impact others.
- 06:16:11 Rep. McNutt stated if a person goes through the HB 831 process and does the hydrological report, a well would not be permitted if it will impact senior water users. Mr. Tubbs stated if the statute says the DNRC has to issue the permit, the DNRC will issue the permit. Mr. Tubbs cautioned against excluding impacts to senior water users.
- 06:18:19 Chairman Elliott noted a community water system could have the same cumulative effect on the ground water, so whatever is done, you would be equal to or ahead of the current situation.
- 06:19:26 Rep. McNutt suggested when language is crafted, something should be done to ensure the outcome does not impact senior water right users. Chairman Elliott stated he did not want the process to be as difficult as HB 831.
- 06:21:20 Sen. Perry noted the existence of a set back of 100 feet from surface water for a well and suggested a specific distance may be needed for a public system. Sen. Perry did not envision a need for a hydrogeologic assessment and suggested the procedure should be kept simple.
- 06:23:01 Rep. Boggio asked whether the proposal would be strictly for developments in closed basins. Chairman Elliott desired to see the proposal be applicable to all basins. Rep. Boggio suggested an incentive might exist if the well could be provided to the developer for use, which would then allow for monitoring. Rep. Boggio believed the option could be used as a negotiation point.
- 06:25:02 At the request of Rep. Cohenour, Mr. Metesh addressed the option of drilling the well for a developer. Mr. Metesh stated if the ground water investigation program were in place, it could be the mechanism for the funding. Mr. Metesh stated monitoring wells could be located in rights-of-way. Mr. Metesh explained that currently, not all monitoring wells are conducive for use by landowners.
- 06:27:38 Rep. Cohenour asked whether the suggestion of drilling the wells with an easement for monitoring might provide a workable solution and Mr. Metesh agreed.
- 06:28:19 Ms. St. Lawrence stated she was confused because the proposal does not provide anything that is not already available.
- 06:30:15 Chairman Elliott deferred to Rep. McNutt's knowledge.

- 06:31:33 Rep. McNutt cautioned against ending up in court because of the impact to someone's water right.
- 06:33:37 Rep. Cohenour noted time costs money and suggested if the permitting time limits could be improved, developers could save money. Rep. Cohenour noted the substantial time and expense currently associated with water investigation.
- 06:35:10 Chairman Elliott asked Mr. Metesh to estimate the time and cost to conduct a hydrogeologic study for a subdivision. Mr. Metesh explained there is a fair amount of information currently gathered for a subdivision. Mr. Metesh thought the distance draw-down factor could be part of the normal permitting process. Mr. Metesh thought more analyses may be needed with data that is already available.
- 06:37:34 Rep. Boggio addressed Mr. Kilbreath and explained when a well driller drills a well, there is a log showing the well has been drilled and the well's pumping rate. Mr. Kilbreath agreed and added in certain subdivisions, additional pump test information is requested. Rep. Boggio asked whether information is obtained about set backs. Mr. Kilbreath responded every well in a subdivision meets the set back provisions in the rules.
- 06:39:05 Rep. Cohenour thought the requirements under subdivision rules would still be in place. Rep. Cohenour asked whether the proposal would work for approving or disapproving a subdivision. Mr. Kilbreath agreed.
- 06:40:29 Chairman Elliott noted a developer would still be required to go through the subdivision review process and asked Mr. Kilbreath to explain what else a developer would have to do if he were going to install exempt wells. Mr. Kilbreath responded it would depend on location of the well, size of subdivision, the aquifer, etc.
- 06:41:47 Rep. McNutt stated that exempt wells also have to go through a procedure. Rep. McNutt wondered how information would be needed to complete a hydrological report. Mr. Metesh reiterated further analyses would be needed rather than more data.
- 06:44:39 Mr. Tubbs identified two different approaches and noted the substantial cost differences between exempt wells and public water supply systems and the question is who will pay for water development.
- 06:45:51 Rep. McNutt suggested the cost of exempt wells is initially borne by the developer. Mr. Tubbs responded most lots are sold prior to the well being developed, and the homeowner pays for the cost of an exempt well. However, when public wells are utilized, the cost is borne up front by the developer.
- 06:47:41 Rep. Cohenour commented the expense for public wells is the reason for the proposal that addresses the up-front infrastructure costs.

- 06:48:37 Mr. Stewart explained the up-front capital costs of a public system are significant and the more expensive the costs, the less likely small developers will be involved. Mr. Stewart identified the major issues as capital costs and time. Chairman Elliott asked whether there would be a point when we would not have to offer assistance. Mr. Stewart thought having the ability to bond for capital investments up-front was a good idea and would act somewhat like a prepaid impact fee. Chairman Elliott asked whether providing up-front bonding would eliminate the concerns of having to perform a hydrogeological study. Mr. Stewart responded many developers would prefer to install community systems rather than exempt wells.
- 06:54:33 Rep. McNutt asked Mr. Stewart how he would replace net depletion. Mr. Stewart stated those situations are currently being faced in closed basins. Mr. Stewart agreed net depletion is a problem for many developers because of the cost of purchasing additional water rights and the uncertainty of what will happen in 15 years when no more water rights are available. Mr. Stewart identified the practice of purchasing unused water rights and leaving the water in the stream as one way developers mitigate net depletion.
- 06:56:20 Chairman Elliott recalled if water is used for domestic use, 90 percent of the water is returned to the aquifer, but lawn watering could increase that percentage. Chairman Elliott supposed in a residential setting, the major cost would be from irrigation. Mr. Stewart generally agreed, but stated there are situations where a development could lessen irrigation use through covenants or other tools.
- 06:58:32 Chairman Elliott asked Mr. Metesh how net depletion for a subdivision is measured. Mr. Metesh responded it would depend on the pumping rate. Chairman Elliott noted if there are 100 exempt wells in place, net depletion does not have to be proved and no mitigation is required. Therefore, if a public water supply system is required, mitigation would have to be performed. Chairman Elliott would like to make it as easy and inexpensive as possible to have a public water supply system. Mr. Metesh identified a need for data regarding the development in order to anticipate and estimate water usage. Chairman Elliott stated no landscaping would mean very little net depletion and Mr. Metesh agreed.
- 07:03:10 Mr. Schenk cited the ease of the permitting process the expense and time involved in appropriately addressing mitigation. Mr. Schenk stated there are places in Montana where ground water augmentation is already taking place. Mr. Schenk addressed taking land out of irrigation and suggested performing an accounting process and providing a credit fee to allow a ditch company to continue to operate and service its customers.
- 07:06:30 Rep. McNutt asked whether SIDs could be utilized for water and sewer systems and be paid back over time and having delayed payments as housing is built and hooked up to mitigate the up-front expense for developers.

- 07:07:42 Mr. Tubbs agreed bond sales could be structured in that manner, but expressed concern about getting involved with raw land development.
- 07:09:34 Mr. Kolman pointed out water and sewer districts already have the power to sell bonds. Mr. Kolman stated a revolving loan program would have to be repaid and, upon default, the state could end up owning a subdivision.
- (BREAK)
- 07:30:23 Chairman Elliott suggested the WPIC should: (1) appoint a small group of people to address the issue; and (2) put "meat on the bones" of the proposal to use as reference points.
- 07:31:45 Sen. Perry addressed Mr. Metesh and asked whether the WPIC had determined whether exempt wells are an insignificant part of the big picture. Mr. Metesh agreed that state-wide ground water is a small percent of how much water is used. On a small scale, however, ground water can have an immediate and direct effect on another well or surface water. Sen. Perry asked Mr. Metesh whether the amount of water withdrawn from an exempt well for household use is insignificant. Mr. Metesh agreed and stated domestic consumptive use is almost nil. Sen. Perry thought the WPIC had bogged itself down with details. Sen. Perry asked Mr. Metesh whether a public water supply would have the same impact as exempt wells, and Mr. Metesh responded public water supply systems could have the same impact. Mr. Metesh suggested public water systems provide more control and the ability to meter water usage. Mr. Metesh explained how meters can actually reduce the amount of water used. Sen. Perry stated the WPIC could suggest reducing the rate of flow and total volume of usage per year for exempt wells. Sen. Perry noted the WPIC is attempting to protect senior water right owners but is making great impediments toward progressing toward developing central water systems for subdivisions. Sen. Perry read from a letter from John Bloomquist. Sen. Perry commented if there is little or no net depletion, why not limit the size of subdivisions and lots with guidelines from the public and interested parties and do the hydrological assessment. Mr. Metesh agreed with Sen. Perry's suggestion. Sen. Perry stated he would like to hear from the interested parties at the next meeting and determine what might be appropriate for Montana subdivision and lot sizes.
- 07:43:33 Upon request from Chairman Elliott, Sen. Perry summarized his question to Mr. Metesh as whether it is reasonable to move forward and stipulate sizes of lots for exempt wells in coordination with the DEQ and look at subdivision permitting by going through the hydrological assessment as the guidelines of HB 831 minimal to virtually no depletion and setting guidelines based on the size and amount of use of water to be expected.
- 07:46:04 Chairman Elliott asked Sen. Perry whether his inquiry included setting parameters at which we know there will be no net depletion as far as size, density, or adverse effect is concerned.

07:46:47 Rep. Cohenour urged avoiding the use of "adverse effect." Mr. Metesh stated there will never be no stream depletion.

07:47:52 Rep. Cohenour stated the suggestion would not infringe on subdivision laws and certain requirements would still be required under the Subdivision Act. Rep. Cohenour also believed the WPIC should discuss rate and volume and consider implementing statutory requirements.

07:49:31 Rep. McNutt recalled past proposed legislation that did not propose to reduce the flow rate but sought to reduce the acre feet amount from ten to one. Rep. McNutt stated most domestic well pumps cannot pump 35 gpm, but Rep. McNutt believed people would not support reducing the gallons per minute.

07:51:06 Rep. Cohenour recalled the House Natural Resources Committee addressed the pumping rate issue and suggested reducing the volume amount would have been more successful.

07:52:11 Chairman Elliott stated he did not see the point of setting lower numbers on something that is not measurable or enforceable.

07:53:23 Mr. Metesh addressed stream depletion and clarified that setbacks are implemented to address water quality rather than stream depletion.

07:54:54 Rep. Cohenour suggested the WPIC should begin drafting a bill to be used as a reference point.

07:56:08 Chairman Elliott addressed Sen. Perry's idea of conducting a hydrogeological study to determine the most efficient point of the water source for a subdivision. Sen. Perry asked interested parties to provide their input to determine what is reasonable and what can be accomplished. Sen. Perry volunteered to work with the interested parties and asked Mr. Kolman to craft wording. Chairman Elliott suggested listing points that need to be considered in drafting a proposal.

07:59:34 Ms. St. Lawrence expressed concern since net depletion for exempt wells is minimal. Ms. St. Lawrence asked the WPIC to observe the separation of net depletion and adverse effect. Ms. St. Lawrence identified the standard in statute for any new water right is no adverse effect on senior appropriators. Ms. St. Lawrence emphasized net depletion does not necessarily equal adverse effect.

08:01:18 Mr. Regensburger requested an opportunity review Dr. Nicklin's report. Mr. Regensburger commented on Dr. Nicklin's assumption there is a lot of water in Montana and that the uses are insignificant. Mr. Regensburger believed the point was overstated in the report. Mr. Regensburger submitted and reviewed "Volumes of Bitterroot R. Flow for Dry Year Compared with Consumptive Uses (modified from Nicklin, 2008) ([EXHIBIT 1](#)).

08:06:00 Sen. Perry asked Mr. Regensburger whether by his reference to "used up" he was referring to "consumed." Mr. Regensburger agreed. Mr. Regensburger explained the flow measured at Missoula is return flow and the water usage

occurs in the middle of the valley. Additionally, some of the water in the Bitterroot comes from the Painted Rocks contract water from the FWP. Mr. Regensburger believed the usage from agriculture and domestic is more significant than what is represented in the Nicklin report. Sen. Perry stated the use of Montana's water is for beneficial use and that there is no reason the water cannot be used. Mr. Regensburger summarized his point as being that there is not as much water available as suggested by the Nicklin report, and a small percentage of water can be significant to an irrigator or someone who gets their water shut off. Sen. Perry clarified that his intent was not to say the use of water is insignificant, but that the net depletion of water from households is insignificant in the big picture because the water is not being destroyed.

- 08:13:36 Rep. Cohenour stated the Nicklin studies are a general look at one variable. Rep. Cohenour stated if a study only considers the start and finish, you do not look at the immediacy in one area. Rep. Cohenour cautioned against generalizing and saying exempt wells have no impact. Rep. Cohenour envisioned a need to address issues on a local level and be cognizant of the local effects.
- 08:16:24 Chairman Elliott presented his framework for legislation, including a hydrogeologic assessment to determine location of the well with the minimum depletion. Rep. McNutt stated HB 831 already addressed the issue.
- 08:17:33 Mr. Kolman summarized WPIC discussions as the exemption or ease of permitting for a municipal use of water and asked whether the exemption would be just for closed basins. Chairman Elliott replied no and suggested the question was whether to exempt a subdivision with a sewer and water district from the permitting process. Sen. Perry reminded Chairman Elliott that court actions could result and his intent was not to provide a total exemption. Sen. Perry thought the exemption should be in accordance with HB 831 and could be done at a reasonable cost.
- 08:21:11 Chairman Elliott summarized the WPIC would like to consider creating a subdivision exception similar to the municipal exception; requiring a hydrogeological assessment; publicly available bonding for public water supply systems; a benchmark above which a public water supply system would be mandatory, including lot number, size, and density; and standards for use and flow for a household.
- 08:22:17 Rep. Cohenour believed the exemption should be limited to closed basins.
- 08:22:39 Rep. McNutt suggested language could refer to high-growth areas, which would include basins that are essentially closed. Rep. McNutt noted "growth areas" would need a definition.
- 08:23:48 Mr. Kolman identified the HB 831 process as the permitting framework. Mr. Kolman summarized a municipal ground water exemption in a closed basin. An applicant would need to complete a hydrogeological assessment. If there is a determination of no net depletion, the applicant would be granted the permit. If net depletion is mitigated, the applicant would be granted the permit.

- 08:26:25 Rep. Cohenour agreed with Mr. Kolman's outline of the WPIC's framework and identified a need to include the portion of HB 831 requiring a hydrogeologic assessment.
- 08:28:17 Rep. Cohenour explained the bonding provision for a public water supply system and emphasized the people who apply for the loan have to be financially able to pay. Payback of the loan would begin one year after the installation of the system and the loan must be paid off in 20 years. The loan will provide the infrastructure up-front costs for a public water supply system.
- 08:30:10 Chairman Elliott addressed adopting standards for subdivision size and lot number. Rep. McNutt suggested developers will build subdivisions just under any set number. Chairman Elliott identified another issue as setting reasonable standards for the amount of usage per household for people who apply for the municipal exemption. Rep. Cohenour identified easement and monitoring issues as also needing to be addressed.
- 08:33:16 Mr. Kolman explained he would draft the proposals and put the drafts out for public comment. Chairman Elliott stated he would prefer to use the documents for reference only and not put the documents out for public comment yet.
- 08:34:05 Rep. Cohenour disagreed and stated the WPIC has asked the interested parties for their input, so there is a need for the interested parties to review the proposals.
- 08:34:27 Mr. Kolman explained the bills will be available on the internet for public comment and that he would emphasize the proposals are draft.
- 08:35:33 Chairman Elliott stated he did not know whether the proposals were an enticement and thought they could be made sweeter. Chairman Elliott emphasized the public's comments should include solutions.
- 08:36:58 Mr. Kolman summarized proposed legislation to be drafted.

PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA BUT IS WITHIN THE WPIC JURISDICTION

There was no public comment offered.

ADMINISTRATIVE MATTERS

- 08:39:15 Mr. Kolman directed the WPIC to the draft report and solicited changes.
- 08:39:41 Rep. Cohenour recalled the original list of items the WPIC wished to discuss had included water-quality issues. Rep. Cohenour recalled water quality had been discussed in many different aspects and suggested it should be noted in the report. Rep. Cohenour also thought the report should also reference the WPIC's travels to closed basins and the issues that came up during those meetings.

08:41:10 The next WPIC meeting will be held August 12-13, 2008, in Helena. Sen. Jent expressed his preference to limit the WPIC meeting to one day.

ADJOURN

 There being no further business to come before the WPIC, the meeting adjourned at 4:54 p.m.