



## Water Policy Interim Committee

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### 63rd Montana Legislature

#### SENATE MEMBERS

CHAS VINCENT--Chair  
JENNIFER FIELDER  
BRADLEY MAXON HAMLETT  
SHARON STEWART-PEREGOY

#### HOUSE MEMBERS

KATHLEEN WILLIAMS--Vice Chair  
PAT CONNELL  
STEVE FITZPATRICK  
REILLY NEILL

#### COMMITTEE STAFF

JASON MOHR, Lead Staff  
HELEN THIGPEN, Staff Attorney  
NADINE SPENCER, Secretary

# MINUTES LOG

Approved September 9, 2013

Date, June 18, 2013

Room 172, State Capital Building  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

#### **COMMITTEE MEMBERS PRESENT**

SEN. CHAS VINCENT, Chair  
REP. KATHLEEN WILLIAMS, Vice Chair

SEN. JENNIFER FIELDER  
SEN. BRADLEY MAXON HAMLETT

REP. PAT CONNELL  
REP. STEVE FITZPATRICK  
REP. REILLY NEILL

#### **COMMITTEE MEMBERS EXCUSED**

SEN. SHARON STEWART-PEREGOY

#### **STAFF PRESENT**

JOE KOLMAN, Legislative Environmental Analyst  
JASON MOHR, Lead Staff

HELEN THIGPEN, Staff Attorney  
NADINE SPENCER, Secretary

## **AGENDA & VISITORS' LIST**

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

## **COMMITTEE ACTION**

- The WPIC adopted the 2013-14 committee work plan.
- The WPIC adopted the 2013-14 meeting dates.

## **CALL TO ORDER AND ROLL CALL**

00:00:01 Sen. Vincent called the Water Policy Interim Committee to order at 8:00 a.m. The secretary called the roll, [Attachment 3](#).

## **AGENDA**

### **WATER SUPPLY OUTLOOK**

- 00:00:43 Tim Davis, Administrator of the Water Resources Division, Department of Natural Resources and Conservation (DNRC), introduced the presentation on water supply and moisture status for Montana, [Exhibit 1](#).
- 00:04:04 Jesse Aber, Water Resource Planner, DNRC, and staff for the Governor's Drought and Water Supply Advisory Committee, continued the presentation on water supply and moisture status for the state.
- 00:16:01 Eric Sommer, Deputy Director, United States Department of Agriculture, National Agricultural Statistics Service, Montana Field Office (USDA's NASS), gave a presentation, [Exhibit 2](#), on Montana's crop report and soil moisture.
- 00:21:51 Mike McLane, Water Resource Specialist, Department of Fish Wildlife and Parks (FWP), gave a presentation, [Exhibit 3](#), on stream flow and stream flow prospects for Montana. He indicated where the FWP has in-stream water rights and discussed fishing restrictions if stream flows become low.

### **Committee Questions and Discussion**

- 00:32:49 Rep. Connell asked Mr. Aber if moisture and water information could be provided on a weekly basis rather than monthly. Mr. Aber responded that the U.S. Geological Survey (USGS), has information on stream flows and that the U.S. Department of Agriculture (USDA), puts out a weekly crop report that gives an update on precipitation.

- 00:35:37 Rep. Connell asked Mr. Aber if there was also information on soil moisture available on a weekly basis, Mr. Aber indicated that the information was available at [www.drought.climate.mt.gov](http://www.drought.climate.mt.gov).
- 00:37:07 Rep. Neill asked if there were tools for predicting long term trends for droughts and floods. Mr. Aber indicated that there is a link under climate on their web page with this information.
- 00:40:23 Rep. Neill asked Mr. McLane if there was data on long term stream flow projections similar to the data on snow pack projections. Mr. McLane indicated that the information is available.
- 00:42:16 Sen. Hamlett asked Mr. McLane where they would make water calls on junior water right holders. Mr. McLane indicated calls would be made depending on conditions.
- 00:43:58 Rep. Williams asked Mr. McLane if there were projections for stream flows 10-20 years out. Mr. McLane indicated that the information provide by Mr. Aber on climate change research was probably the closest information available.
- 00:46:05 Sen. Fielder asked Mr. McLane about the methods used to make calls to protect fish and whether it was based on protecting the maximum number of fish or when the population was critically threatened. Mr. McLane responded that they used both methods.
- 00:48:38 Sen. Hamlett clarified with Mr. McLane that junior water rights means junior to FWP. Mr. McLane agreed indicating that in the water reservations they are water rights developed after 1985.
- 00:49:14 Rep. Williams asked Mr. McLane for clarification about ideal flows. Mr. McLane explained the different methods to determine stream flow.
- 00:50:26 Sen. Vincent asked Mr. McLane how many USGS stations have been handed over to a different agency for management and if there has been any difficulty acquiring data needed for making projections. Mr. McLane indicated that most of the stream gauging stations in Montana are cooperative stations.

#### **WATER RIGHT ADJUDICATION UPDATE**

- 00:53:13 Tim Davis, DNRC, discussed the adjudication report.
- 00:56:29 Judge C. Bruce Loble , Chief Water Judge, Montana Water Court, gave a final report on the water court and reflected on the successes during the past 23 years of water rights adjudication.

**Public comment** None

## **Committee questions and discussion**

- 01:30:21 Sen. Vincent expressed his appreciation for the contributions Judge Loble has made to the state of Montana.
- 01:31:21 Sen. Hamlett also expressed his appreciation on behalf of himself and his constituents for Judge Lobel's work on the water court. Sen. Hamlett then asked Judge Lobel about priority dates and appropriation dates with regard to water rights. Judge Lobel indicated that period of use would take precedence over the priority date.
- 01:34:19 Sen. Hamlett asked for Judge Lobel's opinion on who has standing in the water court on a given water right. Judge Lobel responded.
- 01:37:29 Rep. Williams also thanked Judge Lobel for his service. She asked Judge Lobel about his perspective and historical perspective on 2015 and forward and what becomes of the water court when the big effort on adjudication is complete. Judge Lobel gave his perspective and supports a mechanism to keep the water court active after the adjudication process is complete.
- 01:43:16 Rep. Williams asked if Judge Lobel would be willing to help with certain areas of the WPIC work plan. He indicated that he would be willing to help the committee.
- 01:44:22 Sen. Fielder questioned Judge Lobel about concern over the reserved water rights compact which includes a unitary management ordinance that would administer the rights. Judge Lobel offered his opinion indicating that he would like it under state control.
- 01:48:11 Sen. Hamlett asked Judge Lobel about the challenges Montana faces, as a headwater state, from neighboring states. Judge Lobel said Montana exports more water than it uses so that lessens his concern about downstream water users.
- 01:50:19 Sen. Vincent asked Judge Lobel about the final water right decrees. Judge Lobel indicated that the adjudications will be completed by 2028.
- 01:51:44 Sen. Vincent asked Judge Lobel about associate water judge applicants. Judge Lobel indicated that the information won't be published until July 2013.

## **OVERVIEW OF GROUND WATER PROGRAM**

- 01:52:49 John Metesh, Director and State Geologist, Bureau of Mines and Geology (MBMG), provided an overview of the bureau and the ground water program, [Exhibit 4](#).
- 02:01:05 John LaFave, Senior Research Hydrogeologist, Program Manager, Ground Water Assessment Program (MBMG-GWAP), gave a history and an explanation of current activities of the ground water assessment program, [Exhibit 5](#).

02:15:56 John Wheaton, Senior Research Hydrogeologist, Program Manager, Ground Water Investigation Project (MBMG-GWIP). Mr. Wheaton provided a review of the ground water investigation program and the current status of some of the program's projects, [Exhibit 6](#).

02:34:04 Mr. Metesh provided a copy of the biennial report to the committee, [Exhibit 7](#).

02:34:19 Sen. Vincent thanked the Bureau for their help during the legislative session.

**Committee questions and discussion:**

02:35:02 Sen. Fielder asked Mr. Wheaton if the Bureau's website had information regarding current projects. Mr. Wheaton indicated that there was a map link on the website as well as individual listings for each project.

02:35:48 Rep. Williams asked Mr. Wheaton for more explanation of how scientific results from the studies are quantified and reported.

02:39:34 Rep. Williams suggested that it would help with interpretation if more details are provided about conclusions reached in the studies.

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**2015 STATE WATER PLAN**

02:49:55 Tim Davis, DNRC, gave a presentation, [Exhibit 8](#), on the State Water Plan including a history of water planning, the 1973 Water Resources Act, and 2009 legislation directing the DNRC. Mr. Davis also provided the state water planning statute for reference, [Exhibit 9](#).

**Public comment** None

**Committee questions and discussion:**

03:11:34 Rep. Connell asked Mr. Davis about a potential conflict with water planning and the implementation of the existing water compact with the USDA, Forest Service. Mr. Davis responded that it could be part of the basin advisory feedback.

03:14:20 Rep. Connell stated that based on what he sees in the rule making he did not think the DNRC would accept the wetted P model as a process to establish water rights on private ground or elsewhere in the state.

03:15:11 Sen. Hamlett asked Mr. Davis if the impact of forest fire and wild fires in the state of Montana would be discussed in the study of the plan. Mr. Davis indicated that it could be an issue brought up by the different advisory councils.

03:15:49 Sen. Vincent asked about the Kootenai Basin. Mr. Davis responded that it would be included in the Clark Fork Basin Advisory Council.

03:16:52 Rep. Williams disclosed she is a consultant helping to facilitate the efforts of the Upper Missouri Advisory Council.

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## **NUMERIC NUTRIENT STANDARDS REPORT**

04:31:32 George Mathieus, Administrator, Planning, Prevention and Assistance Division, Department of Environmental Quality (DEQ), provided an update on progress with the numeric nutrient criteria the department has been working on and also provided a history and background.

**Public Comment** None

04:39:10 Cory Swanson, Deputy Attorney General, Montana Department of Justice (DOJ), indicated that Montana has a good program for dealing with nutrient controls and compared Montana to several other states in the context of some federal litigation. He provided a background of what other states and the federal government are doing with nutrient control.

## **Committee questions and discussion**

04:43:18 Sen. Hamlett asked Mr. Mathieus if the DEQ was monitoring Belt Creek for nutrients. Mr. Mathieus was not sure, but would find out for the committee.

04:43:50 Rep. Williams asked Mr. Mathieus if there were demonstration projects going on in Montana that were showing progress. Mr. Mathieus indicated that there were projects occurring in the state and gave examples.

04:46:10 Sen. Vincent asked Mr. Mathieus what kind of values the new technology can provide specifically in the Missoula pilot project. Mr. Mathieus indicated that he did not know, but would find out.

## **RESERVED WATER RIGHTS COMPACT COMMISSION UPDATE**

04:47:43 Chris Tweeten, Chairman, Montana Reserved Water Rights Compact Commission (RWRCC), gave an update on the activities of the commission and the status of the Confederated Salish and Kootenai Tribes water compact with Montana.

**Public Comment**

05:02:13 John Metropolis, attorney and lobbyist, passed out a copy of the resolution passed by the Flathead Joint Board of Control in May 2013, [Exhibit 10](#). He discussed settlement of water right claims by the Flathead project with the Flathead tribes and the water use agreement.

### **Committee questions and discussion**

05:17:25 Rep. Williams asked Mr. Metropolis to address the inconsistency regarding extra duty water. Mr. Metropolis responded that, although it is not adequate, there is a mechanism now that is meant to address that issue.

05:19:20 Rep. Williams asked Mr. Metropolis if he agreed that the water use agreement is not being negotiated by the compact commission. Mr. Metropolis did agree and that the U.S., the tribes and the Joint Board of Control representing irrigators are negotiating the water use agreement.

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### **Public Comment**

05:34:50 Neil Bouma, Choteau, Montana. Mr. Bouma requested that the committee address an issue that happened to him regarding the difference between intermittent and perennial streams.

### **Committee questions and discussion**

05:39:35 Sen. Hamlett asked Mr. Bouma for clarification regarding the maps he referenced in his comments. Mr. Bouma indicated that they were both USGS and BLM maps. Sen. Hamlett confirmed that on one USGS map the stream was referred to as intermittent and on an updated map the stream had been changed to perennial.

05:42:11 Sen. Vincent asked Mr. Davis for the DNRC's response regarding Mr. Bouma's claims. Mr. Davis explained the requirements needed before the Department can take an enforcement action.

05:43:48 Sen. Vincent expressed his concern regarding delayed enforcement action. Mr. Davis explained that a complaint letter was not received until later.

05:46:17 Sen. Vincent asked Mr. Bouma about the previous landowner. Mr. Bouma responded that the previous landowner also received a fine.

05:49:10 Sen. Fielder thanked Mr. Bouma for bringing his case to the attention of the committee.

### **ADOPTION OF COMMITTEE WORK PLAN**

05:50:04 Mr. Kolman instructed the committee to come up with their priorities for the WPIC, [Exhibit 11](#).

05:50:44 Rep. Connell commented that the ditch restatement study would not need as much time for discussion since the concept was discussed by the House during the 2013 legislative session. He said that although the legislation was not passed, he suggested referring the matter to the legal department for review and some

proposed solutions for the committee to consider. Sen. Vincent indicated that the committee consider option C instead of option B and have staff summarize relevant actions, policies, or legal decisions in other states as listed under option C and then organize a panel discussion.

05:54:49 Sen. Hamlett expressed his concern that items be included in the work plan so that they can be discussed by the committee.

05:55:16 Sen. Vincent indicated that the work plan can be modified and revisited at the next meeting.

05:55:45 Sen. Fielder agreed with Rep. Connell's adjustment and other suggestions and wanted to make sure that there was a ratio of time for the staff. She indicated that she was in agreement with everything that had been discussed.

05:56:38 **Motion:** Sen. Vincent moved to adopt the following work plan:

Ditch/canal easement restatement - Option C  
Water policy issues - Option A  
Water transactions policy - Option C  
Future of agricultural water use - Option C  
Receive compact commission report on CSKT compact - Option B  
Role of water court in permit and change decisions - Option C  
Additional member agenda items -Option A

05:57:35 Rep. Williams confirmed that exempt well issues and updates was moved to water policy issues.

05:57:42 Sen. Fielder clarified that the total equaled 1 FTE.

05:58:02 Mr. Kolman indicated that the total was .95 FTE.

05:58:19 Sen. Vincent indicated that .05 FTE would be available for any other issues.

05:58:37 Sen. Fielder requested two additional items be added to the member agenda. The first item was clarification of intermittent and perennial streams and the second item was public notice for SB 355 (2013), related filings.

05:59:20 Sen. Hamlet wanted to clarify that the committee would spend time in the future on the role of the water court.

06:02:26 Sen. Vincent agreed that testimony presented before the committee justified the need for the water court.

06:02:30 Sen. Hamlett also stressed the importance of notice for SB 355. He also said there is a need to define in law the difference between perennial and intermittent streams. He indicated that Pondera County Canal and Reservoir Company water court report will be a significant issue.



- 06:02:35 Sen. Vincent inquired how long legislative services kept bill drafting files. Mr. Kolman indicated that two sessions worth of background files are kept.
- 06:02:45 Sen. Vincent stated that the committee should be prepared for a robust discussion on the definition of a perennial stream and was hoping to give the committee the junque files on previous legislation.
- 06:04:03 Sen. Hamlet indicated that when his bill was drafted on perennial streams, he thought it would go to the Natural Resources Committee but it was sent to the agriculture committee and died in committee.
- 06:04:53 Sen. Fielder asked if the extra .05 FTE be put into an additional member agenda item or left to float. Sen. Vincent responded that the committee will find a way to use the extra FTE.
- 06:05:39 Mr. Mohr wanted to know if items discussed at yesterday's meeting should be included in the motion. Sen. Vincent responded that the motion would be kept more general for now.
- 06:06:46 Rep. Connell indicated that he would like to add on the agenda for next year, a report from the Attorney General's office on reducing fire risk to watersheds and what they view as their opportunity to assist the state and protect our communities. Sen. Vincent indicated that it is a bullet point on the work plan and the committee should assume that time will be given to discuss all of the items listed on the work plan.
- 06:08:08 Rep. Williams wanted to confirm that the work plan is a framework and that there is flexibility to add additional agenda items. Sen. Vincent confirmed that additional items could be added to the agenda.
- 06:09:29 Sen. Hamlet confirmed that it was alright to contact staff with additional agenda items since the chair and vice chair may not always be available.
- 06:10:00 **Vote:** Motion carried unanimous by voice vote of those members present and voting.

## **ADMINISTRATIVE MATTERS**

### **Budget Overview**

- 06:10:31 Mr. Mohr indicated that the WPIC budget for the upcoming interim is \$43,000 assuming there are a total of 6 meeting dates planned.
- 06:11:08 Sen. Hamlet asked about additional funds from Legislative Council if the committee needed to travel to different sites around the state. Sen. Vincent indicated that there would be contingency money available for the committee.

### **Adoption of interim WPIC meeting dates**

- 06:12:18 Mr. Mohr discussed the upcoming meeting dates for the WPIC.
- 06:12:52 Sen. Vincent asked if meeting dates were aligned with the Environmental Quality Council (EQC) meeting dates. Mr. Kolman indicated that they were.
- 06:13:43 Sen. Hamlet asked if the January meeting date conflicted with the Sage Grouse Advisory Council meeting. Sen. Vincent indicated that the January meeting date could be changed if there was a conflict with the advisory council meeting date.
- 06:16:49 **Motion/Vote**: Rep. Connell moved to adopt the WPIC meeting dates for 2013-14. The motion carried unanimously by voice vote of those present and voting.

**PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC** None

### **OTHER BUSINESS**

- 06:17:33 Mr. Mohr asked members for the best way they can be contacted by staff. Mr. Kolman also indicated that members could check whether or not they would like emails from the public forwarded to them.

### **INSTRUCTIONS TO STAFF**

- 06:18:38 Sen. Vincent indicated that he and Rep. Williams will be working together on the agenda for the next meeting. He gave instructions to members of the WPIC to spend time looking at the MBMG and DNRC websites. He also recommended that any member who has an interest in the CSKT compact to get their comments together and submit them to the commission.
- 06:20:15 Rep. Williams indicated that the audit of the water court is online and may be a resource when the committee discusses the future of the water court.
- 06:21:02 Sen. Vincent indicated that it may be helpful for the committee to go online and look at minutes from previous meetings of the WPIC.
- 06:21:42 Sen. Vincent adjourned the meeting at 2:55 p.m.

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