



Water Policy Interim Committee

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

September 9, 2014

Room 152, State Capitol 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.

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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

JASON MOHR, lead staff
HELEN THIGPEN, staff attorney
NADINE SPENCER, secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

- The Water Policy Interim Committee (WPIC) voted to approve the HJ 26 ditch easement study report as amended.
- The WPIC voted to approve the draft SB 355 bill for public comment.
- The WPIC voted to send a letter to the USDA Forest Service (USFS) opposing the proposed groundwater resource management directive.

CALL TO ORDER AND ROLL CALL

- 00:00:01 Sen. Vincent called the meeting to order at 8:04 a.m. The secretary noted the roll, [Attachment 3](#).
- 00:00:28 Rep. Williams commented on questions she asked at the WPIC meeting yesterday.

AGENDA

HJ 26 DITCH EASEMENT STUDY: REVIEW OF PUBLIC COMMENTS ON DRAFT REPORT

- 00:01:02 Jason Mohr, research analyst, Legislative Services Division (LSD), discussed public comment received on the HJ 26 draft report, [Exhibit 1](#).

Public comment None

Committee questions and discussion

- 00:02:55 Rep. Connell commented on the report.
- 00:04:39 Sen. Vincent asked about making changes to the draft report based on public comment. Mr. Mohr said adding the reference will not change the report.
- 00:05:01 Sen. Vincent said without objection from the WPIC the reference will be added to the report.
- 00:05:11 **Motion/Vote:** Rep. Connell moved to accept the HJ 26 draft report as amended. The motion carried unanimously by voice vote. Sen. Stewart-Peregoy voted by proxy, [Exhibit 2](#).

ADJUDICATION UPDATE (85-2-281, MCA)

00:05:42 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), gave an update on statewide water rights adjudication, [Exhibit 3](#).

Public comment None

00:08:05 Recess

00:22:23 Reconvene

00:22:48 Russ McElyea, chief water judge, Montana Water Court, said the water court is on schedule to finish all the preliminary and interim decrees ahead of the 2020 deadline, [Exhibit 4](#).

Public comment None

Committee questions and discussion

00:27:16 Rep. Williams commented on the Marias Basin and the water court summer intern program.

REPORT FROM UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE (85-2-338, MCA)

00:27:59 Maureen Conner, chairwoman, Upper Clark Fork River Basin Steering Committee, provided background information on the steering committee and the statute that created the committee.

00:32:30 Barbara Chillcott, Upper Clark Fork Basin Steering Committee, gave an update on administrative matters they have been working on.

Public comment None

Committee questions and discussion

00:34:25 Rep. Williams asked if there are currently 22 members on the steering committee. Ms. Conner said they have 16 returning members and are recruiting new members.

00:35:55 Rep. Williams said the steering committee can request to have the number of members on the committee adjusted. Ms. Conner said the number of committee members has worked well in the past.

00:36:39 Rep. Williams asked if there is another Upper or Lower Clark Fork group and how they relate. Ms. Connor said there is an Upper Clark Fork River Basin Steering Committee and Clark Fork River Basin Task Force and explained each of their responsibilities.

- 00:38:36 Rep. Williams asked Holly Franz, representing PPL Montana on the Clark Fork River Basin Task Force, about the benefit of having both committees. Ms. Franz said she has served on both committees and that each has a separate focus.
- 00:40:46 Sen. Hamlett asked about the yearly compensation for the facilitator they are planning to hire. Ms. Chillcott said it is a part-time position that will make \$7,500-\$8,000 a year.

AGENCY RULEMAKING UPDATE

- 00:41:58 Helen Thigpen, staff attorney, LSD, gave an update on agency rulemaking [Exhibit 5](#).

Committee questions and discussion None

- 00:43:34 Recess
00:58:23 Reconvene

BIENNIAL STATUS REPORT OF NUTRIENT WORK GROUP ACTIVITY (75-5-313, MCA)

- 00:58:56 George Mathieus, administrator, Planning, Prevention, and Assistance Division, Department of Environmental Quality (EQC), gave the status report from the nutrient work group, [Exhibit 6](#).

Public comment

- 01:01:10 Tammy Johnson, Montana Mining Association (MMA)

Committee questions and discussion

- 01:02:04 Sen. Vincent said, without objection, the WPIC will consider further action at the October WPIC meeting

HYDROELECTRIC POTENTIAL REPORT (85-1-501, MCA)

- 01:02:57 Mr. Davis gave a report on hydroelectric potential, [Exhibit 7](#).

Public comment None

Committee questions and discussion

- 01:06:11 Sen. Vincent asked about the range of the cost estimates and the number of FTE to do the assessment under future recommendations. Mr. Davis said there is a range in cost because they have not yet prepared a proposal to the legislature. He said they will use current staff to do the study, so no additional FTE will be needed.

01:07:17 Sen. Vincent asked if they will be coming to the 2015 Legislature with their proposal. Mr. Davis said they may look at bringing the proposal during the 2017 Legislative session.

DRAFT STATE WATER PLAN (85-1-203, MCA)

01:08:14 Mr. Davis gave a report on the draft State Water Plan, [Exhibit 8](#), and discussed the public hearing process, [Exhibit 9](#).

Public comment

01:13:22 Jim Beck, Missouri River Basin Advisory Council
01:16:56 Rhonda Wiggers, Montana Water Well Drillers Association
01:19:01 Abigail St. Lawrence, Montana Association of Realtors
01:19:50 Krista Lee Evans, Senior Water Rights Coalition and the Association of Gallatin County Irrigators

Committee questions and discussion

01:21:09 Rep. Williams asked about the goal for the basin plans the relationship to the State Water Plan. Mr. Davis said the only plan the state will be adopting is the State Water Plan. He said the basin plans provide more specific information and the DNRC will continue to work with the basin advisory councils to help implement the plans at the basin level.

01:22:30 Rep. Williams asked if the DNRC will keep updating the basin plans. Mr. Davis said the DNRC will ask the 2015 Legislature to continue funding the basin advisory councils in order to update the basin plans and the State Water Plan.

01:23:52 Rep. Williams asked how the DNRC will ensure that the basin plans are actually used in the future. Mr. Davis said the basin advisory councils will come back every 6 months during the next 2 years to report on how the basin plans are being carried out and to provide any new information.

01:25:21 Sen. Fielder asked what kind of deliberations or investigations involved watersheds that are forested and the effects of timber management on Montana's watersheds. Mr. Davis said it was discussed by several of the basin advisory councils.

01:26:33 Sen. Fielder said studies have shown the intensity of wildfires has converted forests to grasslands and that timber management activities can help to hold snowpack longer and provide water later in the year when it is needed. Mr. Davis said he will meet later with Sen. Fielder to discuss the recommendations made by the basin advisory councils.

- 01:27:51 Sen. Vincent asked if the DNRC is going to make any recommendations regarding the criteria used in selecting studies by the groundwater assessment steering committee. Mr. Davis said the DNRC is working with the Montana Bureau of Mines and Geology (MBMG) to help update the criteria
- 01:29:31 Sen. Vincent asked what the DNRC's position is in changing the requirement to consult with the Environmental Quality Council (EQC) on the State Water Plan to instead consult the WPIC. Mr. Davis said it would not be an issue.
- 01:30:29 Sen. Fielder commented it will be more efficient to report to one committee.
- 01:30:52 Rep. Williams asked about a recommendation for mandatory water commissioner training. Mr. Davis said it was discussed at multiple basin advisory council meetings.
- 01:31:58 Rep. Williams said she will be interested in finding out how well the recommendation is supported. Mr. Davis said the DNRC does provide the training every year, but it is not attended by all of the commissioners. He said once the water plan is in place they will work with each of the stakeholder groups on the recommendations that might involve a policy change.
- 01:33:06 Rep. Williams asked if the recommendations will be presented during the 2015 Legislative Session. Mr. Davis said the DNRC is not bringing any legislation recommended in the plan, but will work with the legislature to make sure the plan is supported before they work with stakeholders on drafting legislation.
- 01:33:37 Mr. Davis recognized the basin advisory council members present and thanked them for their work.
- 01:33:58 Sen. Vincent asked John Metesh, state geologist and executive director, MBMG, about changing the criteria for selecting studies for the Ground Water Investigation Program. Mr. Metesh said they have a new program manager working with the steering committee to refine the decision matrix and selection process. He said they usually work 3 to 4 projects per year as funding allows.
- 01:38:48 Sen. Vincent asked how the projects break down geographically. Mr. Metesh said the majority of projects are in the western third of the state, but more projects are being proposed for the eastern half of the state.
- 01:40:16 Sen. Vincent asked if the money appropriated was raised from \$2.7 million to \$4.2 million if they would be able to do 5 to 6 projects per year. Mr. Metesh said they would and that projects generally run \$500,000 to \$600,000 each and take 2 to 3 years to complete.

REPORT OF TEMPORARY LEASES OF APPROPRIATION RIGHT (85-2-427, MCA)

- 01:41:13 Mr. Davis said under HB 37 (2013) there is one active lease located in Big Horn County.

Public comment None

Committee questions and discussion None

GROUNDWATER MONITORING IN OIL FIELDS

01:43:33 Alice Stanley, chief, Resource Development Bureau, DNRC, gave an update on baseline groundwater sampling in oil field activity areas in eastern Montana, [Exhibit 10](#).

Public comment

01:52:41 Dave Galt, executive director, Montana Petroleum Association

Committee questions and discussion

01:54:52 Sen. Fielder asked if there has been any water testing since the Milltown Dam was taken out. Ms. Stanley said she did not know.

01:56:19 Sen. Fielder asked Ms. Franz if she has any information on the status of the groundwater monitoring project at Milltown dam. Ms. Franz said she did not know. Sen. Fielder asked staff to find out the status.

01:57:42 Rep. Williams asked what happens to the information once a sample is collected. Ms. Stanley said the information goes into the database created by the MBMG Ground Water Information Center.

01:59:45 Rep. Williams asked about the Ground Water Information Center database. Mr. Metesh explained the information that is available on the database.

02:03:28 Rep. Williams asked if the database has information collected from multiple organizations. Mr. Metesh said it does.

02:03:50 Rep. Williams asked if the oil and gas industry is helping to gather information. Mr. Metesh said there is not a lot of data that is collected in the oil patch with regard to water.

02:05:40 Rep. Williams asked if the oil and gas industry is doing any water sampling. Mr. Galt said there is not a testing program in every case and it is a company-by-company decision to do sampling in an area before they drill a well.

02:07:36 Rep. Williams asked about the type of testing that is being done. Mr. Galt said they are doing water well testing.

02:08:01 Rep. Williams asked if they are testing for water level and water quality. Mr. Galt said he believes the testing is for water quality.

- 02:08:30 Sen. Vincent asked if there is a standardized set of protocol that is used to gather data. Ms. Stanley said there is a sampling and analysis plan that defines the sampling protocol.
- 02:10:28 Sen. Vincent asked about administration and funding for the program. Ms. Stanley explained the funding and administration for the project.
- 02:12:04 Sen. Vincent asked about the amount of grant money the department receives per biennium. Ms. Stanley said the DNRC received a \$300,000 grant and the DEQ received a \$160,000 grant.

REQUEST FOR COMMITTEE LEGISLATION

- 02:14:36 Mr. McElyea discussed modifications to the exempt rights bill, SB 355 (2013), amending the claims filing process for existing water rights that were exempt from filing for the adjudication of water rights, [Exhibit 11](#).

Public comment

- 02:25:28 Holly Franz, attorney, Water Court Advisory Committee

Committee questions and discussion

- 02:26:15 Rep. Williams asked Mr. McElyea to clarify the changes that have been made to the draft bill. Mr. McElyea said the new language is in red and black ink and the old language has been struck.
- 02:27:01 Rep. Williams asked about the difference in the changes marked in red and black ink. Mr. McElyea said the it is because there were multiple drafts.
- 02:27:26 Rep. Williams asked about the disagreement on subordination. Mr. McElyea said it was a philosophical issue about the configuration of the original bill.
- 02:31:31 Rep. Connell asked about the financial burden that could be caused by the notice provision and about the timing when the notice will be published by the newspapers. Sen. Vincent said if the bill moves forward there will be opportunity for public comment on the notice provision.
- 02:35:21 Sen. Vincent asked about the cost of implementing the notice provision. Ms. Wiggers, Montana County Treasurers Association, said the notice can be added to the property tax bill, but may not be read because there are already multiple items on the bill.
- 02:37:11 Rep. Connell asked when and in what newspapers public notice will be given. Ms. Wiggers said public notice for local government issues is outlined by law. Mr. McElyea said the notice provisions were pulled out of statute and said the intent was to determine the filing date before determining the publication date.

- 02:41:49 Mr. Davis said the DNRC estimates that the cost for adding an additional page to the property tax statement and putting public notice in newspapers will cost \$87,000.
- 02:42:34 Sen. Fielder asked what the cost would be to add a line to the property tax statement instead of adding an additional page. Mr. Davis said he can prepare a cost estimate for the WPIC.
- 02:43:12 Sen. Fielder said they need to be proactive in notifying the public.
- 02:44:27 Sen. Hamlett asked if the Montana Association of Conservation Districts have put the notice in their publications. Mr. Beck said he does not believe they have discussed it yet, but said they probably can.
- 02:46:03 Sen. Hamlett asked if the Montana Association of Realtors can put the notice in their publications. Ms. St. Lawrence said they can add it to their newsletter.
- 02:46:56 Sen. Vincent said there are other organizations that can also print the notice.
- 02:47:03 Sen. Hamlett said all interested groups can notify their members. He said it should be noticed on the property tax bill.
- 02:48:01 **Motion:** Sen. Hamlett moved to approve the draft bill for SB 355 for public comment.

Discussion:

- 02:48:09 Rep. Williams
- 02:49:05 Sen. Vincent
- 02:49:23 Mr. Mohr
- 02:50:02 Sen. Vincent
- 02:50:40 Mr. McElyea
- 02:51:57 Sen. Vincent
- 02:52:20 Sen. Hamlett
- 02:52:42 Sen. Fielder
- 02:53:17 Mr. Davis
- 02:53:44 Sen. Fielder
- 02:54:15 **Vote:** The motion carried unanimously by voice vote. Sen. Stewart-Peregoy voted by proxy, [Exhibit 12](#).
- 02:54:42 Recess
- 05:29:59 Reconvene

Rep. Neill left the meeting.

REVIEW OF PROPOSED AGENCY LEGISLATION

05:30:19 John Tubbs, director, DNRC, presented the proposed legislation from the agency, [Exhibit 13](#).

05:35:44 Tracy Stone-Manning, director, DEQ, presented the proposed legislation from the agency, [Exhibit 14](#).

Public comment None

Committee questions and discussion

05:43:17 Sen. Fielders asked about the water-related legislation from the DNRC.

05:43:52 Rep. William asked about the flexibility of water right notices of completion and if there is just one opportunity for extension. Mr. Tubbs said it is generally just for one time.

05:46:52 Rep. Williams asked about stream classification and if the classification will be for the capability of the stream under improved water conditions or of a certain condition in time. Ms. Stone-Manning said it is determined on a case-by-case basis.

05:48:54 Rep. Williams asked if the intent is to classify streams according to their capability under natural conditions of what uses they can support. Ms. Stone-Manning said it is.

05:49:38 Rep. Williams asked why the 25 counties in Montana cannot apply for and receive brownfields funds. Jenny Chambers, administrator, Remediation Division, DEQ, said there are geographic gaps in Montana and the DEQ is looking at developing a Revolving Loan Funds (RLF) program for the state to fill in where there is not coverage.

05:51:24 Rep. Williams asked if an entity has to have a RLF to apply for brownfield funds and if they can create their own RLF. Ms. Chambers said they can.

05:52:18 Rep. Connell asked Julia Altemus, executive director, Montana Wood Products Association (MWPA), if she has had an opportunity to review the proposed stream classification system. Ms. Altemus said she has not.

05:53:36 Rep. Connell asked Ms. Altemus if she will review the proposal and report back to the WPIC at the October meeting. Ms. Altemus said she will.

05:54:24 Sen. Vincent asked Mr. Tubbs if he would rather have DNRC's proposed legislation related to water reviewed by the WPIC or the EQC. Mr. Tubbs said because of the way the statute is written, they are required to present the legislation to the EQC, but said either the EQC or the WPIC can review the legislation.

05:55:33 Sen. Vincent said the committee can send a letter to EQC in support having WPIC review proposed legislation related to water. Rep. Williams said the WPIC can vote now to support the water-related legislation.

05:57:02 Sen. Vincent said there will need to be a formal motion to make it a WPIC interim committee bill. Mr. Mohr said he will need direction from the committee to begin drafting any of the bills.

05:57:28 Rep. Williams asked if it will be a committee bill or a department bill. Mr. Mohr said it will be a committee bill.

05:57:52 Sen. Vincent said the EQC can draft the bills for the DNRC without it being an EQC bill.

05:58:14 Mr. Tubbs said the EQC can support the legislation and allow the DNRC to move forward.

05:59:21 Sen. Vincent said EQC can consider the legislation and the WPIC can look at it during the meeting in October.

05:59:50 Rep. Williams asked if the WPIC should notify the EQC that it supports the bill. Sen. Vincent said it can.

06:00:05 Rep. Connell said he supports having EQC consider the legislation first and preparing the draft bill.

06:00:40 Rep. Williams asked if the EQC is deciding whether to oppose or approve the agency drafting legislation. Sen. Vincent said the process is set up so that legislative services has time to draft legislation before the legislative session. He said he would like to have input on bills, but those would have to be WPIC bills. The agencies could come back to the WPIC at the October meeting so the committee can review the bill draft and provide input.

06:02:26 Rep. Williams said she was suggesting that the WPIC approve letting the agency move forward with drafting legislation. Sen. Vincent said the WPIC can consider whether or not to take oversight of issues related to water, but it will take a statutory change.

FUNDING FOR WATER QUALITY IMPROVEMENTS, ECONOMIC DEVELOPMENT AT ABANDONED MINE SITES

- 06:03:40 Ms. Chambers explained the abandoned mines program and said there are over 3,700 abandoned hard rock mine sites and over 3,000 coal mine sites in Montana. She said funding is a factor in determining the amount of work they can do.
- 06:09:18 Sen. Vincent said he put this item on the agenda as a follow-up to the Metal Mines License Tax discussion. He said a better use for the money would be to help cleanup legacy issues, provide economic development, and help program administrators trying to implement their Total Maximum Daily Load (TMDL) and cleanup streams.
- 06:11:41 Mr. Mathieus, said that TMDL is a plan to attain water quality standards. He said there are 317 impaired streams in Montana with the probable source related to mining and 148 of those impaired streams caused from abandoned mines.
- 06:15:23 Ms. Johnson said the Montana Mining Association supports using the Metal Mine License Tax to clean up some of the abandoned mine sites.

Public comment None

Committee questions and discussion

- 06:19:34 Rep. Williams asked how counties use the money they receive from the Metal Mines License Tax. Ms. Chambers said she did not know.
- 06:21:06 Rep. Williams asked if money that is going into the general fund can be redirected to DEQ for cleanup and if there is an account that the money could go into. Ms. Chambers said DEQ does not have an abandoned mines land state, special, or revenue account, but there are other state specialized accounts that the money can be diverted into and its use restricted.
- 06:22:44 Sen. Vincent asked how liability is handled for current programs and for clean-up contracted under the Controlled Allocation of Liability Act (CALA). Ms. Chambers said they work with the owner/operator or whoever the landowner was for the property.
- 06:24:51 Sen. Hamlett asked if the DEQ thought projects used in the past to close mine shafts using concrete was adequate and, if not, did they apply for federal funding to clean up those mines. Ms. Chambers said they apply for federal grants every year and if there is a problem that has been identified from an action that was taken in the past, and is still causing contamination or is a public health risk, it will be given a high priority.

- 06:26:33 Sen. Hamlett commented on the contamination from underground coal mines and asked about the plan for Belt Creek and the Great Falls coal fields. Ms. Chambers said they target priorities associated with a higher level of risk such as public health and drinking water. She said one of its top priorities is in Sand Coulee to design a new drinking water system, and in Belt they are working on preventing contamination from going into Belt Creek.
- 06:29:57 Sen. Hamlett commented on the Sand Coulee public water project.
- 06:30:41** Sen. Vincent asked how DEQ determines the sources of impairment. Mr. Mathieu explained how they do their assessment.
- 06:32:51 Sen. Vincent asked if there is a list of the cost to clean up specific sites. Ms. Chambers said they have a priority list of projects and the clean-up cost.
- 06:35:01 Sen. Hamlett asked if the amount of money DEQ receives from federal funding is down from previous years and why. Ms. Chambers said funding is down from the past 5-7 years and explained why.
- 06:36:28 Sen. Hamlett asked about the McLaren Tailings project. Ms. Chambers said they were unable to get a permit to haul the waste material through Wyoming from Cooke City to the Golden Sunlight Mine to have it reprocessed.
- 06:39:04 Rep. Connell asked if DEQ has considered trying to work with Wyoming again to obtain the permit since administrations have changed in both states. Ms. Chambers said they have not.
- 06:42:29 Rep. Connell commented on the financial benefit of reprocessing the tailings and encouraged the state to try and re-open negotiations with Wyoming for a permit to haul the tailings through Wyoming to the Golden Sunlight Mine.
- 06:43:59 Sen. Vincent said the previous administration worked hard to get that accomplished, but were unsuccessful. He said there is also a possibility that due to the design of the repository it could be damaged in an earthquake.
- 06:45:48 Sen. Vincent asked what is in the Good Samaritan Cleanup of Abandoned Hardrock Mines Act of 2013 that is preventing cleanup of some of the mining sites and asked how counties use the money they get from the Metal Mines License Tax. Ms. Johnson said the counties are mandated by statute on how the Metal Mines License Tax is used and explained how it is allocated. She said, with regard to the Good Samaritan law, people are afraid of inheriting the full liability for clean-up of some of the projects site.
- 06:52:45 Sen. Fielder asked why material from the McLaren Tailings project cannot be moved through Yellowstone National Park. Ms. Chambers said there isn't a regulation that restricts the movement of the material through the park, but the decision was based on public comment.

- 06:53:52 Sen. Fielder asked if the issue was because the roads could not accommodate the traffic or because of the material being transported. Ms. Chambers said she does not know the specifics but can find out.
- 06:54:48 Sen. Vincent said, on the national level, the Good Samaritan program was looking to work with conservation groups and asked Ms. Stone-Manning if Montana was going to be eligible to participate and if so where. Ms. Stone-Manning said she did not know.
- 06:55:47 Sen. Vincent asked Ms. Stone-Manning if the Metal Mines License Tax would benefit some of DEQ's programs and if she would support it. Ms. Stone-Manning said she would.
- 06:59:18 Recess
07:26:34 Reconvene

WATER RIGHTS IN MONTANA, REPORT ON LEGAL SYSTEM FROM UNIVERSITY OF MONTANA LAW SCHOOL

- 07:27:00 Michelle Bryan, director, Land Use and Natural Resources Clinic, University of Montana School of Law, discussed the methodology used to put together the report on the legal system of water rights in Montana and the focus areas of the report, [Exhibit 15](#).
- 07:38:13 Mr. McElyea said the report makes some suggestions about things that can be fixed prior to the conclusion of the adjudication process and things to consider upon the conclusion of the adjudication process. He said the proper course of action would be for the WPIC to take up a study bill so that the issues that are raised in the report can be addressed in a public forum and solutions to the problems can be addressed.
- 07:45:44 Mr. Davis discussed the context of the report with regard to the State Water Plan.

Public comment

- 07:48:03 Mike McLane, representing himself, [Exhibit 16](#).

Committee questions and discussion

- 07:51:28 Rep. Williams asked if the clinic continues to work on the report if the results will be updated and if there was a public comment opportunity. Ms. Bryan said she did interview some states that the client and the stakeholders did not identify on the list of states to interview and said she wants to complete the interviews and put the results in a published article. She said she can update the report if the client wants her to. She said public comment was not part of the process.

- 07:53:09 Rep. Williams asked Mr. McElyea if the client would be interested in updating the report and allow public comment. Mr. McElyea said public comment is an important part of the process and one of the reason he is recommending that the WPIC take up a study bill.
- 07:55:00 Rep. Williams asked if the clinic felt the project was more complete with the additional interviews would there be sufficient flexibility in the arrangement to update the report without a new contract. Mr. McElyea said there would be. Rep. Williams encouraged the court to revise and update the report.
- 07:56:59 Sen. Hamlett asked how many years is recommended for the collection of historic data for figuring out basins and their usage of water, taking into consideration that there have been long periods of drouth that would adversely affect the average. Ms. Bryant said the range of look back periods for determining consumptive use varied by state.
- 07:59:21 Sen. Hamlett asked if the compact is not approved how much will it cost to do the additional water adjudication. Mr. McElyea said he did not know.
- 08:00:23 Sen. Hamlett asked how long it will take to adjudicate an additional 10,000 claims. Mr. McElyea said it would be a substantial process.
- 08:02:16 Rep. Fitzpatrick asked about the procedure for updating the final decree when new water right claims are added. Mr. Davis said any new water right permit is a preliminary approval that needs to be folded into the final decree. He said future permits after a final decree will also have to be folded into the final decree.
- 08:03:28 Rep. Fitzpatrick asked how the DNRC and the Water Court will add new claims after the final adjudication. Mr. Davis said when the DNRC reviews a new permit for a water right they go into much more detail than what is currently done in the adjudication process and so will have the detail that is needed to be enforced in priority.
- 08:04:37 Rep. Fitzpatrick asked on average how many new water right applications are there in a typical year and how many are projected going into the future. Mr. Davis said they see significantly fewer permits for a closed basin, but for open basins they may see a dozen or more applications a year per basin. He said it is almost impossible to project forward.
- 08:05:38 Rep. Fitzpatrick asked about the type of caseload there will need to be in order to have a full-time water court after the adjudication process is complete. Mr. McElyea said once the adjudication is complete, the Water Court does not have a mission. He said there are a number of tasks it could perform and gave some examples.
- 08:08:17 Rep. Fitzpatrick asked how many water disputes end up in district court. Mr. McElyea said he did not know the exact number of cases.

- 08:09:39 Rep. Williams asked what would happen if the tribes submitted claims in a basin that has a temporary preliminary decree, a preliminary decree, and a final decree. Mr. McElyea said they will need to set up a process in which those claims are reviewed in some form, presumably by the DNRC. He said they have not yet formulated a complete process for examination of Indian reserved water rights, but after they do, they will have to provide notice for those claims and an opportunity for affected stakeholders to object, and then the process would resemble the adjudication of state-based water rights. He said he does not know how long it would take.
- 08:13:14 Rep. Williams asked if it would change based on the type of decree the basin had. Mr. McElyea there would likely be differences.
- 08:14:37 Sen. Hamlett said the number of potential water right claims was provided by the tribe.
- 08:15:02 Rep. Connell asked if the rules proposed under the Clean Water Act (CWA) are in competition with the authority of the water right of Montana. Ms. Bryan said the report does not explore the EPA's proposed rule on the definition of "waters of the U.S.", but said her understanding of the laws that rely on that definition is that they are not intended to affect the property rights of water right holders under state law.
- 08:16:56 Rep. Connell asked Ms. Bryan for her legal opinion regarding the risk Montanans face. Ms. Bryan responded that the CWA tends to exempts traditional water right uses.
- 08:18:27 Sen. Hamlett asked what the DNRC uses for historic use and historic consumptive use. Mr. Davis said the state looks back to pre-1973 water use based on the Constitution.
- 08:19:29 Sen. Vincent said the WPIC will consider taking up the issue of a study bill during other business.

THE FEDERAL "FARM BILL" AND THE HEALTH OF MONTANA'S WATERSHEDS

- 08:23:45 Ms. Altemus, MWPA, discussed the importance of the farm bill to the timber industry.
- 08:30:14 Tom Schmidt, Deputy Regional Forester, Region 4, USFS, via phone, discussed the authority under the Farm Bill, projects they are working on in the state of Montana, and the 3-year plan to identify other project opportunities.

Public comment None

Committee questions and discussion

- 08:35:07 Rep. Connell asked Mr. Schmidt if he envisions that the water compact that Montana has with the USFS as a tool to ensure adequate appropriations and funding to implement the projects he outlined under the Farm Bill. Mr. Schmidt said he did not see the water compact as a way to do that.
- 08:36:14 Rep. Connell asked if being a party to the compact places obligations on the USFS to justify appropriations. Mr. Schmidt said the water compact deals with appropriated water rights under state law and does not establish a responsibility on the national forest to do any particular kinds of treatment in order to provide water quality or quantity and doesn't see that the water compact gives them any leverage for additional funding.
- 08:38:16 Sen. Fielder asked if any of the 5 million acres that were designated as priority landscapes in Montana have been treated. Mr. Schmidt said they have begun treatment of the Ten Mile watershed. Christine Dawe, USFS, via phone, added that they have a multitude of existing projects that are currently being evaluated under the National Environment Policy Act that fall within some of those designations and gave some examples.
- 08:39:41 Sen. Fielder asked how many acres they expect to treat next year. Ms. Dawe said they are currently in the process of developing a 3-year program of work and have identified the projects that will be implemented in the next fiscal year. She said she did not know the exact number of acres yet.
- 08:40:22 Sen. Fielder asked about the approximate number of acres the USFS plans to treat. Tom Martin, deputy director, forest management, USFS, via phone, said he estimates that they will treat between 4,000 to 5,000 acres in fiscal year 2015.
- 08:41:03 Sen. Fielder asked if the acres they plan to treat are subject to litigation. Mr. Schmidt said there will still be challenges, but with the authority under the farm bill they anticipate it will move more quickly and be more successful.
- 08:42:30 Sen. Vincent asked about the categorical exclusion (CE) in the Farm Bill. Ms. Dawe said the CE that was struck down did not have the requirements around collaborative process, large tree retention, the need to make sure you were increasing resistance to insect and disease and several other criteria required to use the CE that is in the farm bill authority.
- 08:44:12 Sen. Vincent asked if the provision of non-significance with ESA (Endangered Species Act) is still with the CE. Ms. Dawe said that it is and with any CE that they use it must not have significant impact on the ESA or other things like cultural sites.
- 08:45:04 Sen. Vincent asked about the practical application of the Farm Bill. Ms. Dawe said they expect some Farm Bill CE projects in fiscal year 2015 and believe there are places that meet the requirements.

- 08:46:52 Sen. Vincent asked if the good neighbor authority will allow them to tier NEPA to MEPA and have state and federal projects in the same area at the same time and in the same watershed. Ms. Dawe said it still will not allow it.
- 08:47:43 Sen. Vincent asked if the USFS is working with Congress to get firefighting under the Federal Emergency Management Agency (FEMA). Mr. Schmidt said there is a lot of interest in making it happen, but the timing is unknown.
- 08:49:27 Sen. Vincent asked if there were any plans to use the money that may become available in fiscal year 2015. Mr. Schmidt said he did not know if it will free up any money or just keep them from losing money at the end of the year.
- 08:49:46 Sen. Vincent said he thought there would be a shift in how the dollars were going to be used.
- 08:50:34 Sen. Fielder asked what it means to the timber industry and the economy if 5,000 acres are treated next year. Ms. Altemus said it depends on the species of trees and where it is at.
- 08:51:37 Sen. Fielder asked how good that is for the timber industry. Ms. Altemus said it is an improvement.
- 08:53:17 Sen. Fielder asked about the scope for the future with an increase in timber harvest. Mr. Schmidt described some of the projects they are working on. Mr. Martin said they are also working on some initiatives to accelerate their timber sale program.
- 08:55:51 Rep. Connell provided information on the amount of material removed from 5,000 treated acres.
- 08:56:45 Sen. Fielder asked about other initiatives the USFS is working on and if they are factoring in the benefits of timber harvest on enhancing habitat for grizzly bears. Mr. Martin said they do have an initiative developing harvest prescriptions that increase the production of huckleberries which is the primary food source for grizzly bears.
- 08:59:02 Sen. Vincent asked how the money from the Federal Land Assistance, Management and Enhancement (FLAME) Act will free up money to be used for other purposes. Ms. Altemus explained how the money can be put into a special account and used for other purposes.

DISCUSSION OF PROPOSED U.S. FOREST SERVICE DIRECTIVES

- 09:01:10 Sen. Vincent opened discussion on the letter that was written by Mr. Mohr regarding the proposed USFS groundwater resource management directive, [Exhibit 17](#).

- 09:02:19 Rep. Williams asked Rep. Connell where it references, in the water rights compact that was signed between the state of Montana and the USFS, certain responsibility on the USFS for land management. Rep. Connell explained the basis for his comments.
- 09:06:12 Rep. Williams asked if the potential that the USFS was violating their compact was included in DNRC's comments. Mr. Mohr said the DNRC wanted to make it clear that the USFS would not assert management of water rights.
- 09:07:23 Rep. Williams asked Mr. Davis if agreed with Rep. Connell's concern that the directive violates the water rights compact. Mr. Davis said the DNRC wants to it make clear that the state has supremacy over water rights and that the USFS has resolved all of their federal reserve claims, for both surface and groundwater, through the compact.
- 09:09:22 Rep. Connell said it was not an issue of violating the compact, but that the compact was the vehicle that required the USFS to abide by state water laws.
- 09:10:00 Sen. Vincent said until USFS changes the definition of the term "managing" the directive needs to be pulled and made clearer.
- 09:11:29 **Motion:** Sen. Fielder moved that the WPIC send the letter to the USFS opposing the proposed groundwater resource management directive.

Discussion:

- 09:11:48 Rep. Williams
- 09:12:49 **Vote:** The motion carried unanimously by voice vote. Rep. Neill and Sen. Stewart- Peregoy voted by proxy, [Exhibit 18](#).

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

None

OTHER BUSINESS

October committee meeting date

Discussion:

- 09:13:26 Sen. Vincent
- 09:14:48 Rep. Connell
- 09:15:07 Sen. Vincent
- 09:15:32 Rep. Connell
- 09:16:28 Sen. Vincent
- 09:17:24 Sen. Hamlett
- 09:17:42 Rep. Connell

09:18:23 Sen. Vincent
09:18:34 Mr. Mohr
09:19:52 Sen. Vincent
09:19:59 Sen. Hamlett
09:20:20 Sen. Vincent scheduled the next WPIC meeting for Oct. 29-30.

Instructions to staff

09:20:40 Sen. Vincent said, without objection, he will move forward and have staff draft a bill regarding the Metal Mines license tax.

09:21:34 Sen. Fielder said John Metropoulos, attorney, Flathead Joint Board of Control, asked if he could respond to comments at the October meeting. Mr. Mohr said he will add it to the agenda.

09:22:02 Sen. Vincent said, without objection, he will have staff explore the possibility of having water plan updates directed to the WPIC instead of the EQC and change oversight function for department bill requests.

09:24:08 Sen. Fielder asked staff to find out about the funds attached to the Kerr Dam project. Mr. Mohr said that he will.

09:25:07 Rep. Williams asked that Rep. Ballance and Rep. Regier let the WPIC know about any topics they want to discuss before the October meeting. Sen. Vincent agreed.

09:27:10 Sen Vincent said the WPIC should consider a committee bill on the Ground Water Investigation Program funding. Rep. Connell agreed.

Budget update

09:28:52 Sen. Vincent
09:29:01 Mr. Mohr

09:29:16 Sen. Vincent thanked staff for their additional work.

09:30:11 Sen. Vincent adjourned the meeting at 5:05 p.m.

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