



Water Policy Interim Committee

64th Montana Legislature

SENATE MEMBERS

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

HOUSE MEMBERS

CARL GLIMM--Vice Chair
BOB BROWN
ZACH BROWN
KATHLEEN WILLIAMS

COMMITTEE STAFF

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

MINUTES LOG

January 12, 2016
Room 172, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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COMMITTEE MEMBERS PRESENT

SEN. BRADLEY MAXON HAMLETT, chair
REP. CARL GLIMM, vice chair

SEN. CHAS VINCENT

REP. BOB BROWN
REP. ZACH BROWN
REP. KATHLEEN WILLIAMS

COMMITTEE MEMBERS EXCUSED

SEN. JENNIFER FIELDER
SEN. SHARON STEWART-PEREGOY

STAFF PRESENT

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

AGENDA (Attachment 1)

VISITORS' LIST (Attachment 2)

COMMITTEE ACTIONS

- The Water Policy Interim Committee (WPIC) directed staff to continue studies of 404 assumption, water availability and supply, and the future of the Water Court.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Hamlett called the meeting to order at 8:23 a.m. The secretary noted the roll. **(Attachment 3)**

DEQ COMPREHENSIVE HYDROLOGICAL IMPACT ASSESSMENT AND SIGNAL PEAK ENERGY MINE EXPANSION

00:01:22 Tom Livers, director, Department of Environmental Quality (DEQ), presented an update on the settlement reached with Signal Peak Energy over the expansion of Bull Mountain Mine

00:02:19 Mr. Livers presented a history of the application by Signal Peak Energy for the expansion.

00:06:15 Mr. Livers discussed the hydrological analysis.

Public Comment:

00:12:24 Derf Johnson, staff attorney, Montana Environmental Information Center (MEIC). **(Exhibit 1)**

00:16:09 Sen. Duane Ankney, SD 20

Committee Questions and Discussion:

00:20:24 Rep. Z. Brown asked Mr. Livers what other environmental impacts, besides salinity, were the reasons the Board of Environmental Review voted down the Commulative Hydrologic Impact Assessment (CHIA). Mr. Livers deferred to Ed Coleman, bureau chief, Industrial and Energy Minerals Bureau, DEQ.

00:22:19 Rep. Z. Brown asked Mr. Coleman if the non-degradation policy had ever been used when considering permits in the past. Mr. Coleman said it had not.

00:23:02 Sen. Vincent entered the meeting.

00:23:07 Rep. Glimm asked Mr. Livers if a monetary compensation was included in the settlement. Mr. Livers said the department made \$30,000 available in its settlement.

00:24:55 Rep. Glimm redirected his question to Mr. Johnson.

00:26:38 Rep. Williams asked Mr. Johnson if MEIC thinks that its investment in the legal action will provide beneficial change in the future. Mr. Johnson said it does.

00:27:57 Rep. Williams asked Mr. Johnson if groundwater will be better protected because of the actions. Mr. Johnson said it will be.

00:29:21 Sen. Hamlett asked Mr. Livers if the 50-year standard used when considering migration of groundwater after the mining operation has stopped has always been in place.

00:31:04 Sen. Hamlett asked Mr. Livers if the Montana Bureau of Mines and Geology, Groundwater Investigation Program, made the models more accurate. Mr. Livers redirected the question to Mr. Coleman.

00:32:11 Sen. Hamlett asked Mr. Coleman if there was concern that water in the mine was coming to the surface. Mr. Coleman said there was not.

00:32:45 Sen. Hamlett said the settlement allows development of new mining potential, but does not allow mining and asked Sen. Ankney what position that puts the mine in economically.

00:35:01 Sen. Hamlett asked Sen. Ankney why a company would spend money to expand a project when it might not get a permit. Sen. Ankney said there could be future value in overseas markets.

00:36:54 Sen. Hamlett asked Sen. Ankney about previous legislative testimony indicating the BTU of the coal being mined by Signal Peak Energy was at times higher than other coal being mined.

00:38:47 Sen. Hamlett asked if there was anyone present in the audience representing Signal Peak Energy that wanted to testify.

00:39:03 Sen. Hamlett asked Mr. Johnson if money will be paid for any future settlements. Mr. Johnson said this settlement marks the end of the legal proceeding.

00:41:20 Sen. Hamlett asked Mr. Johnson if he has any future advice for the WPIC in its oversight of the DEQ. Mr. Johnson said the committee should ensure groundwater is protected and the law enforced.

00:41:48 Sen. Hamlett asked Mr. Johnson about the 50-year standard and the accuracy of being able to sample water.

00:43:23 Sen. Hamlett asked Mr. Johnson if the low moisture content of Signal Peak coal is indicative of there not being a lot of groundwater. Mr. Johnson said there is a lot of groundwater in the mine, but the groundwater is not necessarily connected to the coal.

00:43:55 Sen. Hamlett asked Mr. Johnson if water has to be pumped out of the mine. Mr. Johnson said it does.

00:44:35 Sen. Hamlett asked Mr. Livers if DEQ is concerned that the mine will fill up with water. Mr. Livers said it would not have issued the permit if there were major concerns about groundwater.

00:45:26 Sen. Hamlett asked Mr. Livers if DEQ is satisfied with the permitting process. Mr. Livers said it is, but they could have done a better job communicating what was done.

00:46:30 Sen. Hamlett asked Mr. Livers if the DEQ can assess fees for services it provides when challenges to decisions it made were correct.

00:48:19 Sen. Hamlett asked Mr. Livers if the DEQ has a good working relationship with the Board of Environmental Review. Mr. Livers said it does.

00:48:41 Sen. Hamlett asked Mr. Livers if there have been any similar issues with permits issued in the past.

00:50:20 Sen. Hamlett asked Mr. Livers if there is 50-year data available for the DEQ when making decisions.

- 00:50:50 Sen. Vincent asked Mr. Livers if there are any policy considerations the WPIC needs to look at to help the DEQ explain its permitting process in the future. Mr. Livers said the department would look at its own processes.
- 00:52:40 Mr. Coleman said the DEQ does work with the Office of Surface Mining and Enforcement for help with technical assistance and oversight on its CHIA processes.
- 00:53:18 Sen. Hamlett asked Mr. Livers the number of years he feels is an adequate standard for the level of analysis. Mr. Livers said the level of analysis has been accepted in the past.
- 00:55:06 Sen. Hamlett asked John Metesh, director, Montana Bureau of Mines and Geology, if the Groundwater Investigation Program has done any monitoring in coal country and if there is any available data. Mr. Metesh said there is a coal program, but it has not done a groundwater investigation project in the Bull Mountain area.
- 00:56:19 Rep. Glimm asked Mr. Johnson if MEIC has any other ongoing objections with any other CHIAs. Mr. Johnson said it does with the Rosebud Mine.
- 00:56:50 Rep. Glimm asked Mr. Johnson if it is MEIC's intention to file an objection on every CHIA. Mr. Johnson said it is not.
- 00:57:25 Sen. Hamlett said the public should be able to know the amount of settlement costs that are incurred by the state. He said if any agency feels there needs to be a change in policy they need to bring it to the attention of the WPIC.

WATER RELATED RESEARCH

- 01:00:17 Wyatt Cross, director, Montana Water Center and associate professor, Department of Ecology, Montana State University, presented a PowerPoint presentation on the Montana Water Center. [\(Exhibit 2\)](#)
- 01:12:18 Ginette Abdo, program manager, Groundwater Investigation Program, Montana Bureau of Mines and Geology, presented a PowerPoint presentation on irrigation canals and their affect on groundwater and surface water. [\(Exhibit 3\)](#)

Public Comment: None

Committee Questions and Discussion:

- 01:39:35 Sen. Vincent asked Mr. Cross how the Montana Water Center can have better collaboration with other state agencies and help with the water planning process.
- 01:41:47 Rep. Z. Brown asked Mr. Cross how the Montana Water Center's work with the Montana climate assessment relates to the State Water Plan.
- 01:43:09 Rep. Z. Brown asked Ms. Abdo if there are any site specific examples on the timing of return flows and canal leakage.
- 01:45:47 Rep. Z. Brown asked Ms. Abdo about delivery efficiency.
- 01:47:44 Rep. Z. Brown asked Krista Lee Evans, Association of Gallatin Agricultural Irrigators (AGAI), why some canal companies have the economic incentive to line their ditches while others do not.

01:49:58 Rep. Z. Brown asked Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), if the agency is looking at setting up incentives for irrigators to switch back from pivot irrigation to flood irrigation for groundwater recharge and late season return flows. Mr. Davis said it is being considered as part of the State Water Plan.

01:52:41 Rep. Z. Brown asked Mr. Davis to give an example of how the agency would work with irrigators to go back to flood irrigation.

01:54:44 Rep. Williams said the Farm Bill is another funding resource to consider for conversion to sprinklers.

01:55:05 Rep. Williams asked Ms. Abdo about the grant program the Groundwater Investigation Program administers and the criteria used to rank and prioritize projects.

01:57:55 Rep. Williams asked Ms. Abdo if the legislation creating the groundwater program is specific enough to give them the guidance that they need.

01:58:55 Rep. Williams requested that Ms. Abdo ask the Groundwater Assessment Steering Committee if it needs more guidance from the WPIC.

01:59:20 Rep. Williams asked Mr. Cross if the Montana Water Center would consider reactivating an advisory committee.

02:01:03 Rep. Williams said an effective first step would be to look at what was done in the past.

02:01:13 Rep. Williams asked Mr. Cross about funding.

02:02:46 Rep. Williams asked Mr. Cross if funding provided for development expertise would be helpful.

02:04:11 Rep. Williams commented on the potential for the University of Montana and the Montana Water Center to become an important asset to other state agencies.

02:05:10 Rep. B. Brown asked Ms. Abdo if any water modeling studies have been done at 50% of flow in order to determine how much water can come out of the system before there is an adverse affect.

02:07:44 Ms. Abdo responded to Rep. Z. Brown's earlier question on return flows.

02:08:42 Rep. Z. Brown asked Ms. Abdo if the application review process, as one of the criteria for funding projects, takes into consideration implementation of the State Water Plan.

02:09:58 Rep. Z. Brown commented on the opportunity for the WPIC to help the Groundwater Investigation Program formalize the criteria used to prioritize projects through statute.

002:10:48 Sen. Hamlett asked Ms. Abdo if there is a potential for water banking to have an adverse affect on a canal company. Ms. Abdo said there is.

02:12:29 Sen. Hamlett asked Ms. Abdo about increased leakage from canals and if there is an increase in water being used that is not in the water right. Ms. Abdo referred the question to Mr. Davis.

02:13:31 Mr. Davis said the DNRC would analyze the change to mitigation and the potential that it could adversely affect someone else.

02:14:01 Sen. Hamlett asked if the DNRC could refuse the process. Mr. Davis said it can.

02:15:31 Sen. Hamlett asked Mr. Davis what happens when, as a result of developing inefficiencies, people farther down the system are unable to irrigate because there isn't enough flow.

- 02:17:52 Sen. Vincent said science needs to be considered when making policy decisions. He commented on the value of the Groundwater Investigation Program and why it needs to continue to be a priority.
- 02:21:01 Sen. Hamlett asked Sen. Vincent if the Groundwater Investigation Program should be statutorily funded. Sen. Vincent said he recommends a statutory appropriation with a sunset in place.
- 02:23:56 Sen. Vincent asked Mr. Metesh to give a history of the Groundwater Investigation Program and the resources available since 2009.
- 02:25:29 Sen. Hamlett asked Mr. Metesh if the Groundwater Investigation Program has ever been incorporated into the executive budget. Mr. Metesh said it has.
- 02:25:53 Rep. Z. Brown said the Montana Water Center and the Montana Climate Office should be included as valuable university based resources and prioritized in the budgeting process.
- 02:27:45 Sen. Hamlett asked Rep. Z. Brown about the involvement of the Board of Regents.

ADJUDICATION UPDATE

- 02:28:29 Mr. Davis, presented the adjudication report from the DNRC. **(Exhibit 4)**
- 02:30:47 Mr. Davis provided an update on giving notice for the exempt claim filing process.
- 02:32:03 Russ McElyea, chief water judge, Montana Water Court, presented the adjudication report from the Water Court. **(Exhibit 5)**
- 02:33:52 Mr. McElyea discussed the status on tribal compacts.

Public Comment:

- 02:34:51 Jay Weiner, assistant attorney general, State of Montana

Committee Questions and Discussion:

- 02:35:49 Rep. Williams asked Mr. McElyea about the problem issuing temporary preliminary decrees prior to Congressional approval of tribal compacts.
- 02:38:51 Rep. Williams asked John Carter, legal counsel, Confederated Salish and Kootenai Tribe (CSKT), to clarify the concern regarding issuing temporary decrees.
- 02:43:15 Rep. Williams asked Mr. Carter if it is helpful for Congress to have a deadline.
- 02:45:49 Sen. Hamlett said there is some discussion that Congress could adjourn early making it problematic for timely decisions.
- 02:46:32 Mr. Carter said tribal delegates are meeting with the three Montana congressional delegates and the U.S. Department of the Interior with proposals for legislation.
- 02:47:11 Rep. Williams asked Mr. McElyea if he would be opposed to extending deadlines.
- 02:50:17 Rep. Williams asked Mr. McElyea if there is another option for the Blackfeet Tribe situation.
- 02:51:53 Sen. Vincent thanked Mr. McElyea for sharing his decision making process with the WPIC.
- 02:54:09 Sen. Vincent asked Mr. Carter to explain the congressional process for ratifying tribal water right compacts.

- 03:00:17 Sen. Hamlett asked Mr. Carter if there a possibility that the compact could be attached to an omnibus bill.
- 03:00:52 Sen. Vincent asked Mr. McElyea what the Water Court would do if the compact is not approved by Congress. Mr. McElyea said the Water Court is improving its processes.
- 03:04:44 Mr. Weiner responded to comments made by Mr. McElyea and Mr. Carter and where the compacts are in the decree process.
- 03:10:32 Rep. B. Brown said the lawsuit filed against the state regarding the compact could affect implementation.
- 03:11:17 Sen. Hamlett said he understands the Water Court judge needs to treat everything that comes before the court equally. He said in order to change anything with priorities it will be up to the WPIC and the Legislature.

UPDATE ON PROCESS FOR ADJUDICATING TURTLE MOUNTAIN BAND ALLOTMENT WATER RIGHTS

- 03:12:14 Mr. Davis provided a list of the Turtle Mountain claims comparing them to the number of state trust lands in each county. **(Exhibit 6)**
- 03:14:38 Mr. Davis said the proposed procedures for adjudicating the claims should not provide a significant delay to the adjudication process. **(Exhibit 7)**
- 03:15:40 Mr. Weiner presented an update on the Attorney General's review of the Turtle Mountain claims.

Public Comment: None

Committee Questions and Discussion:

- 03:17:11 Sen. Vincent asked Mr. Weiner if there has been any discussion regarding the claim review process.
- 03:19:27 Sen. Vincent asked Mr. Weiner if the U.S. has the same ability as the tribe to appeal a ruling by the Water Court.
- 03:20:08 Rep. Williams asked Mr. Weiner what the priority date is for the claims.
- 03:21:14 Sen. Hamlett asked Mr. Davis what the total amount of acreage is for the allotment lands. Mr. Davis said he will provide the information.
- 03:22:08 Recess for lunch
- 04:09:14 Reconvene

FUTURE OF WATER COURT STUDY

- 04:09:35 Mr. Mohr presented a summary of the information provided to the WPIC. **(Exhibit 8)**

Input from Adjudication Advisory Committee

The following individuals presented their comments on the 2014 report by the Land Use and Natural Resources Clinic of the University of Montana School of Law on the future of the Water Court:

- 04:17:07 Mike Cusick, water law attorney, Moore, O'Connell, and Refling, member of the advisory committee

- 04:26:00 Tom Sheehy, member of the advisory committee ([Exhibit 9](#))
- 04:29:20 Jay Weiner, assistant attorney general, State of Montana, member of the advisory committee
- 04:35:06 Mr. McElyea responded to the comments received from the Adjudication Advisory Committee

Review of DNRC Permitting and Change Decisions

- 04:55:08 Mr. Davis, presented the DNRC permitting and change process. ([Exhibit 10](#))
- 05:01:07 Mr. Davis provided a copy of permit and change application processing timelines from 2005-2015. ([Exhibit 11](#))
- 05:06:37 Mr. McElyea said he did not have any additional comments.
- 05:07:10 Mr. Davis discussed the lookback period determinations.
- 05:09:40 Mr. Davis discussed the venue for appeals.

Final Decrees

- 05:11:49 Abigail St. Lawrence, attorney, Bloomquist Law Firm, discussed the accuracy of final decrees, enforcement of decrees, and timing of when the decrees are enforced.

District Courts and Enforcement

- 05:20:07 Loren Tucker, judge, 5th judicial district, presented his perspective and information on how a district court handles distribution disputes.
- 05:49:19 Ms. St. Lawrence gave an example from Eureka highlighting issues when utilizing water commissioners.

Public Comment:

- 05:53:41 Tim Schaff, Fishtail ([Exhibit 12](#))
- 06:05:14 Krista Lee Evans, Senior Water Rights Coalition
- 06:08:07 Renee Coppock, attorney, Crowley Fleck Attorneys

Committee Questions and Discussion:

- 06:13:22 Sen. Vincent asked Ms. St. Lawrence if a water commissioner was appointed in Eureka because of a request made by one water user.
- 06:14:56 Sen. Vincent asked Ms. St. Lawrence about a water commissioner's ability to defer an assessment. Ms. St. Lawrence referred the question to Mr. Tucker.
- 06:20:48 Sen. Vincent asked if notice of other water users in a hearing is required by statute. Mr. Tucker said there is little in the statutes that help a district court judge with procedure.
- 06:21:55 Rep. Williams asked Ms. St. Lawrence for her suggestions on ways to improve updating ownership information.
- 06:26:34 Rep. Williams asked Mr. Davis if the current administration of decrees prompts some water users to come to the DNRC for the change process.

06:28:15 Rep. Williams asked Mr. Davis about issues related to updating ownership information.

06:30:00 Rep. Williams asked Mr. Davis if there have been situations where someone might assert they were adversely affected by a change of use that happened in the past and how it is addressed.

06:33:11 Sen. Hamlett asked Mr. Davis if the DNRC still has an agreement with the Department of Revenue to notify them when parcels that have water rights are sold.

06:35:06 Sen. Hamlett asked Mr. Davis if someone changes from flood to sprinkler irrigation they do not have to go through the change application. Mr. Davis said they do not as long as they are staying within their historic place of use and do not change their point of diversion or purpose.

06:35:38 Sen. Hamlett asked Mr. Davis about someone who expands their historic place of use with pivot irrigation.

06:36:27 Rep. Glimm asked Mr. Davis if someone would need a permit to build a reservoir on their property. Mr. Davis said they would with one exception.

06:37:09 Rep. Glimm asked Mr. Davis how someone would permit a pond without giving them a water right that adversely affects the downstream users.

06:38:23 Rep. Glimm redirected his question to Mr. Schaff and asked what size pond his neighbor built.

06:40:00 Rep. Glimm redirected to Mr. Davis for clarification.

06:41:20 Rep. Z. Brown asked Mr. Tucker what should be done with the users that did not use the change process.

06:44:48 Rep. Z. Brown asked Mr. Tucker what would happen if district courts took on more enforcement and administrative responsibilities compared to consolidating those responsibilities with the Water Court.

06:49:39 Rep. Z. Brown redirected his question to Mr. McElyea and asked if district courts have the capacity to administer water rights.

06:54:37 Rep. B. Brown asked Mr. Davis the point at which the DNRC does site verifications on water rights.

07:00:04 Sen. Hamlett asked Mr. Cusick about a possible future role of the Water Court as an appellate court.

07:04:41 Sen. Hamlett asked Mr. Cusick about the general case load in district courts. Mr. Cusick said it varies by district and by the number of judges in each district.

07:06:06 Sen. Vincent said there is an interim study on district court caseloads.

07:06:45 Sen. Vincent asked Mr. McElyea how much time is spent on certification tabulations. Mr. McElyea said the Water Court handles six to seven certifications a year, and those take varying amounts of time.

07:09:02 Sen. Vincent asked Mr. McElyea how many cases there could be with the change process and the amount of time it would take.

07:12:47 Sen. Vincent asked Mr. McElyea how much time the Water Court spends working with the DNRC to get accurate ownership updates.

07:14:42 Sen. Vincent asked Mr. Tucker if he would be willing to provide the WPIC with his suggestions for moving forward. Mr. Tucker said he would.

07:17:06 Sen. Hamlett asked Mr. Tucker if there will be more water distribution cases once adjudication is complete.

07:21:12 Sen. Hamlett said the adjudication process now is a historical look at water rights filings.

07:21:55 Rep. Williams asked Mr. Tucker if the commissioner system is the right system for Montana.

07:26:34 Sen. Vincent asked Mr. Weiner about his comment that the Attorney General's Office should have resources in order to deal with issue remarks.

07:31:17 Sen. Vincent asked Ms. Evans for her opinion on the recommendation that a single user should be able to force appointment of a water commissioner, who a commissioner should work for, and about records coordination.

07:32:28 Ms. Evans discussed the appointment of a water commissioner.

07:33:05 Ms. Evans discussed who a water commissioner should work for.

07:33:53 Ms. Evans discussed ownership updates.

07:35:14 Sen. Vincent asked Mr. Davis if the ability to show damage is the threshold to appoint a water commissioner.

07:37:51 Sen. Vincent asked Mr. Davis if the DNRC can work with other entities involved in updating ownership records and bring recommendations for coordinating information back to the WPIC. Mr. Davis said the DNRC has been working on ownership updates. He said he can coordinate with Mr. Tucker and Mr. McElyea on recommendations for enforcement and distribution.

07:39:41 Mr. Davis said the DNRC is considering a pilot project on how to distribute water differently in the Tongue River.

07:41:03 Sen. Hamlett asked Mr. Schaff if he was ever worried about the appearance of the abandonment of his water right. Sen. Hamlett said the court challenge protects his water right.

07:43:01 Sen. Hamlett asked Ms. Coppock about how to address the cost of litigation.

07:44:53 Rep. Williams thanked Mr. McElyea for providing the WPIC's questions to the advisory committee.

07:45:55 Rep. Williams asked Mr. McElyea if information is documented about post-1973 patterns of use or things covered in a change. Mr. McElyea said it is, if it is an abandonment issue.

07:50:08 Rep. Williams asked Mr. McElyea how many water masters there are. Mr. McElyea said there are currently 11.

07:51:01 Rep. Williams asked Mr. McElyea about suggestions made by the advisory committee for regionalizing the Water Court, and what the options are.

07:53:59 Rep. Williams asked Mr. McElyea if the water masters are specialized by basin.

07:55:11 Rep. Williams asked Mr. McElyea if both parties will have to agree if litigants choose their own venue.

07:57:23 Rep. Williams asked Mr. McElyea when decrees should become enforceable.

07:59:42 Rep. Williams asked Mr. McElyea to provide his suggestions on enforceability. Mr. McElyea offered to schedule a meeting with all interested parties and bring a set of proposals to the WPIC for consideration.

08:02:08 Sen. Hamlett said there needs to be more ideas and information that can be used to draft into legislation.

08:02:26 Rep. Williams said the meeting should also include an invitation to the members of the WPIC and the suggestions made today.

08:02:57 Mr. McElyea said he would like the WPIC staff to participate in the meeting.

08:03:41 Rep. Williams asked Mr. McElyea if a case is certified through to the water court if some authority can be certified as well. Mr. McElyea said it can be.

Direction to Staff

- 08:07:13 Sen. Hamlett opened discussion on next steps.
- 08:07:44 Sen. Vincent said the WPIC should consider solutions to update ownership processes, the time gap and look back period on decrees, learn more about the living decrees process, the existing process of the advisory committee, potential options on an appeals venue, inequities in the enforcement of decrees, and creating uniform instructions for water commissioners.
- 08:10:33 Rep. Z. Brown agreed with Sen. Vincent's suggestions. He said he would be interested in participating in a meeting regarding potential legislation.
- 08:12:19 Sen. Vincent asked Helen Thigpen, staff attorney, Legislative Services Division, to look into and provide information on the time gap issue.
- 08:12:41 Rep. Williams said there are uniform instructions for water commissioners and there needs to be uniform instructions for district court judges. Sen. Vincent said updates are needed in the existing code.
- 08:14:06 Rep. Williams said there is an information gap for judges and recommended potential improvements to the annual water commissioner training to include judges from the Water Court. She recommended that staff include a documentation of authority. She said if the WPIC does travel for a meeting it should look at where commissioners are located so they can attend and provide their perspectives. She said she would be interested in participating in the meeting discussed by Mr. McElyea and said there should be a minority report.
- 08:16:58 Rep. B. Brown said it is important to consider what can be accomplished in the interim.
- 08:17:42 Rep. Glimm discussed the authority of the water court.
- 08:18:17 Rep. Z. Brown recommended including who water commissioners work for.
- 08:18:53 Rep. Williams recommended that Mr. McElyea discuss the proposal for regionalizing the Water Court and how it would happen.
- 08:19:41 Mr. Mohr summarized the recommendations.
- 08:20:43 Sen. Vincent commented on the appeals venue.
- 08:21:04 Mr. Mohr continued with his summary of the recommendations.
- 08:22:38 Rep. Williams clarified the concept of regionalizing water courts and the need to document related authorities.
- 08:23:40 Sen. Hamlett asked if there was any public comment. He said the legal staff needs to look at existing law to avoid any conflicts.

AGENCY ADMINISTRATIVE RULE UPDATE

- 08:24:58 Ms. Thigpen, presented the rule review update. [\(Exhibit 13\)](#)
- 08:25:26 Ms. Thigpen discussed the rule notice establishing a controlled groundwater area in East Helena. [\(Exhibit 14\)](#)
- 08:26:51 Ms. Thigpen discussed the rule notice establishing a stream depletion zone.

Committee Questions and Discussion: None

Public Comment: None

ADMINISTRATIVE MATTERS

Budget overview

- 08:28:58 Mr. Mohr gave an overview of the WPIC budget.
08:30:26 Mr. Mohr discussed the timeline for drafting committee legislation.

Public comment: None

Committee Discussion on Changing Location and Adding an Additional WPIC Meeting:

- 08:31:51 Sen. Vincent said the WPIC can ask Legislative Council if there is any contingency money available for adding an additional meeting. He said he supports moving a meeting to another location if there is something that can be gained from it.
- 08:33:48 Rep. Williams said the WPIC can use the City of Bozeman as a case study in water availability and supply.
- 08:35:40 Rep. B. Brown said he supports changing the location of a meeting if there is value in doing so.
- 08:36:47 Rep. Glimm said he agreed.
- 08:36:54 Sen. Hamlett said changing locations offers a chance for more public involvement. He said he recommends waiting until after the next WPIC meeting to decide whether to change a meeting location. He asked staff to determine the cost.
- 08:39:58 Sen. Vincent said he agreed in waiting until after the next meeting to make a decision. He asked about next steps on the water availability study. Sen. Hamlett said the WPIC needs to decide that now.
- 08:40:46 Rep. B. Brown said travel will be valuable if it helps accomplish a goal of the interim. He asked if state assumption of the 404 permitting program will be discussed at a future meeting.
- 08:41:43 Mr. Mohr said the next step for state assumption of the 404 permitting program will be to bring in the state agencies that will be affected and the stakeholders.
- 08:42:19 Sen. Hamlett requested that the Attorney General's Office also participate.
- 08:42:52 Rep. Z. Brown said he can help staff facilitate a meeting in Bozeman. He said there are resources available in Bozeman that can help with several studies the WPIC is working on.

Committee Discussion on State Assumption of Section 404 Permitting Program:

- 08:44:34 Sen. Hamlett asked for comments.
- 08:45:05 Rep. Williams said the Montana Wetland Council can be included as part of the stakeholder group. She requested that the WPIC keep informed of any litigation updates from North Dakota on "Waters of the U.S."
- 08:46:34 Sen. Vincent requested staff forward the information offered by other agencies once it is received, get input from stakeholders, and determine the costs involved in state assumption of the 404 permitting program in order to have guideposts for others to look at.
- 08:48:33 Sen. Vincent asked if the WPIC is getting close to using the time allotted in the work plan for the 404 study. Mr. Mohr said it is on schedule.
- 08:48:53 Sen. Hamlett requested copies of the maps showing wetlands in Montana and irrigation ditches in the state.

08:49:54 Rep. B. Brown said he would like information on federal grants available.
08:50:44 Rep. Glimm said he would like to get the Attorney General's opinion on whether the state would only have to comply with the Clean Water Act and not any additional rules by the EPA or the Army Corp of Engineers.
08:51:42 Sen. Vincent said if the rule is implemented it will be faster for an applicant to only deal with the state. He said the cost may be prohibitive for the state to assume the program.
08:54:49 Rep. Williams said some of the federal grant money was being used to fund the state's Wetland Program. She requested the WPIC receive information when the Nationwide Permit Program update is posted in the federal register.

Committee Discussion on Water Availability and Supply:

08:56:01 Mr. Mohr said he will schedule a discussion on gray water and irrigation efficiency at the meeting in March. He asked for direction on the case studies.
08:56:35 Rep. Williams said she would like to pursue the City of Bozeman for a case study.
08:58:19 Sen. Vincent said the WPIC may want to look at the issue of aging infrastructure.
09:00:12 Sen. Hamlett said there is a problem with infrastructure in terms of water and wastewater. He said he also wants to look at water conservation.
09:01:30 Sen. Vincent recommended the WPIC have someone discuss the status of municipal water supply and infrastructure in the state.
09:01:51 Sen. Hamlett discussed public perception and the need to find out exactly how much water is being used from individual wells. He asked about SB 330 (2015) and when the review of state water reservations will be discussed. Mr. Mohr said the report from the DNRC is due out in the summer.
09:02:50 Mr. Mohr said future issues for this study will be how Bozeman plans to drill wells and mitigate for future water supply plans and aging municipal water supply structure statewide.
09:03:13 Sen. Hamlett commented on innovative ways that are being used to supply water.
09:03:59 Rep. Z. Brown recommended asking the DNRC for their plans to modernize water storage infrastructure. He said drought has a big effect on future water supply concerns. He commented on drought plans.
09:06:52 Sen. Hamlett commented on irrigation ditches.
09:07:27 Rep. Williams said the case study should be broad in focus.
09:08:43 Sen. Hamlett said the city of Bozeman has a watershed that impacts its availability of water.
09:08:57 Rep. B. Brown said leakage is a problem in any small water system and infiltration is always a problem with wastewater.

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

None

INSTRUCTIONS TO STAFF

09:10:14 Sen. Hamlett advised the WPIC to contact staff with any questions.

ADJOURN

09:10:35 Sen. Hamlett adjourned the meeting at 5:33 p.m.

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