



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

September 3, 2015
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.

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 Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

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

SEN. JENNIFER FIELDER
SEN. CHAS VINCENT

REP. ZACH BROWN
REP. KATHLEEN WILLIAMS

COMMITTEE MEMBERS EXCUSED

REP. BOB BROWN
SEN. SHARON STEWART-PEREGOY

STAFF PRESENT

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

AGENDA AND VISITORS' LIST

Agenda, [Attachment 1](#).
Visitor's List, [Attachment 2](#).

COMMITTEE ACTIONS

- The Water Policy Interim Committee adopted the 2015-16 interim work plan.

CALL TO ORDER AND ROLL CALL

- 00:00:01 Sen. Hamlett called the meeting to order at 9:01 a.m. The secretary noted the roll, [Attachment 3](#).
- 00:00:09 Sen. Hamlett said the WPIC will discuss the work plan at the end of the day during other business.

PROGRAM EVALUATION: WATER PROTECTION BUREAU (DEQ)

- 00:00:45 Jason Mohr, research analyst, Legislative Services Division (LSD), said the WPIC is required by statute to conduct program evaluations for the agencies under its oversight. He presented a summary of the Water Protection Bureau, Department of Environmental Quality (DEQ), the first of the four program evaluations, [Exhibit 1](#).
- 00:05:56 George Mathieus, deputy director, DEQ, presented an overview of the changes that have been made in the agency that impact the Water Protection Bureau.
- 00:09:04 Jon Kenning, bureau chief, Water Protection Bureau, DEQ, said the bureau is taking a proactive customer service approach in working with stakeholders.
- 00:10:02 Kari Smith, policy advisor, Planning, Prevention, and Assistance Division, DEQ, introduced herself and explained her responsibilities.
- 00:10:36 Christian Schmidt, administrator, Planning, Prevention, and Assistance Division, DEQ, introduced himself and explained his responsibilities.

Public comment: None

Committee questions and discussion:

- 00:11:20 Sen. Fielder said she likes the direction the bureau is heading and asked where the bulk of its funds are spent. Mr. Mathieus said the funds are primarily spent to develop permits.
- 00:12:36 Sen. Fielder asked if the bureau does any subcontracting. Mr. Mathieus said he did not know.
- 00:13:35 Sen. Vincent asked if the bureau has looked at how the Alaska Department of Environmental Conservation (DEC) structures its fees. Mr. Mathieus said it has not, but it is looking across the agency to see how it can optimize and become more effective.
- 00:16:06 Rep. Williams asked where in statute guidance is given on what program evaluation means. Mr. Mohr said it is not well defined.
- 00:19:19 Sen. Fielder asked about a 1994 performance audit that recommended changes to the Water Quality Division. Ms. Smith said the audit came during the reorganization and creation of DEQ.
- 00:21:43 Sen. Hamlett asked Sen. Vincent what he thought Alaska DEC does that has value for the state of Montana. Sen. Vincent said its operators or applicants pay for their own compliance and enforcement.
- 00:24:16 Rep. Williams said 5-5-215(c), MCA, is the statute related to oversight, program overview, and duties of interim committees.
- 00:25:54 Sen. Vincent provided information on how Alaska DEC structures its MEPA process.

Public comment:

- 00:28:12 Tammy Johnson, executive director, Montana Mining Association

Committee questions and discussion continued:

- 00:33:55 Rep. Z. Brown asked Mr. Mathieus about the agency's relationship with the EPA for setting numeric water quality standards.
- 00:36:17 Rep. Z. Brown asked Mr. Mathieus if the process is ongoing and if there is an expected date when the two will come to an agreement on the standards.
- 00:37:36 Rep. Williams asked Mr. Mathieus to respond to the comments made by Ms. Johnson concerning consistency and predictability within the permitting process and keeping communication open. Mr. Mathieus said the agency has become more involved and engaged.
- 00:39:42 Sen. Fielder asked if the agency has protocols in place to ensure that the interpretation of the rules are consistent. Mr. Mathieus said the agency is working on putting together its policies and procedures.
- 00:41:45 Sen. Hamlett asked about moss and algae in rivers and if that is a water quality issue. Mr. Mathieus said it is.
- 00:44:46 Sen. Hamlett asked if storm water runoff is also part of the problem. Mr. Mathieus said there are several sources of pollution that contribute to the problem.
- 00:46:44 Sen. Hamlett asked if the agency monitors storm water discharge. Mr. Mathieus said it does.

00:47:13 Sen. Hamlett asked if it is done on a year-round basis. Mr. Mathieus said it is monitored frequently.

00:48:24 Sen. Hamlett said there is a benefit for the state to monitor discharges and asked Mr. Mathieus if that could be part of the solution for municipalities instead of returning the discharges back into the river.

00:51:28 Sen. Hamlett asked about pharmaceuticals passing into waterways. Mr. Mathieus said it is an issue.

00:53:25 Sen. Hamlett discussed the effect pharmaceuticals are having on fish.

00:54:14 Rep. Williams said studies have shown that pharmaceuticals are showing up in well water. She asked Mr. Mathieus if he is aware of a rule proposed by the EPA that would prohibit pharmacies and hospitals from flushing pharmaceuticals into their water system and if Montana should consider a similar rule. Mr. Mathieus said he is not aware of the proposal, but said he will look into it. Rep. Williams requested that the WPIC be kept informed.

00:57:31 Sen. Hamlett suggested doing public service announcements discouraging flushing of unused pharmaceuticals.

00:58:09 Sen. Hamlett asked Mr. Mathieus about the affect of wildfire on waterways.

01:01:11 Sen. Vincent said a bill was passed in 2013 that changed where septic systems and wells can be located. He asked if it is having a positive effect.

01:02:18 Sen. Fielder said the bill required a well head not be located within 100 feet of a drain field. She asked if there can be an investigation to determine if the number should be adjusted to ensure the aquifer is not being polluted with sewage.

01:03:28 Sen. Hamlett asked if invasive species affect water quality. Mr. Mathieus said they can be detrimental to water quality.

CLARK FORK RIVER BASIN TASK FORCE UPDATE (85-2-350, MCA)

01:05:50 Mr. Mohr said the task force will meet later in September and discussed its duties.

01:06:57 Sen. Hamlett asked if the task force is required to meet each year or just once a biennium. Mr. Mohr said it meets annually.

01:07:12 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), said the task force served as the advisory council for the Kootenai river basin and Clark Fork river basin when the state was developing the water plan. He provided a copy of the 2014 Clark Fork and Kootenai River Basin Water Plan report, [Exhibit 2](#).

01:08:17 Rep. Williams asked for a written update from the task force. Mr. Mohr said he will look into it.

01:08:41 Sen. Hamlett said the task force has been busy, but it has not met for its annual meeting. Mr. Davis said the WPIC will be able to receive an update in October.

01:09:24 Sen. Fielder said meeting schedules should be coordinated so the WPIC has an opportunity to read the task force report and ask questions at its meeting.

01:09:39 Sen. Hamlett agreed and asked staff to coordinate meeting schedules in the future.

01:10:54 Recess

01:23:44 Reconvene

SJ2 STUDY: STATE ASSUMPTION OF FEDERAL SECTION 404 PERMITTING PROGRAM

01:24:25 Mr. Mohr presented an introduction to the SJ2 study on whether Montana has the ability and authority to take over the Section 404 permitting program.

Regulatory program overview

01:25:46 Todd Tillinger, state program manager, Helena Regulatory Office, U.S. Army Corps of Engineers, gave a PowerPoint presentation on the current 404 permitting program, provided a budget and staffing background, and presented information on what Section 404 is and what it means to administer the program, [Exhibit 3](#).

01:27:57 Mr. Tillinger provided a copy of a *Guide to Stream Permitting in Montana*, [Exhibit 4](#).

How dredging, filling affects waterways

02:00:25 Karin Boyd, Applied Geomorphology Inc., presented a summary of the implications of wetland fill in streams and rivers, [Exhibit 5](#).

Definition of "waters of the United States"

02:17:33 Mr. Mohr said he is standing in for the EPA experts who wrote the rule since they declined an invitation to attend the meeting.

02:18:15 Helen Thigpen, staff attorney, LSD, discussed an update to the EPA rule defining what constitutes a navigable river for purposes of Clean Water Act jurisdiction.

02:22:37 Mr. Mohr presented information on the Clean Water Rule.

02:22:51 Mr. Mohr discussed the definition of the rule, [Exhibit 6](#).

02:24:29 Mr. Mohr discussed the fact sheet from the EPA, [Exhibit 7](#).

02:28:04 Mr. Mohr discussed the practical implications of the rule.

02:30:17 Mr. Mohr discussed next steps.

02:31:11 Alan Joscelyn, chief deputy attorney general, Attorney General's Office, presented background information on the new rule proposal.

02:37:23 Mr. Joscelyn discussed what the rule does.

02:39:42 Mr. Joscelyn discussed what the rule means to the state of Montana.

02:44:03 Mr. Joscelyn discussed the lawsuit that challenges the EPA's authority to adopt the rule.

02:49:57 Guy Alsentzer, executive director, Upper Missouri Waterkeeper, Inc. (UMW), presented information on the need for legal clarity on what types of waters are protected from harm under the federal law and why that is relevant to Montana. He discussed several key changes made to the final published rule.

Public comment:

03:07:24 Jeff Tiberi, Montana Association of Conservation Districts
03:10:35 Mr. Tillinger said he wanted to clarify comments that he made regarding the definition of "Waters of the U.S.," and speak to the district issues mentioned by Mr. Tiberi.

Committee questions and discussion:

03:12:39 Sen. Fielder asked about exemptions under the current rule for existing farms and if new farms will also be exempt. Mr. Tillinger said new farming operations that bring new areas into production are required to get a permit if it is being done in aquatic areas or "Waters of the U.S."

03:14:48 Sen. Fielder asked Mr. Tillinger to explain why some normal farming activities are exempt and others are not.

03:16:03 Sen. Vincent asked about exemptions for an EA or EIS on an action for dredge and fill and if there is a threshold. Mr. Tillinger said most nationwide permits limit the adverse impact to "Waters of the U. S." to one-half acre or less.

03:18:10 Sen. Vincent asked Mr. Tillinger about the process for larger projects.

03:19:30 Sen. Vincent asked Mr. Tillinger to describe mitigation alternatives for an applicant.

03:22:51 Sen. Vincent asked if the Corp is looking at an applicant-driven fee structure to help pay for costs associated with jurisdictional determination. Mr. Tillinger said the fees charged by the Corp is limited in statute. Sen. Vincent said that is a gap that may need to be addressed by Congress.

03:26:57 Sen. Vincent said under the Clean Water Act the EPA has veto authority over the Corps' final decision and asked how many times it has vetoed projects in the last six years. Mr. Tillinger said the EPA has not vetoed a project in Montana for any project the Corp has issued a permit for.

03:29:22 Sen. Vincent asked how many total miles have been armored on the Yellowstone River. Ms. Boyd said 126 miles between Gardiner and the mouth of the river have been armored.

03:29:43 Sen. Vincent said of the 126 miles, four miles have failed. Ms. Boyd said it was from 2001 and 2011.

03:30:22 Sen. Vincent asked Ms. Boyd about trench armor.

03:30:52 Sen. Vincent asked which part of the Clean Water Act indicates whether or not the appellate court or the district court has jurisdiction. Mr. Joscelyn said he did not know, but will find out.

03:32:01 Sen. Vincent asked if it is an equal footing doctrine. Mr. Joscelyn said he did not think so.

03:33:41 Sen. Vincent asked Mr. Alsentzer how far UMW thinks the Clean Water Rule should go.

03:37:18 Sen. Vincent asked what the position of the UMW is on the state's assumption of the dredge and fill program. Mr. Alsentzer said it does not support state assumption of the program.

03:39:19 Sen. Vincent asked if its argument is purely fiscal. Mr. Alsentzer said it is not.

03:40:14 Sen. Vincent asked Mr. Alsentzer about the reason UMW feels the federal government is better suited to implement any type of dredge and fill program.

03:42:01 Sen. Fielder asked if it is UMW's position that science shows a significant nexus and the EPA rule does not go far enough in protecting waters that have a nexus. Mr. Alsentzer said the EPA rule does not rely upon the scientific documents.

03:43:24 Sen. Fielder asked Mr. Alsentzer about the scientific reports.

03:46:24 Rep. Glimm asked Mr. Joscelyn how the new rule applies to the creation of a wetland from a ditch.

03:48:08 Rep. Z. Brown said armored banks can push erosion affects downstream and asked Ms. Boyd if the permitting process considers the impact to property downstream.

03:50:07 Sen. Hamlett presented his reason for bringing the study resolution.

03:53:21 Sen. Hamlett asked Mr. Joscelyn about the legislative process as it relates to the rule.

03:57:46 Recess

05:03:29 Reconvene

Committee questions and discussion continued:

05:03:49 Rep. Williams asked how successful the Corp program is in avoidance and what percentage of its contacts are able to have potential impacts avoided. Mr. Tillinger said the Corps is successful, but he will need to get back to the WPIC on its percentage amount.

05:09:13 Rep. Williams said if the state assumes the 404 permitting program the majority of what the state will take on will be avoidance and minimization rather than permitting. Mr. Tillinger said the general nationwide permit program comprises the bulk of the workload in Montana and across the country.

05:10:56 Rep. Williams asked if farming activities that are not exempt are farming activities in waters. Mr. Tillinger said they are.

05:12:55 Rep. Williams asked if the Corps currently uses bed, banks, and ordinary high water marks to determine jurisdictional extent. Mr. Tillinger said it does.

05:13:45 Rep. Williams said the Corps currently does not exclude intermittent or ephemeral waterways from jurisdiction. Mr. Tillinger said if a tributary is found to have a significant nexus to interstate commerce then it will become a jurisdictional tributary.

05:14:21 Rep. Williams asked since the rule will clarify significant nexus it will reduce the time and workload in determining what is jurisdictional. Mr. Tillinger said he cannot comment.

05:15:28 Rep. Williams asked if the SWANCC decision was solely about using migratory bird presence as an assertion of jurisdiction. Mr. Tillinger said it was.

05:17:33 Rep. Williams asked Mr. Tillinger to explain the jurisdictional aspect of artificial wetlands.

05:18:50 Rep. Williams asked if the Corps has had any discussions about the relationship of federal jurisdiction to states and what affect changes might have to overall protection. Mr. Tillinger said he did not know.

05:20:45 Rep. Williams referred to a court case in Louisiana against the Corps regarding levy failures and asked if there are liability aspects that case or others might have that Montana needs to be aware of as it takes over the program. Mr. Tillinger said he cannot comment on any litigation, but said he is not aware of any. Rep. Williams said it should be tracked.

05:22:59 Rep. Williams asked Mr. Mathieus for a summary of Montana's wetland program including what its objectives are, where its limits are, and what its focus is.

05:25:53 Sen. Hamlett asked what the definition of "other waters" means. Mr. Davis said he did not know.

05:27:06 Sen. Hamlett asked Mr. Tillinger what the definition of "other waters" means.

05:28:25 Sen. Hamlett asked if "other waters" can include ephemeral and intermittent waters. Mr. Tillinger said it can.

05:29:15 Sen. Hamlett asked if fishing is significant in determination of interstate commerce. Mr. Tillinger said it can be an indicator of interstate use.

05:30:03 Sen. Fielder said the new rule affects farming due to runoff of pollutants and discharge from fields.

05:31:12 Rep. Williams said point source pollution is the nexus for the Clean Water Act permitting, and that non-point source pollution from farms is not subject to permits now and will not be subject to permits in the future. Mr. Tillinger said the 404 permitting program administered by the Corp deals exclusively with the discharge of dredge or fill material.

05:32:44 Rep. Williams redirected her question to Mr. Mathieus and asked if non-point source pollution is not regulated under discharge permits it would not be regulated under the new rule. Mr. Mathieus agreed.

05:33:36 Sen. Fielder asked about exemptions for new farming, ranching, and agriculture practices under the new rule. Mr. Mathieus said he did not know.

05:35:17 Sen. Hamlett said the EPA is doing legislation and how an executive agency is going to change the law by rule, and the only way that can be changed is by an act of Congress or court action. He instructed the WPIC to direct its questions to staff.

LETTER OF SUPPORT FOR S.338 (LAND AND WATER CONSERVATION FUND)

05:37:33 Sen. Hamlett opened discussion on S.338, [Exhibit 8](#).

05:37:54 Mr. Mohr presented information on S.338 which makes the Land and Water Conservation Fund permanent. He said he drafted a letter of support and provided a fact sheet, [Exhibit 9](#).

05:39:17 Sen. Hamlett said Congressman Zinke has proposed several projects for Montana.

Committee questions and discussion:

05:39:43 Rep. Z. Brown asked if the discussion is on whether or not the WPIC should sign a letter of support. Sen. Hamlett said it is. Rep. Z. Brown said both Congressman Tester and Daines are co-sponsors of the bill. He said he supports the bill.

05:40:40 Sen. Fielder said she has used some of the grant resources for projects in the past, but said she is concerned because a lot of the money is used to buy land in the state and turn it over to the federal government for control.

05:42:04 Sen. Hamlett said most of the money is for conservation easements which, do not change ownership.

05:42:27 Sen. Vincent said there are good merits to the fund, but he does not support the bill without reform.

05:46:11 Sen. Hamlett asked if any of the projects proposed by Congressman Zinke are in Sen. Vincent's district. Sen. Vincent said they are not.

05:46:42 Rep. Williams asked if S.338 is to permanently re-authorize the funds or if the letter supports eliminating the fund. Mr. Mohr said S.338 is for permanent re-authorization.

05:47:34 Rep. Z. Brown said royalties from oil and gas projects goes to mitigate impacts. He said the committee should support Montana's Congressional delegates.

05:49:40 Sen. Fielder said she is concerned that land ownership is being taken off the tax base without consent from people in the state.

05:52:46 Rep. Glimm said it is time to make suggestions for making it better.

05:53:35 Sen. Vincent said it is a great use of resources, but the grants in the fund will be used to acquire land and take it away from the tax base.

05:56:25 Rep. Williams said the draft needs to be modified to address the concerns of the WPIC. She said she supports the way the funds have been used in Montana.

05:57:25 Sen. Hamlett said most of the projects are in different parts of the state and that access is one of the biggest issues of the legislature. He said a letter can be sent supporting the fund in theory, but emphasis should be on conservation easements to keep land under private ownership.

05:58:46 Sen. Vincent said he supports the letter if it is amended to include local input on how funds are used in Montana.

06:02:16 Mr. Mohr presented his suggestions amending the letter.

06:03:07 Sen. Hamlett said it should include the mention of the counties in the state that have a high proportion of federal land.

06:03:16 Rep. Z. Brown said he did not support taking out mention of S.338.

06:04:15 Sen. Vincent said he did not support making the fund permanent without making some reforms.

06:05:26 Sen. Fielder commented on local input and local consent.

06:08:27 **Motion:** Rep. Z. Brown moved to not send a letter of support.

Discussion:

06:08:43 Sen. Hamlett said there is only one opportunity to send a letter from the WPIC. He said he supports the letter with some changes.

06:11:07 Sen. Vincent said the letter can be amended by the WPIC and approved later by conference call. Sen. Hamlett agreed.

06:12:38 Rep. Z. Brown withdrew his motion.

06:13:26 Sen. Hamlett asked if the letter needs to have unanimous approval by the WPIC. Mr. Mohr said it can be approved by majority vote.

06:13:44 Rep. Williams proposed leaving reference to the bills in the letter and presented her changes to the letter.

- 06:14:54 Sen. Hamlett said he supports Sen. Vincent making changes to the letter for the WPIC to review.
- 06:15:23 Rep. Williams said many urban park projects rely on some of the funds.
- 06:16:13 Sen. Hamlett instructed Sen. Vincent to move forward with revisions to the draft letter.

TEMPORARY LEASING REPORT (85-1-203, MCA)

- 06:16:30 Mr. Davis presented the annual temporary leasing report.

Committee questions and discussion:

- 06:18:32 Rep. Williams asked about the beneficial purpose of water marketing. Mr. Davis said water marketing can be done for another beneficial use.

STUDY OF WATER AVAILABILITY AND SUPPLY

Update on implementation of State Water Plan (85-1-203, MCA)

- 06:19:42 Mr. Davis presented the executive summary of the state water plan, [Exhibit 10](#), the short term recommendations in the state water plan, [Exhibit 11](#), and information on the surface water monitoring program implementing one of the recommendations in the state water plan, [Exhibit 12](#).
- 06:23:55 John Metesh, director, Montana Bureau of Mines and Geology (MBMG), presented information on the surface water monitoring program.

Committee questions and discussion:

- 06:26:15 Sen. Vincent asked if the MBMG received any funding to make the surface water data available. Mr. Metesh said it did not.
- 06:26:57 Sen. Vincent asked what kind of data MBMG is getting for the surface water monitoring program. Mr. Metesh said it is getting stage stream flow information, as well as water temperature and specific conductivity.
- 06:27:55 Sen. Vincent asked Mr. Davis when the short-term recommendation to complete all outstanding tribal and federal compacts is implemented will the DNRC determine if Turtle Mountain will be a treaty or a compact.

Development of Water Quality Standards: Report on Ammonia and Nutrient Standards for Lagoons

- 06:30:11 Eric Urban, bureau chief, Water Quality Standards Section, DEQ, presented the report on ammonia and nutrient standards for lagoons.
- 06:31:47 Mr. Urban discussed the known sources of ammonia.
- 06:35:05 Mr. Urban discussed difficulties with regulatory compliance of ammonia standards for small communities, [Exhibit 13](#).

Committee questions and discussion:

- 06:47:34 Rep. Z. Brown asked if the agency expects the EPA to give it flexibility in making localized standards for different streams and if there is precedent. Mr. Urban said the EPA has agreed to the concept, and it is the recommended approach.
- 06:48:09 Sen. Hamlett left the meeting. Rep. Glimm took over as chair.
- 06:48:19 Rep. Z. Brown asked if there is any other legislation regarding standards besides SB 97 (2015). Mr. Urban said there is not.
- 06:48:49 Sen. Vincent asked if re-calculating ammonia criteria for specific, naturally occurring aquatic life begins the review of the stream classification process. Mr. Urban said it does.
- 06:50:02 Sen. Vincent asked Mr. Urban about the collection of datasets.
- 06:50:24 Sen. Hamlett returned to the meeting and resumed the chair.
- 06:51:38 Sen. Vincent asked Mr. Urban what other total retention systems are being considered.
- 06:52:54 Sen. Vincent asked Mr. Urban what adjustments were done in order for the mechanical systems to handle the ammonia standard.
- 06:53:42 Rep. Williams asked if there is data available on whether mussels or early fish life stages occurred in Montana waters. Mr. Urban said there is, but it is not comprehensive.

Update on Legal Status of Exempt Well

- 06:56:27 Mr. Mohr presented the 2011-12 WPIC report on exempt wells, [Exhibit 14](#).
- 06:56:56 Ms. Thigpen presented the district courts order on exempt wells.
- 06:58:03 Ms. Thigpen discussed background information on the rule defining combined appropriation.
- 07:02:20 Ms. Thigpen discussed Judge Sherlock's opinion on *Clark Fork Coalition v. DNRC*, [Exhibit 15](#).
- 07:06:09 Mr. Davis presented the DNRC's guidance document on exempt wells, [Exhibit 16](#).
- 07:09:16 Dustin Stewart, executive director, Montana Building Industry Association, presented information on the lot availability issue and how the exempt well case is impacting subdivision development in Montana, [Exhibit 17](#).
- 07:14:50 Barbara Chilcott, legal director, Clark Fork Coalition, presented information on why it filed the petition.
- 07:16:45 Ms. Chilcott provided information on a water bank west of Missoula as an example of a successful option for new residential development that protects senior water rights, [Exhibit 18](#).

Public comment:

- 07:17:45 Abigail St. Lawrence, Montana Association of Realtors, [Exhibit 19](#).
07:21:36 Ronda Wiggers, Montana Water Well Drillers Association, [Exhibit 20](#).
07:26:07 Erica Wirtala, Northwest Montana Association of Relators

Committee questions and discussion

- 07:33:41 Rep. Glimm asked if all parcels created before HB 168 (2015) can still drill an exempt well. Mr. Davis said any project, development, or subdivision that was in existence or had submitted a subdivision application and fee prior to October 17, 2014 are subject to the old rule.
- 07:36:13 Rep. Glimm asked Mr. Davis if the rule applies to all parcels of land not just subdivision lots.
- 07:37:59 Rep. Glimm asked if the DNRC is allowing people to come in and change 602 permits to adjust quantities. Mr. Davis said it is and the form, request for reduction of 602 permit, is available on the DNRC website.
- 07:39:44 Rep. Glimm asked Mr. Davis what the DNRC is seeing in the quantity of lots. Mr. Davis said he will be able to provide more information at the January meeting.
- 07:42:53 Rep. Glimm asked about the permit process. Mr. Davis said the DNRC has gone through a series of reforms and is continuing to work on improving the permit process.
- 07:44:36 Sen. Fielder asked about public comments regarding updates to the guidance document to reflect HB 168. Mr. Davis said the agency is working on an updated version.
- 07:45:05 Sen. Fielder asked why the DNRC did not appeal the decision regarding legal fees. Mr. Davis said it fought the entitlement of attorney fees to the Clark Fork Coalition, but lost in district court.
- 07:45:55 Sen. Fielder asked why the DNRC filed for a stay instead of an appeal. Mr. Davis said it cannot file an appeal until the attorney fee issue is resolved in district court.
- 07:47:26 Sen. Fielder asked how much the DNRC spent on attorney fees in relation to other agencies. Mr. Davis said he did not know.
- 07:47:59 Sen. Vincent asked if someone can file a 602 form to reduce their exempt well from 10 acre feet to 2.5 acre feet and market the excess to a water bank. Mr. Davis said they can.
- 07:49:39 Sen. Vincent asked if there should be an internal timeline for the application process. Mr. Davis said the agency does have an internal timeline.
- 07:51:01 Sen. Vincent asked if there can be an internal evaluation into how often the timeline is met. Mr. Davis said the agency does look at it regularly.
- 07:52:28 Sen. Vincent commented on the availability to gather information to make the application process easier.
- 07:54:17 Rep. Williams asked about the comment made by Ms. Wirtala about the stall in development in her area and if it is related to a lack of information. Mr. Davis said there are a couple issues related to the area.
- 07:58:03 Rep. Williams asked Mr. Davis if the current status fosters clustering and setting aside large open spaces.

- 07:59:15 Rep. Williams said the WPIC is interested in the intermediate recommendations in the state water plan. She asked Mr. Davis to provide a copy of the Upper Missouri Basin water availability and water management assessment. Mr. Davis said it is an ongoing process and won't be complete for 3-4 years. He said the DNRC is working on some of the 2-6 year recommendations and he can discuss them in depth at a future WPIC meeting.
- 08:03:22 Rep. Williams asked if the WPIC can get an update on the Upper Missouri Basin water availability and water management assessment at the January meeting. Mr. Davis said he can provide some information.
- 08:04:01 Rep. Williams asked if the model will generate data on areas of shortage and surplus of availability. Mr. Davis said it will generate a planning model and a daily time-stamp model to provide some of that data.
- 08:05:40 Rep. Williams suggested the WPIC take a case study of a shortage area from each of the four major basins and use it to get information on how to supply water for growing communities.
- 08:06:36 Rep. Glimm asked Mr. Metesh what information is available from the ground water studies.
- 08:13:50 Sen. Hamlett asked if it is legal for exempt wells to be drilled within the confines of the Flathead Indian Reservation now that the CSKT Compact has been ratified by the legislature. Jay Weiner, Attorney General's Office, said it is the first step in the approval of the compact and the tribes rights will be finalized with the Water Court decree. He said the Supreme court has said the DNRC lacks the authority to issue new water rights permits on the reservation while the tribes rights remain unquantified.
- 08:16:02 Sen. Hamlett asked if the Clark Fork Coalition has a water right it is going to market. Ms. Chilcott said it does not market water.
- 08:17:36 Sen. Hamlett asked if it was going to market water could it be moved upstream or downstream. Ms. Chilcott said it is a new concept that has yet to be determined.
- 08:18:39 Sen. Hamlett asked where money to pay for attorney fees will come from. Mr. Davis said the DNRC will make a determination once it finds out how much it has to pay. Sen. Hamlett asked if it will put in jeopardy notifying people under SB 37 (2015). Mr. Davis said he did not believe it will.
- 08:19:58 Sen. Hamlett asked Mr. Davis about drilling an exempt well and putting in a grey water system.
- 08:22:08 Sen. Hamlett asked if clustered developments are in jeopardy because of the 1,320 feet rule. Mr. Davis said he did not believe so.
- 08:23:42 Sen. Hamlett said as the DNRC moves forward it needs to consider reasonable attorney fees.
- 08:24:05 Mr. Davis commented on the numbers used when calculating 10 acre feet.

AGENCY ADMINISTRATIVE RULE UPDATE

- 08:25:11 Ms. Thigpen presented an update on rules recently proposed by the DNRC, [Exhibit 21](#).

Committee questions and discussion:

- 08:26:12 Sen. Fielder asked Mr. Davis about the increase in application fees for water reservations.
- 08:27:53 Sen. Fielder asked for an example of a water reservation application. Mr. Davis said it was created by statute to reserve water for future development.
- 08:28:52 Sen. Fielder said it will not affect a citizen applying for a well, but rather a government entity that is applying for a water reservation. Mr. Davis agreed.
- 08:29:39 Sen. Hamlett asked what the minimum amount of acreage is, for an existing lot, to drill an exempt well and get a permit in Cascade County. Mr. Davis said for an existing lot it is one quarter acre. Sen. Hamlett asked Mr. Davis what the amount of acreage would be for a new lot.

ADMINISTRATIVE MATTERS

- 08:30:52 Mr. Mohr presented a budget update.

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

- 08:31:14 Mr. Weiner commended the WPIC for working on the future of the Water Court and adjudication in its plan.

OTHER BUSINESS

- 08:35:09 Sen. Hamlett opened discussion on the work plan.

Discussion:

- 08:35:21 Sen. Vincent
- 08:39:24 Rep. Z. Brown
- 08:40:49 Sen. Fielder
- 08:42:39 Rep. Glimm
- 08:44:02 Rep. Williams
- 08:48:56 Sen. Vincent
- 08:52:57 Mr. Mohr
- 08:53:21 Sen. Vincent
- 08:53:32 Mr. Mohr
- 08:53:43 Sen. Hamlett
- 08:57:16 Rep. Williams said a copy of a press release from U.S. Senator Mike Crapo of Idaho was provided to the WPIC supporting a change to treat forest fire funding as disaster funding at the federal level, [Exhibit 22](#).
- 08:58:26 **Motion/Vote:** Sen. Fielder moved to adopt the work plan as outlined by the WPIC. The motion carried unanimously by voice vote. Rep. B. Brown voted aye by proxy, [Attachment 4](#). Sen. Stewart -Peregoy was excused.
- 08:58:55 Sen. Hamlett adjourned the meeting at 6:00 p.m.
CI0099 5287nsxa.