



## Water Policy Interim Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

JILL COHENOUR  
PAT CONNELL  
JON SESSO  
JEFFREY WELBORN

#### HOUSE MEMBERS

BOB BROWN  
ZACH BROWN  
JOHN FLEMING  
CARL GLIMM

#### COMMITTEE STAFF

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

# MINUTES LOG

August 1, 2017  
Room 152, 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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Please contact the Legislative Services Division at 406-444-3064 for more information.

### **COMMITTEE MEMBERS PRESENT**

SEN. PAT CONNELL, Chairman  
REP. ZACH BROWN, Vice Chairman

SEN. JILL COHENOUR  
SEN. JON SESSO  
SEN. JEFFREY WELBORN

REP. BOB BROWN  
REP. JOHN FLEMING  
REP. CARL GLIMM

### **STAFF PRESENT**

JASON MOHR, Lead Staff  
NADINE SPENCER, Secretary

## **VISITORS' LIST (Attachment 1)**

## **AGENDA (Attachment 2)**

### **COMMITTEE ACTIONS**

The Water Policy Interim Committee (WPIC):

- Elected Sen. Connell as presiding officer and Rep. Zach Brown as vice-presiding officer;
- Voted to accept the preliminary work plan;
- Adopted the interim calendar;
- Voted to have staff draft a letter to the Bonneville Power Administration requesting funding for aquatic invasive species prevention efforts in western Montana.

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

00:00:01 Sen. Sesso called the meeting to order at 9:00 a.m. He said all committee members were present. **(Attachment 3)**

### **ELECTION OF WPIC PRESIDING OFFICER AND VICE PRESIDING OFFICER**

00:00:48 Jason Mohr, research analyst, Legislative Services Division, said the committee received a history of WPIC leadership. **(Exhibit 1)**

00:01:15 Sen. Sesso opened nominations for chairman.

### **Motion**

00:01:31 Sen. Welborn nominated Sen. Connell as chairman.

### **Substitute Motion**

00:02:34 Rep. Bob Brown made a substitute motion to nominate Rep. Glimm as chairman.

### **Discussion on the Motion**

00:03:29 Sen. Sesso

00:04:38 Sen. Cohenour

00:04:44 Sen. Sesso

### **Vote**

00:05:17 The substitute motion failed 3-5 by roll call vote with Rep. Bob Brown, Rep. Fleming, and Rep. Glimm voting aye. **(Attachment 4)**

00:06:26 Rep. Glimm said this is the fourth interim that the presiding officer has been from the Senate. Sen. Sesso said there is no rule that precludes the motion.

### **Vote**

00:07:23 The motion to nominate Sen. Connell as chair carried 6-2 by roll call vote with Rep. Bob Brown and Rep. Fleming voting no. **(Attachment 5)**

00:08:02 Sen. Sesso opened nominations for vice-chairman.

### **Motion/Vote**

- 00:08:13 Sen. Cohenour moved to nominate Rep. Zach Brown as vice-chairman. The motion carried unanimously by voice vote.
- 00:09:37 Recess
- 00:10:49 Reconvene
- 00:11:06 Sen. Connell commented on his election as chairman.
- 00:13:11 Rep. Z. Brown commented on his election as vice chairman.

### **AGENCY OVERVIEWS OF WATER-RELATED PROGRAMS**

#### **DEPARTMENT OF AGRICULTURE**

- 00:13:57 Ben Thomas, director, Department of Agriculture, provided information on the department's Groundwater Protection Program. **(Exhibit 2)**

#### **DEPARTMENT OF ENVIRONMENTAL QUALITY**

- 00:17:09 Tom Livers, director, Department of Environmental Quality (DEQ), gave an overview of the DEQ, discussed changes in the department, and current projects.
- 00:26:00 Mr. Livers discussed future projects.
- 00:31:51 Mr. Livers discussed the budget.

#### **DEPARTMENT OF FISH, WILDLIFE, AND PARKS**

- 00:33:21 Mike McLane, water conservation specialist, Department of Fish, Wildlife, and Parks (FWP), discussed the department's involvement in water-related issues.
- 00:38:42 Mr. McLane provided information on U.S. Geological Survey (USGS) stream monitoring gauges. **(Exhibit 3)**
- 00:41:28 Mr. McLane discussed HB 110 (2017).
- 00:42:17 Mr. McLane discussed legislation that may be needed as a result of the sunset of FWP's instream leasing authority. **(Exhibit 4)**
- 00:43:31 Mr. McLane discussed a potential problem with the state's water right database distribution list.

#### **DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**

- 00:47:43 John Tubbs, director, Department of Natural Resources and Conservation (DNRC), introduced the DNRC staff that were present and discussed the divisions within the DNRC.
- 00:48:55 Mr. Tubbs discussed the Conservation and Resource Development Division.
- 00:50:09 Mr. Tubbs discussed the Forestry Division.
- 00:53:21 Mr. Tubbs discussed the Trust Lands Management Division.
- 00:53:58 Mr. Tubbs discussed the Water Resources Division.
- 00:54:05 Mr. Tubbs discussed the Montana Board of Oil and Gas Conservation.
- 00:54:35 Mr. Tubbs discussed the Director's Office.
- 00:54:46 Mr. Tubbs discussed the Water Resources Division budget.
- 00:58:40 Mr. Tubbs discussed the Water Adjudication Bureau.
- 01:00:52 Mr. Tubbs discussed the Water Management Bureau.
- 01:01:51 Mr. Tubbs discussed the Water Operations Bureau.

01:05:59 Mr. Tubbs discussed potential legislation.

Public Comment None

Committee Questions and Discussion

01:07:31 Rep. Z. Brown asked Christopher Kelley, hydrologist, Agricultural Services Bureau, Department of Agriculture, about the loss of FTE and programs it will affect.

01:08:30 Rep. Z. Brown asked Mr. McLane about the instream flow leasing program and statute.

01:12:54 Rep. Z. Brown asked Todd Everts, staff attorney, Legislative Services Division, for a legal interpretation on the statute regarding prohibition on the dissemination and use of distribution lists, and if it affects FWP's water rights database.

01:15:21 Mr. McLane discussed FWP's concern regarding interpretation of the statute. Mr. Everts said the water rights database is not included on the list of exemptions. He said he will provide an analysis of the section of the law as it relates to the issues brought forward by FWP.

01:18:27 Sen. Cohenour said the database was established specifically for water right administration.

01:19:19 Sen. Connell thanked the legal staff.

01:19:38 Sen. Sesso asked Mr. Livers how the Water Quality and Enforcement divisions will interact on enforcement actions.

01:27:23 Sen. Sesso asked Mr. Livers about rulemaking and the timeline for implementation of SB 325 (2015). Mr. Livers deferred the question to Tim Davis, Water Quality Division administrator, DEQ. Sen. Connell asked Mr. Davis to provide an update at the next WPIC meeting.

01:31:31 Sen. Cohenour asked staff if agencies are required to notify legislators about the rulemaking process.

01:32:52 Mr. Livers commented on notification to legislators. Sen. Cohenour said she is concerned about when legislators are notified.

01:35:01 Mr. Livers said the WPIC will receive information in the future on rulemaking related to HB 368 (2017) establishing setbacks for wells and lagoons.

01:35:55 Rep. Glimm asked Mr. Tubbs about the cost of a stream gauge.

01:36:54 Rep. Glimm asked Mr. Tubbs about rulemaking process for the combined appropriation.

01:40:10 Sen. Connell said that the WPIC members can be considered a contact point for the initiation of rulemaking.

01:40:24 Rep. Z. Brown asked Mr. Tubbs about the timeline for the rulemaking process during the interim. Mr. Tubbs deferred to Millie Heffner, Water Rights Bureau chief, DNRC.

01:42:19 Sen. Connell discussed the graph showing nitrogen level input in Lake Helena that was provided during the field trip ([Exhibit 5](#)) and asked Mr. Davis to provide an analysis of the reduction in nitrogen input into Lake Helena over the last decade.

01:44:28 Recess

01:54:44 Reconvene

## **DROUGHT, WATER SUPPLY, AND WILDFIRE OUTLOOK**

- 01:55:47 Ann Schwend, water resource planner, Water Management Bureau, DNRC, presented information on water supply in Montana.
- 01:58:50 Ms. Schwend discussed the U.S. drought monitor map for Montana. **(Exhibit 6)**
- 02:00:20 Ms. Schwend discussed the vegetation drought response index. **(Exhibit 7)**
- 02:02:46 Ms. Schwend discussed impacts from the drought.
- 02:04:34 Ms. Schwend said the governor declared a drought disaster on July 19.
- 02:05:38 Hoyt Richards, Central Land Office area manager, Forestry Division, DNRC, provided information on the fire season. **(Exhibit 8)**

Public Comment None

### Committee Questions and Discussions

- 02:19:39 Sen. Connell asked Ms. Schwend about improving the clarity of public communication regarding irrigation water availability and fire weather risk.
- 02:22:16 Rep. Z. Brown asked Ms. Schwend how the DNRC is staffing the Governor's Drought and Water Supply Advisory Committee with the department's current vacancy savings.

## **WATER RIGHT ADJUDICATION UPDATE (85-2-281, MCA)**

- 02:24:39 John Peterson, bureau chief, Water Adjudication Bureau, DNRC, presented the water right adjudication progress report. **(Exhibit 9)**
- 02:28:23 Mr. Peterson discussed HB 110.
- 02:32:07 Chief Water Judge Russ McElyea, Montana Water Court, presented the Montana Water Court report. **(Exhibit 10)**
- 02:37:42 Mr. McElyea discussed preparation for issuing final decrees. **(Exhibit 11)**
- 02:45:31 Mr. McElyea discussed potential legislation.
- 02:55:06 Sen. Connell asked Mr. McElyea to provide staff with information regarding his suggestions and justification for legislation. Mr. McElyea said he will.

### Public Comment

- 02:56:51 Rep. Bradley Hamlett, HD 23, said he was the sponsor of HB 110 and discussed the bill.

### Committee Questions and Discussions

- 03:07:51 Rep. Z. Brown asked Rep. Walt Sales, HD 69, about HB 110 and conversations he has had with agricultural users.
- 03:11:08 Rep. Z. Brown asked Rep. Hamlett the same question.
- 03:12:20 Rep. Z. Brown asked Mr. McElyea about amending the 2019 deadline for HB 110 and what that would do to the overall adjudication process timeline.
- 03:13:44 Rep. Z. Brown asked Mr. McElyea about the timeline for setting up deadlines for motions to amend.
- 03:18:06 Rep. Z. Brown commented on attending Water Adjudication Advisory Committee meetings during the last interim.

03:18:37 Sen. Connell asked Mr. McElyea to let staff know when the next advisory council meeting is scheduled.

03:19:09 Recess for lunch at 12:19 p.m.

04:22:31 Reconvene at 1:23 p.m.

### **NUMERIC NUTRIENT STANDARDS REPORT (75-5-313, MCA)**

04:23:07 Tim Davis, Water Quality Division administrator, DEQ, provided a copy of the numeric nutrient standards that were adopted in June. [\(Exhibit 12\)](#)

Public Comment None

### **Committee Questions and Discussion**

04:27:20 Sen. Sesso asked Mr. Davis about economic impacts and the process to apply for a waiver.

04:31:20 Sen. Connell asked Mr. Davis if applying for an individual variance poses an additional economic burden to a community.

### **WATER RESEARCH (85-2-105, MCA): OVERVIEW OF WATER PROGRAMS OF MBMG**

04:32:57 John LaFave, manager, Ground Water Assessment Program, Montana Bureau of Mines and Geology (MBMG), presented a PowerPoint presentation [\(Exhibit 13\)](#) and provided information on the Ground Water Assessment Program. [\(Exhibit 14\)](#)

04:51:50 Ginette Abdo, senior research hydrogeologist and program manager, Ground Water Investigation Program, MBMG, continued the PowerPoint presentation and gave an overview of the Ground Water Investigation Program. She provided a fact sheet [\(Exhibit 15\)](#) and summary of active projects. [\(Exhibit 16\)](#)

05:09:07 John Metesh, director, MBMG, continued the PowerPoint presentation and provided information on the Surface Water Assessment and Monitoring Program. [\(Exhibit 17\)](#)

Public Comment None

### **Committee Questions and Discussion**

05:23:53 Sen. Cohenour commented on possible future field trips to areas in Bozeman and Ravalli County.

05:24:50 Sen. Connell commented on facts based upon the MBMG field studies.

### **CLARK FORK AND KOOTENAI RIVER BASINS COUNCIL**

05:25:45 Erin Ferris-Olsen, executive director, Montana Watershed Coordination Council, presented information on the 2016 Montana's State of the Watersheds Report. [\(Exhibit 18\)](#)

05:30:17 Ms. Ferris-Olsen presented an overview of regional watershed coordination in Montana. [\(Exhibit 19\)](#)

05:31:27 Ms. Ferris-Olsen said the WPIC received a letter regarding the Clark Fork and Kootenai River Basins Council. [\(Exhibit 20\)](#)

Public Comment          None

Committee Questions and Discussion          None

**AQUATIC INVASIVE SPECIES UPDATE**

05:36:09          Thomas Woolf, Aquatic Invasive Species (AIS) Bureau chief, FWP, gave a PowerPoint presentation on aquatic invasive species and provided an update on the program. **(Exhibit 21)**

Public Comment

05:46:24          Gary Gannan, sciGaia, asked if microscopic organisms can be detected at the inspection stations. Mr. Woolf discussed protocol.

Committee Questions and Discussion

05:48:10          Rep. Z. Brown asked Mr. Woolf to provide his background information.

05:48:49          Rep. Z. Brown asked Mr. Woolf about the Columbia River drainage and the extent that the Bonneville Power Administration has funded AIS prevention in the past and the amount of federal funding the AIS program is receiving this fiscal year.

05:50:30          Rep. Z. Brown asked Mr. Woolf about future funding and if the WPIC can help with legislation.

05:51:54          Rep. Z. Brown redirected his question to Paul Sihler, chief of staff, FWP.

05:53:36          Rep. B. Brown asked Mr. Woolf if plugs should be removed from boats before travel away from the water.

05:55:39          Sen. Connell said he is a licensed commercial pesticide applicator and that he has the aquatic endorsement. He asked Mr. Woolf about action by other states and next steps.

05:59:13          Sen. Connell asked Mr. Woolf about a potential eradication process in the future.

06:00:14          Sen. Connell asked Mr. Woolf about felt bottom waders and if they can carry mussels.

06:01:27          Rep. Z. Brown asked staff if the legislation passed during the 2017 session put a ban on felt soled boots. Mr. Mohr redirected the question. Mr. Woolf said he did not think it was passed.

06:02:21          Rep. Z. Brown said that Mr. Woolf and the incident command team were presented an award at the Pacific Northwest Economic Region (PNWER) meeting for its work on the state's AIS program.

06:03:18          Rep. Fleming asked Mr. Woolf about public education and outreach regarding the AIS inspection program.

06:04:38          Rep. Z. Brown said that Section 9, HB 22 (2017) gives FWP rulemaking authority that could include prohibiting the use of felt bottom waders. He asked Mr. Woolf if the department has any plans to ban felt bottom waders.

06:06:12          Rep. Z. Brown redirected his question to Mr. Sihler and asked about the status of the rulemaking process.

06:07:06          Sen. Connell asked Mr. Sihler if FWP has any plans to implement an educational program to provide information to new fishing license holders.

06:09:46          Sen. Connell asked that FWP continue to provide an update on the AIS program at every WPIC meeting.

06:10:19 Rep. Glimm said he encourages FWP to continue to work on obtaining federal funding.  
06:10:55 Rep. Glimm asked Mr. Woolf about testing and if it has been adequate.  
06:14:26 Recess  
06:28:38 Reconvene

#### **UPDATE FROM ENVIRONMENTAL QUALITY COUNCIL**

06:28:59 Joe Kolman, director, Legislative Environmental Policy Office, Legislative Services Division, provided an update from the Environmental Quality Council meeting in June.

Public Comment None

#### **Committee Questions and Discussion**

06:39:11 Sen. Cohenour asked Mr. Kolman about duplicating effort between the EQC and the WPIC on AIS.  
06:40:37 Sen. Welborn said he recommends getting the EQC report earlier in the meeting so there is less duplication. Sen. Connell agreed and said the information can be included in the WPIC mailing packet.  
06:41:50 Rep. Z. Brown asked Mr. Kolman about the State of the Environment report.  
06:43:52 Sen. Connell said he requested the performance audit on the study of state parks over a year ago. He commented on tracking grizzly bear delisting.

#### **ADMINISTRATIVE MATTERS**

##### **Adoption of Committee Work Plan**

06:46:42 Sen. Connell open discussion on the WPIC work plan and said the committee received an example of resource allocation. **(Exhibit 22)**

##### **Discussion on Statutory Duties and Program Evaluation**

06:47:58 Sen. Cohenour said she recommends .15 FTE for program evaluation and statutory duties. Sen. Sesso and Sen. Connell agreed.  
06:50:22 Sen. Connell asked staff if a motion needs to be made for each topic or if the committee can wait until after the entire discussion. Mr. Mohr said the motion can be made after the discussion has ended.

##### **Discussion on Exempt Groundwater Wells and HB 339 (2017)**

06:51:05 Sen. Cohenour said she would like to include topics on exempt wells, historical consumptive use, and the analysis of water right permitting process in the work plan.  
06:53:15 Rep. Z. Brown asked if the committee wanted to include another study on exempt well use.  
06:54:11 Sen. Cohenour  
06:55:18 Sen. Connell  
06:57:19 Sen. Sesso  
06:58:02 Sen. Connell  
06:58:18 Rep. Glimm



07:00:33 Sen. Connell  
07:00:44 Rep. Z. Brown  
07:02:38 Sen. Connell  
07:03:04 Sen. Sesso  
07:04:08 Sen. Connell  
07:04:10 Mr. Mohr said as a result of SB 261 (2017) every interim committee had to reduce its budget by \$1,250. He said the WPIC budget is \$43,000 for the biennium.  
07:05:01 Sen. Connell  
07:05:50 Rep. Z. Brown  
07:06:35 Rep. Sales  
07:07:10 Sen. Cohenour  
07:08:08 Sen. Connell  
07:08:32 Rep. Glimm  
07:10:17 Rep. Z. Brown  
07:11:21 Rep. Glimm  
07:11:52 Sen. Connell asked staff to put together information from two different county planning departments, including a subdivision in Gallatin County, on water use under the exempt well statute.  
07:13:12 Mr. Mohr  
07:13:44 Sen. Connell said he recommends that the WPIC tour subdivisions in October.  
07:14:33 Rep. Z. Brown  
07:15:07 Sen. Cohenour

#### Discussion on Member Suggestions

07:16:10 Sen. Connell said SB 248 was vetoed during session and should be resolved when the exempt bill issue is resolved and that HB 433 should be an easy fix. He said silvicultural activities were discussed during the last interim. He said the committee receives regular reports from the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) and would like to include in the report from the USFS an update on the water compact it has with the state.  
07:19:17 Mr. Mohr said the USFS is required to report on its water reservations on a regular basis.  
07:19:50 Sen. Cohenour said she recommends including information on future federal funding for water related programs within DEQ and DNRC in the regular reports from the USFS, BLM, and Natural Resources Conservation Service (NRCS).  
07:21:10 Sen. Connell  
07:21:40 Sen. Sesso said he recommends allocating staff time to profile compliance with state regulations.  
07:25:25 Sen. Connell  
07:26:28 Sen. Sesso  
07:27:03 Sen. Connell said he would like the committee to receive a report from the DNRC and the forest products industry on best management practices.  
07:28:28 Rep. Bob Brown said he would like to receive information on the future of the Water Court.  
07:29:48 Rep. Z. Brown agreed.  
07:30:51 Sen. Connell

07:31:31 Mr. Mohr provided a summary of the work plan.

#### Discussion on the Future of the Water Court

07:33:51 Rep. B. Brown said he recommends a one-time report on the Water Court.

07:34:26 Rep. Z Brown said he recommends a report at every other meeting.

07:35:07 Sen. Connell

#### Discussion on Chronicling Improvements to Water Quality

07:36:15 Mr. Mohr asked if chronicling improvements to water quality should be a study.  
Sen. Sesso said no and that he will talk to staff.

07:37:10 Sen. Connell agreed.

#### Discussion on Studies for Exempt Wells and Changes to Water Rights/Consumptive Use

07:37:30 Sen. Cohenour

07:39:37 Sen. Connell

07:40:16 Sen. Cohenour

07:41:57 Mr. Mohr

07:42:39 Rep. Z. Brown

07:45:28 Rep. B. Brown

07:46:30 Sen. Connell

07:47:58 Mr. Mohr

07:48:22 Rep. Z. Brown

07:48:56 Sen. Cohenour

07:49:40 Sen. Connell

07:49:52 Mr. Mohr

07:50:01 Rep. Z. Brown said he recommends adding future options related to water storage in Montana as a member issue.

07:50:45 Sen. Cohenour said she recommends continuing to include watershed groups on the issues before the committee.

07:51:41 Sen. Connell

07:51:56 Sen. Cohenour

#### **Motion/Vote**

07:52:02 Sen. Cohenour moved to accept the preliminary work plan and to finalize it at next WPIC meeting. The motion carried unanimously by voice vote.

#### **Budget Overview**

07:53:08 Mr. Mohr said the WPIC had a small reduction in its budget.

07:53:29 Sen. Cohenour gave her suggestions for field trips.

07:54:32 Sen. Connell

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

##### Committee Discussion

07:55:33 Sen. Connell opened discussion on the meeting calendar.

07:55:38 Mr. Mohr said the committee received a copy of the work plan timeline and meeting calendar. **(Exhibit 23)**

07:55:50 Sen. Welborn  
07:56:33 Sen. Connell  
07:57:33 Sen. Cohenour  
07:57:51 Mr. Mohr  
07:58:25 Rep. Z. Brown  
07:59:33 Mr. Mohr  
07:59:48 Sen. Connell said that without objection the meeting in March will be moved to March 5-6, 2018.  
08:00:20 Sen. Cohenour  
08:01:24 Sen. Sesso  
08:02:00 Rep. Z. Brown  
08:02:16 Sen. Connell said that without objection the meeting in July will be moved to July 16-17, 2018.  
08:02:38 Mr. Mohr  
08:03:24 Sen. Connell  
08:03:34 Rep. B. Brown  
08:04:10 Mr. Mohr asked the committee members to update their contact information.

#### Public Comment

08:04:44 Rep. Hamlett discussed his concern about the amount of water allowed with an exempt well.  
08:07:10 Sen. Connell  
08:07:22 Rep. Glimm  
08:08:47 Rep. Hamlett discussed water marketing.  
08:09:48 Sen. Cohenour provided information on the Capitol Square Farmers Market.

#### INSTRUCTIONS TO STAFF

##### Motion

08:10:19 Rep. Z. Brown moved to have staff draft a letter to the Bonneville Power Administration requesting funding for aquatic invasive species prevention efforts in western Montana.

##### Discussion on the Motion

08:11:26 Sen. Connell

##### Vote

08:11:48 The motion carried unanimously by voice vote.

#### PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

08:12:20 Gary Gannan, sciGaia, discussed a research project on water use in Gallatin County.  
08:15:13 Sen. Welborn asked about the meeting calendar.  
08:15:37 Sen. Connell thanked the committee and staff.

**ADJOURNMENT**

08:15:48 With no further business before the committee, Sen. Connell adjourned the meeting at 5:16 p.m.

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