



Water Policy Interim Committee

65th Montana Legislature

SENATE MEMBERS

PAT CONNELL--Chair
JILL COHENOUR
JON SESSO
JEFFREY WELBORN

HOUSE MEMBERS

ZACH BROWN--Vice Chair
BOB BROWN
JOHN FLEMING
CARL GLIMM

COMMITTEE STAFF

JASON MOHR, Lead Staff
ERIN BILLS, Staff Attorney
NADINE SPENCER, Secretary

MINUTES LOG

October 9, 2017
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. PAT CONNELL, Chair
REP. ZACH BROWN, Vice Chair

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

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

STAFF PRESENT

JASON MOHR, Lead Staff
ERIN BILLS, Legal Staff
NADINE SPENCER, Secretary

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTIONS

The Water Policy Interim Committee (WPIC):

- Approved the minutes log from July 31 and August 1;
- Voted to send a letter to the Bonneville Power Administration and the Northwest Power and Conservation Council regarding the state's Aquatic Invasive Species efforts.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Connell called the meeting to order at 10:00 a.m. The secretary called the roll. **(Attachment 3)**

Introduction of New Committee Attorney

00:00:52 Jason Mohr, research analyst, Legislative Services Division (LSD), introduced Erin Bills, legal staff, LSD.

00:00:59 Rep. Z. Brown entered the meeting.

00:01:19 Ms. Bills provided her background information.

Approval of Minutes

Motion/Vote

00:02:22 Sen. Cohenour moved to approve the minutes log from July 31 and August 1. The motion carried unanimously by voice vote of those present and voting.

UPDATE FROM ENVIRONMENTAL QUALITY COUNCIL

00:02:53 Joe Kolman, director, Legislative Environmental Policy Office, LSD, provided an update from the Environmental Quality Council (EQC) meeting on September 27 and 28.

Committee questions

00:08:49 Sen. Welborn asked Mr. Kolman about the proposed rule from the Department of Fish, Wildlife, and Parks (FWP) regarding dog training in upland game bird nesting areas.

00:10:04 Rep. Glimm asked Mr. Kolman about the EQC members appointed to the HB 661 (2017) subcommittee on the study of state labs at Montana State University, Bozeman. Mr. Kolman said Rep. Kerry White and Rep. Bradley Hamlett were appointed.

00:10:25 Rep. Z. Brown asked Mr. Kolman about the EQC work plan topic on data trends related to fire.

STATUS OF CSKT WATER RIGHTS SETTLEMENT

00:12:08 Arne Wick, supervisor, Compact Implementation Section, Water Resources Division, Department of Natural Resources and Conservation (DNRC), provided information on the Compact Implementation Section.

00:14:17 Mr. Wick discussed the Confederated Salish and Kootenai Tribes (CSKT) water compact.

00:15:08 Mr. Wick provided an update on ratification of the compact.

00:15:53 Mr. Wick discussed the Compact Implementation Technical Team.

00:19:03 Mr. Wick provided information on federal status.

Public comment None

Committee questions and discussion

00:19:55 Rep. Glimm asked Mr. Wick about how to reconcile legislation proposed at the federal level if it is significantly different than legislation passed by the state.

00:22:33 Sen. Connell asked Mr. Wick how other Indian compacts that were ratified by the state and federal government were worked out. Mr. Wick provided information on the Blackfeet Tribe compact.

00:24:17 Sen. Connell asked Mr. Wick if the Blackfeet Tribe compact received ratification by the tribe as it was presented.

00:24:44 Sen. Connell asked Mr. Wick if the CSKT compact is the only compact that has not been ratified. Mr. Wick said the Fort Belknap compact remains idle at the federal level.

00:25:14 Sen. Connell asked Mr. Wick about a time limitation on reservation compacts by the federal government. Mr. Wick said he will find out and provide the information to staff.

00:25:58 Sen. Cohenour asked Mr. Wick about state responsibility regarding the compact.

00:28:00 Sen. Connell asked Rhonda Swaney, attorney, CSKT, about the tribe's perspective on the progress of the compact.

00:30:10 Sen. Connell said Rep. Walt Sales, HD 69, is in the audience and invited him to join the committee at the table as a visiting legislator.

00:31:02 Recess

01:00:08 Reconvene

01:00:28 Sen. Sesso entered the meeting.

WATER RIGHT ADJUDICATION UPDATE

01:01:34 John Peterson, bureau chief, Water Adjudication Bureau, DNRC, provided an update on the water right adjudication process. **(Exhibit 1)**

01:04:09 Hon. Russ McElyea, chief water judge, Montana Water Court, provided an update on decree issuance. **(Exhibit 2)**

01:06:50 Mr. McElyea discussed claims that have been closed. **(Exhibit 3)**

01:07:41 Mr. McElyea discussed percentage of claims resolved. **(Exhibit 4)**

01:09:05 Mr. McElyea discussed compact status. [\(Exhibit 5\)](#)

Public comment

01:11:15 James Rokosch, Bitterrooters for Planning and former Ravalli County commissioner

Committee questions and discussion

01:14:17 Rep. Z. Brown asked Mr. McElyea about the timing of final decrees and the effect of unresolved compacts.
01:20:11 Rep. Z. Brown asked Mr. McElyea about recommendations from the Water Adjudication Advisory Committee.
01:22:06 Rep. Z. Brown asked Mr. McElyea about the adjudication process and McCarran Amendment compliance.
01:25:09 Sen. Connell asked Mr. McElyea if a challenge to the McCarran Amendment would be made in state or federal court. Mr. McElyea said it could be either.
01:26:01 Sen. Connell asked Mr. McElyea about providing information outlining legislative proposals from the advisory committee for the WPIC meeting in January.

IMPROVEMENTS TO MONTANA WATER QUALITY

01:29:18 Tim Davis, administrator, Water Quality Division, Department of Environmental Quality (DEQ), provided an update on the information that will be presented to the WPIC at its January meeting.

Committee questions and discussion

01:31:42 Sen. Connell commented on the information that will be presented.
01:33:17 Rep. Z. Brown said he would like an update on the Big Hole River Incentive Program. Mr. Davis said he will follow-up with the DNRC, and he can also include information on nutrient trading, optimization, and ecosystem services.

Public comment None

01:35:42 Recess for lunch at 11:35 a.m.

03:01:24 Reconvene at 1:01 p.m.

UPDATE FROM CLARK FORK AND KOOTENAI RIVER BASINS COUNCIL

03:01:49 Jennifer Schoonen, Blackfoot River water steward, Blackfoot Challenge; board member, Montana Watershed Coordination Council; executive committee member, Clark Fork and Kootenai River Basins Council, provided an update.

03:06:20 Ms. Schoonen provided a copy of a letter from the Ensuring Natural System Health and Water Availability for Human Use working group, Clark Fork and Kootenai River Basins Council, outlining their initial priorities. [\(Exhibit 6\)](#)

03:06:45 Ms. Schoonen discussed next steps for the council.

03:09:41 James Rokosch, executive committee member, Clark Fork and Kootenai River Basins Council, said he encourages the WPIC to use the council as a resource for information and data in all aspects of water resources.

Public comment None

Committee questions and discussion

- 03:11:50 Rep. Z. Brown asked Erin Ferris-Olsen, executive director, Montana Watershed Coordination Council, to provide her perspective and information on the formation of the council and possible changes to the statute dealing with basin advisory committees.
- 03:16:09 Rep. B. Brown asked Ms. Schoonen if the council received support from the Bonneville Power Administration. Ms. Schoonen said support was from the Bonneville Environmental Foundation.
- 03:17:00 Sen. Sesso asked Ms. Schoonen if members of the Upper Clark Steering Committee have been able to participate with the Clark Fork and Kootenai River Basins Council. Ms. Schoonen said they have.
- 03:17:56 Sen. Connell asked Ms. Schoonen if the council has a website. Ms. Schoonen said they have space on the Montana Watershed Coordination Council site.

UPDATE ON SB 325 (2015) IMPLEMENTATION

- 03:18:48 Mr. Davis said the committee received copies of SB 325 ([Exhibit 7](#)) and provided an update on implementation.

Public comment None

Committee questions and discussion

- 03:23:40 Sen. Sesso asked Mr. Davis about the delay in the rulemaking process.
- 03:25:07 Sen. Sesso asked Mr. Davis about the stream conditions for applying SB 325.
- 03:26:42 Sen. Sesso asked Mr. Davis about copper in Silver Bow Creek, and who makes the determination that a condition is man-made or naturally occurring.
- 03:28:46 Sen. Sesso asked Mr. Davis about setting more stringent water quality standards. Mr. Davis said he will provide information on the natural background copper in Silver Bow Creek.
- 03:31:41 Sen. Sesso asked Mr. Davis if SB 325 will address the issue that municipalities have to clean water discharge that is cleaner than the water in the stream.
- 03:33:42 Rep. B. Brown asked Mr. Davis about the rulemaking process and the Board of Environmental Review.
- 03:35:13 Rep. B. Brown asked Mr. Davis if any permits have been issued under the new rules.
- 03:35:33 Sen. Connell asked Mr. Davis if there are any permits currently being considered following the guidelines of SB 325.
- 03:36:42 Sen. Cohenour asked Mr. Davis about the permit process.
- 03:37:46 Sen. Connell asked Mr. Davis to provide staff with the information on copper in Silver Bow Creek.
- 03:38:34 Sen. Connell asked Mr. Davis to provide information on the proposed rules that the board has not considered or voted on.
- 03:39:03 Sen. Sesso asked Mr. Davis if there are currently any proposed rules. Mr. Davis said the department will be proposing variance rules to the board by the end of the year. Sen. Sesso said he would like to receive a copy of the rules.

03:39:40 Sen. Sesso commented on the purpose of the legislation and the stringent standards that municipalities or other dischargers are having to meet. Mr. Davis discussed the process.

03:42:22 Sen. Sesso asked Mr. Davis if the rules address what is man-made and what is not man-made.

03:44:15 Rep. Glimm asked Mr. Davis for an estimate of how many permittees would benefit if the rules were in place.

03:45:42 Rep. Glimm commented on the amount of time that has elapsed since the legislation was passed and requested that the department move forward.

03:46:47 Sen. Connell asked Mr. Davis to provide the draft rules and the information on Silver Bow Creek to the WPIC before its January meeting. Mr. Davis said he will.

03:47:16 Sen. Sesso asked Mr. Davis about the SB 325 rulemaking workgroup meetings.

03:48:00 Sen. Connell asked Mr. Davis if there is a mandate for when the board must act on the rules.

AQUATIC INVASIVE SPECIES UPDATE

03:49:26 Paul Sihler, chief of staff, Department of Fish, Wildlife, and Parks (FWP), provided an update on the aquatic invasive species (AIS) efforts.

03:57:37 Mr. Sihler said there was an occurrence of proliferative kidney disease in the Yellowstone River this year.

Public comment None

Committee questions and discussion

03:59:23 Rep. Glimm asked Mr. Sihler about the terminology used for mussels.

04:01:07 Rep. Glimm asked Mr. Sihler about private float planes. Mr. Sihler redirected the question to Thomas Woolf, AIS Bureau chief, FWP.

04:02:30 Rep. Glimm asked Mr. Woolf about federal funding sources.

04:04:00 Rep. B. Brown asked Mr. Woolf about where mussel-infested boats were coming from.

04:04:54 Rep. B. Brown asked Mr. Woolf if the department is issuing citations to people who buy a fishing license, but don't pay for the AIS pass. Mr. Woolf redirected the question to Mr. Sihler.

04:08:50 Rep. Z. Brown asked Mr. Sihler about an expiration date for funding in the statute.

04:09:42 Rep. Z. Brown asked Mr. Woolf about Montana's history with the Bonneville Power Administration (BPA) regarding financial support for AIS prevention efforts.

04:11:19 Rep. Z. Brown asked Mr. Woolf about BPA funding requests from other states.

04:12:01 Rep. Fleming asked Mr. Sihler about coordination between the Flathead Basin Commission and the CSKT.

04:14:12 Sen. Connell asked Mr. Woolf about the types of watercraft inspected.

04:15:00 Sen. Connell asked Mr. Woolf if the inspection station signs use the term "boat" or "watercraft". Mr. Woolf said he will find out.

04:15:30 Sen. Connell said he suggests that FWP look into having a warning issued out of the Federal Aviation Administration for registered float planes.

04:16:05 Sen. Sesso asked Mr. Woolf if vessel and watercraft refer to the same thing.

04:17:36 Sen. Sesso asked Mr. Woolf about the reason citations were issued.

04:18:59 Rep. B. Brown asked Mr. Woolf about the procedure for taking samples.
04:21:41 Sen. Cohenour asked Mr. Woolf about sampling done in Tiber and Canyon Ferry Reservoirs.
04:22:14 Sen. Connell asked Mr. Woolf if vessels found with mussels initiates an additional inspection of gear on board.
04:23:33 Sen. Connell asked Mr. Woolf about the longevity of villagers or larvae on felt-bottomed waders.
04:24:45 Sen. Connell thanked FWP for its efforts to protect the waters in the state.

LETTER TO BONNEVILLE POWER ADMINISTRATION RE: AIS EFFORTS

04:25:30 Mr. Mohr said that during the August 1 WPIC meeting Rep. Z. Brown requested a letter be drafted to the BPA asking to help fund the state's AIS efforts. **(Exhibit 8)** Mr. Mohr said a new letter was drafted adding a sentence to reflect the state's current budget deficit. **(Exhibit 9)**
04:28:02 Rep. Z. Brown said he is a member of the Legislative Council on River Governance which includes representatives from Washington, Oregon, and Idaho, and he will ask the other states to send a similar letter.

Committee questions and discussion

04:29:35 Rep. B. Brown asked Mr. Woolf if FWP uses the analytical lab at Portland State that BPA helps fund.
04:30:00 Rep. B. Brown asked if Montana takes advantage of training that BPA helps support.
04:30:24 Rep. B. Brown said he recommend also thanking the BPA for its current support.

Public comment None

Committee questions and discussion continued

04:31:30 Sen. Connell asked about sending the letter to the Northwest Power and Conservation Council and including copies of the letter to the Secretary of the Interior and the Secretary of Energy. Rep. Z. Brown agreed and said he recommends including the assistant secretary to the U.S. Fish and Wildlife Service. Sen. Connell agreed.

Motion/Vote

04:34:04 Sen. Connell moved to send the letter to the Northwest Power and Conservation Council. The motion carried unanimously by voice vote.
04:34:20 Sen. Connell said that without objection from the committee copies of the letter will be sent to the Secretary of the Interior and the Secretary of Energy.

Motion

04:34:30 Rep. Glimm moved to also send the letter to the BPA.

Discussion on the Motion

04:34:54 Sen. Connell
04:34:58 Mr. Mohr
04:35:10 Sen. Connell

Vote

- 04:35:18 The motion carried unanimously by voice vote.
- 04:35:24 Sen. Connell thanked Rep. Z. Brown for his leadership in pursuing the letter.
- 04:36:27 Recess
- 04:49:05 Reconvene

DROUGHT WATER SUPPLY, AND WILDFIRE OUTLOOK

- 04:50:21 Jan Langel, administrator, Water Resources Division, DNRC, gave an update on the drought and water supply.
- 04:54:46 Mr. Langel discussed the weather and climate outlook. [\(Exhibit 10\)](#)
- 04:54:57 Mr. Langel discussed storage content in state water projects. [\(Exhibit 11\)](#)
- 04:55:53 Mike DeGrosky, chief, Fire and Aviation Management Bureau, Forestry Division, DNRC, provided information on the fire season. [\(Exhibit 12\)](#)
- 04:58:25 Mr. DeGrosky discussed the U.S. drought monitor map. [\(Exhibit 13\)](#)

Public comment

- 05:08:31 Elena Evans, executive director, Montana Association of Conservation Districts, discussed what conservation districts are doing to address drought and fire.
- 05:12:09 Mr. Rokosch discussed wildfire and things to consider from his experience as a county commissioner.

Committee questions and discussion

- 05:20:47 Sen. Cohenour asked Mr. DeGrosky about the shortage of resources at the end of the fire season.
- 05:22:35 Sen. Sesso asked Mr. DeGrosky about the amount of money spent by the state on wildfires and reimbursement by federal agencies. Mr. DeGrosky said he will provide the information.
- 05:27:45 Sen. Connell thanked the department for its efforts.
- 05:28:58 Sen. Connell asked Mr. DeGrosky about the possibility of water hydrophobicity on soil for the fires managed by the state, and if the level of hydrophobicity was altered based on the amount of fuel existing on the ground. Mr. DeGrosky said he will find out.
- 05:31:00 Sen. Connell asked Ms. Evans about the possibility of hydrophobicity on private land.
- 05:32:04 Sen. Connell asked Ms. Evans to provide the information from conservation districts, especially in the western half of the state, for the January meeting.
- 05:32:23 Rep. Z. Brown asked Ms. Evans to provide more detailed information on hydrophobicity for the soil related to the Lodgepole Complex fire when it is available. Ms. Evans said she will have the information for the January meeting.

RECESS FOR THE DAY

- 05:33:38 Sen. Connell recessed the meeting at 3:33 p.m.

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