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Water Policy Interim Committee

62nd Montana Legislature

SENATE MEMBERS

BRADLEY MAXON HAMLETT--Chair
DEBBY BARRETT
SHARON STEWART-PEREGOY
CHAS VINCENT

HOUSE MEMBERS

WALTER MCNUTT--Vice Chair
PAT CONNELL
BETSY HANDS
BILL MCCHESENEY

COMMITTEE STAFF

JOE KOLMAN, Lead Staff
HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary

MINUTES

Approved September 10, 2012

June 21, 2012

Bitterroot River Inn
Hamilton

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. BRADLEY MAXON HAMLETT, Chair
REP. WALTER MCNUTT, Vice Chair

SEN. DEBBY BARRETT
SEN. CHAS VINCENT

REP. PAT CONNELL
REP. BETSY HANDS
REP. BILL MCCHESENEY

COMMITTEE MEMBERS EXCUSED

SEN. SHARON STEWART-PEREGOY

STAFF PRESENT

JOE KOLMAN, Lead Staff
KEVIN MCCUE, Secretary

Visitors

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

CALL TO ORDER AND ROLL CALL

00:00:00 Sen. Hamlett called the meeting to order and roll was noted ([Attachment 3](#)).

AGENDA

COMMITTEE INTRODUCTIONS AND STATEMENTS

00:00:58 Rep. McChesney told those in attendance the purpose of the meeting was to gather as much information as possible.

00:03:05 Rep. Connell said he looked forward to the testimony.

00:06:06 Rep. McNutt assured attendees that the Department of Natural Resources and Conservation (DNRC) could not do away with exempt wells and said there are many places in the state that would be uninhabitable without them.

00:11:53 Sen. Barrett recounted her experience on the Reserved Water Right Compact Commission (RWRCC).

00:15:05 Sen. Vincent encouraged the attendees to remain engaged as the 2013 legislative session approaches.

00:16:37 Rep. Hands recalled the Legislature's study of this issue in the preceding eight years.

00:21:17 Sen. Hamlett stressed that "one size" does not fit all regarding exempt wells.

OVERVIEW OF EXEMPT WELL STUDY AND PROPOSALS

00:23:21 Mr. Kolman gave a brief history and current definition of the domestic well exemption. Mr. Kolman explained the state's prior appropriation doctrine and how the exemption has changed over the years. Mr. Kolman explained that the current exemption placed a limit on wells of 35 gallons per minute and 10 acre feet a year as long as it is not part of a "combined appropriation." Mr. Kolman said that the law does not define "combined appropriation" but leaves said definition to the administering agency of the Executive Branch to define. Mr. Kolman said that "combined appropriation" has been defined for the last 20 years as two wells that are physically connected. Mr. Kolman explained that the current study of exempt wells had been mandated by HB 602 (2011). Mr. Kolman explained each of the bills drafted in collaboration with interested parties ([EXHIBIT 1](#)) ([EXHIBIT 2](#)) ([EXHIBIT 3](#)) ([EXHIBIT 4](#)) ([EXHIBIT 5](#)). Mr. Kolman reminded attendees that public comment will be accepted until the WPIC's final

meeting in September 2012. Mr. Kolman also invited those in attendance to examine the WPIC's draft study report ([EXHIBIT 6](#)).

00:30:15 Sen. Hamlett introduced John Metesh of the Montana Bureau of Mines and Geology (MBMG), Groundwater Investigation Program (GWIP).

PUBLIC COMMENT ON EXEMPT WELL STUDY AND PROPOSALS

00:32:03 Ted Antonioli, Montana Mining Association (MMA), explained that the ground water permit exemption is essential to small mine exploration and development. Mr. Antonioli said the exemption was a good and necessary thing in its current form and pointed to other problems not addressed by the bill drafts.

00:34:59 Doug Nation thanked Trout Unlimited for its advocacy for the precious resource of water and expressed concern that loopholes in exempt well regulation pose risks to natural resources.

00:38:56 Harvey Hackett, Bitterroot Conservation District Commissioner, recounted the irrigation district's experience with exempt wells and said he believes the current exemption to be sufficient.

00:42:21 Ron Stoker referred to numbers supplied by Mr. Metesh, saying residential use returns 95-98% of water to its source.

00:46:44 Heather Mullee, Bitterroot Water Forum (BWF), said the BWF represents many different types of water users and that she was present on their behalf to collect information.

00:48:53 Terry Nelson noted that dense snow pack produces lots of water in a narrow valley like the Bitterroot. Mr. Nelson said there would probably be less complaints if it were easier to get a non-exempt well. Mr. Nelson said exempt wells are not the problem.

00:56:12 J.R. Iman asked the WPIC to consider that the state has no way to measure water use and that "abuse" may occur in areas with a lot of water. Mr. Iman said in many instances water is not removed from where it came from and any attempt to limit usage would be unnatural.

(Break)

01:24:53 Robert Myers said more people are claiming water rights than are available and that the state agreed to close the basins until adjudication is completed. Mr. Myers presented the WPIC with documents pertaining to wells in Kansas, which confronted problems with its own prior appropriation doctrine in the 1960s ([EXHIBIT 7](#)) ([EXHIBIT 8](#)) ([EXHIBIT 9](#)).

01:34:33 Jon Norcross, Montana Water Well Drillers Association (MWWDA), addressed pump well drilling and said during 59 years of drilling there has not been an instance where exempt wells have adversely affected a senior water rights

holder. Mr. Norcross asked the WPIC to refer to science and said the economy would stagnate without the ability to drill exempt wells.

- 01:37:37 Brianna Randall, Clark Fork Coalition, said all agree that exempt wells are necessary but disagreement may exist as to whether there are too many in one place. Ms. Randall said a lack of rules regarding the proximity of exempt wells may impact water levels. Ms. Randall agreed that there was not enough scientific data available regarding exempt well water use and noted that there were no monitoring requirements in any of the drafts. Ms. Randall said the small additional cost of monitoring would provide valuable data.
- 01:43:45 Robert Ratcheson said a nearby subdivision built above a stream had coincided with a decline in fishing access but he could not prove causality. Mr. Ratcheson said building houses with septic systems too close together is asking for trouble and urged scientific investigation.
- 01:47:06 Teresa Polumsky cautioned against blaming expansion for water problems and urged the WPIC to examine the economic impacts of the proposed changes.
- 01:48:56 Daniel Westberg, a Potomac well driller, said he thinks changes to laws regarding exempt wells are premature. Mr. Westberg said aquifers are very different across state and must be looked at individually. Mr. Westberg voiced support for LC 8003.
- 01:57:17 J.M. Wisniewski said people are conserving surface and ground water and said he did not see a problem with exempt wells.
- 02:00:55 Break
- 02:18:32 Valerie Staney said from her experience the water rights system is a mess. Ms. Staney asked that the WPIC reconsider the timing of the proposed legislation and expressed her hope that Montana families would be able remain in the state and find employment.
- 02:23:26 Cassie Buhl, Trout Unlimited Bitterroot Chapter, supported LC 8000 and challenged the WPIC to examine the available data on exempt wells. Ms. Buhl said that although the committee could not look into the future it also could not afford to wait until a problem is upon us.
- 02:25:11 Ryan Rubie, Missoula, asked the WPIC to consider the economic effects of any proposed restrictions. Mr. Rubie said the building industry was suffering from tough times and that more restrictions would equal more costs to builders.
- 02:26:49 George Bingham said Montana's different regions vary in terms of ground and hydrological morphology and that this issue should be addressed at the local level. Mr. Bingham said the Bitterroot River was cleaner now than when he was a child and asked for the WPIC to employ common sense in order to benefit the common public welfare. Mr. Bingham also noted he had placed a DNRC meter on his irrigation.

- 02:30:30 Niki Sardot, Ravalli County Farm Bureau President, voiced support for exempt wells using 35 gallons per minute and opposition to diminished water and property rights.
- 02:31:52 Ron Stoltz said there was no available science indicating a problem with domestic wells. Mr. Stoltz said domestic use accounts for only 1% of water use in Montana, a small amount when compared with other states.
- 02:32:57 Ron Stringham said excessive permitting turns rights into privileges. Mr. Stringham said the study regarding the issue was incomplete. Mr. Stringham expressed opposition to water monitoring.
- 02:36:16 Brian Wilkinson said there was no apparent problem and discouraged reckless spending on studies. Mr. Wilkinson said there was no problem in the Bitterroot and discouraged the WPIC from making rules to solve a problem present in only certain areas of the state. Mr. Wilkinson said any change to exempt well policy should be done at the county level.

COMMITTEE QUESTIONS FOR PUBLIC

- 02:39:23 Rep. Hands asked Mr. John Metesh of the Montana Bureau of Mines and Geology (MBMG) to describe the effects of exempt wells on basins versus sub basins. Mr. Metesh said that a lot of what was said about current scientific data is true and that irrigation is impacting ground water recharge. Mr. Metesh said the MBMG is trying to assess how much water is actually being used.
- 02:45:54 Sen. Vincent asked Mr. Bingham about the meter he had mentioned and the response by DNRC. Mr. Bingham said he was to keep a log of water used to irrigate from the spring he developed and that although his logs were sent in, the DNRC is not set up to deal with them.
- 02:48:07 Sen. Hamlett asked Mr. Hackett for his opinion on whether sprinkler and pivot irrigation are diminishing ground water return flows. Mr. Hackett said he estimates 50-100% of water is returned to the ground.
- 02:50:58 Sen. Hamlett asked Mr. Hymen about flood irrigation and what the effect had been of changing from a center pivot system to flood irrigation. Mr. Hymen said more water is left instream.
- 02:58:51 Rep. McChesney thanked the public for the good information provided at the meeting and agreed that one prescription would not work for the entire state.
- 03:02:33 Rep. McNutt thanked those in attendance and dispelled the concern that exempt wells were being targeted for restriction. Rep. McNutt said he thinks there are some areas where exempt wells are affecting senior water rights holders but that the WPIC was not about to do anything rash. Rep. McNutt urged those concerned to submit their comments to Mr. Kolman. Rep. McNutt said the WPIC is committed to protecting the rights of water users.

03:06:34 Sen. Hamlett said no action would be taken immediately regarding the exempt well study and encouraged submissions to Mr. Kolman.

PUBLIC COMMENT on any matter not contained in this agenda and that is within the jurisdiction of the WPIC

03:07:34 Bill Menager urged the WPIC to address surface water rights and the cost of adjudication.

03:09:04 Rep. McNutt said he spearheaded the bill to speed up the adjudication process and stressed the importance of completing adjudication in every basin.

03:10:26 Sen. Hamlet thanked the public for its testimony and invited them to follow the WPIC's July and September meetings.

ADJOURN

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