



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

October 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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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. SHARON STEWART-PEREGOY
SEN. CHAS VINCENT

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

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):

- Voted to approve the minutes log as amended from August 29 and 30;
- Voted to pre-introduce LCwp4b as amended as a committee bill;
- Voted to pre-introduce LCwp82 as amended as a committee bill;
- Voted to pre-introduce LCwp06 as amended as a committee bill;
- Voted to pre-introduce LCwp81 as amended as a committee bill.

CALL TO ORDER AND ROLL CALL

00:00:03 Sen. Hamlett called the meeting to order at 10:08 a.m. The secretary noted the roll. [\(Attachment 3\)](#)

ADMINISTRATIVE MATTERS

Approval of Minutes

00:00:26 Rep. Williams said that in the minutes log for August 30, at timestamp 00:35:04, the word "self" needs to be added before the word "bonding."

Discussion:

00:01:22 Sen. Hamlett

00:01:38 Rep. Williams

00:01:55 **Motion/Vote:** Rep. Glimm moved to approve the minutes log for August 29 and 30 as amended. The motion carried unanimously by voice vote.

DRAFT LEGISLATION: LIMIT ADVERSE EFFECTS ANALYSIS (LCwp4b)

00:02:17 Jason Mohr, research analyst, Legislative Services Division, presented information on LCwp4b. [\(Exhibit 1\)](#)

Public Comment:

00:05:26 Laura Ziemer, Trout Unlimited (TU), said that the revisions made to LCwp4b addresses TU's concerns and that the group supports the bill.

Committee Questions and Discussion:

00:06:22 Rep. Williams

00:09:24 Mr. Mohr

00:09:44 Rep. Williams

00:10:36 Sen. Hamlett
00:10:41 Rep. Williams
00:12:10 Sen. Vincent
00:13:58 Sen. Hamlett
00:14:18 Rep. Williams
00:15:14 Rep. B. Brown
00:16:08 Tim Davis, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC)
00:16:48 Rep. B. Brown
00:17:31 Rep. Williams
00:18:21 Mr. Davis
00:19:41 Rep. Williams
00:19:54 Mr. Davis
00:20:33 Rep. Williams
00:20:42 Mr. Davis
00:21:47 Rep. Glimm
00:24:04 Sen. Hamlett
00:25:00 Rep. Williams
00:26:49 Sen. Vincent
00:28:19 Rep. Williams
00:29:27 Sen. Fielder
00:30:34 Mr. Mohr
00:31:16 Sen. Fielder
00:31:59 Helen Thigpen, staff attorney, Legislative Services Division
00:32:20 Sen. Fielder
00:32:42 Mr. Davis
00:33:41 Sen. Fielder
00:33:58 Mr. Davis
00:34:44 Mr. Mohr
00:35:32 Sen. Fielder
00:35:51 Sen. Vincent

00:36:20 **Motion:** Rep. Glimm moved to amend LCwp4b and include a six-year sunset. The motion carried unanimously by voice vote.

00:37:23 **Motion/Vote:** Sen. Vincent moved to pre-introduce LCwp4b, as amended, as a committee bill. The motion carried unanimously by voice vote.

DRAFT LEGISLATION: ESTABLISH SWAMP (LCwp82)

00:38:01 Mr. Mohr presented information on LCwp82. ([Exhibit 2](#))

Public Comment:

The following individuals spoke in support of LCwp82.

00:39:57 Krista Lee Evans, Senior Water Rights Coalition (SrWRC) and Association of Gallatin Agricultural Irrigators (AGAI)
00:41:10 Jeff Tiberi, Montana Association of Conservation Districts (MACD)
00:41:43 Barbara Chillcott, Clark Fork Coalition

Committee Questions and Discussion:

00:42:35 **Motion:** Sen. Fielder moved to pre-introduce LCwp82 as a committee bill.

Discussion:

00:43:05 Rep. Williams

00:45:39 Sen. Vincent

00:46:12 Ms. Thigpen

00:46:32 Sen. Vincent

00:47:04 Rep. Williams

00:47:41 Sen. Hamlett

00:47:50 Sen. Vincent

00:48:20 Rep. Williams

00:49:10 Sen. Hamlett

00:49:23 Sen. Vincent

00:50:00 Rep. Williams

00:50:43 Sen. Fielder

00:51:25 Rep. B. Brown

00:52:32 Rep. Williams

00:52:38 Ms. Thigpen

00:53:17 Rep. Glimm

00:53:58 **Motion/Vote:** Rep. Glimm moved to amend LCwp82 and add an eight-year sunset. The motion carried unanimously by voice vote.

Discussion:

00:54:20 Sen. Hamlett

00:54:40 Rep. Williams

00:55:21 **Motion/Vote:** Sen. Fielder moved to pre-introduce LCwp82, as amended, as a committee bill. The motion carried unanimously by voice vote.

DRAFT LEGISLATION: ALLOW WATER COURT REVIEW OF CERTAIN DNRC DECISIONS (LCwp06)

00:55:52 Ms. Thigpen said the only change made to the bill draft was to broaden the title and provided a summary of the bill. **(Exhibit 3)**

00:57:27 Rep. Glimm

00:57:55 Ms. Thigpen

Public Comment:

00:58:50 Lorents Grosfield, cattle rancher, Big Timber, said he supports the bill and that it is important to keep the Water Court in place after the adjudication process is complete.

Committee Questions and Discussion:

01:00:03 Rep. Williams said the WPIC was sent another option from Jay Weiner, assistant attorney general and member of the Adjudication Advisory Committee.

01:01:45 Mr. Grosfield

01:02:55 Sen. Fielder

01:04:30 Rep. Z. Brown
01:05:35 **Motion:** Rep. Z. Brown moved to amend LCwp06 and add a six-year sunset.

Discussion:

01:05:42 Ms. Thigpen
01:06:16 Rep. B. Brown
01:06:45 Rep. Glimm

01:07:00 **Substitute Motion:** Rep. Glimm made a substitute motion to add an eight-year sunset and that it would not affect any pending appeals.

01:08:49 Sen. Hamlett
01:09:02 Mr. Mohr restated the motion.
01:09:25 Ms. Thigpen clarified the motion.

01:09:39 **Vote:** The motion carried 7-1 by voice vote. Rep. Williams voted no.

Discussion:

01:09:58 Sen. Fielder
01:10:17 Rep. Williams
01:14:33 Rep. B. Brown
01:15:02 Rep. Z. Brown

01:16:14 **Motion:** Rep. Glimm moved to pre-introduce LCwp06 as amended as a committee bill.

Discussion:

01:16:24 Sen. Hamlett

01:18:48 **Vote:** The motion carried 7-1 by voice vote. Rep. Williams voted no.

01:19:22 Sen. Hamlett

01:20:21 Recess for lunch at 11:28 a.m.
02:12:16 Reconvene

DRAFT LEGISLATION: AUTHORIZE DEQ ASSUMPTION OF DREDGE AND FILL PERMITTING (LCwp81)

02:12:26 Mr. Mohr presented information on LCwp81. ([Exhibit 4](#))

02:15:11 Sen. Vincent asked staff about adding an applicability amendment if the Waters of the United States (WOTUS) rule is upheld.

02:16:29 Ms. Thigpen
02:16:51 Mr. Mohr

02:17:15 **Motion/Vote:** Sen. Vincent moved to amend LCwp81 to include an applicability clause. The motion carried unanimously by voice vote.

02:17:45 Sen. Hamlett

Public Comment:

02:18:16 Jeff Ryan, supervisor, Lewis and Clark County Conservation District, said he supports state assumption of the federal Section 404 program and recommends that the Department of Environment Quality (DEQ) apply for federal grants to study state assumption. He said that the two states that have assumed the 404 program do not have conservation districts available to help with permit review.

Committee Questions and Discussion:

02:25:19 Sen. Fielder

02:25:43 Ms. Thigpen

02:26:15 Sen. Fielder

02:26:39 Sen. Hamlett

02:26:54 Rep. Williams

02:28:17 Sen. Hamlett

02:29:11 Sen. Vincent

02:32:09 Rep. Williams

02:32:57 Rep. Glimm

02:33:03 Sen. Vincent

02:33:40 Rep. Williams

02:34:04 Ms. Thigpen

02:34:10 **Motion/Vote:** Rep. Williams moved to amend LCwp81 and replace "authorizing" with "directing" in the title of the bill. The motion carried unanimously by voice vote.

Discussion:

02:34:41 Sen. Hamlett

02:35:57 Rep. Williams

02:36:51 Sen. Hamlett

02:37:00 Sen. Fielder

02:37:41 **Motion/Vote:** Sen. Vincent moved to pre-introduce LCwp81 as amended as a committee bill. The motion carried unanimously by voice vote.

DISCUSSION OF EXEMPT WELLS

02:38:35 Ms. Thigpen gave a synopsis of the Montana Supreme Court ruling in *Clark Fork Coalition v. Montana Well Drillers*. **(Exhibit 5)**

02:46:52 Rep. Williams asked about references to the U.S. Constitution.

02:47:46 Ms. Thigpen

02:48:43 Mr. Mohr presented information on LCwp7b. **(Exhibit 6)**

Public Comment:

- 02:51:36 Gene Erb, St. Ignatius, discussed a well that he owns. Sen. Fielder said the issue Mr. Erb has is not related to the bill and should be discussed during the other public comment period.
- 02:53:23 Mr. Davis said he is available to answer any questions and that the DNRC is appealing the attorney fees in the case.
- 02:54:08 John Youngberg, Montana Farm Bureau Federation, said he wanted to offer another idea on exempt wells.
- 02:54:37 Sen. Hamlett
- 02:54:44 Mr. Youngberg
- 02:54:48 Sen. Hamlett
- 02:55:27 Rep. Z. Brown
- 02:55:44 Rep. Williams
- 02:56:19 Sen. Hamlett
- 02:56:28 Mr. Youngberg said he looked at what other states are doing that don't limit exempt wells, but limit the amount of land that can be irrigated. He provided a rough draft proposal for a bill. ([Exhibit 7](#))
- 03:02:34 Abigail St. Lawrence, representing the Montana Building Industry Association and the Montana Association of Realtors, said that they do not currently have a position on the bill or the proposal submitted by Mr. Youngberg, but would like to be part of the conversation and are committed to continuing to work with stakeholders and interested legislators.
- 03:04:23 Ronda Wiggers, Montana Water Well Drillers Association, said it recommends that the WPIC not take action on exempt well legislation at this time so that stakeholders can work together on a compromise solution.
- 03:06:22 Ms. Evans said that AGAI and the Senior Water Rights Coalition support the draft concept presented by Mr. Youngberg and request that the WPIC not move forward with legislation at this time.
- 03:08:00 Tara DePuy, land use attorney for the Montana Association of Counties, said that LCwp7b refers to cluster developments and that cluster developments are not a widely used option in the state of Montana.
- 03:09:18 Ms. Ziemer said the acreage limitation proposed by Mr. Youngberg can serve as a basis for a compromise bill especially if it keeps intact the stream depletion zones as proposed in LCwp7b.
- 03:10:13 Lain Leoniak, city of Bozeman, discussed the bill draft and challenges for municipalities and the ability to prevent contamination in the groundwater supply.
- 03:13:17 Colleen Coyle, water rights attorney, Bozeman, discussed LCwp7b and the option presented by Mr. Youngberg and said she recommends allowing a compromise solution to move forward.
- 03:14:40 Ms. Chillcott said the Clark Fork Coalition appreciates the effort in working on a compromise solution by the stakeholders and supports the concept in Mr. Youngberg's proposal for an acreage limitation.

Committee Questions and Discussion:

- 03:15:49 Sen. Fielder
- 03:17:05 Sen. Hamlett
- 03:17:35 Mr. Youngberg
- 03:17:50 Sen. Hamlett

03:18:32 Mr. Youngberg
03:19:37 Rep. Williams
03:22:39 Rep. Z. Brown
03:23:25 Sen. Hamlett
03:28:26 Rep. Williams
03:29:40 Sen. Hamlett
03:30:58 Sen. Vincent
03:33:04 Sen. Stewart Peregoy
03:33:26 Rep. Glimm
03:38:10 Rep. Z. Brown
03:39:57 Sen. Hamlett

DRAFT LEGISLATION: EXPAND DUTIES OF RIVER BASIN COUNCILS (LCwp83 AND LCwp93)

03:41:17 Mr. Mohr presented information on LCwp83 and LCwp93. [\(Exhibit 8\)](#)

Public Comment:

03:43:19 Michael Sweet, Montana Climate office, served as technical advisor to the Clark Fork Basin Advisory Council, and member Clark Fork Basin Council, provided his perspective on consolidating LCwp83 and LCwp93 into one bill draft.

03:49:16 Jim Dinsmore, irrigator, Flint Creek Valley, discussed the Clark Fork River Basin Task Force and the Upper Clark Fork Steering Committee and the formation of river basin councils. He encouraged the WPIC to delay making a decision on any legislation.

03:53:59 Mr. Erb said he has water that runs down the Clark Fork River and provided a copy of a court decree for the DNRC to follow up on. [\(Exhibit 9\)](#)

03:55:34 Erin Farris-Olsen, executive director, Montana Watershed Coordination Council (MWCC), said MWCC met with the stakeholders of the Clark Fork River Basin Task Force, and the stakeholders recommend that the WPIC take no action at the current time. She said the stakeholders would like more time to develop a process for creating a river basin council, but said they prefer LCwp83 and provided some suggested edits to the draft legislation.

04:00:53 Dean Brockway, Flathead Joint Board of Control, discussed the irrigation projects and water rights on the Clark Fork River.

04:03:43 Ms. Chillcott said she recommends that the WPIC wait on making any decisions that would eliminate the Clark Fork River Basin Task Force and the Upper Clark Fork Steering Committee.

04:06:14 Ms. Leoniak said that the city of Bozeman supports the idea of expanding river basin councils and provided some suggestions to give more structure to the bill.

04:08:05 Mr. Tiberi said that the draft legislation to form statewide river basin councils has become a bigger issue than the initial concept to combine the Clark Fork River Basin Task Force and the Upper Clark Fork Steering Committee, and that the MACD has not yet gotten an opinion from its members.

04:09:45 Ms. Ziemer said formation of river basin councils is a good idea, but the bills are premature in the scope of the council's duties and the membership and how it functions. She recommended that a study be done during the next interim.

Committee Questions and Discussion:

04:11:10 Sen. Fielder
04:13:44 Ms. Ziemer
04:14:21 Sen. Fielder
04:14:27 Ms. Ziemer
04:14:42 Rep. Z. Brown
04:16:03 Ms. Farris-Olsen
04:19:03 Rep. Williams
04:22:05 Mr. Dinsmore
04:24:17 Rep. Williams
04:24:56 Mr. Dinsmore
04:25:42 Rep. Williams
04:25:55 Mr. Dinsmore
04:26:08 Rep. Williams
04:27:02 Sen. Hamlett
04:27:24 Mr. Sweet
04:29:21 Sen. Hamlett
04:29:47 Rep. Williams
04:31:58 Sen. Fielder
04:33:11 Sen. Vincent
04:36:25 Sen. Fielder commented on the testimony from Mr. Erb and Mr. Brockway and requested that staff look at the information that was submitted.
04:37:17 Sen. Hamlett
04:37:32 Rep. Glimm
04:37:53 Mr. Mohr

04:38:20 Brief Recess
05:07:49 Reconvene

05:07:59 Mr. Mohr said that the WPIC voted at its meeting in July to keep receiving reports from both the Clark Fork River Basin Task Force and the Upper Clark Fork Steering Committee.
05:08:15 Sen. Hamlett
05:08:36 Rep. Williams
05:09:13 Sen. Vincent
05:09:30 Sen. Hamlett
05:09:41 Sen. Fielder
05:10:31 Sen. Hamlett

PUBIC COMMENT ON ANY MATTER WITHIN THE JURISDICTION OF THE WPIC

05:11:00 Mr. Tiberi gave an update on the federal Assumable Waters Sub-Committee.

SELECTION OF COMMITTEE BILL SPONSORS

05:12:31 Mr. Mohr said the WPIC received a list of the bills it passed for pre-introduction and that need to have a sponsor assigned. ([Exhibit 10](#))

LCwp01 — Clarify water commissioner appointments

05:13:08 Mr. Mohr provided a summary of LCwp01.

05:13:34 Sen. Hamlett assigned Sen. Stewart Peregoy as the bill sponsor and Sen. Vincent as the back-up.

LCwp02 — Require education program for water commissioners

05:13:46 Mr. Mohr provided a summary of LCwp02.

05:14:06 Sen. Hamlett assigned Sen. Stewart Peregoy as the bill sponsor and Sen. Vincent as the back-up.

LCwp03 — Clarify definition of water right change

05:14:15 Mr. Mohr provided a summary of LCwp03.

05:14:34 Sen. Hamlett assigned Rep. B. Brown as the bill sponsor and Sen. Stewart Peregoy as the back-up.

LCwp08 — Statutory appropriation for Groundwater Investigation Program

05:14:52 Mr. Mohr provided a summary of LCwp08.

05:15:07 Sen. Hamlett assigned Rep. Glimm as the bill sponsor and Sen. Stewart Peregoy as the back-up.

LCwp11 — Clarify process for updating water right transfer

05:16:10 Mr. Mohr provided a summary of LCwp11.

05:16:27 Sen. Hamlett assigned Rep. B. Brown as the bill sponsor and Sen. Vincent as the back-up.

LCwp4b — Limit adverse effects analysis

05:16:38 Mr. Mohr provided a summary of LCwp4b.

05:17:04 Sen. Hamlett assigned Rep. Z. Brown as the bill sponsor and Sen. Vincent as the back-up.

LCwp82 — Establish Surface Water Assessment and Monitoring Program

05:17:13 Mr. Mohr provided a summary of LCwp82.

05:17:34 Sen. Hamlett assigned Rep. Glimm as the bill sponsor and Sen. Stewart Peregoy as the back-up.

LCwp06 — Allow Water Court review of certain DNRC decisions

05:17:50 Mr. Mohr provided a summary of LCwp06.

05:18:11 Sen. Hamlett assigned Sen. Vincent as the bill sponsor and Sen. Stewart Peregoy as the back-up.

LCwp81 — Authorize DEQ assumption of dredge and fill permitting

05:18:27 Mr. Mohr provided a summary of LCwp81.

05:19:06 Sen. Hamlett assigned Sen. Vincent as the bill sponsor and Sen. Stewart Peregoy as the back-up.

ADJOURN

05:20:49 Sen. Hamlett adjourned the meeting at 3:27 p.m.

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