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Water Policy Interim Committee

60th Montana Legislature

SENATE MEMBERS

JIM ELLIOTT--Chair
GARY PERRY--Vice Chair
LARRY JENT
TERRY MURPHY

HOUSE MEMBERS

SCOTT BOGGIO
JILL COHENOUR
BILL MCCHESENEY
WALTER MCNUTT

COMMITTEE STAFF

JOE KOLMAN, Lead Staff
GREG PETESCH, Staff Attorney

ENVIRONMENTAL QUALITY COUNCIL/ WATER POLICY JOINT SUBCOMMITTEE MINUTES

Date Approved: ¹

August 12, 2008

Room 152
State Capitol Building

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. JIM ELLIOTT, Chair
SEN. GARY PERRY
SEN. BOB STORY (Via conference call)
SEN. DAVID WANZENRIED (Via conference call)
REP. WALTER McNUTT

¹These minutes were completed after the interim recessed and were not approved by the subcommittee.

COMMITTEE MEMBERS EXCUSED

REP. CAROL LAMBERT

STAFF PRESENT

JOE KOLMAN, Lead Staff
TODD EVERTS, Staff Attorney
CYNTHIA A. PETERSON, Committee Secretary

Visitors

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

COMMITTEE ACTION

There was no committee action.

CALL TO ORDER AND ROLL CALL

00:00:02 Sen. Jim Elliott, Chairman of the Water Policy/Environmental Quality Council Joint Subcommittee (Joint Subcommittee), called the meeting to order at 5:15 p.m. The secretary noted the roll ([Attachment 3](#)).

AGENDA

CONSIDERATION OF LEGISLATIVE ADMINISTRATIVE OPTIONS FOR FUTURE WATER POLICY DEVELOPMENT

Overview of Issues - Mr. Everts

00:00:19 Mr. Everts identified the issue before the Joint Subcommittee as being how to best address Montana's future water issues. Mr. Everts reported the Environmental Quality Council (EQC) has been a standing statutory committee of the Legislature since 1971. Mr. Everts explained the EQC is a policy committee which provides agency oversight for the Department of Environmental Quality (DEQ), the Department of Natural Resources and Conservation (DNRC), and the Department of Fish, Wildlife & Parks (FWP).

Presentation of Bill Drafts - Mr. Kolman

00:02:18 Mr. Kolman directed the Subcommittee to LC5017, which would make the Water Policy Interim Committee (WPIC) a permanent interim committee ([EXHIBIT 1](#)); and LC5018, which would make the WPIC a permanent subcommittee of the EQC ([EXHIBIT 2](#)). Mr. Kolman reviewed the bill drafts with the Joint Subcommittee.

Joint Subcommittee Questions

- 00:08:33 Sen. Wanzenried asked Rep. McNutt to comment.
- 00:08:50 Rep. McNutt stated he had mixed emotions about the issue, but he believed creating a separate WPIC is necessary, provided that the separation of the issues with the EQC can be accomplished. Rep. McNutt noted FWP, the DEQ, and the DNRC address other issues besides water. Rep. McNutt thought some issues may need to be referred by the WPIC to the EQC. Rep. McNutt urged caution in organizing the WPIC's workload and staffing, but believed the WPIC should continue. Chairman Elliott asked whether Rep. McNutt believed the administrative functions should remain with the EQC. Rep. McNutt agreed.
- 00:12:07 Sen. Story agreed the WPIC should be separate and suggested a transition phase be implemented during the WPIC's first interim to coordinate with the EQC.
- 00:13:33 Chairman Elliott thought the Chairmen of the WPIC and EQC could communicate and coordinate WPIC and EQC activities.
- 00:14:04 Rep. McNutt stated he has knowledge of the EQC and that it would be great for the WPIC to have input from EQC members regarding the EQC's work and functions.
- 00:14:50 Sen. Wanzenried stated this is the first interim the EQC has not addressed water issues and stated he has seen how integral water is to other issues, specifically water quality. Chairman Wanzenried saw a need to have depth of knowledge regarding the environmental consequences of water issues. Chairman Wanzenried noted the amount of time the agencies would need to expend if the agencies were required to appear before both the WPIC and the EQC.
- 00:16:54 Sen. Perry stated he is also torn and reiterated the difficulty in separating water policy and water quality. Sen. Perry did not want to overburden the EQC.
- 00:18:28 Chairman Elliott pointed out the current WPIC conducted 160 hours of hearings on water issues. Chairman Elliott believed there was a need to have legislators with water expertise. Chairman Elliott suggested continuing the WPIC for several years, and that the WPIC work in coordination with the EQC and that the administrative power remain with the EQC.
- 00:20:20 Sen. Wanzenried suggested if an experiment was going to be conducted, water policy should be addressed by a subcommittee of the EQC initially and, if that did not work well, a separate WPIC could be created in the future.
- 00:21:28 Chairman Elliott asked how a subcommittee of the EQC could retain the autonomy of an interim committee and have its decisions subject to the full EQC.
- 00:22:04 Sen. Wanzenried believed if there were a commitment from both committees, it would work.

- 00:22:52 Rep. McNutt did not view the proposal as an experiment since the WPIC had been in existence during the past interim. Rep. McNutt stated he would like to see the WPIC continue.
- 00:24:01 Sen. Perry stated he had not previously considered politics, but stated he has heard politics are involved in the EQC. However, Sen. Perry had not seen politics on the current WPIC.
- 00:25:18 Sen. Wanzenried identified politics as inherent in all interim committees, and explained he was referencing the role that public interest groups play in politics. Sen. Wanzenried clarified he did not mean anything degrading by referencing "experiment."
- 00:26:42 Sen. Story suggested creating a new interim committee would be more difficult than creating a permanent subcommittee of the EQC. Sen. Story thought size and makeup of a future WPIC would be important. Sen. Story noted in the future there would not be many rural legislators and thought it was important to include both rural and urban legislators. Chairman Elliott thought eight members would be a desired number. Chairman Elliott expressed concern about the Senators' workloads and noted other states do not put equal numbers of Senators and Representatives on subcommittees.

Public Comment

There was no public comment offered.

Subcommittee Recommendations

- 00:30:58 Sen. Perry stated if he were to design a committee, he would ask the committee to address water policy, water quality, and provide oversight of the department that addresses water. Sen. Perry envisioned difficulties in separating water policy and water quality.
- 00:32:19 Sen. Story stated it was his understanding the WPIC would address all issues regarding water quality and quantity and provide agency oversight on those issues. Sen. Story suggested agencies could report to interim committees even though those interim committees do not directly provide oversight. Sen. Story believed some issues, such as coal bed methane development, would have overlap. If the chairmen or vice chairmen were unable to make a decision or agree, the issue of jurisdiction could be decided by Legislative Council.
- 00:37:04 Chairman Elliott suggested proposed agency legislation should be approved by the EQC.
- 00:37:34 Sen. Perry noted the procedure contained in LC5017.
- 00:38:36 Chairman Elliott suggested asking the Legislature to create a WPIC, consisting of four Senators and four Representatives, equally divided between parties. The chairmen and vice chairmen would coordinate topics for study and action and, if

the chairmen and vice chairmen could not agree, jurisdiction would be decided by Legislative Council.

- 00:40:07 Sen. Story wondered about agency oversight since the EQC already has an established Agency Oversight Subcommittee. Sen. Story thought oversight coordination could also be a problem.
- 00:42:29 Chairman Elliott thought removal of authority could be difficult. Chairman Elliott thought the oversight of water adjudication and water rights should be part of the WPIC's duties. Chairman Elliott suggested other duties could be transferred incrementally.
- 00:43:48 Rep. McNutt noted the DNRC and water court are charged with the responsibility of reporting to the EQC on the water adjudication progress. Rep. McNutt thought the requirements already contained in statute should remain.
- 00:45:24 Mr. Everts agreed progress on water adjudication is statutorily required to be reported to the EQC.
- 00:45:53 Sen. Story suggested reviewing DNRC's structure and identifying which divisions should report to which interim committee. Sen. Story would like to see the workload delineated up front.
- 00:48:50 Chairman Elliott suggested legislation could include the specific areas of oversight that would be under the authority of the WPIC. Sen. Story agreed and suggested the agencies could assist with making a determination regarding oversight issues.
- 00:49:33 Sen. Perry suggested if part of the EQC's responsibility is transferred to the WPIC, EQC membership could be reduced to eight legislators and two members of the public. Sen. Perry noted the intent is for the WPIC to specialize and become more in depth with water issues.
- 00:50:51 Sen. Wanzenried was not convinced the WPIC would continue as a separate interim committee.
- 00:51:40 Sen. Story commented that he shared some of Sen. Wanzenried's concerns and was uncertain of Rep. Lambert's position.
- 00:52:15 Sen. Wanzenried noted other issues could develop in the future and the difficulty that could arise in deciding where those issues should be addressed. Sen. Wanzenried noted public interest groups would also be concerned about jurisdiction. Sen. Wanzenried wanted to ensure that making the WPIC permanent would improve the process.
- 00:54:37 Sen. Story agreed there should be some mechanism to decide the WPIC and EQC workloads. Sen. Story requested staff to work on LC5017 and incorporate the ideas that had been discussed by the Joint Subcommittee.

00:56:57 Chairman Elliott suggested the Joint Subcommittee could meet in September.

00:57:59 Rep. McNutt stated he is not quite ready to make a decision, and that he had not considered some of the issues brought up by Sen. Wanzenried. Rep. McNutt stated he needed more time to make a decision.

00:59:37 Chairman Elliott expressed concern about the amount of study an EQC subcommittee could give water issues. Chairman Elliott stated staff will work on LC5017 and provide a provision for the chairmen and vice chairmen to allocate issues, and provide for Legislative Council to settle disagreements.

01:01:30 Mr. Kolman requested clarification whether staff should discern how oversight of the various bureaus and divisions should be allocated. Sen. Story suggested exploring that option and discussing the various options with people who have institutional knowledge.

01:02:20 Mr. Everts stated "agencies" usually refers to the legal units, and the administrative bureaus and divisions are not differentiated in legislation. Mr. Everts thought specific issues may have to be identified rather than specific bureaus or divisions.

01:03:56 Chairman Elliott thought consideration should be given to the reason the Legislature initially created the WPIC.

01:04:42 Rep. McNutt noted the WPIC had two-day meetings, but EQC subcommittees only have one-day meetings. Rep. McNutt wondered if an EQC subcommittee could accomplish its work in one day.

01:05:48 Mr. Everts clarified that other EQC subcommittees have had two day meetings, a separate budget and staff, and that those issues could be dictated.

01:06:34 Chairman Elliott commented the result could be a three-day meeting for EQC subcommittee members. Mr. Everts explained subcommittee meetings could be handled however the EQC decides. Sen. Story agreed and recalled the Eminent Domain Subcommittee also met separately. Mr. Everts recalled past subcommittee attendance was good.

01:08:38 Chairman Elliott observed water issues would not become less important in Montana and would become more political in the future.

ADJOURN

01:08:56 Chairman Elliott adjourned the meeting at 6:26 p.m.