



Water Policy Interim Committee

61st Montana Legislature

SENATE MEMBERS

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DEBBY BARRETT
BRADLEY MAXON HAMLETT
TERRY MURPHY

HOUSE MEMBERS

WALTER MCNUTT--Chair
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BILL MCCHESENEY
JP POMNICHOWSKI

COMMITTEE STAFF

JOE KOLMAN, Research Analyst
TODD EVERTS, Staff Attorney
CYNTHIA PETERSON, Secretary

MINUTES

Approved May 11, 2010

March 10, 2010

Room 102
State Capitol Building

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.

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

COMMITTEE MEMBERS PRESENT

REP. WALTER MCNUTT, Chair
SEN. DAVID WANZENRIED, Vice Chair
SEN. DEBBY BARRETT
SEN. BRADLEY MAXON HAMLETT
SEN. TERRY MURPHY
REP. RUSSELL BEAN
REP. BILL MCCHESENEY
REP. JP POMNICHOWSKI

STAFF PRESENT

JOE KOLMAN, Research Analyst
TODD EVERTS, Staff Attorney
HELEN THIGPEN, Staff Attorney
CYNTHIA PETERSON, Secretary

Visitors

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

COMMITTEE ACTION

- The WPIC approved the January 13 and 14, 2010, Minutes.
- The WPIC voted to approve the draft letter, as amended, to the Montana congressional delegation opposing the proposed amendments to the federal Water Pollution Control Act.
- The WPIC voted to draft a letter to the congressional delegation regarding the flood map modernization program.

CALL TO ORDER AND ROLL CALL

00:00:01 Representative Walter McNutt, Chairman of the Water Policy Interim Committee (WPIC) called the meeting to order at 9:00 a.m. The secretary noted the roll ([Attachment 3](#)).

AGENDA

Approval of draft January 2010 WPIC minutes

00:00:37 Sen. Wanzenried moved to approve the January 13 and 14, 2010, minutes. The motion carried unanimously by voice vote.

Overview of agenda - Joe Kolman, staff

00:01:01 Mr. Kolman reviewed the agenda for March 10 and 11, 2010.

DRAFT LETTER OPPOSING CLEAN WATER RESTORATION ACT

Review of draft letter - Joe Kolman, staff

00:02:30 Mr. Kolman reviewed the draft letter to the congressional delegation regarding Senate Bill 787 ([Exhibit 1](#)).

Public comment

00:04:34 Mark Fix, a Tongue River rancher and irrigator and Chairman of the Coal Bed Methane Task Force, Northern Plains Resource Council, showed photographs of the discharge of coal bed methane (CBM) water. Mr. Fix opposed the draft letter because he believed all waters need to be protected. Mr. Fix submitted an article from *The New York Times* entitled "Rulings Restrict Clean Water Act, Foiling E.P.A., February 28, 2010" ([Exhibit 2](#)).

Committee questions, discussion and action, if any

00:09:24 Sen. Murphy moved the WPIC approve the draft letter, Exhibit 1.

- 00:09:54 Sen. Wanzenried had questions about the phrase "was intended" on the second page and wondered whether the phrase referenced the original act or what the sponsor of the proposal had intended.
- 00:10:08 Mr. Kolman clarified the phrase referred to the original Clean Water Act. Sen. Wanzenried believed the phrase needed clarification.
- 00:11:29 Rep. Bean agreed with including the proposed clarification. There was no opposition from the WPIC to including the clarification.
- 00:11:58 Sen. Wanzenried referred to the language in the last paragraph "proposes these provisions and any similar legislation" and wondered whether the phrase was necessary. Sen. Wanzenried suggested deleting the sentence.
- 00:13:00 Rep. Bean suggested "the provisions of SB 787" rather than "these provisions." Sen. Wanzenried recommended removing the first sentence of the last paragraph.
- 00:14:38 Rep. Bean suggested retaining the sentence since the WPIC does adamantly oppose the legislation. Chairman McNutt believed the balance of the paragraph relayed the intention of the WPIC. Rep. Bean stated he would like the federal legislators to know the WPIC opposes the federal legislation.
- 00:16:13 Sen. Murphy's motion carried unanimously by voice vote.

LEVEE CERTIFICATION

- 00:17:36 Mr. Kolman contacted the state Office of the Army Corps of Engineers and submitted a copy of electronic correspondence between himself and the Army Corps of Engineers ([Exhibit 3](#)).

Rep. Robert Mehloff, Great Falls

- 00:18:07 Rep. Mehloff submitted a packet of information from the West Great Falls Flood Control & Drainage District ([Exhibit 4](#)). Rep. Mehloff reviewed the information and concerns regarding levee certification.

Public comment

- 00:22:15 Sandy Jo Mares, Secretary and Commissioner, West Great Falls Flood Control and Drainage District, explained the flood district cannot afford to meet all the federal requirements. Ms. Mares stated the new requirements are not what the voters passed. Ms. Mares requested assistance and support from the WPIC and requested the WPIC to write letters to the congressional delegation.
- 00:26:26 Ron Litostansky, President and Commissioner, West Great Falls Flood Control & Drainage District, referred the WPIC to the sample letter to the congressional delegation contained in Exhibit 4.

00:29:27 Laurence Siroky, Department of Natural Resources and Conservation (DNRC), supported the request to send a letter to the congressional delegation requesting funding for levee certification.

Committee questions, discussion and action, if any

00:33:05 Rep. McChesney commented on the experience of Miles City regarding levee certification and implementation of remapping of the flood plain. Rep. McChesney outlined the significant economic impacts of the remapping.

00:37:09 Sen. Wanzenried wondered what good a delay would do since the standards will be difficult and expensive to meet. Rep. McChesney thought the delay would provide time to look for a more economical way to address the issues.

00:38:35 Sen. Wanzenried asked Ms. Mares if she was certain a delay would ensure the certification would be done by the entity they want and at a desirable cost. Ms. Mares addressed the current design flow and the Army Corps of Engineer's requirements. Ms. Mares explained the current project is not very old, development in the drainage basin is not rampant, and the project meets Montana's development requirements.

00:42:23 Sen. Barrett asked what was occurring in other states and wondered whether there would be any merit in asking the Western Governors Association to address the issue.

00:43:03 Rep. Mehloff noted interaction is beginning at the national level and was confident there would be some national unification.

00:44:01 Rep. Bean asked how many Montana levees would be affected.

00:44:18 Mr. Siroky responded there are six to eight Army Corps of Engineer levees in Montana, but there is no comprehensive list. Mr. Siroky explained how remapping has to occur in the community before re-certification is required.

00:46:20 Sen. Hamlett asked Mr. Siroky to explain his past statement that certification is not warranty. Mr. Siroky explained certification is a statement by an expert that the levee meets the building requirements and has been operated and maintained properly, but is not a warranty. Sen. Hamlett asked whether the Corps of Engineers inspected the Great Falls levee prior to the decertification. Mr. Siroky stated there was no inspection that revealed deficiencies in the Great Falls levee. Sen. Hamlett wondered if there was a sunset clause on the Army Corps of Engineer's certification. Mr. Siroky understood there was no sunset, but there was an amendment to legislation in 2000 that stated the Army Corps of Engineers could not compete with private services, and some Corps offices relied on that clause since they were not given funding to certify the levees. Sen. Hamlett requested confirmation that the levees in Great Falls pass muster, but the Army

Corps of Engineers wants to walk away. Mr. Siroky stated the Army Corps of Engineers built the levee and has done annual inspections. Mr. Siroky believed the Great Falls levee could be certified.

00:51:26 Sen. Hamlett asked whether any roads go through the Sun River levee. Ms. Mares identified three sand bag closures and stated none are on the north bank of the Sun River levee. Sen. Hamlett asked whether there were any mechanical locks that could fail on the Sun River levee. Ms. Mares explained how those drainage structures operate. Ms. Mares stated the total drainage system is 7.65 miles. Sen. Hamlett asked about the different procedures for different levees in the state. Rep. Mehlhoff agreed there are different rules for each side of the state.

00:55:47 Rep. Mehloff explained that U.S. Senator, Jon Tester, would be holding a town meeting in Great Falls and asked for a letter of support from the WPIC. Rep. Mehlhoff also submitted copies of letters to the Honorable Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works), dated February 18, 2010 ([Exhibit 5](#)) and March 4, 2010 ([Exhibit 6](#)), and a letter to William Fugate, Federal Emergency Management Agency, dated March 4, 2010 ([Exhibit 7](#)).

00:56:45 Chairman McNutt asked whether the WPIC would support forwarding a letter to the congressional delegation. Rep. McChesney moved a letter be drafted to the congressional delegation regarding the flood map modernization program. The motion carried unanimously by voice vote.

CHANGE OF WATER RIGHT

00:58:01 Mr. Kolman explained the necessity and procedure for changing a water right.

Scott Irvin, DNRC - change process

00:59:24 Scott Irvin, DNRC, explained the past and current processes for changing a water right. Mr. Irvin gave a PowerPoint presentation entitled "Water Right Changes, Legal Background & Historic Use Analysis, March 2010" ([Exhibit 8](#)).

Anne Yates, DNRC - pending legal issues

01:19:36 Anne Yates, an attorney with the DNRC, provided an update on pending water right change cases in Montana.

John Bloomquist, private attorney

01:22:39 John Bloomquist, an attorney in Helena who practices water law, focused on the Montana Water Use Act and its underlying purpose to develop the wise use of water and conservation of water. Mr. Bloomquist identified issues with the change process, including the magnitude of the work involved, the daunting nature of the process for someone wanting to change a water right, and the lack of a simple process to amend a water right. Mr. Bloomquist believed a simpler process to change a water right would encourage compliance.

Holly Franz, private attorney

01:41:37 Holly Franz, a private attorney in Helena, spoke about her experiences as a water right attorney. Ms. Franz stated a water right can be changed, as long as the change does not adversely affect other water users, and the key is that a water user can keep the same priority date. Ms. Franz identified two important considerations: the ability to maintain the right to have changes; and the importance of maintaining the protection in changes for other users. Ms. Franz emphasized the change authorization process is available to protect seniors, as well as juniors. Ms. Franz submitted "Montana Water Plan, Management Section, Subsection: Agricultural Water Use Efficiency, February 1989" ([Exhibit 9](#)).

Public comment

01:59:29 Bob Goffena, an irrigator on the Musselshell River, explained problems irrigators have encountered in changing water rights. Mr. Goffena outlined the importance of historical use and historical consumptive use on the Musselshell River. Mr. Goeffena would like to see a re-examination of the Musselshell.

02:08:14 Dave Schmidt, a water right consultant, spoke about the unintended consequences of HB 40.

Committee questions, discussion and action, if any

02:09:47 Rep. Pomnichowski asked Mr. Irvin what happens to the remaining water if the change is for less water. Mr. Irvin explained the remaining water sits in limbo and may be available for future change. Rep. Pomnichowski wondered what the mechanism was for a change of use and a change of a portion of use. Specifically, Rep. Pomnichowski wondered how water reservations work. Mr. Irvin stated the water right still exists under the changed water right. Rep. Pomnichowski wondered why anyone would file a change of use. Rep. Pomnichowski stated there was substantial irrigated land in Gallatin County that had been developed into subdivisions, but she did not believe the water rights had gone through the change process. Rep. Pomnichowski wondered how a person would know what the amounts or water rights were. Mr. Irvin explained the water right would go through a historic use analysis, and that there are a number of other historic resources available. Rep. Pomnichowski was curious how the historic use analysis happens over time and the change of the rate of use. Rep. Pomnichowski noted that agricultural use goes down in the winter, but domestic use does not change substantially during the year. Mr. Irvin explained the right would be prohibited from being expanded.

02:16:51 Sen. Hamlett wondered if an irrigator proves that he has 500 miner inches of water and reduces to pivot irrigation and then reverts back to flood irrigation, whether the irrigator would be entitled to recapture his original 500 miner inches. Mr. Irvin explained the irrigator would be required to file another change and cautioned there would be an inherent risk because if a water user fails to use a water right, there could be an issue and a possibility that the water cannot be recaptured.

02:18:40 Sen. Barrett wondered how water could physically sit in limbo. Mr. Irvin explained the water is sitting in limbo on paper. Sen. Barrett noted the water did not sit there for 20 years. Sen. Barrett expressed concern about senior water users losing their water simply because they have not used the water. Mr. Irvin addressed the abandonment clause in western water law. Sen. Barrett was concerned about the state denying a senior water user the right to his water.

02:21:46 Mr. Bloomquist identified a need for a water user to protect the remaining water right. Sen. Barrett wondered whether the DNRC informs water users of the need to protect any remaining water the DNRC might view as being abandoned. Mr. Bloomquist did not believe so, but agreed change applicants should be informed up front that they could be jeopardizing their remaining water right.

Break

WATER STORAGE

02:46:12 Mr. Kolman summarized the issue of water storage.

State water projects - Kevin Smith, DNRC

02:47:05 Kevin Smith, State Water Projects Bureau, DNRC, gave a PowerPoint presentation on state water projects ([Exhibit 10](#)).

Aquifer storage options - John Metesh, MBMG

03:01:09 John Metesh, Montana Bureau of Mines and Geology (MBMG), gave a PowerPoint presentation entitled "Aquifer Storage Options, Montana" ([Exhibit 11](#)).

Evaporation, John Wheaton - MBMG

03:20:07 John Wheaton, MBMG, gave a PowerPoint presentation entitled "Evapotranspiration and Groundwater, a Brief Overview" ([Exhibit 12](#)).

Public comment

No public comment was offered.

Committee questions, discussion and action, if any

There were no questions or discussion from the WPIC.

LUNCH

WATER MARKETING -- PRESENT AND FUTURE

04:22:09 Mr. Kolman explained the issues surrounding water marketing in Montana.

Mike McLane, FWP

04:23:42 Mike McLane, Water Conservation, Department of Fish, Wildlife and Parks (FWP), explained how FWP has taken advantage of water marketing for decades. FWP was also given approval to obtain water leases to protect instream flow. Mr. McLane submitted "Final Report of the Select Committee on Water Marketing to the 49th Legislature, State of Montana, January 1985" ([Exhibit 13](#)). Mr. McLane provided a history of water marketing in Montana.

Barbara Hall, Clark Fork Coalition

04:48:04 Barbara Hall, Legal Director, Clark Fork Coalition, gave a PowerPoint presentation entitled "Water Marketing in Montana Today, Buying Water for Fish" ([Exhibit 14](#)).

Chris Corbin, Lotic Water Marketing

05:07:47 Chris Corbin, Lotic Water Marketing, gave a PowerPoint presentation entitled "A Need for Water Marketing Policy" ([Exhibit 15](#)).

David Schmidt, Water Right Solutions

05:19:21 Dave Schmidt, Water Right Solutions, Inc., reviewed his written testimony on water marketing ([Exhibit 16](#)).

Public comment

There was no public comment.

Committee questions, discussion and action, if any

05:29:22 Sen. Barrett asked Mr. McLane whether he believed there was any merit to allowing temporary change permits and temporary leases. Mr. McLane pointed out a temporary change statute already exists, and the original drought plan proposed to address cities, towns and high value water users whose water supply by priority was being shut down. Mr. McLane explained how temporary water use can be used to address drought.

05:32:43 Sen. Wanzenried asked Mr. Schmidt about his comment that Montana should encourage community wells. Mr. Schmidt explained developments in high-growth areas need to be limited on the number of lots that can use exempt wells. Mr. Schmidt suggested making the change process more user friendly and less expensive. Mr. Schmidt believed the DNRC needs to have a relaxed attitude when it comes to its administrative rules and to work on simplifying the process. Mr. Schmidt did not see a need for another agency or water banking entity. Mr. Schmidt depicted the process as a moving target and stated it was difficult to achieve a correct and complete application. Sen. Wanzenried asked Mr. Schmidt to comment on Mr. Corbin's suggestion of mitigation. Mr. Schmidt thought making water marketing a form of mitigation was an interesting concept.

- 05:39:20 Senator Hamlett addressed Ms. Hall about competitive uses for water and asked whether Ms. Hall believed hydro is a non-consumptive use. Ms. Hall stated hydro is an instream use of water. Senator Hamlett asked Mr. Corbin whether environmental, agricultural, or industrial users would supply the water. Mr. Corbin believed most of the water would probably come from agriculture.
- 05:41:59 Sen. Hamlett addressed Mr. Tom Schultz, Administrator, Water Resources Division, DNRC, and asked whether an individual who owns water rights who leases to the State of Montana has to go through the change process. Terri McLaughlin responded state projects do not have to go through the change process and have special statutes providing the marketing ability. Sen. Hamlett then asked whether the DNRC would review the water right to determine whether the amount of water would be diminished because of historic use if a private individual wanted to lease or sell to a water marketing company. Ms. McLaughlin responded if an individual were to sell or give their water right to a water marketer, the individual would have to go through the change process to analyze whether the change would cause an adverse effect. Sen. Hamlett asked Ms. McLaughlin to address how seasonal flows would affect water marketing. Ms. McLaughlin explained most of the water rights that have been made available or have been changed to be used for mitigation or marketing have been seasonal irrigation water rights. Ms. McLaughlin stated if the water had been taken and injected or returned to the aquifer slowly through a recharge it could be used to offset a year-round diversion. Sen. Hamlett noted a number of irrigation districts store water for future irrigation, and asked whether an irrigation district's storage and capacity also be considered. Ms. McLaughlin agreed.
- 05:47:11 Rep. McNutt asked Ms. Hall whether the problem of exempt wells was confined to closed basins. Ms. Hall agreed and stated she believes exempt wells have a place in rural area development.

Break

MENU OPTIONS FOR EXEMPT WELLS, MITIGATION, ETC.

Overview - Joe Kolman, staff

- 06:14:18 Mr. Kolman spoke about the activities of the working group and reviewed "Water á la carte" ([Exhibit 17](#)).

WORK GROUP COMMENTS

Laura Ziemer, Trout Unlimited

- 06:28:21 Laura Ziemer, Trout Unlimited, suggested the ability to transfer water between uses is key to water management. Ms. Ziemer stated while the change process is not perfect, it is DNRC's implementation that needs improvement rather than the

statutory process. Ms. Ziemer noted FWP had been both an objector and an applicant in the change process. Ms. Ziemer believed section § 85-2-402(2)(d), MCA, will need to be changed.

Krista Lee Evans, Senior Water Rights Coalition

06:31:48 Krista Lee Evans, Senior Water Rights Coalition, believed complete removal of exempt wells is not feasible or realistic. Ms. Evans explained the Senior Water Rights Coalition is mainly focused on mitigation. Ms. Evans emphasized the need for a defined service area. Ms. Evans recommended working on an idea to allow for preapproval of a mitigation system.

Abigail St. Lawrence, Montana Association of Realtors

06:34:59 Abigail St. Lawrence, Montana Association of Realtors, agreed with establishing a preapproval process for mitigation. Ms. St. Lawrence identified the problem as being the change applications. Ms. St. Lawrence believed a preapproval process for mitigating water would assist with getting approval for public water supply systems with new water rights. Ms. St. Lawrence summarized the question as how to encourage and make easier the process of getting new permitted water rights, particularly in closed basins, while not sidestepping any of the existing criteria. Ms. St. Lawrence suggested creating a voluntary inspection program as a way to monitor septic systems, and noted the Helena Association of Realtors is beginning a voluntary inspection program with Lewis and Clark County. Ms. St. Lawrence also supported the promotion of gray water systems through a tax credit.

Steve Kilbreath, DEQ

06:41:17 Steve Kilbreath, DEQ Subdivision Section, asked the WPIC to remember the time frames associated with the processes. Mr. Kilbreath stated the DEQ promotes the use of public water supply systems and that the DEQ has witnessed a definite decrease in the number of public water systems due to the acquisition of water rights and the economic downturn. Mr. Kilbreath stated the DEQ recognizes that exempt wells and individual septics have a place in Montana at some lot size and some density.

Terri McLaughlin, DNRC

06:42:58 Terri McLaughlin, DNRC, stated the DNRC is willing and able to do whatever the WPIC would like to resolve the issues.

Bill Schenk, FWP

06:44:02 Bill Schenk, FWP, reported FWP is interested in remaining active in the work group while details are worked out. Mr. Schenk stated FWP has three policy goals: (1) limit the impact of exempt wells on existing water rights; (2) continue to provide for access to ground water for domestic use; and (3) promote the use of community water supply systems in subdivisions. Mr. Schenk thought exempt

wells should be limited in closed basins. Mr. Schenk suggested the limitation should apply to administratively closed basins and not just to statutorily closed basins. Mr. Schenk believed the exempt well limitation should stay at 35 gpm and 10 acre feet for stock. Mr. Schenk addressed ground water mitigation areas and suggested using the term "mitigated ground water development areas." Mr. Schenk believed small well development within the mitigation area should be at 35 gpm or 10 acre feet, and community water systems should have a higher level. Mr. Schenk commented a rancher, an entrepreneur, or a developer could set up a mitigation area. In addition, a conservation district, county water district or conservancy district, could set up a public mitigation area. Mr. Schenk envisioned a need for ongoing monitoring and believed monitoring would be a task for the DNRC.

John Metesh, MBMG

- 06:52:58 John Metesh, MBMG, stated the MBMG had reviewed Exhibit 17. Mr. Metesh stated all of the basins in Montana are altered slow systems, and that there is a new baseline established by 100 years of irrigation. Mr. Metesh emphasized the importance of hydrogeologic assessments and getting science back into the process. Mr. Metesh agreed with the need to monitor.
- 06:55:36 Chairman McNutt thanked the working group.

Public comment

- 06:55:48 Mary Sexton, Director, DNRC, provided an update on the petition for declaratory ruling for the combined appropriation rule. Director Sexton announced Joe Lamson will be the Hearings Examiner, opening briefs are due April 30, responses are due June 4, and the public hearing will be held on June 17. Director Sexton explained that public comment at the hearing will be limited to five minutes per party.
- 06:59:10 Matthew Bishop, staff attorney, Western Environmental Law Center, focused on whether DNRC's interpretation of the term "combined appropriation" in statute is consistent with the intent of the legislature. Mr. Bishop did not believe there was any need for a legislative fix on the combined appropriation language, and that the Legislature's intent was clear.
- 07:02:23 Purcie Bennett, Cottonwood Environmental Law Center, Bozeman, stated Gallatin County is aware of the lawsuit and the current loopholes in the statute. Ms. Bennett thought it was paramount to consider the unique opportunity to address the issues.
- 07:03:57 Rhonda Wiggers, Montana Water Well Drillers' Association, stated it was National Groundwater Well Awareness Week. Ms. Wiggers stated the association was unsure how it feels about mitigation or water banking and desires more details. Ms. Wiggers stated 32 percent of Montana's households have nonpublic source point wells. Ms. Wiggers reviewed static water levels around the state. Ms. Wiggers read letters regarding Paradise Valley and the

Bozeman area. Ms. Wiggers urged the WPIC to leave the exempt well requirements as they stand.

Committee questions, discussion and action, if any

- 07:11:22 Sen. Wanzenried was pleased with the progress the working group had made and suggested the WPIC should encourage the group to continue meeting and reporting to the WPIC.
- 07:13:03 Sen. Murphy asked Mr. Schenk about his comment that in a community system they could allow more than 35 gpm. Mr. Schenk clarified that his recommendation is to specifically look at the closed basins in Montana rather than the exempt well limitation. Mr. Schenk suggested having a preapproved mitigation area would allow someone to come in at a higher volume and would provide built-in incentives. Sen. Murphy asked whether in a community water system there may be instances where you would allow more than 35 gpm per household for homes on the system. Mr. Schenk stated that was not what he was referring to and consideration should be given to what is appropriate for a specific area.
- 07:16:31 Sen. Murphy asked Mr. Kilbreath what he presently found to be the average use per household in subdivisions with a community water system. Mr. Kilbreath explained the average use is a function of how much irrigation is associated with the lot. Mr. Kilbreath stated the average household domestic use is approximately 150-200 gallons of water per day, and almost 100 percent is returned to the ground water through the on-site waste water system.
- 07:17:43 Rep. Pomnichowski agreed with Sen. Wanzenried's comments about the working group. Rep. Pomnichowski thought preapproval of mitigation assumes there will be more exempt wells. Rep. Pomnichowski thought the WPIC could agree there is a desire to limit and not eliminate exempt wells. Rep. Pomnichowski observed a disincentive to be on a municipal system since households would have to pay for their water. Rep. Pomnichowski would like to see incentives to extend municipal infrastructures. Ms. St. Lawrence reported the working group did not discuss either limiting or prohibiting exempt wells within the boundaries of municipal systems or extending the boundaries of municipal systems.
- 07:21:57 Ms. Ziemer explained the working group's task was to develop a menu of options. Rep. Pomnichowski was interested in the limitation of exempt wells within a square mile of a proposal where development of a community system would be better. Ms. Ziemer agreed density of exempt wells is the issue and thought the question was very well placed and could produce substantial results.
- 07:24:07 Sen. Barrett observed three people on the panel stated there is no new water in Montana and stated she disagreed. Sen. Barrett saw a need to determine how much water is available. Sen. Barrett agreed more science is needed, and the state should use its funding to pay for the science. Sen. Barrett suggested promoting science first,

- 07:25:56 Senator Hamlett addressed Mr. Metesh and asked about the varying age of Montana's ground water and whether the water is new or accumulated. Mr. Metesh explained the age of ground water varies extensively.
- 07:28:08 Rep. Bean commented he has been on an individual well for many years and clarified there are expenses involved regardless of the system.
- 07:29:11 Chairman McNutt addressed the working group and asked the working group to continue and refine their work and work on doable issues. Chairman McNutt saw a need to have a semblance of an agreement from the parties in order to move forward. The WPIC agreed and the working group will report to the WPIC at its next meeting.
- 07:33:16 Mr. Kolman asked the WPIC to give the working group a specific charge and commented he suspected the working group size would increase in the future. Chairman McNutt agreed with the need to narrow the scope of the working group and asked the WPIC members to think about the working group's next charge.

MENU OPTIONS FOR COAL BED METHANE WATER

Joe Kolman, staff

- 07:37:08 Mr. Kolman reviewed "Summary of HB 575 from 2009 Legislature, Options for Addressing Beneficial Use Permitting of Coal Bed Methane Water" ([Exhibit 18](#)).

Public comment

- 07:45:27 Brenda Lindlief Hall, Tongue River Water Users' Association, stated two weeks ago she received notices of completion of ground water development under the exempt well statutes ([Exhibit 19](#)) ([Exhibit 20](#)). Ms. Hall thought the issue could have been moot if ranchers were allowed to use the exempt well provision for stock water. Ms. Hall submitted copies of the Notices of Completion and LC 1031 ([Exhibit 21](#)).
- 07:49:50 Jeff Tiberi, Montana Association of Conservation Districts, agreed to take the options to his association for comment.
- 07:50:26 Tom Richmond introduced Jon Metropoulos.
- 07:51:22 Jon Metropoulos, U.S. Fidelity, spoke about the recent court case. Mr. Metropoulos explained that Fidelity has decided to work through the existing Water Use Act process and asked the WPIC not to adopt any of the options until a determination is made whether the Water Use Act process will work.
- 07:56:46 Brad Sauer, Northern Plains Resource Council, agreed with Sen. Barrett's suggestion that there is a need for more science. Mr. Sauer stated he would favor forming a working group to study solutions to the issue of coal bed methane (CBM) water.

Committee questions, discussion and action, if any

07:58:48 Rep. McChesney suggested that HB 575 was vetoed and ranchers can get the water, and asked the WPIC to hold off on addressing the issue.

07:59:47 Chairman McNutt commented the folks and players and dialogue has not changed over the years and he has seen no movement toward a willingness to discuss options. Chairman McNutt stated he is not anxious to see another bill go through the process.

PUBLIC COMMENT ON ANY MATTER WITHIN THE WPIC JURISDICTION

08:01:16 Dane Gamble thanked the WPIC for its hard work and commented on his observations of the meeting.

ADJOURN

08:05:45 Chairman McNutt adjourned the meeting.

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