



PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

## Water Policy Interim Committee

### 61st Montana Legislature

#### SENATE MEMBERS

DAVID WANZENRIED--Vice Chair  
DEBBY BARRETT  
BRADLEY MAXON HAMLETT  
TERRY MURPHY

#### HOUSE MEMBERS

WALTER MCNUTT--Chair  
RUSSELL BEAN  
BILL MCCHESENEY  
JP POMNICHOWSKI

#### COMMITTEE STAFF

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

# MINUTES

Approved September 8, 2010

Date: July 27, 2010

Room 172  
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.

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**

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  
CYNTHIA PETERSON, Secretary

### **Visitors**

Agenda ([Attachment 1](#))  
Visitor list ([Attachment 2](#))

## **COMMITTEE ACTION**

- The WPIC approved sending the following legislative proposals out for public comment:
  - LC 8002
  - LC 9002 (as amended)
  - LC 9004
  - LC 9005
  - LC 9999 (as amended)

## **CALL TO ORDER AND ROLL CALL**

00:00:00 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**

### **UPDATE ON NAVIGABLE RIVERS--USE OF STREAM BEDS**

#### **Todd Everts, WPIC attorney**

00:00:15 Mr. Everts reported on the Montana Supreme Court decision in PPL v. Montana regarding navigability for title. The court determined if the river is navigable, the streambed is owned by the state; however, if the river is deemed non-navigable, the streambed is owned by the riparian owner. Mr. Everts believed the determination of what is and is not navigable is a judicial decision since rivers are a public trust resource.

00:04:13 Sen. Barrett commented that at statehood, Montana had control of the navigable rivers and wondered if the same was true for the other states. Mr. Everts explained the doctrine applies across the U.S., but there may be different interpretations as to what constitutes "navigable."

#### **Redraft of SB 507--Joe Kolman**

00:05:23 Mr. Kolman directed the WPIC to the redraft of SB 507 ([EXHIBIT 1](#)), and reviewed the legislation.

00:14:34 Sen. Barrett requested a list of the rivers that currently meet the definition of navigable. Mr. Kolman submitted a map indicating the rivers that had been judicially determined to be navigable ([EXHIBIT 2](#)).

00:15:28 Sen. Wanzenried requested an explanation of page 7, Section 7, subsection (2). Mr. Kolman explained Section 7 allows the user of the riverbed to challenge the requirement based on navigability of the river or the location of the footprint. Sen. Wanzenried wanted to know about the reference to "or other factors." Mr. Kolman explained the reference was relatively open.

- 00:17:13 Sen. Barrett noted the public trust doctrine says the state owns the water, but it is open to the public. Sen. Barrett wanted to know the financial responsibility of the state and whether the state can ask the public to pay. Mr. Everts explained the users of the beds set up a legal mechanism to compensate the trust for that use. Sen. Barrett wondered who pays the upkeep for recreation. Mr. Everts responded the upkeep is paid for by the recreational use fee.
- 00:20:29 Sen. Hamlett wondered how Section 7 would fit in with the provisions of SB 465 which addresses structures on rivers that were determined to be navigable. Mr. Everts requested time to review SB 465 in detail. Sen. Hamlett had questions with the reference to "proposes to use."
- 00:22:47 Mr. Kolman replied SB 465 provided a person would still own the structure and have access to the structure, and the change of a designation regarding navigability may not interfere or impede a water right. SB 507 would require compensating the state for the use of the underlying streambed.
- 00:25:01 Chairman McNutt asked whether the Environmental Quality Council (EQC) had approved SB 507. Mr. Kolman responded the EQC would decide at its September 13-14 meeting. Chairman McNutt wanted to know about the public comment period. Mr. Kolman stated LC 8002 would go out for public comment and would be included in the WPIC's report.

#### **Public Comment**

- 00:28:08 Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC), stated that during the last session, they were attempting to strike a balance and address the concerns of other river users and determine where Montana has management opportunities on the rivers. Director Sexton wondered whether the state was abrogating its trust responsibility.
- 00:33:01 Krista Lee Evans, Senior Water Right Users and Association of Gallatin Agricultural Irrigators, supported SB 507 and emphasized the importance of having a consistent formula. Ms. Evans suggested navigability for title should be determined by a court of competent jurisdiction. Ms. Evans did not believe the bill was asking the DNRC or Land Board to abrogate its responsibility.

#### **Committee Questions, Discussion and Action, if any**

- 00:35:57 Sen. Barrett asked whether the bill should include the list of rivers that already fit the definition of navigability.
- 00:36:26 Mr. Everts responded defining the river as adjudicated addresses the concern. The Legislature has already said the State Land Board should take all necessary action to determine title.
- 00:37:54 Chairman McNutt added listing the rivers in statute would require updating the statute. Chairman McNutt believed the definition would be adequate.

- 00:38:53 Sen. Hamlett thought it seemed like a lot of actions were being based on the PPL lawsuit and noted the lawsuit is under appeal. Mr. Everts explained navigability for title is a federal decision and the results of the appeal may have to be addressed by a future legislature.
- 00:40:45 Sen. Barrett wondered whether the WPIC should adopt the changes from the EQC. Mr. Kolman believed it was not necessary to formally adopt the EQC's changes, and that the EQC's final action should occur in September.
- 00:42:22 Rep. Pomnichowski asked about the procedure, and Mr. Kolman explained the bill could be co-sponsored with the EQC, but since the EQC meets after the WPIC, the bill may be changed by the EQC. Chairman McNutt stated he will speak with Rep. Vincent, Chairman of the EQC, about the way to proceed. The WPIC believed the bill should go forward.
- 00:44:35 Sen. Hamlett asked whether the DNRC is claiming ownership and asserting management authority. Director Sexton responded the DNRC claims ownership and, therefore, is asserting management authority. Sen. Hamlett recalled the DNRC's concern about oil and gas leases and wondered whether the DNRC is getting money from oil and gas leases under its management authority. Director Sexton agreed the DNRC is receiving income due to oil and gas development. Sen. Hamlett wondered if the DNRC receives money from the beds of rivers not deemed navigable by a court of competent jurisdiction. Director Sexton responded yes.
- 00:47:51 Sen. Barrett noted the Department of Fish, Wildlife & Parks (FWP) is recommending setbacks for oil and gas and wondered what that would do to DNRC's responsibility to make money. Mr. Everts reiterated the state has the ability to regulate how the beds are used. Director Sexton added the setback requirements are already in rule.
- 00:51:49 Mr. Everts stressed the delicate balance between asserting ownership for management purposes and receiving income and an actual determination of ownership by a court of competent jurisdiction. Chairman McNutt explained the use of horizontal drilling. Sen. Barrett questioned whether there would be a new cost for oil and gas for gas development under the river beds. Chairman McNutt did not believe that would be the case.
- 00:54:53 Sen. Hamlett asked for an approximate figure on how much income comes in from oil and gas. Director Sexton identified the amount as \$30-\$40 million. Director Sexton clarified if a meandering stream has not been adjudicated, the state cannot assert ownership and would not get rents and royalties.

## **WATER-RELATED FINANCIAL ISSUES**

### **Overview of Legislative Finance Committee Work--Sen. Wanzonried**

- 00:57:48 Sen. Wanzonried reported on the PPL settlement, the appeal, and the disposition of the monies. On October 13, 2010, the U.S. Supreme Court will let Montana

know if they will hear the case. Sen. Wanzenried believed resolution would occur after the 2011 Legislature is in session. Both parties submitted a one-page summary of their positions to the U.S. Supreme Court.

01:03:52 Barbara Smith, Legislative Fiscal Division, offered to answer questions.

01:04:16 Director Sexton believed that, statutorily and constitutionally, the Land Board has clear authority, and the damages are compensatory for illegal trespass, and the money was awarded to make the trust whole. Director Sexton emphasized the revenue is not federal or state money and is, in fact, private money coming from PPL.

### **Committee, Questions, Discussion and Action, if any**

01:06:53 Sen. Hamlett asked whether the Legislative Finance Committee (LFC) received a reply to its letter. Ms. Smith responded the letter did not specifically request a response.

01:07:51 Sen. Wanzenried explained the EQC also sent a letter to the Land Board endorsing the letter sent by the LFC. Chairman McNutt observed that it appears both sides are treading water. Sen. Wanzenried identified the next steps as determining whether PPL will appeal and whether the U.S. Supreme Court will accept the appeal. Sen. Wanzenried emphasized the need to make an active effort to resolve the case.

01:11:41 Sen. Wanzenried summarized one question as being whether the EQC or the LFC has legal standing to bring an action. Mr. Everts stated the entire Legislature would have standing in court. Upon question from Chairman McNutt, Sen. Wanzenried stated an interim committee cannot bring an action. Mr. Everts recalled a court case that says a committee cannot take action on behalf of the whole Legislature.

01:14:40 Mr. Kolman requested Sen. Wanzenried to address other issues pending before the LFC.

01:15:04 Sen. Wanzenried explained that with the projected shortfall of revenue, the LFC is looking at ways revenue and expenditures can be balanced. Sen. Wanzenried directed the EQC to the on-line reference book identifying revenue enhancements and expenditure reductions.

01:16:50 Ms. Smith submitted "Legislative Fiscal Division, Legislative Budget Options" (**EXHIBIT 3**); a graph depicting the 2013 Biennium General Fund Budget (**EXHIBIT 4**); and "Reference Book--Status Update (**EXHIBIT 5**). Sen. Wanzenried asked the EQC to note the references to programs that were funded with one-time-only (OTO) funds.

01:19:59 Chairman McNutt addressed the Groundwater Investigation Program and the disagreement as to whether that funding was base budget or OTO Ms. Smith responded the project is in the current level service and is OTO.

- 01:26:11 Sen. Barrett addressed page 9 and asked if there would be any justification to repaying past monies allocated to FWP from the General Fund. Ms. Smith replied that could not be done since the money was approved by the Legislature.
- 01:26:59 Sen. Wanzenried thought there were probably a number of other ideas that had not found their way onto the list and acknowledged the budget would be a significant undertaking. Ms. Smith urged the legislators to call her if they have any ideas they would like included in the reference book.
- 01:28:45 Chairman McNutt addressed the water adjudication account and wondered if reducing the balance below what was originally set up as the cap would result in the fee kicking back in and said he was told the fee will not automatically come back. Chairman McNutt acknowledged it took a lot of effort to get water adjudication on track and was concerned about funding being cut.

### **Public Comment**

- 01:30:42 Larry Luloff, Decreed Water Advocates, said he has a long history with water adjudication and believed the water adjudication funding should remain.
- 01:32:27 Lee Heiman, Legislative Services Division, introduced the new Legal Director and Chief Legal Counsel, Rob Stutz. Mr. Stutz greeted the WPIC.

## **WATER RIGHT ADJUDICATION/OWNERSHIP UPDATE**

### **Director Mary Sexton, DNRC**

- 01:34:26 Director Sexton reviewed "DNRC Report to EQC, HB 22 Adjudication Progress" ([EXHIBIT 6](#)). Director Sexton submitted "HB 39 Ownership Automation" ([EXHIBIT 7](#)).

### **Committee Questions, Discussion and Action, if any**

- 01:42:12 Chairman McNutt recalled the process was supposed to streamline updates and asked whether the update process can be corrected. Director Sexton believed the data would always need to be scrubbed, but also believed there would be less data in the future.
- 01:43:37 Terri McLaughlin, Water Rights Bureau, predicted that within a couple more cycles of scrubbing, the DNRC would have all the geocodes. Ms. McLaughlin agreed the data loads get smaller each cycle.
- 01:44:52 Chairman McNutt pointed out that in the future, the research will have already been completed to establish the validity of the geocode. Chairman McNutt urged the DNRC to continue its good work.

### **Judge Bruce Loble, Water Court**

- 01:45:39 Chairman McNutt commended Judge Loble for his rapport with the public.

01:46:21 Judge Loble reviewed "Water Court Adjudication Progress Report to the EQC Pursuant to § 85-2-281, MCA" (Exhibit 6).

#### **Committee Questions, Discussion and Action, if any**

- 01:51:00 Sen. Hamlett addressed Judge Loble's reference to delays by the U.S. government in fact finding and asked if the delays were coming from the Department of the Interior and were related to Reservation issues and boundaries. Judge Loble agreed the Department of the Interior is having difficulty keeping up since one of their experts retired. Judge Loble did not believe it had anything to do with Reservations but rather had more to do with the demand on resources from the federal government. Sen. Hamlett thought water rights on Reservations were an issue before the Department of the Interior.
- 01:53:40 Chairman McNutt asked whether Judge Loble had it in his purview to respond to the federal government that the delays are unacceptable. Judge Loble stated he would be willing to put the pressure on the federal government.
- 01:55:17 Sen. Hamlett asked how many extensions could be filed by the federal government. Judge Loble identified two 90-day extensions.

#### **Public Comment**

There was no public comment.

(BREAK)

#### **WATER RIGHT ADJUDICATION AUDIT**

##### **Angus Maciver, LAD**

- 02:23:03 Angus Maciver, Legislative Audit Division, gave a PowerPoint presentation on the water adjudication audit (**EXHIBIT 8**).
- 02:49:22 Rep. Pomnichowski asked if any decrees were issued under the verification process rather than the newer examination process. Mr. Maciver agreed temporary decrees were issued for the basins that were verified. Rep. Pomnichowski asked whether there was any conflict between the examination process and what occurred under the verification process. Mr. Maciver understood the temporary decrees would need to transition to preliminary status and that would likely involve an opportunity for further objections. Mr. Maciver suggested many of the basins had addressed the issues that raised objections.

##### **Director Mary Sexton, DNRC**

- 02:51:56 Director Sexton commented on the audit and thanked Mr. Maciver and the Audit Division for their hard work. Director Sexton identified the verification examination process as being significant. Director Sexton also identified reserved water rights and water right enforcement as being ongoing processes. Director Sexton

envisioned a need for the DNRC to transition with the Reserved Water Rights Compact Commission once that entity sunsets.

### **Judge Bruce Loble, Water Court**

02:57:20 Judge Loble depicted the audit report recommendations as achievable. Judge Loble provided a history of efforts to address water rights by Montana Legislatures. Judge Loble was uncertain whether claims that have been through the verification process should be re-examined.

### **Committee Questions, Discussion and Action, if any**

03:08:49 Sen. Barrett found Judge Loble's comments about the audit encouraging and asked whether Judge Loble could expedite the process and whether he thought hiring a consultant would be beneficial. Judge Loble believed the water court and the DNRC could expedite the process without using a consultant. Sen. Barrett thought utilizing both would be helpful.

### **Public Comment**

03:11:12 Susan Cottingham, Staff Director, Reserved Water Rights Compact Commission, acknowledged all settlements must be approved by the water court and spoke about the impacts the water court will experience as settlement agreements are reached on the compacts.

03:18:46 Ms. Evans urged that changes not be made where claimants do not have a say about their rights or their neighbors' rights.

03:20:31 Rep. Pomnichowski asked Judge Loble to address the statute which restricts objections raised for matters decided in prior decrees. Judge Loble stated anytime the state makes a change to a water right, the water court will give the water right holder an opportunity to respond.

03:21:23 Chairman McNutt appreciated everyone's work on the audit and depicted the audit as good news.

### **WPIC INTERIM REPORT--CONTINUED DISCUSSION**

03:24:24 Mr. Kolman submitted LC 9002 and reviewed the changes to the water marketing bill draft ([EXHIBIT 9](#)).

03:28:25 Mr. Kolman submitted LC 9004 and reviewed the changes to the proposed legislation regarding mixing zones ([EXHIBIT 10](#)).

03:33:33 Mr. Kolman submitted LC 9999, and reviewed the changes to the proposed legislation addressing attorney fees and costs ([EXHIBIT 11](#)).

03:36:22 Mr. Kolman submitted Mr. MacIntyre's bill draft regarding community well supply systems ([EXHIBIT 12](#)).



(LUNCH)

### **Committee Questions and Discussion**

04:50:28 Chairman McNutt directed the WPIC on the procedure and time lines for the remainder of the interim.

### **LC 9002**

04:51:35 Mr. Kolman reviewed the discussion draft of the water marketing bill.

04:55:51 Rep. Pomnichowski suggested striking the reference "to other users." Mr. Kolman did not believe that change would work. Rep. Pomnichowski referred to page 2, subsection (4), and thought the other users should also be notified. Mr. Kolman stated Rep. Pomnichowski was speaking of two different processes and clarified notification to the other users occurs when the change application is filed.

04:59:08 Sen. Murphy asked whether the DNRC currently requires mitigation outside closed basins and, if they do, what their specific statutory authority is. Ms. McLaughlin explained if the analysis indicates a new appropriation outside of closed basins would impact senior water rights, a mitigation plan could be offered. Sen. Murphy recalled mitigation was sold to the public as only applying to the closed basins. Sen. Murphy again asked where the statutory authority came from. Ms. McLaughlin cited the Trout Unlimited vs. DNRC (TU) decision where the Montana Supreme Court said the DNRC had to look at ground water impacts that could cause adverse effects to surface water. Sen. Murphy suggested the whole process was set up for use within closed basins, and thought the people outside the closed basins should not be under the same restrictions.

05:03:49 Chairman McNutt noted that Supreme Court decisions are controlling until the Legislature can change the law. Mr. Everts agreed. Mr. Kolman explained a closed basin assumes there is no surface water available for appropriation, and just because a basin is open, does not mean there is a presumption that new uses will not create an adverse effect.

05:09:13 Sen. Murphy asked when the statute was enacted. Mr. Kolman identified the 1973 Water Use Act.

05:09:40 Rep. Pomnichowski explained that mitigation and aquifer recharge are currently only considered a beneficial use in closed basins. LC 9002 would recognize mitigation and aquifer recharge as beneficial uses in open basins.

### **Public Comment**

05:10:46 Ms. McLaughlin clarified her understanding of the amendments.

- 05:12:55 Abigail St. Lawrence, Montana Association of Realtors, stated the TU decision explained it was DNRC's interpretation of the closed basin statutes that was the problem.
- 05:14:31 Anne Yates explained the history prior to HB 831 and stated that TU mitigation augmentation was a beneficial use but was not used very much.
- 05:16:56 Chairman McNutt asked whether the WPIC desired to send LC 9002 out for public comment with the language change. Sen. Wanzenried moved LC 9002, with the language change, be sent out for public comment. The motion carried unanimously by voice vote.

#### **LC 9004**

- 05:18:00 Mr. Kolman submitted and reviewed a revised copy of LC 9004 (**EXHIBIT 13**).
- 05:21:43 Rep. Bean asked if the bill only applied to new developments. Mr. Kolman agreed. Rep. Bean asked if an older home that needs the septic replaced would be subject to the new regulations.
- 05:22:30 Steve Kilbreath, Department of Environmental Quality (DEQ), clarified LC 9004 would not apply to any existing lots.
- 05:22:57 Rep. Pomnichowski was curious about the zoning and the understanding of an easement. Mr. Kilbreath clarified zoning is provided for in the Platting Act. Rep. Pomnichowski explained she serves on the Zoning Commission in Bozeman and was concerned there could be an application for a variance from the zoning process. Mr. Kilbreath stated a subdivision comes to the DEQ after it has been through the local government zoning process. In addition, the DEQ does not take action until the local government takes final action, and the DEQ is part of the preliminary approval process.
- 05:29:36 Sen. Wanzenried moved to approve LC 9004. The motion carried, with Sen. Barrett voting no. Sen. Barrett explained she voted no because it may increase the acres, which would result in an increased cost. Sen. Barrett clarified she was okay with putting LC 9004 out for public comment.

#### **LC 9005**

- 05:31:48 Mr. Kolman explained LC 9005 would clarify the authority of local governments to require public water and sewer systems (WPIC Minutes, July 26, 2010, Exhibit 9, Appendix N).
- 05:37:23 Chairman McNutt emphasized LC 9005 simply states counties have the authority and it is not mandatory for counties to adopt rules, but if they do, then they have to meet the criteria.

### **Public Comment**

There was no public comment.

05:38:35 Rep. McChesney moved LC 9005 be moved forward for public comment. The motion carried unanimously by voice vote.

### **LC 9999**

05:39:21 Mr. Kolman explained LC 9999 (Exhibit 11) addresses the award of attorney fees and costs and changes the current language from "shall" to "may." The award is for the appeals process only and not for the administrative proceedings.

05:41:34 Chairman Wanzenried asked where most of the costs and expenses are incurred. Mr. Everts recalled testimony indicating the bulk of the costs and work are incurred at the administrative level. Sen. Wanzenried wondered why the administrative costs would not be included.

05:42:57 Don MacIntyre, representing himself, believed if costs are going to be allowed, it should be throughout the entire case and should not be dependent on whether an appeal is filed.

05:45:32 Chairman McNutt asked for clarification that in a hypothetical case, the only way to get attorney fees and costs is on appeal. Mr. MacIntyre agreed.

05:46:21 Rep. Bean thought the proposal would really only protect the DNRC. Mr. MacIntyre explained the DNRC is acting as the judge and is not a party.

### **Public Comment**

There was no public comment.

05:49:09 Sen. Barrett stated she would not support the proposed legislation because of past testimony. Chairman McNutt noted the language would change "shall" to "may" and would give more room to the judiciary.

05:50:57 Rep. Bean thought there should be discretion in the administrative proceeding. Chairman McNutt reiterated a party cannot reach back from the appeal level and collect administrative costs and fees.

05:55:17 Rep. Pomnichowski believed the administrative proceeding is like a contested case hearing and is where the bulk of preparation goes.

05:57:15 Ms. McLaughlin explained the application process and that no administrative costs are awarded.

06:01:25 Sen. Murphy moved that LC 9999 be amended by striking the language after "attorney fees." The motion carried unanimously by voice vote. Sen. Murphy

moved LC 9999 be moved forward for public comment. The motion carried unanimously by voice vote.

06:04:28 Mr. Kolman explained a bill draft from Mr. MacIntyre regarding exempt wells (Exhibit 12).

**Committee questions, discussion and action, if any**

06:06:15 Rep. Bean thought the proposal was good and believed homes do not need 35 gallons per minute (gpm).

06:06:50 Sen. Wanzenried suggested changing the original statute rather than enacting a new exemption.

06:07:32 Mr. MacIntyre suggested moving the bill forward and receiving public comment on the concept. Mr. MacIntyre suggested the bill draft is a starting place.

06:11:22 Ms. Evans thought the proposal prioritizes the type of use by providing a special exemption for domestic uses. Ms. Evans was against prioritizing types of beneficial uses.

06:12:58 Rep. Bean viewed the bill as a win/win situation and suggested the idea should be given more consideration.

06:13:54 Chairman McNutt stated he was also guarded about placing a priority on any beneficial use.

06:16:56 Rep. McChesney thought the bill warranted further scrutiny. Rep. McChesney moved to keep the proposed legislation in consideration and put it out for public comment. The motion carried 5-3 with Sen. Barrett, Sen. Wanzenried and Sen. Hamlett voting no.

06:18:50 Rep. McChesney recalled the WPIC's practice to not move legislation forward unless there is full consensus from the committee.

06:19:19 Chairman McNutt thought the proposal should not go forward if it got three no votes.

06:20:10 Sen. Barrett stated she was agreeable to putting the bill draft forward for comment because it could be voted up or down. Sen. Wanzenried did not believe it was a good proposal and did not think public comment would change his mind but stated he would accept the chair's decision. Sen. Hamlett agreed. Chairman McNutt decided the bill would not be moved forward.

(BREAK)

06:49:03 Chairman McNutt explained he had re-thought his decision and Mr. MacIntyre's bill, Exhibit 12, will go out for public comment. Sen. Wanzenried believed new exemptions weaken the prior appropriation doctrine. Sen. Wanzenried wanted to

make sure the WPIC was comfortable with what Exhibit 12 would do. Chairman McNutt explained his decision was purely procedural.

- 06:52:31 Rep. Pomnichowski stated there was a majority vote to send the bill out for public comment and the vote was not the final decision of the WPIC. Rep. Pomnichowski was comfortable with the vote and the decision.
- 06:53:29 Sen. Murphy stated he agreed with the first decision, but suggested adopting a committee rule before the September WPIC meeting. Sen. Murphy believed a bill should have a three-quarter vote of the committee before it moves forward. Chairman McNutt assured the WPIC he would place the voting procedure on the agenda for the next meeting before any votes would be taken.
- 06:54:54 Rep. Bean would not oppose a re-vote on the proposal and was wary about wasting the WPIC's time.
- 06:55:27 Sen. Wanzenried moved the WPIC reconsider its action on Exhibit 12. The motion carried with Rep. Pomnichowski voting no. Rep. Pomnichowski moved Exhibit 12 proceed and be put out for public comment. The motion failed 2-6 by roll call vote with Sen. Murphy and Rep. Pomnichowski voting yes.
- 06:57:27 Sen. Barrett asked whether new bills would be allowed in September. Chairman McNutt stated the decision will be made early in the day.
- 06:58:13 Sen. Wanzenried suggested no one would be able to bring a bill in September because of notice requirement. Mr. Kolman was not sure that would be desirable because of the short public comment period.
- 07:00:09 Rep. Pomnichowski requested that new bill drafts be included in the mailing. Chairman McNutt noted committee action would be needed to consider those proposals.
- 07:01:02 Mr. Everts cautioned final policy decisions are made at the last meeting, and the WPIC is not precluded from doing that on the last day. Mr. Kolman added if someone wants to submit public comment in the form of a bill draft, they can do so.
- 07:03:14 Rep. Pomnichowski hypothetically asked whether legislation regarding flooding the river for cottonwood regeneration would be addressed at the next meeting. Mr. Everts explained an agenda item is sufficient notice to the public.

#### **WPIC INTERIM REPORT--Continued Discussion**

- 07:06:39 Mr. Kolman directed the WPIC to the content of the draft report (Minutes of July 26, 2010 Meeting, Exhibit 9). The report will be going out for public comment, so Chairman McNutt solicited suggestions for changes to the report.
- 07:14:50 Sen. Barrett addressed enforcement and noted the DNRC has enforcement authority, but does not exercise its authority.

- 07:15:56 Chairman McNutt told of his past experience with DNRC enforcement and the DNRC's enforcement authority. Chairman McNutt believed the DNRC does exercise its enforcement authority. Sen. Barrett stated she would like to hear the DNRC report on its enforcement activities. Mr. Kolman stated he would put enforcement on the agenda.
- 07:19:59 Sen. Wanzenried acknowledged the water court has such an escalating workload that he would like to discuss the need for a second water judge to avoid a bottleneck in the adjudication process. Chairman McNutt thought the Montana Supreme Court could also appoint an additional water judge. Mr. Everts offered to research the issue.
- 07:24:12 Mr. Kolman sought input and direction regarding the report.
- 07:25:44 Sen. Hamlett wondered if there would be any findings regarding the cottonwood issue. Sen. Hamlett requested the issue be included in the final report. Mr. Kolman said he would invite the federal agencies to the September meeting.
- 07:26:43 Sen. Barrett agreed the invitation should be issued again and also requested the federal agencies to provide something in writing. Mr. Kolman stated he would extend the invitation again and ask them to listen to the meeting and provide input. Sen. Hamlett asked Mr. Kolman to urge the federal agencies to attend the meeting in person.

#### **COMMITTEE DISCUSSION OTHER ISSUES**

There was no further committee discussion.

#### **ADMINISTRATIVE MATTERS**

##### **Public Comment on Draft Report July 30 - Aug. 30**

- 07:28:59 David Schmidt, consultant, encouraged the WPIC to consider quality and not quantity. Mr. Schmidt envisioned a need to work to encourage the DNRC to communicate with the private sector. Mr. Schmidt addressed exempt wells and the need to fix the change of use process. Mr. Schmidt identified a need to save water in Montana.

##### **Final WPIC meeting--September 8-9, Helena**

#### **INSTRUCTIONS TO STAFF**

There were no further instructions to staff.

#### **PUBLIC COMMENT ON ANY MATTER WITHIN THE WPIC JURISDICTION**

- 07:33:19 Jana Suchy, Way Out West Creative, addressed the Lewis and Clark County septic program. Ms. Suchy performed education and outreach for septic systems. Ms. Suchy believed it was critical how Lewis and Clark County rolls out its new

program. Ms. Suchy depicted septic systems as sewage treatment plants in the back yard. Ms. Suchy encouraged bold leadership.

07:38:27 Mr. Kolman submitted written comments from Ed Smith, Smith Farms (EXHIBIT 14).

## **ADJOURN**

The meeting adjourned at 3:50 p.m.

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