



Water Policy Interim Committee

63rd Montana Legislature

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TO: Water Policy Interim Committee
RE: March 18, 2014 meeting

Greetings WPIC members,

The committee is meeting one day only — March 18 — starting at 8 a.m. in room 172 of the Capitol. A discussion on possible expansion of the Water Court's role was delayed until the May meeting.

Enclosed are meeting materials. The materials are also online at www.leg.mt.gov/water.

Enclosures include:

- An agenda for the March meeting.
- Draft minutes from the January WPIC meeting
- Tab 1: Adjudication update from the Department of Natural Resources (DNRC) and the Water Court, each detailing their progress toward resolution of pre-1973 water rights claims across the Montana. Please note that Beth McLaughlin of the Supreme Court Administrator's Office will give a Water Court budget update, too.
- Tab 2: Renewable Resource Grant and Loan Program report from the DNRC's Resource Development Bureau. This program loans and grants state funds to public and private parties to invest in renewable natural resource projects across Montana. Projects include improvements to irrigation systems.
- Tab 3: A memo, "Ditch easement law in Colorado," about the Colorado Supreme Court's test for resolving intractable disputes between landowners and ditch owners. House Joint Resolution 26 requires the committee to examine ditch easement disputes. Colorado water rights attorney Scott Miller will continue the committee's HJ26 study, as he will discuss how the judicial test works in that state.
- Tab 4: Power Point presentation, "Stream Depletion Zones, the hydrologic perspective," from State Geologist John Metesh. He will discuss the science behind Senate Bill 346 (2013), which is also included in your packet.
- Tab 5: Agency rulemaking update from committee attorney Helen Thigpen (Legislative Services Division).
- Tab 6: Two notices of public hearings and two DEQ circulars related to base numeric nutrient standards and variances from these standards. George Mathieus, administrator of the Department of Environmental Quality's Planning, Prevention and Assistance Division, will discuss these proposed rules related to

- nutrients.
- Tab 7: Memo on status of Water Use Agreement (CSKT). Reserved Water Rights Compact Commission staff updates the status of the Water Use Agreement, which is a standalone agreement between the tribe and irrigators. (The proposed compact refers to this agreement.) The status of the Water Use Agreement is uncertain, as the Flathead Joint Board of Control, which negotiated the agreement on behalf of the Flathead Indian Irrigation Project irrigators, was dissolved in late 2013. Also included is a copy of the Water Use Agreement, and Proposed Flathead Indian Irrigation Project Water Use Agreement Summary, which summarizes how the agreement was to function within the proposed compact. Lastly, Jon Metropoulous, attorney for the Flathead Irrigation District, provided a memo, "Claims to FIIP water," which outlines some irrigators' claims of property rights in water delivered by the irrigation project.
 - Tab 8: Various documents requested by committee members at the January committee meeting and since for future discussions, including: the 1855 Hellgate Treaty with the "Flathead, Kootenay, and Upper Pend d'Oreilles Indians"; the 1855 Judith River Treaty with the Blackfeet, which established peace with other tribes and allowed for travel and settlement in the area; three treaties involving the Crow Tribe, including the 1825 Crow Treaty, the 1851 Treaty of Fort Laramie, and the 1868 Crow Treaty; a Harvard Law Review article, "Indian Canon Originalism," discussing how American Indian treaties are interpreted by courts; a California Law Review article, "Indian Water Rights, Practical Reasoning, and Negotiated Settlements," relating a general legal history of Indian water rights settlements; a University of Idaho Law Review article, "The Elusive Implied Water Right for Fish," discussing some aspects related to off-reservation water rights; and four acts of Congress related to settlement and development of Flathead Reservation lands, including the 1887 General Allotment Act, the 1904 Flathead Allotment Act, the 1908 Flathead Irrigation Act (Section 15, Act of Congress, May 29, 1908), and the 1934 Indian Reorganization Act.

Please let me know if you have questions about the meeting or materials.

Sincerely,

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