



Water Policy Interim Committee

63rd Montana Legislature

SENATE MEMBERS

CHAS VINCENT--Chair
JENNIFER FIELDER
BRADLEY MAXON HAMLETT
SHARON STEWART-PEREGOY

HOUSE MEMBERS

KATHLEEN WILLIAMS--Vice Chair
PAT CONNELL
STEVE FITZPATRICK
REILLY NEILL

COMMITTEE STAFF

JASON MOHR, Lead Staff
HELEN THIGPEN, Staff Attorney
NADINE SPENCER, Secretary

MINUTES LOG

Date: September 9, 2013

Room 172, State Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. CHAS VINCENT, Chair
REP. KATHLEEN WILLIAMS, Vice Chair

SEN. JENNIFER FIELDER
SEN. BRADLEY MAXON HAMLETT

REP. PAT CONNELL
REP. STEVE FITZPATRICK
REP. REILLY NEILL

COMMITTEE MEMBERS EXCUSED

SEN. SHARON STEWART-PEREGOY

STAFF PRESENT

JOE KOLMAN, Legislative Environmental Analyst
JASON MOHR, Lead Staff
HELEN THIGPEN, Staff Attorney
NADINE SPENCER, Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

- The WPIC approved the minutes from June 17-18, 2013.
- The WPIC approved the work plan.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Vincent called the Water Policy Interim Committee (WPIC) to order at 11:00 a.m. The secretary called the roll, [Attachment 3](#).

Approval of Minutes:

00:01:34 **Motion:** Sen. Fielder moved to accept the June 17-18, 2013 WPIC minutes.

Committee Questions and Discussion

00:01:45 Rep. Williams
00:03:19 Sen. Hamlett
00:03:25 Rep. Williams
00:03:34 Sen. Hamlett
00:03:39 Sen. Fielder

00:04:13 **Vote:** The motion carried 6-1 by roll call vote, [Exhibit 1](#), with Rep. Williams voting no. Sen. Stewart-Peregoy was excused.

AGENDA

FINALIZATION OF INTERIM WORK PLAN

00:05:10 Sen. Vincent

00:05:27 **Motion/Vote:** Sen. Hamlett moved to adopt the WPIC work plan. The motion carried unanimously by voice vote.

WATER-RELATED RESEARCH BY STATE ENTITY (85-2-105, MCA): CURRENT AND FUTURE PROJECTS AT THE MONTANA WATER CENTER

00:06:42 Duncan Patten, Director, Montana Water Center, gave a PowerPoint presentation on water related research at the Montana Water Center and discussed current and future projects, [Exhibit 2](#).

Public comment None

Committee questions and discussion

- 00:36:38 Sen. Fielder asked about the procedure that is followed before studies completed by the Montana Water Center are presented to the public. Mr. Patten explained the process for publishing studies.
- 00:38:15 Sen. Fielder asked if the studies are peer reviewed before they are used to influence policy. Mr. Patten said that the studies are peer reviewed prior to publication.
- 00:39:55 Rep. Williams asked how the advisory committees work. Mr. Patten said that they are used as a sounding board and for input on the issues.
- 00:42:19 Sen. Hamlett asked about the efficiency of below ground aquifers for storing recharge water in the future verses creating more ground water storage facilities. Mr. Patten gave his viewpoint.
- 00:45:24 Sen. Hamlett asked about the map showing the southeast portion of Georgetown Lake that is at risk for contaminants and the location of Southern Cross, an old mining town. Mr. Patten said that he was not familiar with the area, but would get the information for the committee.
- 00:47:23 Sen. Vincent asked about training for wastewater treatment systems. Mr. Patten said they are building on training material that has been used in the past.
- 00:49:21 Sen. Vincent asked about the scope of wetland training. Mr. Patten discussed current training courses at the Montana Water Center.
- 00:52:03 Sen. Vincent asked about the depth of the Madison Aquifer. Mr. Patten said that the depth of the aquifer is approximately 7,000 feet deep.
- 00:52:25 Rep. Neill asked who would organize studies to develop a searchable database of local water conditions and put together educational materials for communities in order to be prepared for extreme weather conditions. Mr. Patten said that he wanted to bring state agencies together with academic groups so that they can learn from each other.
- 00:54:49 Recess
- 02:01:33 Sen. Vincent reconvened the meeting.

STATE WATER PLAN UPDATE (85-1-203, MCA)

- 02:01:51 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC). Mr. Davis gave an update on the State Water Plan. He indicated that all four Basin Advisory Councils have been set up and handed out a list of the members for each council, [Exhibit 3](#).

Public comment None

Committee questions and discussion

02:04:29 Sen. Vincent commented on the participation and members of the Clark Fork Basin Advisory Council.

TEMPORARY LEASING REPORT (HB 37)

02:05:02 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC). Mr. Davis discussed HB 37 (2013), which created a temporary leasing process for water rights. He handed out form 650, [Exhibit 4](#).

Public comment

02:06:40 Tom Hopgood, Executive Director, Montana Mining Association, explained the importance of being able to lease water rights to a mining exploration operation.

Committee questions and discussion

02:09:02 Rep. Connell asked a question about the lease period and the period of diversion. Mr. Davis responded that there was a second part to the lease that allows for flexibility.

02:10:31 Rep. Connell asked if the use of the lease period was limited to annual time or annual volume. Mr. Davis indicated that the water right would be limited by the actual use of the water and the volume will be determined by the underlying water right.

02:11:45 Rep. Connell asked if the lessee only used a fraction of the water right if the use was still only limited to two years of diversion use. Mr. Davis indicated that the lease is intended to be temporary even if the user does not exercise it entirely.

02:12:55 Rep. Williams asked about wavier of time lines. Mr. Davis indicated that by statute there was a 30 day review period and 60-day public notice period for the DNRC to review applications, but that the deadline can be waived for more complex applications.

WATER SUPPLY UPDATE

02:14:02 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC). Mr. Davis gave an update on the state water supply and moisture status by county, [Exhibit 5](#); surface water supply index values, [Exhibit 6](#); and the average storage in both state water projects and in federal reclamation projects, [Exhibit 7](#).

Public comment None

Committee questions and discussion

- 02:18:47 Rep. Connell passed out an email he had received regarding recent sediment discharge at Painted Rocks Reservoir, [Exhibit 8](#). He asked Mr. Davis for a report on the impact of the discharge to the reservoir. Mr. Davis indicated that he was unable to provide a detailed report because the DNRC does not have a sonar study of the reservoir establishing a baseline, but he said he would look into it.
- 02:23:42 Rep. Williams asked if there was a water quality problem coming out of Painted Rocks Reservoir. Mr. Davis said that there was sediment coming out of the reservoir.
- 02:24:01 Rep. Williams asked if Painted Rocks is a top or a bottom release reservoir or both. Mr. Davis indicated that the outlet was at the bottom.
- 02:24:32 Sen. Hamlett requested continual monitoring of Painted Rocks Reservoir by DNRC.
- 02:25:37 Rep. Connell commented that all three headwaters going into Painted Rocks Reservoir have been noticeably impacted by wildfire.
- 02:27:14 Sen. Fielder asked if the fires were on state, federal or private land. Rep. Connell said that the initial ignition was on U.S. Forest Service land and that some of the fires had burned into state and private land.
- 02:27:59 Sen. Hamlett requested information on the impact that increased nutrient levels have on fisheries. Sen. Vincent said he spoke to Rep. Connell about the problem and is looking at putting together a panel discussion to get a broader perspective on the impact of the increased sediment loads.

FOLLOWUP ON DNRC V. NEAL BOUMA AND HAROLD POULSEN

- 02:29:39 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC) gave an overview of DNRC's enforcement process and a summary of the Neal Bouma case, [Exhibit 9](#).

Public comment:

- 02:38:38 Neal Bouma, Choteau, Montana, commented on the complaint that the DNRC had received. He also commented on data related to whether the stream is an intermittent stream or a perennial stream.
- 02:47:24 Judy van der Hagen, Choteau, Montana and complainant against Neal Bouma, presented evidence that the stream runs all year.
- 02:50:11 Don van der Hagen, Choteau, Montana, commented that the stream is a perennial stream.
- 02:51:53 Mrs. van der Hagen, commented on the water line that Mr. Bouma had installed.

Committee questions and discussion

- 02:54:35 Rep. Connell requested clarification on the question that if the stream was an intermittent stream the dams and ponds would have been legal, but it became an issue because the stream was defined as perennial. Mr. Davis responded that in Mr. Poulsen's 2001 water rights application the stream was listed as perennial.
- 02:55:59 Rep. Connell asked for clarification regarding the resolution that required Mr. Bouma to remove the dams. Mr. Davis indicated that under the resolution Mr. Bouma was required to obtain a permit to remove the dam and restore it.
- 02:56:40 Sen. Fielder asked about research into whether or not the stream was classified as perennial or intermittent. Mr. Davis said that the classification of the stream did not come up until after the court order was decided.
- 02:58:07 Sen. Fielder asked if the DNRC has the authority to go back and look at the classification of the stream. Mr. Davis indicated that they do not have that authority.
- 02:58:45 Rep. Williams asked if it mattered what the stream classification is when obtaining a water right. Mr. Davis indicated that it did not matter.
- 02:59:18 Rep. Williams asked if this was an illegal appropriation regardless of the stream classification. Mr. Davis indicated that the finding of the court was that it was an illegal appropriation and needed to be removed.
- 02:59:38 Rep. Williams said that the stream classification became relevant when Mr. Bouma went to the conservation district for a permit to breach the stream. Mr. Davis indicated he was not familiar with the process for obtaining the permit with the conservation district.
- 03:00:11 Rep. Williams said that the court case and the enforcement action were about an illegal appropriation neither of which have anything to do with defining the stream as intermittent or perennial.
- 03:00:45 Sen. Hamlett inquired about the name of the stream. Mr. Davis said that the stream was unnamed and commented that he did not know how many streams were unnamed in the state.
- 03:02:34 Sen. Hamlett asked where the stream terminated. Mr. Bouma indicated that the stream terminates with the Sun River Ditch Company.
- 03:04:48 Mrs. van der Hagen said that the stream flows into the Sun River Canal then flows into either Muddy Creek or flows underground into a ditch then into the Sun River.
- 03:05:47 Sen. Hamlett asked Mr. van der Hagen if he has ever ordered water from the irrigation district. Mr. van der Hagen indicated that he has not.

03:07:10 Sen. Vincent asked about the enforcement action after Mr. Poulsen had his application for water rights for the ponds denied in August 2001. Mr. Davis indicated that the DNRC does not assume that someone will continue to use water illegally after a water right is denied. The DNRC investigates only when they receive a complaint.

03:08:44 Sen. Vincent asked Mr. Davis if he thought the WPIC should look at quicker ways to help resolve these types of situations in the future. Mr. Davis responded that he sees this as an opportunity to educate the committee and the public about the enforcement process.

03:10:47 Sen. Vincent asked if there has been any net effect from the passage of HB 39 (2009). Mr. Davis said that he has not seen any enforcement effect and that they continue to seek voluntary compliance.

03:12:18 Sen. Fielder asked about the importance of whether or not the stream was classified as intermittent or perennial. Mr. Bouma responded that he only needed a water right for the evaporation in the ponds.

03:16:19 Jeff Tiberi, Executive Director, Montana Association of Conservation Districts (MACD) introduced himself.

03:16:24 Sen. Hamlett asked if the MACD can determine whether streams are perennial, intermittent or ephemeral. Mr. Tiberi said that they make that determination.

03:16:44 Sen. Hamlett asked if the MACD had one policy across the state for stream classification. Mr. Tiberi indicated that because of the varied geology in Montana there is no statewide policy.

03:17:27 Sen. Hamlett asked Mr. Bouma what he thought could be done better in an appeals process. Mr. Bouma responded that the first meeting needs to be more complete.

03:18:50 Sen. Hamlett asked Mr. Bouma if he thought he has been dealt with fairly. Mr. Bouma said that he did not believe he was treated fairly.

03:19:55 Sen. Hamlett asked Mr. Bouma to explain how he received the water right. Mr. Bouma explained the process that he followed. He also said that the van der Hagen's have an illegal pond on their property.

03:22:28 Sen. Hamlett asked Mrs. van der Hagen to respond to Mr. Bouma's comments. Mrs. van der Hagen explained that the pond was put in by the highway department.

03:24:09 Mr. van der Hagen commented about erosion on the creek.

03:25:51 Recess

04:00:19 Sen. Vincent called the meeting back to order.

BRADY WATER SUPPLY

- 04:00:43 Mr. Mohr, Research Analyst, gave an overview of the Brady, Montana water supply project and water quality issue.
- 04:02:02 Tom Livers, Deputy Director, Department of Environmental Quality (DEQ), discussed problems that Brady is having with their water supply and the long-term solution.
- 04:05:36 Larry Bonderud, President, North Central Montana Regional Water Authority, gave a description of the project that will bring water from Havre to Cutbank and the interim solution which will provide water to Brady from Conrad.
- 04:09:15 Mr. Livers indicated that Montana Rural Water System is also involved in the project.
- 04:09:31 John Tubbs, Director, Department of Natural Resources and Conservation (DNRC) discussed the process for clarifying water rights in Brady and the letter he sent to Mr. Bonderud, [Exhibit 10](#).

Public comment None

Committee questions and discussion

- 04:14:44 Sen. Vincent referenced the Great Falls Tribune article, dated 8/16/2013, [Exhibit 11](#), and asked if the recent court decision changed the opinion of any of the city council members in Conrad. Mr. Tubbs explained the concerns of the mayor and the city of Conrad and said that the issues have been resolved.
- 04:19:32 Rep. Williams asked about policy issues associated with the project. Mr. Tubbs said that he did not think there were any policy issues involved.
- 04:21:04 Rep. Williams asked Abigail St. Lawrence, a water rights attorney, if she thought there are policy issues involved in cases in Brady and Helena. Ms. St. Lawrence responded that there are policy issues involved but she did not know what the implications will be until final decisions on the cases are made by the chief water judge.
- 04:22:31 Sen. Fielder asked about the split between federal, state and local funds and why it is taking so long to receive the federal funds. Mr. Bonderud explained that the Bureau of Reclamation's funding formula gives priority to states that have met the state match. He indicated that now that Montana's funding mechanisms are in place, due to the last legislative session, the project should be receiving federal funds.
- 04:26:04 Sen. Hamlett asked about water and future growth. Mr. Tubbs said that Montana has the ability to meet future needs and growth and gave examples.

- 04:29:47 Sen. Vincent asked about the next steps for Brady since the wastewater treatment failed. Mr. Livers indicated the drinking water system failed and commented on the current systems in place.
- 04:31:20 Mr. Tubbs commented that there was also an in-town project to build a water treatment plant and redo the distribution system.
- 04:32:02 Sen. Vincent asked if Brady will have their own water treatment plant. Mr. Tubbs clarified that they would have a storage facility and a new distribution system.
- 04:32:39 Rep. Williams asked about timing for policy discussions if the Curry v. Pondera County Canal and Reservoir Company (PCCRC) case brings up policy issues. Mr. Tubbs responded that he hoped there would be time for discussion prior to the next legislative session.
- 04:34:55 Rep. Williams requested that the committee remain flexible so that if any issues arise they can be discussed.
- 04:35:26 Sen. Hamlett asked if new technology will lead to policy issues in the future. Mr. Tubbs responded that it will be a difficult issue for the next couple of decades.
- 04:36:51 Sen. Hamlett ask about sprinkler irrigation and if return flow would become an issue. Mr. Tubbs said that it will become an issue if someone wants to change their water right.

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

- 04:38:19 Mr. Evan Hammer, Digital Information Manager/Chief Information Officer, Natural Resource Information System (NRIS), Montana State Library, introduced Troy Blandford, the new Water Information System Manager.
- 04:39:11 Mr. Blandford gave an overview of the Water Information System at the Montana State Library.
- 04:40:08 Rep. Williams asked Mr. Blandford if he was working with Mr. Patten on coordinating a searchable database for local water conditions. Mr. Blandford indicated that he has been in contact with Mr. Patten regarding the project.
- 04:41:04 Sen. Hamlett offered clarification on the Madison Aquifer.
- 04:42:11 Sen. Vincent recessed the meeting at 4:30 p.m.

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