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Water Policy Interim Committee

64th Montana Legislature

SENATE MEMBERS

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

HOUSE MEMBERS

CARL GLIMM--Vice Chair
BOB BROWN
ZACH BROWN
KATHLEEN WILLIAMS

COMMITTEE STAFF

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

MINUTES LOG

July 12, 2016
Room 172, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. BRADLEY MAXON HAMLETT, Chair

SEN. SHARON STEWART-PEREGOY
SEN. CHAS VINCENT

REP. BOB BROWN
REP. ZACH BROWN
REP. KATHLEEN WILLIAMS

COMMITTEE MEMBERS EXCUSED

REP. CARL GLIMM, Vice Chair
SEN. JENNIFER FIELDER

STAFF PRESENT

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

AGENDA (Attachment 1)

VISITORS' LIST (Attachment 2)

COMMITTEE ACTIONS

The Water Policy Interim Committee (WPIC):

- Voted to have staff work on a bill draft to combine the Clark Fork River Basin Task Force and the Upper Clark Fork River Basin Steering Committee;
- Voted to continue to receive reports from the Upper Clark Fork Basin Steering Committee;
- Voted to take public comment on the study of water availability and supply report;
- Voted to take public comment on LCwp01;
- Voted to take public comment on LCwp02 as amended;
- Voted to take public comment on LCwp03 as amended;
- Voted to have staff work with stakeholders on amendments to LCwp04 and to take public comment after the WPIC has reviewed the amendments and they have been approved by the chairman and vice chairman;
- Voted not to take public comment on LCwp05;
- Voted to take public comment on LCwp06 as amended;
- Voted to take public comment on LCwp07 and to have staff draft a second bill that would propose to codify the pre-1993 rule defining a combined appropriation;
- Voted to have staff create a bill draft that would create an addition to the existing water right ownership update process allowing DNRC to process an ownership update if it receives an ownership update form with a copy of the deed;
- Voted to take public comment on the SJ2 report and the five recommendations as amended;
- Voted to have staff create a bill draft to provide a statutory appropriation of \$250,000 for each year of the next biennium for the Ground Water Investigation Program (GWIP) and to create a separate bill draft to provide a statutory appropriation of \$250,000 per year for the next biennium for the Surface Water Assessment and Monitoring Program (SWAMP) with a prioritization function;
- Voted to have staff redraft LCwp03 that would insert language into 85-2-402, MCA, to require the DNRC to rely on current use practices on consumptive use analysis.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Hamlett called the meeting to order at 8:11 a.m. The secretary noted the roll. (Attachment 3) Sen. Fielder and Rep. Glimm were excused and left their proxies with Rep. B. Brown. (Attachment 4)

00:00:12 Jason Mohr, research analyst, Legislative Services Division, said the WPIC received information yesterday from the Water Pollution Control Advisory Council (WPCAC). He provided information from the Department of Natural Resources and Conservation (DNRC) on funding for the Clark Fork River Basin Task Force ([Exhibit 1](#)) and information on Conservation Resource Development Division (CARRD) capacity grants. ([Exhibit 2](#))

WATER SUPPLY/DROUGHT UPDATE

00:01:23 Tim Davis, administrator, Water Resources Division, DNRC, presented the July 2016 Montana Water Supply report. ([Exhibit 3](#))

00:06:22 Mr. Davis discussed the Drought Resilience Partnership.

00:07:14 Mr. Davis discussed the Drought Response Plan.

Public Comment: None

Committee Questions and Discussions:

00:08:41 Sen. Vincent asked Mr. Davis about the monthly sea surface temperature graph.

00:09:12 Rep. Williams asked Mr. Davis about fire hazard and fire conditions and about fishery conditions. Mr. Davis said an update is scheduled to be given on July 15.

00:10:14 Rep. Williams asked if streams were closed to fishing earlier than usual this year. Mr. Davis deferred to Mike McLane, water conservation specialist, Department of Fish, Wildlife, and Parks, (FWP). Mr. McLane said that stream flow conditions in southwest and western Montana are 10 percent of what the normal median flow is right now.

00:13:45 Sen. Vincent asked Mr. McLane about the need to create a drought plan for the Tobacco River and said that the Glen Lake Irrigation District is willing to help.

UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE UPDATE (85-2-338, MCA)

00:15:35 Maureen Connor, member, Upper Clark Fork River Basin Steering Committee, provided an update on the committee.

00:26:00 Sen. Hamlett asked what it would cost to have a facilitator for the steering committee. Ms. Connor said she budgeted \$20,000 a year for a facilitator and to pay for mileage and lunch for the members of the steering committee.

Public Comment: None

Committee Questions and Discussions:

00:27:21 Rep. Z. Brown asked Ms. Connor about the superfund site clean-up process.

00:31:41 Rep. Z. Brown asked Ms. Connor about concerns with superfund projects.

00:33:51 Rep. Z. Brown asked about the cause of the algae blooms on the Upper Clark Fork River and the impact on the river and fishery. Ms. Connor deferred the question to Mr. McLane. Mr. McLane said the blooms are related to the nutrient levels from multiple sources and that between Garrison Junction and Clinton there are natural sources of phosphorus that get into the river. He said because flows are low this year and the river didn't get a strong run-off the algae blooms are occurring earlier than normal.

00:38:22 Rep. Williams asked Ms. Connor about combining the steering committee with the Clark Fork River Basin Task Force or eliminating the steering committee.

00:44:56 Rep. Williams asked Mr. Davis about plans to develop a drought response plan in the Upper Clark Fork River Basin and working with the steering committee. Mr. Davis referred the question to Mr. McLane.

00:50:51 Rep. Williams said she encourages all the parties involved to let the legislature know if there is anything it can do to help move things forward. Mr. McLane said funding is an issue.

00:53:48 Sen. Vincent asked Mr. Davis about updating statute. Mr. Davis said he will let the WPIC know.

00:55:02 Sen. Vincent asked Ms. Conner about her time as a water commissioner and working with the steering committee and some of the things that they were not able to complete and why.

00:58:35 Sen. Vincent said he recommends that the steering committee look at the statute to determine what can be done so it has clear direction and can be successful.

00:59:47 Rep. Williams said she recommends leadership involvement from the DNRC.

01:01:33 Sen. Hamlett asked Ms. Connor if the steering committee wanted to get involved in directing future political processes.

01:05:56 Sen. Hamlett asked Ms. Connor if the steering committee had ever encouraged legislation. Ms. Connor said it did.

01:07:42 Sen. Hamlett asked Jeff Tiberi, Montana Association of Conservation Districts (MACD), about the conservation districts involvement in drought planning. Mr. Tiberi said he can get a list of the initiatives it has been involved in. Sen. Hamlett said the list can be given to staff.

01:09:05 Sen. Hamlett asked Mr. McLane about the benefit of involving all the people along a water source on drought planning.

01:12:46 Rep. Z. Brown asked Mark Bostrom, CARDD, operations manager, if CARDD grants are the primary tool DNRC uses to move projects forward.

01:16:11 Rep. Z. Brown asked Mr. Bostrom about funding from other agency grants.

01:17:23 Rep. Williams asked Mr. Davis if the watershed planner for the Clark Fork is currently acting as a facilitator.

01:19:16 Sen. Hamlett opened discussion on whether the WPIC should continue to receive reports from the steering committee.

01:19:23 Mr. Mohr said the motion can include whether to continue to receive the report and to keep or eliminate the committee.

01:19:39 Rep. Z. Brown said it would be helpful to put together a proposal to combine the two committees and get their input.

01:20:36 Sen. Vincent said he recommends refining the steering committee in order to make them more successful.

01:21:48 **Motion:** Sen. Vincent moved to have staff work on a bill draft to combine the Clark Fork River Basin Task Force and the Upper Clark Fork River Basin Steering Committee.

Discussion:

01:23:30 Rep. Williams
 01:25:14 Sen. Vincent
 01:25:27 Sen. Hamlett

- 01:25:44 Mr. Mohr restated the motion.
 01:26:00 Sen. Hamlett
 01:26:29 Sen. Vincent
- 01:26:43 **Vote:** The motion carried unanimously by voice vote. Rep. Glimm and Sen. Fielder voted aye by proxy.
- 01:27:14 **Motion/Vote:** Rep. Williams moved to continue to receive reports from the Upper Clark Fork River Basin Steering Committee. The motion carried unanimously by voice vote. Rep. Glimm and Sen. Fielder voted aye by proxy.

STUDY OF WATER AVAILABILITY AND SUPPLY

- 01:27:55 Mr. Mohr presented the summary report on water availability and supply.
(Exhibit 4)

Public Comment: None

Committee Questions and Discussions:

- 01:30:13 Sen. Vincent thanked staff for the report.
 01:30:29 Rep. Williams asked if the report will go out for public review and comment. Mr. Mohr said the WPIC can make that decision.
 01:31:05 Sen. Hamlett thanked staff for its work.
- 01:31:41 **Motion:** Sen. Vincent moved to put the study of water availability and supply report out for public comment.

Discussion:

- 01:32:06 Rep. Williams
- 01:32:54 **Vote:** The motion carried unanimously by voice vote. Rep. Glimm and Sen. Fielder voted aye by proxy.
- 01:33:40 Recess
 01:49:17 Reconvene

STUDY OF THE FUTURE OF THE WATER COURT

- 01:49:37 Mr. Mohr presented the draft report on the study of the future of the Water Court.
(Exhibit 5) He said that the WPIC needs to decide if it wants to put the report out for public comment.
- 01:54:55 Jim Peterson, rancher and former legislature, discussed the water right change process.
- 01:56:49 Mr. Peterson provided his perspective, as co-chair of the governor's Main Street Montana Project for the Agriculture Key Industry Network (KIN), on its recommendations on the water right change process, point of use process, and reserved water rights held by conservation districts for economic development.
(Exhibit 6)

02:05:40 Sen. Hamlett asked the WPIC about the order for reviewing draft legislation. Rep. Z. Brown said he recommends reviewing all of the legislation and then taking public comment and having committee discussion.

Review of Draft Legislation:

LCwp01

02:06:32 Mr. Mohr discussed LCwp01— clarify 15 percent threshold for water commissioner appointments. [\(Exhibit 7\)](#)

02:08:31 Sen. Vincent and Rep. Williams recommended reviewing each bill draft separately followed by public comment and committee discussion. Sen. Hamlett agreed.

Public Comment: None

Committee Questions and Discussion:

02:09:50 Rep. Williams

02:10:31 Russ McElyea, chief water judge, Montana Water Court

02:10:58 Rep. Williams

02:11:44 Mr. Mohr

02:12:43 Rep. Williams

02:13:09 Sen. Stewart Peregoy

02:13:34 Sen. Hamlett

02:14:03 Rep. Williams

02:14:26 Mr. Mohr

02:14:53 Sen. Vincent

02:15:30 Sen. Hamlett

02:16:30 Helen Thigpen, staff attorney, Legislative Services Division

02:17:19 **Motion/Vote:** Rep. Williams moved to take public comment on LCwp01. The motion carried unanimously by voice vote. Rep. Glimm and Sen. Fielder voted aye by proxy.

LCwp02

02:17:39 Mr. Mohr discussed LCwp02 — require training for water commissioners. [\(Exhibit 8\)](#)

Committee Questions and Discussion:

02:19:01 Sen. Vincent asked Mr. Mohr if water commissioners who were reappointed needed to attend an educational program every year.

Public Comment:

02:19:36 Krista Lee Evans, Senior Water Rights Coalition (SWRC), said that SWRC supports the bill, but asked that more detail be added on how to track whether someone attended training and enforcement action if they do not.

Committee Questions and Discussion:

02:20:22 Sen. Hamlett
02:21:11 Rep. B. Brown
02:21:53 Sen. Vincent
02:22:10 Tim Davis, administrator, Water Resources Division, DNRC
02:22:32 Sen. Hamlett
02:23:14 Rep. Williams
02:23:51 Sen. Hamlett
02:23:55 Rep. Williams
02:24:26 Sen. Vincent
02:25:08 Mr. Davis
02:25:32 Sen. Hamlett
02:25:52 Ms. Evans
02:26:20 Sen. Hamlett
02:26:28 Rep. Z. Brown
02:26:54 Rep. Williams
02:27:57 Mr. Davis
02:28:32 Sen. Vincent
02:28:42 Mr. Davis
02:29:23 Sen. Hamlett
02:29:41 Mr. Davis
02:29:59 Sen. Vincent
02:30:16 Mr. Davis

02:30:39 **Motion:** Rep. Williams moved to add at the beginning of Section 1 (2) "unless otherwise determined by the appointing court" and after the word shall to change the word "attend" to "complete" and add after subsection (1) "prior to administering water" and to put LCwp02 out for public comment

Discussion:

02:32:02 Sen. Hamlett
02:32:36 Mr. Davis
02:32:50 Rep. B. Brown
02:33:51 Sen. Hamlett
02:34:06 Mr. McElyea
02:35:51 Rep. B. Brown
02:36:31 Sen. Vincent
02:37:15 Sen. Hamlett
02:37:20 Sen. Vincent
02:37:45 Rep. Williams
02:38:16 Rep. B. Brown
02:38:38 Rep. Z. Brown
02:39:08 Rep. Williams

02:39:42 **Substitute Motion/Vote:** Sen. Stewart Peregoy made a substitute motion to put LCwp02 out for public comment as written. The motion failed 1-7 by voice vote with Sen. Stewart Peregoy voting aye. Sen. Fielder and Rep. Glimm voted no by proxy.

Discussion:

02:40:33 Mr. Mohr restated Rep. Williams motion.
02:41:00 Rep. Williams
02:41:32 Rep. B. Brown
02:41:52 Rep. Williams
02:42:00 Sen. Hamlett

02:42:07 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder and Rep. Glimm voted aye by proxy.

LCwp03

02:42:28 Mr. Mohr discussed LCwp03 — clarify the definition of a water right change.
(Exhibit 9)

Public Comment:

The following individuals discussed their concerns with the bill draft and provided suggestions to address their concerns.

02:43:40 Abigail St. Lawrence, private water attorney
02:47:18 Ms. Evans, SRWC
02:48:56 Jay Weiner, member, Water Adjudication Advisory Committee
02:50:01 Laura Ziemer, Trout Unlimited
02:52:10 Walt Sales, irrigator, Gallatin Valley
02:52:52 Mr. Davis

Committee Questions and Discussion:

02:54:05 Sen. Hamlett
02:54:25 Sen. Vincent
02:55:07 Mr. Davis
02:55:34 Sen. Hamlett
02:56:10 Sen. Vincent
02:57:26 Rep. Williams
02:58:01 Sen. Vincent
02:59:15 Sen. Hamlett
02:59:40 Rep. Williams
03:00:26 Sen. Vincent
03:00:33 Rep. Williams
03:00:41 Sen. Hamlett
03:00:50 Rep. Williams
03:01:05 Sen. Vincent
03:01:41 Sen. Hamlett

03:02:02 **Motion/Vote:** Sen. Vincent moved to change "technology" to "method of irrigation" and put LCwp03 out for public comment. The motion carried unanimously by voice vote. Sen. Fielder and Rep. Glimm voted aye by proxy.

LCwp04

03:03:02 Mr. Mohr discussed LCwp04 — allow applicants for water rights permits or water right change authorizations to limit analysis of adverse effects for certain water rights. ([Exhibit 10](#))

Public Comment:

The following individuals discussed their concerns with the bill draft and provided suggestions to address their concerns.

03:07:17 Ms. St. Lawrence
03:09:42 Ms. Evans
03:12:55 Mr. McElyea
03:13:44 Mr. Weiner
03:16:40 Mr. Davis
03:18:52 Ms. Ziemer

Committee Questions and Discussion:

03:23:13 Sen. Vincent
03:25:35 Mr. Davis
03:26:23 Sen. Vincent
03:26:49 Rep. Williams
03:27:20 Mr. Davis
03:28:31 Rep. Williams
03:29:25 Sen. Hamlett
03:30:16 Sen. Stewart Peregoy
03:31:32 Sen. Hamlett
03:31:37 Sen. Stewart Peregoy
03:32:06 Sen. Vincent
03:33:31 Mr. Mohr
03:34:11 Sen. Hamlett
03:34:15 Mr. Mohr
03:34:42 Sen. Hamlett
03:34:59 Mr. Mohr
03:35:06 Sen. Hamlett
03:35:14 Mr. Mohr
03:35:59 Rep. Williams
03:37:06 Mr. Mohr
03:37:38 Sen. Hamlett
03:37:42 Mr. Mohr
03:37:47 Sen. Vincent
03:38:16 Mr. Mohr
03:38:34 Sen. Vincent
03:39:26 Sen. Hamlett
03:39:41 Rep. Williams
03:40:01 Sen. Vincent
03:40:37 Sen. Hamlett
03:41:00 Sen. Stewart Peregoy
03:41:20 Sen. Hamlett
03:41:35 Sen. Vincent

03:41:40 **Motion:** Sen. Vincent moved to have staff work with stakeholders on amendments to LCwp04 and take public comment after the WPIC has reviewed the amendments and they have been approved by the chairman and vice chairman.

Discussion:

03:42:39 Rep. Williams

03:43:32 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder and Rep. Glimm voted aye by proxy.

LCwp05

03:43:52 Mr. Mohr discussed LCwp05 — allow the assistance of a water master for certain water right appeals to a district court. ([Exhibit 11](#))

Public Comment:

03:45:01 Ms. Evans, SWRC, provided comments on LCwp06.

The following individuals provided comments on LCwp05:

03:46:54 Mr. McElyea

03:48:29 Mr. Weiner

Committee Questions and Discussion:

03:51:59 Rep. Williams

03:53:15 Mr. Mohr

03:54:22 Rep. Williams

03:54:50 Sen. Hamlett

03:55:18 Sen. Vincent

03:56:51 Mr. Mohr

03:56:59 Sen. Vincent

03:57:21 Rep. Williams

03:58:24 Sen. Vincent

03:59:17 Rep. Z. Brown

04:00:06 Rep. Williams

04:01:51 Sen. Hamlett

04:04:33 Sen. Vincent

04:05:09 Rep. B. Brown

04:06:16 **Motion:** Rep. Williams moved not put LCwp05 out for public comment.

Discussion:

04:06:43 Sen. Hamlett

04:06:55 **Vote:** The motion carried 7-1 by voice vote. Sen. Hamlett voted no. Sen. Fielder and Rep. Glimm voted aye by proxy.

LCwp06

04:07:14 Mr. Mohr discussed LCwp06 — allow Water Court jurisdiction of appeals to DNRC decisions. ([Exhibit 12](#))

Public Comment:

The following individuals discussed their comments and concerns on LCwp06:

04:08:50 Ms. Evans
04:11:30 Ms. Ziemer
04:15:23 Mr. McElyea
04:21:40 Mike Murphy, Montana Water Resources Association
04:23:21 Mr. Weiner

Committee Questions and Discussion:

04:29:56 Sen. Hamlett
04:31:51 Sen. Vincent

04:37:29 **Motion:** Sen. Vincent moved to amend LCwp06 that an application or change should not be solely at the discretion of the Water Court and put out for public comment.

Discussion:

04:38:08 Rep. Williams
04:40:23 Sen. Hamlett
04:40:41 Rep. Williams
04:41:17 Sen. Hamlett
04:42:15 Rep. B. Brown

04:42:37 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder and Rep. Glimm voted aye by proxy.

LCwp07

04:43:13 Mr. Mohr discussed LCwp07 — define "combined appropriation" for ground water wells that are exempt from permitting. ([Exhibit 13](#))

Public Comment:

The following individuals discussed concerns on LCwp07:

04:45:29 Ms. Evans
04:48:10 Barbara Chillcott, legal director, Clark Fork Coalition

04:50:28 Ronda Wiggers, Montana Water Well Drillers Association said that the association supports LCwp07.

The following individuals discussed concerns on LCwp07:

04:52:49 Chelsea Cargill, Montana Farm Bureau Federation
04:54:27 Ms. Ziemer

Committee Questions and Discussion:

04:57:17 Sen. Vincent
04:57:41 Ms. Ziemer
04:58:10 Sen. Vincent
04:58:26 Ms. Ziemer
04:58:43 Sen. Vincent

04:58:51 Ms. Ziemer
04:58:57 Sen. Vincent
04:59:23 Ms. Ziemer
04:59:53 Sen. Vincent
05:00:06 Ms. Ziemer
05:00:09 Sen. Vincent
05:00:26 Ms. Ziemer
05:01:08 Sen. Vincent
05:01:55 Ms. Ziemer
05:02:29 Rep. Williams
05:04:51 Ms. Evans
05:06:12 Rep. Williams
05:06:41 Ms. Evans
05:06:55 Rep. Williams
05:08:20 Sen. Hamlett
05:09:45 Rep. Z. Brown
05:13:00 Sen. Hamlett
05:15:01 Rep. Williams

05:15:42 **Motion:** Rep. Williams moved to put LCwp07 out for public comment.

Discussion:

05:16:17 Sen. Vincent
05:16:47 Rep. Williams amended her motion to include drafting a second bill that would propose to codify the pre-1993 rule defining a combined appropriation and put it out for public comment.

05:17:32 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder and Rep. Glimm voted aye by proxy.

05:17:51 Sen. Hamlett said the WPIC would recess for 30 minutes and continue with the agenda after the break.

05:18:29 Rep. Williams asked staff to provide a copy of the language for the 1993 rule.

05:19:13 Recess for lunch at 1:30 p.m.
05:50:33 Reconvene

UPDATE ON YELLOWSTONE EFFLUENT SPILL

05:50:49 Tom Livers, director, Department of Environmental Quality (DEQ), gave an update on the effluent spill that occurred from a storage pond at the Yellowstone Club on March 3.

05:51:14 Mr. Livers discussed the public meeting that was held in Belgrade regarding the spill.

05:53:46 Mr. Livers gave an update on the restoration plan for the canal below the holding pond.

05:55:10 Mr. Livers discussed enforcement action for the Yellowstone Club.

05:56:23 Myla Kelly, supervisor, Water Quality Standards Section, DEQ, discussed water quality monitoring in the area affected by the spill. [\(Exhibit 14\)](#)

Public Comment:

06:07:37 Tony Kolnik, West Gallatin surface water right holder and excavator, discussed the DEQ update.

Committee Questions and Discussion:

06:19:10 Rep. Williams asked Mr. Livers to respond to Mr. Kolnik's testimony.

06:24:49 Rep. Z. Brown said he attended the community meeting in Belgrade and thanked the DEQ staff for providing information about the spill.

06:25:32 Sen. Hamlett asked Mr. Livers if the storage pond is functional and safe for use. Mr. Livers said it is.

06:27:03 Sen. Hamlett asked Mr. Livers if future reports from the water commissioner will be mailed directly to DEQ as well as the district court. Mr. Livers said they will be.

UPDATE ON WATER RIGHT OWNERSHIP TRANSFERS

06:28:10 Mr. Davis provided copies of a conceptual bill draft that would create an addition to the existing water right ownership update process allowing DNRC to process an ownership update if it receives an ownership update form with a copy of the deed. [\(Exhibit 15\)](#)

Public Comment: None

Committee Questions and Discussion:

06:33:00 Rep. Williams asked Mr. Davis if this is the only statutory change that needs to be made. Mr. Davis said it is.

06:33:27 Sen. Hamlett asked Mr. McElyea for an update on the water right ownership update process.

06:35:09 Mr. McElyea discussed a decision he made in a case where the claimant failed to update ownership records.

06:36:35 Rep. Williams asked Mr. McElyea if the authority to terminate a water right is defined clearly in statute. Sen. Hamlett asked Mr. McElyea to provide the statute information.

06:39:52 Sen. Hamlett asked Mr. McElyea about excusable neglect.

06:42:44 Sen. Hamlett said that many water right owners were not recording changes of appropriation which could affect the validity of the adjudication. He asked Mr. McElyea how to address that going forward.

06:45:50 Rep. Williams asked if the WPIC wanted to take action on the conceptual bill draft from the DNRC.

06:46:28 Mr. Mohr discussed the process for drafting bills.

06:47:06 Sen. Vincent asked about incentives for a reduced fee when applying and filing with the department for a change application.

06:48:09 Rep. Williams

06:48:18 **Motion:** Sen. Vincent moved to have staff create a bill draft based on the conceptual draft provided by the DNRC.

Discussion:

06:48:34 Rep. Williams
06:49:25 Sen. Vincent
06:49:54 Rep. Williams
06:50:04 Sen. Hamlett
06:50:09 Mr. Mohr
06:50:13 Rep. Williams
06:51:20 Sen. Vincent
06:51:30 Rep. Williams
06:52:04 Mr. Mohr

06:52:09 Sen. Stewart Peregoy left the meeting and gave her proxy to Sen. Hamlett.
(Attachment 5)

06:52:28 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder, Rep. Glimm, and Sen. Stewart Peregoy voted aye by proxy.

06:52:50 Sen. Hamlett said he will bring another bill draft forward during other business.

PERMITTING FOR WEST BANK LANDING DEVELOPMENT

06:53:23 Aaron Perry, West Bank Landing, LLC, presented information on land that was acquired by West Bank LLC in Cascade County and problems they are having developing the site because of the remediation process for petroleum and pentachlorophenol contamination. **(Exhibit 16)**

07:06:10 Sen. Hamlett asked Mr. Perry about the size of the site and its location relative to the Missouri River.

07:06:46 Sen. Hamlett asked Mr. Perry if the plume from the petroleum is migrating toward the river. Mr. Perry said that it has. Sen. Hamlett said it has become a water quality issue.

07:07:38 Sen. Hamlett asked Mr. Perry if the DEQ has monitors on site.

07:08:25 Jenny Chambers, administer, Waste Management and Remediation Division, DEQ, discussed the West Bank Landing site.

07:12:07 Ms. Chambers discussed the Voluntary Cleanup and Redevelopment Act (VCRA).

07:14:07 Ms. Chambers discussed the recommendations from West Bank.

Public Comment:

07:17:50 Brad Talcott, partner, West Bank, LLC, discussed its efforts to clean up the site.

Committee Questions and Discussion:

07:30:47 Sen. Vincent asked Mr. Perry about the money that was allocated for clean up by the DNRC and by the Petroleum Tank Release Compensation Board.

07:32:29 Spencer Worth, partner, West Bank, LLC, discussed the DNRC grant and the money allocated for remediation efforts.

07:34:20 Sen. Vincent asked Ms. Chambers about administration of the funds.

07:42:04 Sen. Vincent asked Ms. Chambers about the ongoing litigation and if any of it involves the 12-acre site acquired by West Bank.

07:42:52 Sen. Hamlett asked Ms. Chambers if the site has to be cleaned up and approved by DEQ before any building can be done. Ms. Chambers said a DEQ permit is not needed for the property or redevelopment, but there is a risk for liability.

07:44:43 Sen. Hamlett asked Ms. Chambers why the site is considered a medium priority when the plume is going into the Missouri River.

07:46:31 Sen. Hamlett asked Ms. Chambers if West Bank can remove the contaminated soil and begin to build. Ms. Chambers said it would be at their own risk.

07:47:54 Sen. Hamlett asked Ms. Chambers if the 12.5-acre site can be cleaned up separately from the rest of the property.

07:49:15 Sen. Vincent asked who owns the land. Mr. Perry said it is owned by West Bank, LLC.

07:49:46 Rep. Williams asked Mr. Perry about the treatment method for the petroleum and pentachlorophenol contamination. Mr. Perry referred the question to Ms. Chambers.

07:51:21 Rep. Williams asked if West Bank is confident that it can clean up all of the contamination. Mr. Perry said it is.

07:53:18 Rep. Williams said she thought the topic may be appropriate for the Environmental Quality Council (EQC). Sen. Hamlett said because it affects groundwater it is appropriate for both the EQC and the WPIC.

07:53:47 Sen. Hamlett encouraged the DEQ to work with West Bank, LLC, to resolve the issue.

07:54:33 Rep. B. Brown asked Mr. Perry how much it will cost to clean up the site. Mr. Perry said it will cost approximately \$2.5 million more.

07:55:27 Rep. B. Brown said that because of the time it will take for legislation to change the rules it may be more cost efficient for West Bank to start the project. Sen. Vincent said he did not agree.

07:58:01 Ms. Chambers commented on legislation that could provide a funding source.

08:00:10 Sen. Hamlett asked Ms. Chambers if DEQ charges a tonnage fee for contaminated soil. Ms. Chambers said DEQ does not charge a fee for nonhazardous waste.

08:00:59 Rep. Williams asked Ms. Chambers about VCRA and if there are funds available to help speed up the process for data collection.

08:04:09 Mr. Talcott commented on VCRA.

AGENCY ADMINISTRATIVE RULE UPDATE

08:07:10 Helen Thigpen, staff attorney, Legislative Services Division, said there were no updates.

Public Comment: None

Committee Questions and Discussion: None

PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC

None

OTHER BUSINESS

08:08:11 Mr. Mohr said at its meeting yesterday the WPIC requested that the SJ2 report be amended to provide some options for recommendations. **(Exhibit 17)** He also said he was unclear if the committee had moved to put the future of the Water Court report out for public comment,

Discussion on SJ2 report:

08:09:06 Mr. Mohr discussed the five options related to SJ2 and its evaluations of permits for waterway projects and state assumption of federal Section 404 permits.

Public Comment: None

Committee Questions and Discussion:

08:10:23 Sen. Vincent

08:10:50 Rep. Williams

08:11:46 Sen. Hamlett

08:11:57 Sen. Vincent

08:12:19 **Motion/Vote:** Sen. Vincent moved to put the SJ2 report and the five recommendations out for public comment and to replace, under the five recommendations, "issue this report" with "issue a report." The motion carried unanimously by voice vote. Sen. Fielder, Rep. Glimm, and Sen. Stewart Peregoy voted aye by proxy.

Discussion on funding for GWIP and SWAMP:

08:13:18 Sen. Vincent said he recommends reinstating the Ground Water Investigation Program (GWIP) funding to \$250,000 a year and to reinstate funding for the Surface Water Assessment and Monitoring Program (SWAMP) to \$500,000 per biennium.

Committee Questions and Discussion:

08:15:58 Rep. Z. Brown

08:18:41 Rep. Williams

08:19:22 Sen. Vincent

08:20:10 Rep. Williams

08:20:25 Sen. Vincent

08:20:51 Rep. Williams

08:21:13 Sen. Vincent

08:21:25 Sen. Hamlett

08:23:39 Mr. Mohr

08:24:02 Sen. Vincent

08:25:13 Rep. Z. Brown

08:26:33 Rep. B. Brown

08:27:09 **Motion:** Sen. Vincent moved to have staff create a bill draft to provide a statutory appropriation of \$250,000 for each year of the next biennium for the GWIP and to create a separate bill draft to provide a statutory appropriation of \$250,000 per year for the next biennium for the SWAMP with a prioritization function.

Discussion:

08:27:56 Rep. Williams
08:28:02 Sen. Vincent
08:28:17 Mr. Mohr restated the motion.
08:28:58 Rep. Williams
08:29:25 Sen. Vincent

08:29:50 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder, Rep. Glimm, and Sen. Stewart Peregoy voted aye by proxy.

Discussion on expanding the WPIC membership:

08:30:10 Sen. Vincent discussed expanding WPIC by appointing two ex-officio members from the Attorney General's office and the Water Court.

Committee Questions and Discussion:

08:33:12 Rep. Z. Brown
08:33:57 Sen. Hamlett
08:34:36 Rep. Williams
08:36:02 Sen. Vincent

Discussion on LCwp03:

08:38:53 Rep. Z. Brown asked about working with staff on an amendment to LCwp03.
08:39:40 Sen. Hamlett
08:40:01 Rep. Z. Brown said he is proposing a conceptual amendment that the DNRC limit its assessment of consumptive use analysis to current practices.

Committee Questions and Discussion:

08:41:38 Sen. Vincent
08:41:44 Rep. Williams
08:42:02 Mr. Mohr
08:42:48 Rep. Z. Brown
08:43:05 Sen. Hamlett
08:43:41 Sen. Vincent
08:44:04 Sen. Hamlett
08:44:09 Sen. Vincent
08:44:19 Rep. Williams
08:44:31 Sen. Vincent
08:45:20 Rep. Williams
08:45:43 Sen. Hamlett

- 08:45:55 **Motion/Vote:** Rep. Z. Brown moved that the WPIC reconsider its previous action on LCwp03. The motion carried unanimously by voice vote. Sen. Fielder, Rep. Glimm, and Sen. Stewart Peregoy voted aye by proxy.
- 08:46:32 **Motion:** Rep. Z. Brown moved to amend LCwp03 that would insert language into 85-2-402, MCA, to require the DNRC to rely on current use practices on consumptive use analysis.
- 08:47:22 Mr. Mohr restated the motion.
- 08:47:53 **Vote:** The motion carried unanimously by voice vote. Sen. Fielder, Rep. Glimm, and Sen. Stewart Peregoy voted aye by proxy.

Discussion on the future of the Water Court report:

- 08:48:21 Rep. Williams
- 08:48:55 Sen. Hamlett
- 08:50:55 Sen. Vincent
- 08:51:02 Sen. Hamlett
- 08:51:17 Sen. Vincent
- 08:51:25 Rep. Williams
- 08:52:58 Sen. Vincent
- 08:53:11 Rep. Williams
- 08:53:34 Mr. Mohr
- 08:54:03 Rep. Williams
- 08:55:00 Sen. Hamlett
- 08:55:11 Sen. Vincent
- 08:56:16 Rep. Williams
- 08:56:45 Mr. Mohr
- 08:56:49 Sen. Vincent
- 08:56:55 Rep. Williams asked that staff move the topic of exempt wells from the study of the future of the Water Court into the study of water availability and supply.
- 08:57:28 Sen. Hamlett
- 08:57:33 Mr. Mohr
- 08:58:23 Rep. B. Brown
- 08:58:31 Rep. Williams asked about including a section in the future of the Water Court study on the DNRC change process to clarify that a water right is based on historic use.
- 09:01:25 Sen. Hamlett
- 09:01:57 Rep. Williams
- 09:03:13 Sen. Hamlett
- 09:03:19 Rep. Williams
- 09:03:34 Sen. Hamlett
- 09:04:16 Rep. Z. Brown
- 09:05:21 Sen. Vincent
- 09:06:13 Rep. Williams
- 09:06:26 Mr. Mohr
- 09:07:33 Sen. Hamlett
- 09:08:14 Mr. Weiner

09:13:12 Sen. Hamlett
09:13:26 Sen. Vincent
09:14:56 Sen. Hamlett
09:15:49 Rep. Williams
09:16:33 Rep. Williams asked the WPIC about its interest in a study bill.
09:17:04 Rep. Z. Brown
09:17:32 Sen. Hamlett
09:17:37 Rep. Z. Brown
09:17:57 Sen. Vincent
09:19:16 Sen. Hamlett gave instructions to staff for the next WPIC meeting.
09:19:56 Sen. Vincent
09:20:13 Rep. Williams asked about including recommendations in the future of the Water Court report.
09:21:00 Sen. Hamlett
09:21:09 Rep. Z. Brown
09:22:15 Rep. Williams asked about water commissioners, and if they have judicial immunity.
09:22:38 Ms. Thigpen
09:24:48 Rep. Williams
09:24:56 Mr. Mohr discussed the agenda for the next WPIC meeting.
09:25:27 Mr. Mohr reviewed the reports and bill drafts that will be put out for public comment.
09:27:07 Rep. Williams asked about the time frame for public comment.
09:27:20 Mr. Mohr
09:27:57 Sen. Hamlett
09:28:17 Sen. Vincent
09:28:31 Rep. B. Brown

ADJOURNMENT

09:28:44 Sen. Hamlett adjourned the meeting at 5:39 p.m.

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