



## Water Policy Interim Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

PAT CONNELL--Chair  
JILL COHENOUR  
JON SESSO  
JEFFREY WELBORN

#### HOUSE MEMBERS

ZACH BROWN--Vice Chair  
BOB BROWN  
JOHN FLEMING  
CARL GLIMM

#### COMMITTEE STAFF

JASON MOHR, Lead Staff  
NADINE SPENCER, Secretary  
ERIN BILLS, Legal Staff

# MINUTES LOG

May 21, 2018  
Bozeman City Hall  
Bozeman, 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.

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 Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

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

### **COMMITTEE MEMBERS PRESENT**

SEN. PAT CONNELL, Chair  
REP. ZACH BROWN, Vice Chair

SEN. JILL COHENOUR  
SEN. JON SESSO

REP. BOB BROWN  
REP. JOHN FLEMING  
REP. CARL GLIMM

### **COMMITTEE MEMBERS EXCUSED**

SEN. JEFFREY WELBORN

## **STAFF PRESENT**

JASON MOHR, Lead Staff  
NADINE SPENCER, Secretary  
ERIN BILLS, Legal Staff

## **VISITORS' LIST (Attachment 1)**

## **AGENDA (Attachment 2)**

## **COMMITTEE ACTIONS**

The Water Policy Interim Committee (WPIC):

- Approved the minutes from March 5.

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

00:00:01 Sen. Connell called the meeting to order at 10:02 a.m. The secretary called the roll. **(Attachment 3)** Sen. Welborn was excused.

00:00:40 Sen. Connell invited Rep. Walt Sales to join the committee at the table as a visiting legislator.

## **Approval of March 2018 Minutes**

### **Motion/Vote**

00:01:31 Sen. Cohenour moved to approve the minutes from March 5. The motion carried unanimously by voice vote of those present and voting.

### **Review of Planned Activities**

00:01:52 Jason Mohr, research analyst, Legislative Service Division (LSD), provided information about the meeting and field trip.

## **ADJUDICATION UPDATE**

00:04:20 Jan Langel, Water Resources Division administrator, Department of Natural Resources and Conservation (DNRC), provided an update on the adjudication process. **(Exhibit 1)**

00:07:24 Mr. Langel discussed HB 110 (2017) claims.

### **Committee questions and discussion**

00:10:03 Sen. Connell said HB 110 was an effort by the WPIC to further quantify the amount of water that was being used in the state against demand on water from downstream states.

00:11:08 Hon. Russ McElyea, chief water judge, Montana Water Court, provided an update on the number of decrees issued this year, claim closings per month, and compact status. **(Exhibit 2)**

00:12:57 Mr. McElyea discussed when the adjudication process will be completed.

00:22:15 Mr. McElyea discussed impacts affecting the adjudication process.

00:25:51 Mr. McElyea discussed funding reductions.

00:28:26 Mr. McElyea discussed changes to the adjudication statutes.

Public comment None

Committee questions and discussion

00:29:28 Sen. Cohenour asked Mr. McElyea about HB 110 claims and how they affect water compacts.

00:31:55 Sen. Cohenour asked Mr. McElyea about exempt claims and the impact of extending the filing deadline.

00:33:47 Rep. Z. Brown asked Mr. McElyea about the Scott Ranch case and if the legislature can grant jurisdiction to the Water Court over Walton water rights.

00:35:27 Rep. Z. Brown asked Mr. McElyea about unintended consequences if the legislature expanded the jurisdiction of the Water Court.

00:37:13 Rep. Z. Brown asked Mr. McElyea about the deadlines on settlement acts and requested the information for each compact or settlement act.

00:38:48 Sen. Cohenour asked Mr. McElyea about the number of filings for federal exempt rights claims.

00:39:34 Sen. Cohenour asked Mr. Langel about the potential number of filings for federal exempt rights claims.

00:41:14 Sen. Connell asked Mr. McElyea about a water right that doesn't have a means of resolution and prevents the Water Court from doing a final decree.

00:42:20 Sen. Connell requested that the Water Court staff work with the WPIC staff on possible legislation to resolve the issue.

00:44:22 Sen. Connell commented on the value of having a letter to send to Montana's Congressional delegation and to the Secretary of the Interior regarding the risk the state faces in not being able to finalize decrees until compacts are finalized by the federal government. Mr. McElyea said the court could issue portions of decrees in basins where conflicts exist.

00:47:57 Sen. Connell thanked Mr. McElyea.

**COMMITTEE STUDY OF THE PROCESS OF CHANGING A WATER RIGHT**

00:49:15 Mr. Mohr provided an introduction and said the WPIC previously heard from the DNRC regarding the administrative process for changing a water right ([Exhibit 3](#)) and a legal review by staff. Mr. Mohr said staff presented information comparing the change of a water right process in Montana and five other western states, and the DNRC presented information on the impact of HB 40 (2009).

00:51:32 Mr. Mohr said the committee requested a panel discussion with participants consisting of change applicants, objectors, and the DNRC. He said panel members will describe their experience through the change of water right process and offer suggestions for improvements.

00:52:01 Mr. Mohr introduced the members of the panel.

**Panel Discussion on Administrative Process**

Holly Franz, water rights attorney

Patrick Byorth, director, Montana Water Program, Trout Unlimited

Mack White, agricultural producer, Two Dot

Millie Heffner, Water Rights Bureau chief, DNRC

00:53:33 Ms. Franz (**Exhibit 4**)  
01:09:40 Mr. Byorth (**Exhibit 5**)  
01:20:04 Mr. White  
01:27:33 Sen. Connell asked if Shiel Anderson was in the audience.  
01:27:44 Ms. Heffner

#### Public comment

01:34:48 Julie Merritt, WGM Group  
01:46:15 Krista Lee Evans, Senior Water Rights Coalition, Association of Gallatin  
Agricultural Irrigators  
01:51:18 Andrew Gorder, Clark Fork Coalition  
01:54:57 Abigail St. Lawrence, water attorney, Montana Building Industry Association  
(**Exhibit 6**)  
01:58:26 Bill Schenk, attorney, Department of Fish, Wildlife, and Parks  
02:01:15 Dane Gamble, Bridger Creek Golf Course

#### Committee questions and discussion

02:04:33 Sen. Connell asked Mr. Mohr about time for committee discussion and the possibility of rescheduling items on the agenda for this afternoon until tomorrow. Mr. Mohr said draft findings and conclusions and proposals for draft legislation can be discussed tomorrow.

02:06:57 Sen. Cohenour asked Ms. Heffner about the time for the deficiency letter response.

02:09:50 Sen. Sesso asked Mr. White about the deficiency letters.

02:12:12 Sen. Sesso asked Ms. Franz about the deficiency letters and her suggestion for a two-pronged approach.

02:15:12 Ms. Heffner commented on when a deficiency letter is needed.

02:17:01 Sen. Sesso asked Mr. Byorth about the value of a second deficiency letter.

02:19:31 Rep. Glimm commented on allowing an applicant to waive their timeline.

02:20:44 Rep. Glimm asked Ms. Franz if the change process is providing preference to an existing use over a changed use, because of the financial obligation it takes to change a use.

02:22:42 Rep. Glimm asked Ms. Franz about the consequences of the change process being so onerous.

02:25:15 Sen. Connell asked Ms. Franz about her availability at the meeting tomorrow.

02:25:57 Rep. Z. Brown asked Ms. Franz about the recommendation regarding the Colorado system.

02:27:06 Rep. Sales asked Ms. Franz about the deficiency letter.

02:28:02 Rep. Z. Brown asked Ms. Heffner about the preponderance of evidence for adverse effect analysis and if the direction is clear in code.

02:29:28 Rep. B. Brown asked Ms. Heffner about staff turnover.

02:30:54 Sen. Connell asked Ms. Franz about the Colorado system.

02:34:03 Sen. Connell said he would like to get more detail during the discussion tomorrow on the pluses and minuses of defining adverse effects. He thanked the panelists for their participation.

02:35:34 Recess for lunch at 12:37 p.m.

02:36:15 Reconvene at 1:47 p.m.

02:36:34 Mr. Mohr provided information on the afternoon agenda.

**PROPOSED LEGISLATION FROM THE ADJUDICATION ADVISORY COMMITTEE**

02:37:31 Ms. Franz presented information on the changes made to the proposed legislation from the Water Court Adjudication Advisory Committee. **(Exhibit 7)**

02:40:39 Sen. Connell said staff can formalize the information for the WPIC to review at its July meeting.

Public comment

02:40:55 Doug Braaksma, board member, Association of Gallatin Agricultural Irrigators

02:42:22 Mr. McElyea

02:43:07 Mike Cusik, water rights attorney, Bozeman, and member of the Water Court Adjudication Advisory Committee

Committee questions and discussion

02:44:43 Sen. Sesso asked Ms. Franz about consensus on the proposed legislation.

**UPDATE FROM GOVERNORS DROUGHT AND WATER SUPPLY ADVISORY COMMITTEE**

02:47:17 Anne Schwend, water planner, DNRC, gave a PowerPoint presentation from the Governor's Drought and Water Supply Advisory Committee, on the current water supply. **(Exhibit 8)**

Public comment None

Committee questions and discussion

02:56:00 Sen. Connell thanked Ms. Schwend for the report.

02:56:47 Ms. Schwend presented a video that was produced from the Montana Water Summit.

03:07:06 Mr. Mohr provided directions for the field trip.

03:08:02 Sen. Connell recessed the meeting at 2:19 p.m.

**LEAVE FOR FIELD TRIP: WATER MANAGEMENT IN THE GALLATIN VALLEY**

Included discussion of Farmer's Canal case study, SWAMP pilot project, infrastructure management, and agricultural-municipal cooperation. Stops included Farmer's Canal (intersection of U.S. Highway 191 and Fowler Ave. near Rosauers Supermarket), Section Line and Pipeline lateral ditches (near Meadowlark School, 4415 Durston Road), Bozeman Sports Park (Flanders Mill Road, north of Meadowlark Elementary School), and the Bozeman Water Reclamation Facility (2245 Springhill Road). **(Exhibit 9)**

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