



Water Policy Interim Committee

60th Montana Legislature

SENATE MEMBERS
BILL TASH--Vice Chair
JIM ELLIOTT--Chair
GREG LIND
GARY PERRY

HOUSE MEMBERS
SCOTT BOGGIO
JILL COHENOUR
EDWARD HILBERT
BILL MCCHESENEY

COMMITTEE STAFF
KRISTA LEE EVANS, Lead Staff
GREG PETESCH, Staff Attorney

MINUTES

Approved October 24, 2007

September 12-13, 2007

Thompson Falls High School
Thompson Falls, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

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

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities.

COMMITTEE MEMBERS PRESENT

SEN. JIM ELLIOTT, Chairman
SEN. GARY PERRY
REP. SCOTT BOGGIO
REP. JILL COHENOUR
REP. EDWARD HILBERT
REP. BILL MCCHESENEY

COMMITTEE MEMBERS EXCUSED

SEN. BILL TASH, Vice Chairman
SEN. GREG LIND

STAFF PRESENT

KRISTA LEE EVANS, Lead Staff
CYNTHIA A. PETERSON, Committee Secretary

Visitors

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

COMMITTEE ACTION

- The WPIC adopted the Minutes from the August 16-17, 2007, meeting.

CALL TO ORDER AND ROLL CALL

Chairman Jim Elliott called the Water Policy Interim Committee (WPIC) to order at 9:02 a.m. The secretary noted the roll ([Attachment 3](#)).

Cindy Bronner, Thompson Falls Chamber of Commerce, welcomed the WPIC members and visitors. Jerry Pauli, Superintendent of Thompson Falls Public Schools, also welcomed the WPIC members to Thompson Falls.

Chairman Elliott welcomed Representative Pat Ingraham, HD 13, to the meeting.

AGENDA

ADMINISTRATIVE MATTERS

Minutes

Rep. Cohenour moved the Minutes of the August 16-17, 2007, meeting be adopted. The motion carried unanimously by voice vote.

WPIC Budget Overview

Krista Evans, Lead Staff, reported the WPIC budget is on track with the estimated expenses, but that not all travel vouchers from the Bozeman meeting had been processed and included. Chairman Elliott stated he would be requesting additional funding from Legislative Council on September 25, 2007.

GROUND WATER MODELING—Dr. William Woessner, Professor of Hydrology, UM

Dr. Woessner gave a power point presentation entitled "Usefulness of Numerical Models to Address Impacts of Mitigation and Augmentation Actions on Groundwater and Surface Water Systems" ([EXHIBIT 1](#)).

(Tape 1; Side B)

Questions from the WPIC

Sen. Perry recalled Dr. Woessner's reference to the mining project in Nevada and asked for the conclusion. Dr. Woessner did not have the results since he had not revisited the literature.

Rep. Cohenour talked about the requirements of HB 831 and the need for hydrogeological assessments. Rep. Cohenour asked about the adequacy of the data and whether the data would be useful in making long-term predictions. Rep. Cohenour was concerned whether the data would be adequate to predict the effect of the WPIC's decisions. Dr. Woessner suggested there is never enough data, and that the data is never complete. Dr. Woessner cited a need for site-specific data, and stated that decisions would need to be made based on the available data. Rep. Cohenour wondered how data could be tweaked or changed to make the data more applicable. Dr. Woessner suggested there would be differences in the data for individual areas.

Dr. Woessner thought there was a need to have flexibility built into the system to allow for changes. In addition, Dr. Woessner noted the inability to predict the future.

(RECESS)

Public Comment

Gail Patton, Sanders County Commissioner and a member of the Clark Fork Water Task Force, pointed out the geology of the Thomson Falls canyon which is part of the glacier Lake Missoula. Mr. Patton noted Sanders County includes the Clark Fork and Flathead Rivers, six smaller rivers, and numerous voluminous creeks. Mr. Patton explained how subdivisions have encountered problems because of the variances in the well depths.

Don MacIntyre, Utility Solutions, commented on Dr. Woessner's presentation. Mr. MacIntyre believed there is a preference system in Montana's water law. Mr. MacIntyre suggested HB 831 would create a preference for municipal uses and in-stream flows. Mr. MacIntyre suggested HB 831 would drive development of 35 gpm wells and would cause development to occur near the very streams Montana is attempting to protect.

MONITORING TO DETERMINE EFFECTIVENESS OF MITIGATION AND AQUIFER RECHARGE PLANS—Panel Discussion

Ms. Evans talked about the directive of HB 304 to look at whether monitoring is occurring to determine the effectiveness of mitigation and aquifer recharge plans.

Water Quality—Russell Levens, Hydrogeologist, Department of Natural Resources and Conservation (DNRC)

Mr. Levens outlined the different aspects of mitigation and aquifer recharge plans. Mr. Levens stated most permit applications, if not all, are for small amounts of water relative to the impacted aquifer river systems. Mr. Levens believed it is rare that the effectiveness of a mitigation or an aquifer recharge plan can be adequately measured since it is difficult to detect changes from the initial application or mitigation. In addition, some effects may only be significant in times of water shortages. Mr. Levens believed the best opportunity to improve the effectiveness of mitigation and aquifer recharge plans is through the hydrogeologic assessment and up-front planning. Mr. Levens identified the purpose of mitigation and aquifer recharge plans as offsetting adverse effects as a result of net depletion. Mitigation involves a change of use, while aquifer recharge allows surface water to infiltrate ground water. Mitigation with surface water is accomplished by changing the existing use. Mr. Levens stated the effectiveness of the mitigation using surface water is the elimination of a historic consumptive use to offset the new consumptive use. However, an aquifer recharge plan can be outside the historic period of use of the water. In addition, surface water needs a relatively senior water right, but aquifer recharge can utilize a relatively junior water right. Mr. Levens suggested HB 831's requirement for hydrogeologic assessments would be the mechanism to determine effectiveness of mitigation and aquifer recharge plans. Mr. Levens believed the effectiveness of mitigation and aquifer recharge plans could rarely be monitored and that hydrogeologic assessment is key.

Science Perspective—Dr. William Woessner, Professor of Hydrogeology, UM

Dr. Woessner submitted "Are Impacts Measurable? Science Perspective" (**EXHIBIT 2**). Dr. Woessner agreed monitoring could be very challenging, and that the up-front work is what decisions should be based on.

Sen. Perry recognized former Sen. Lorents Grosfield.

Questions from the WPIC

Sen. Perry acknowledged the stream flow right at the point of withdrawal and expressed concern about swapping irrigation rights for ground water rights. Mr. Levens stated if the water is left in the stream, the concept is that it would offset the depletion that occurs.

Sen. Perry did not want the WPIC members to believe that everything would be fine by giving up an irrigation right from a ditch and developing property with ground water which will not be mitigated by giving up stream rights. Dr. Woessner emphasized the need to keep the water balanced. Mr. Woessner noted the importance of water not being consumed all at the same time of year and that timing can be very challenging. Sen. Perry commented the stream effect is delayed regarding the mitigation of the aquifer. Dr. Woessner stated the aquifer is not being mitigated; however, the effect of what the ground water was doing to the stream is what is being replaced.

Chairman Elliott asked Sen. Perry whether he was trying to express that the point of mitigation is not the same as the point of diversion. Ms. Evans added HB 831 looked at water rights, and that HB 831 had to do with offsetting impacts to surface water and water rights and did not consider the impact of wells on water availability in the aquifer. HB 831 talks about changing the purpose or place of use of water rights to offset adverse affects to a surface water right.

(Tape 2; Side A)

Rep. McChesney commented that using a surface water right to offset ground water depletion would be, at best, a swag. Rep. McChesney suggested a hydrogeologic study would be in order to more adequately address the issue.

Sen. Perry referred to Mr. McIntyre's comments that the result may be driving development toward irrigated farms and streams.

Rep. Boggio asked Mr. Levens about development areas where there are instances where people are applying for pond permits and noted the development of ponds can affect senior water rights for agricultural purposes. Rep. Boggio specifically wanted to know about the DNRC's role in protecting senior water right holders. Mr. Levens could not answer Rep. Boggio's question. John Tubbs, DNRC, stated the issue would be addressed later in the agenda.

Rep. Cohenour wondered whether there would be areas in Montana where mitigation and aquifer recharge would not work. Mr. Levens agreed that was true.

Water Quality—Kate Miller, Department of Environmental Quality (DEQ)

Ms. Miller submitted "Monitoring to Determine Effectiveness of Mitigation and Aquifer Storage/Recovery (ASR) Plans" (**EXHIBIT 3**). Ms. Miller identified the important question as what the water will be used for downstream and whether it will be safe to use as drinking water. Ms. Miller was concerned that drinking water wells down gradient have exposed people to pathogens. Ms. Miller suggested regular screening should be undertaken as part of any monitoring program. Ms. Miller believed surface water injected underground could have different chemical characteristics than the ground water it displaces and suggested important questions should be answered prior to the permitting of an aquifer injection project. Ms. Miller believed water should be treated to drinking water standards since it is likely someone will ultimately be drinking the water. Ms. Miller submitted material regarding pharmaceuticals found in the drinking water in the Helena Valley in a 2005 study (**EXHIBIT 4**). Ms. Miller noted increases in breast and prostate cancers and suggested the increases are probably environmental, and commented that concern has been expressed about pharmaceuticals found in drinking water.

Water User—Randy Overton, RLK Hydro

Mr. Overton reviewed a power point presentation entitled "Water Users Perspective on Monitoring of Mitigation and Aquifer Recharge" (**EXHIBIT 5**).

(Tape 2; Side B)

Committee Discussion and Action, if any

Rep. Cohenour asked Mr. Overton to address the surprises that resulted from monitoring. Mr. Overton explained in Florida the surprises were related to fresh water mixing with salt water, making the water unuseable. Mr. Overton stated in other areas changes in the geochemistry of the system resulted in recovery of toxins or the plugging of aquifers.

Sen. Perry wondered whether Florida's practice to treat water to drinking water standards had been cost effective. Mr. Overton stated it was cost effective in Florida, but emphasized Florida's uniqueness.

Rep. Cohenour commented that some analyses can be bad and asked Ms. Miller to expand on the implications of low concentrations. Ms. Miller explained some chemicals have a very low effective dose. In addition, many drugs are designed to act at low levels. Therefore, the detection of lower concentrations does not necessarily provide a higher level of comfort.

Rep. McChesney stated using septic discharge is considered part of aquifer recharge and inquired about the impacts of using that water to offset withdrawal. Rep. McChesney wondered whether the impacts were being addressed on a city-to-city basis. Ms. Miller responded that as long as a subdivision meets state regulations, then the counties can be more strict. Rep. McChesney asked Ms. Miller whether she had concerns about the use of septic systems under the present law. Ms. Miller stated she is concerned under the current densities.

Public Comment

John Tubbs, DNRC, addressed the calculation of net depletion and stated changes to the calculation would not eliminate septic tanks.

CUMULATIVE IMPACT ANALYSIS FOR WATER QUANTITY

Agency Perspective—Mike Roberts, Surface Water Hydrologist, DNRC

Mr. Roberts performs his job out in the field. Mr. Roberts addressed the DNRC's approach to analyzing water quantity impacts and an Environmental Assessment (EA) done on the Smith River. Mr. Roberts submitted "Cumulative Impact Analysis of Water Quantity" ([EXHIBIT 6](#)).

Senior Appropriator Perspective—Steve Fry, Avista

Mr. Fry provided a history of Avista's operations in the Thompson Falls area. Mr. Fry cited a need to work with water resources on a local level and stated that local problems need local solutions. Mr. Fry explained that Avista is a privately owned utility that owns a large water right with a 1950s priority date, and that Avista's ratepayers are mostly located in Eastern Washington and Northern Idaho. Mr. Fry identified water quality as a large issue for Avista. Mr. Fry cited a need to protect the existing water users and stated he was encouraged by the dialogue taking place that combines water rights with water quality. Mr. Fry identified education and awareness as key especially in areas where water issues have not been taken seriously. Mr. Fry suggested recent legislation regarding Hungry Horse may create new opportunities.

Questions from the WPIC

There were no questions from the WPIC.

Applicant Perspective—Marc Spratt, RLK Hydro, Inc.

Mr. Spratt reviewed "Cumulative Impact Analysis for Water Quantity" ([EXHIBIT 7](#)).

(Tape 3; Side A)

Questions from the WPIC

There were no questions from the WPIC.

(LUNCH)

MONTANA SANITATION AND PLATTING LAWS—Panel Discussion

Sanitation—Bonnie Lovelace, DEQ

Ms. Lovelace, Chief of the Water Protection Bureau, DEQ, submitted and reviewed "DEQ Subdivision Regulations" ([EXHIBIT 8](#)). Ms. Lovelace noted the existence of 900 series rules used by the state to set minimum standards under the Montana Water Quality Act for the

handling of sewage. Ms Lovelace identified one issue as being when subdivision developers fail to get a discharge permit, which is required for community systems over 5,000 gpm. Therefore, the Subdivision Bureau is now notifying the Water Protection Bureau when it believes a discharge permit will be necessary. Ms. Lovelace explained how the two programs are attempting to work together to alleviate problems.

(Tape 3; Side B)

Rep. Cohenour recalled hearing that occasionally the well driller will make an alternative choice than what is granted by the permit and wondered who has control over those situations. Ms. Lovelace agreed it is a problem and stated that the DEQ has no control over water well drillers. However, enforcement action could be taken against the homeowner or the developer. Ms. Lovelace identified Ravalli County as the only county having control over well drillers.

Platting—Myra Shults, Land Use Attorney

Ms. Shults submitted "Elements of Land Use Law" ([EXHIBIT 9](#)). Ms. Shults also submitted a copy of Title 76, MCA, Land Resources and Use ([EXHIBIT 10](#)). Ms. Shults asked the WPIC members to note Section 76-1-601(4)(c)(viii)(B), MCA, which addresses water for agriculture water user facilities, and Section 76-3-616, MCA, which provides the regulatory authority for implementing the infrastructure plan now contained in the growth policy.

Questions from the WPIC

There were no questions from the WPIC.

Contract County—Barbara Woodbury, Sanders County

Ms. Woodbury, Sanders County Sanitarian, explained how she contracts with the state to conduct sanitation review for wastewater systems. Ms. Woodbury stated she believes she is in a better position than the DEQ to perform sanitation reviews since she resides in Sanders County. Ms. Woodbury explained that she took a test to become certified to perform subdivision sanitation reviews. Ms. Woodbury explained how ten percent of her files must be thoroughly reviewed by the state. As a contracted county, if a subdivision or project comes in that Ms. Woodbury cannot review for any reason, the work reverts back to the state. Ms. Woodbury receives 80 percent of the fees collected, and the state receives 20 percent of the fees. Ms. Woodbury stated the increase in revenue has allowed Sanders County to hire another sanitarian to meet the increasing workload. Ms. Woodbury emphasized the importance of doing the work on the ground rather than simply reviewing a project on paper. Ms. Woodbury identified the level of review as consistent between contracted and non-contracted counties. Ms. Woodbury stated the process is difficult and that she attempts to be fair and follow the process. Ms. Woodbury addressed the impact of septic systems on ground-water quality and stated the more effluent disposed of in the subsurface area the higher the chance of contamination. Ms. Woodbury identified ensuring that septic systems are good and functioning properly as key to maintaining water quality. Ms. Woodbury submitted a photograph of a failed septic system ([EXHIBIT 11](#)). Ms. Woodbury also submitted a map depicting the sewer and unsewered areas in Thompson Falls ([EXHIBIT 12](#)). Ms. Woodbury stated she wrote a grant to provide assistance to individuals in Sanders County to replace failed septic systems.

(Tape 4; Side A)

Ms. Woodbury spoke about the difficulties she encountered when assisting individuals in applying for federal grant money to replace septic systems. Ms. Woodbury cited Sanders County as having a 17 percent poverty rate. Ms. Woodbury was adamant about a need to examine and correct and/or replace pre-1993 exempt septic systems. Ms. Woodbury encouraged the WPIC to help Montana's citizens protect Montana's water quality.

Questions from the WPIC

Sen. Perry asked Ms. Woodbury to prepare a list of items that she believes need to be changed. Ms. Woodbury suggested the DEQ would know more about the inconsistencies in the laws.

Chairman Elliott stated it is his understanding that Thompson Falls is built on cobble and boulder. Ms. Woodbury agreed that was the case and stated she has seen sewer pipes run into the ground between boulders.

County Experiences—Jim Carlson, Env. Health Director, Missoula County

Mr. Carlson was invited to appear before the WPIC since Missoula is the only city in Montana that has grown more than its surrounding county. Mr. Carlson discussed problems with various subdivisions in the Missoula area. Mr. Carlson explained the cumulative impacts that 7,000 septic tanks have had on the Clark Fork River and how Missoula's problems were addressed. Mr. Carlson identified a need to separate drinking water from waste water. Mr. Carlson submitted information regarding Missoula's sewers ([EXHIBIT 13](#)) ([EXHIBIT 14](#)). Mr. Carlson suggested the Legislature could assist by making it economically feasible for cities to extend sewer into existing neighborhoods. Mr. Carlson noted the expense involved in cleaning up individual septic systems. Mr. Carlson also cited a need for legislation to ensure money is available to assist people with existing developments who need help to address their water quality. Mr. Carlson also thought it would be helpful if well drillers had to comply and get permits since the well driller does not currently have a legal obligation to drill the well in the location previously identified.

Questions from the WPIC

Rep. Cohenour was curious about the financing methods used in Missoula. Mr. Carlson explained the utilization of city SIDs, county RSIDs, grants when they were available, loans under the revolving loan program, special grants made available by the Legislature, and use of private investors. The Water Quality District also provides incentives for people to connect to sewers. In addition, there are many different interlocal agreements requiring people to hook up to sewer when it becomes available in their area.

(BREAK)

(Tape 4; Side B)

Public Comment

Glenn Oppel, Montana Association of Realtors, stressed the importance of land-use planning. Mr. Oppel expressed concern about using the Water Use Act as a tool to regulate land use. Mr. Oppel was afraid water policy might be used to control land development. Mr. Oppel emphasized the need to look at infrastructure needs and planning to accommodate growth and acknowledged it is difficult to decide who pays for expansion of infrastructure. The Montana Association of Realtors is supportive of impact fees as long as the fees comply with the enabling act passed in 2005. In addition, realtors are looking at the practicality of creating an infrastructure fund to assist local governments in providing infrastructure for new growth. Mr. Oppel addressed SB 201 (2007) which gave local communities the tools and guidelines to plan for growth. The legislation did not provide a mandate for local communities, but was an optional program. Mr. Oppel cited Missoula as an example of proper planning.

Chairman Elliott noted the context of Mr. Oppel's remarks mostly addressed urban areas and asked how to address a large subdivision in a rural area. Mr. Oppel responded past studies on the impact of exempt wells on watersheds have not indicated noticeable impacts. Mr. Oppel stated there are options for local governments, including controlled ground water areas or water quality districts. Chairman Elliott thought the issue was with the closeness of the septic system to the well. A community water system or community septic system could solve the problem, and Chairman Elliott thought a community water supply system would be less expensive. Chairman Elliott asked Mr. Oppel to address the significant statutory hurdles to putting in a community water supply system. Mr. Oppel agreed and stated community water systems are significant in terms of time and cost, and that it takes approximately two years to permit a community water system. Mr. Oppel stated he was not qualified to explain all the hurdles involved in creating a community sewer system.

WATER AVAILABILITY DETERMINATION IN SUBDIVISION REVIEW—Eric Regensburger, DEQ

Mr. Regensburger gave a power point presentation entitled "Water Availability Determination in Subdivision Review" ([EXHIBIT 15](#)). Mr. Regensburger addressed the following agenda items:

1. Level of analysis regarding water availability (both physical and legal);
2. Does the level of analysis vary on the size of the subdivision, subsequent minors, etc.; and
3. Is there a difference between the state and the county contracted review?

Questions from the WPIC

There were no questions from the WPIC.

Public Comment

Sanders County Commissioner Gail Patton commented that he is very aware there will be some dry wells. Mr. Patton commented the average household in Missoula uses eight gallons per day.

Committee Discussion and Action, if any

Sen. Perry noted the DEQ assesses quality, quantity, and dependability, but does not assess impacts to surrounding existing wells. Sen. Perry wondered if there were shortcomings in what the DEQ is required to do regarding water supply. Mr. Regensburger admitted there is a time and place for exempt wells, but that exempt wells are being over used. Mr. Regensburger thought it would be more appropriate to ask whether the exemption for wells is working anymore. Mr. Regensburger also noted that when the exemption was passed, huge subdivisions did not exist.

Rep. Boggio asked Mr. Regensburger whether he finds exempt-well situations are more site specific. Mr. Regensburger agreed exempt wells are a site-specific problem.

Rep. Cohenour acknowledged the existing processes people have to go through and wondered where the WPIC could assist the DEQ and the DNRC in helping people move through the processes. Rep. Cohenour recalled various testimonials indicating the processes are no longer working efficiently. Mr. Regensburger responded the DEQ's review for exempt wells is less stringent than the DNRC's. Mr. Regensburger suggested exempt wells should be required to have a more stringent review.

Mr. Tubbs, DNRC, identified substantial coordination between the two agencies, and stated that HB 831 has the two agencies focused on coordination. Mr. Tubbs believed the DEQ and the DNRC are committed to working with each other. Mr. Tubbs identified a substantial amount of domestic use as being for lawn and garden.

(Tape 5; Side A)

Mr. Tubbs agreed the issue of exempt wells is ripe for policy. In addressing the processing of permits, Mr. Tubbs referred to many of the complaints as "rearview mirror" complaints. Mr. Tubbs explained how the *Smith River* decision disrupted the entire history of processing water rights. Mr. Tubbs thought the better approach would be to look at how the DNRC is performing after implementation of HB 831. Mr. Tubbs suggested the DNRC's performance had improved since implementation of HB 831 due to added resources and a law that the DNRC can work with. Mr. Tubbs suggested there is a need for water users to work with developers, consultants, and attorneys to help get through the processes. Rep. Cohenour added the WPIC could assist with working on the process at the front end.

Rep. Boggio noted development on the Stillwater and that people are buying acreage along a stream when they do not have a water right. Rep. Boggio wondered what the DNRC could do to preclude buyers from drilling a well 50 feet from the streambed. Mr. Tubbs responded if the well is less than 35 gpm, the DNRC would automatically issue a certificate. A well above 35 gpm would have to prove there are no adverse affects and existing water right holders could object. Chairman Elliott clarified a well could still be exempt if it provided over 35 gpm but had controls in place that limited the use to under 10 ac. ft.

Sen. Perry asked whether there was something to preclude a well owner from using over 35 gpm. Mr. Tubbs explained that the DNRC does not inspect exempt wells. Mr. Tubbs responded when the owner files the completion certificate, information is filed that certifies, based on their signature, that they are going to pump less than 35 gpm. Mr. Tubbs suggested the DNRC

should quit collecting that information and require the applicant to certify in writing exactly what he is doing.

Kurt Hafferman, Bill Mayer Engineering, explained both the DEQ and the DNRC have time limits. The DNRC tests at the production rate, and Mr. Hafferman would like to see the DEQ accept the DNRC's pump test regarding physical availability. Mr. Hafferman would like to see the tests synchronized. Mr. Tubbs added the DEQ and the DNRC are currently attempting to use each other's pump tests.

WATER RIGHT ENFORCEMENT—Panel Discussion

County Attorney perspective—Coleen I. Magera, Sanders County Attorney

Ms. Magera was unable to attend the meeting.

DNRC Perspective—Tim Hall, Chief Legal Counsel, DNRC

Mr. Hall submitted and reviewed a written summary on Water Right Enforcement ([EXHIBIT 16](#)).

Questions from the WPIC

Sen. Perry recalled Mr. Hall's reference to a person's ability to hire an attorney, file in district court, and get awarded attorney fees. Sen. Perry wondered whether attorney fees were mandated to be paid by the "prevailing party." Mr. Hall clarified attorney fees are only paid if a person prevails in obtaining an injunction against an illegal water user. Ms. Evans noted the Montana Code Annotated refers to "prevailing party." Mr. Hall stated he would review the statute further. Sen. Perry asked Mr. Hall to address the issue of digging a hole below ground water and pumping from that hole. Mr. Hall explained if a person digs a hole to get a spring, it is considered ground water, and if it was over 35 gpm, it would require a permit. Mr. Hall identified the issue as an anomaly in the law. Sen. Perry noted many people are building ponds and not lining the pond and utilizing an exempt well to keep water in the pond. Mr. Hall agreed that scenario is a problem. Sen. Perry suggested the WPIC should address the issue.

Sen. Perry inquired about a new gravel pit that applies for a permit when the depth of the pit is well below the known ground water level resulting in a depletion of ground water. Mr. Hall explained under Montana law, a person only has to get a permit if he is beneficially using water, which would not include moving the water out of the way. Rep. Cohenour asked whether a gravel pit utilizing such a practice would be required to have a permit for discharge. Mr. Hall stated the DNRC does not have the ability to grant a permit for that practice, and the practice could be the subject of individual lawsuits filed by downstream users because they are being adversely affected.

Ms. Lovelace stated under such a scenario, a discharge from a gravel pit to surface water would require a permit. The permit may or may not be needed depending on water quality. Ms. Lovelace stated the DEQ would look at the issue on a site-specific basis. Ms. Lovelace further added if a person was running water through a pond, they may be violating the Water Quality Act since that practice changes the temperature of the water and temperature is a pollutant. Ms. Lovelace spoke about recent efforts to educate the public and especially realtors. In addition,

Fish, Wildlife & Parks (FWP) also has issues with ponds. Ms. Lovelace stated the DEQ has not taken serious enforcement action regarding ponds, but is attempting to educate the public.

Rep. Boggio asked whether they are finding any problems with county attorneys representing senior water users in district court. Mr. Hall responded county attorneys do not have the time available, but the DNRC and county attorneys are working on combining resources. Rep. Boggio asked whether the law is different for a person who has a water right out of a stream as opposed to an irrigation ditch. Mr. Hall responded it does not matter, as long as the person has a senior water right. Mr. Hall noted differences between two permitted users and an illegal water user.

Rep. Boggio asked why the DNRC would permit a pond built on a stream or a ditch that affects the senior water rights down stream. Mr. Hall responded the DNRC can place conditions on a permit, so senior water users are not adversely affected; the DNRC could revoke the permit for violating that condition.

(Tape 5; Side B—Blank)
(Tape 6; Side A)

Mr. Hall noted that the DNRC can revoke a permit but does not have the authority to shut headgates.

Rep. Cohenour requested that the pond issue be placed on the WPIC's next agenda and stated she would particularly like to hear from FWP.

Water User Perspective—Stephen R. Brown, Attorney

Mr. Brown commented on two different aspects of enforcement: (1) illegal water use; and (2) distribution problems with determining priority.

Mr. Brown suggested ways a water user can resolve a dispute:

1. Contact whomever you are having a problem with;
2. contact the DNRC since the DNRC does have some enforcement tools regarding illegal water use;
3. file a private lawsuit;
4. appoint a water commissioner;
5. certify the decree to the water court; or
6. petition the district court to appoint a mediator.

Mr. Brown cautioned about unintended consequences when considering amending Montana's current water laws. Mr. Brown stated the implementation of HB 831 has spawned the buying and selling of water rights and the use of creative solutions on how to make water available in closed basins.

Questions from the WPIC

There were no questions from the WPIC.

Public Comment

Bill Meadows, a local rancher representing the Montana Farm Bureau Federation, stated that once the adjudication process is completed, he would like to see a signed and notarized document stating the owners understand their water right and its restrictions.

Don MacIntyre, Utility Solutions and Fidelity, spoke about the cost of enforcement. Mr. MacIntyre stated in the past it cost the DNRC approximately \$4,000 - \$5,000 to assess a \$25 fine that ultimately went to the county. Mr. MacIntyre believed any enforcement program would need to be adequately funded. Mr. MacIntyre wondered whether taxpayers would be willing to pay for enforcement of water laws that do not affect them. Mr. MacIntyre noted that many of the laws only apply to permitted water rights; however, not every beneficial water use in Montana needs a permit. Mr. MacIntyre spoke about the *Fidelity* decision which addressed water marketing applications both in state and out of state.

Kurt Hafferman, Bill Mayer Engineering in Kalispell, believed the DNRC is underfunded and, therefore, has misguided priorities. Mr. Hafferman acknowledged the water adjudication process is moving forward, but he suggested the transfer of existing water rights is problematic. Mr. Hafferman suggested no one would be willing to take on an enforcement action if the DNRC would not be there to back them up. Mr. Hafferman suggested the solution is to have an enforcement bureau within the DNRC.

Holly Franz, a water rights practitioner representing PPL Montana, believed the enforcement area is the most frustrating aspect to her clients because it is expensive, and court actions move slowly. Ms. Franz also noted that the amount of water changes from year to year resulting in the variation of problems. Ms. Franz also spoke about difficulties in finding water commissioners. Ms. Franz stated there is no steady source of water commissioners.

Mr. Tubbs stated the WPIC did not hear information about the conjunctive use of ground water and surface water. Mr. Tubbs noted water commissioners do not shut off wells, but shut off surface water diversions. Mr. Tubbs suggested Idaho court cases regarding what happens when surface and ground water are connected might be of interest to the WPIC.

COMMITTEE DISCUSSION AND ANALYSIS OF DAY'S TOPICS

Sen. Perry addressed the issue of deliberately turning a high-yield well into an exempt well. Sen. Perry suggested the well driller could be required to certify the pump is not capable of pumping in excess of the 35 gpm.

Regarding gravel pit discharge, Sen. Perry was concerned about dewatering a gravel pit and sending water down stream. Sen. Perry was very concerned about this practice. Sen. Perry suggested the WPIC should pay attention to how the issue could be controlled. Sen. Perry believed enforcement is a significant issue and state laws should not require neighbors go against each other. Sen. Perry stated since the Legislature makes the laws, it should also be responsible for providing enforcement provisions. Sen. Perry also believed county attorneys are

needed who will do the job. Sen. Perry noted the state general fund pays at least one-half of the county attorneys' salaries. Sen. Perry did not believe it should be necessary for a water user to file suit to enforce his water right. Sen. Perry noted the existence of a disconnect between the DNRC, the DEQ, and county commissioners regarding gravel pit permitting. Sen. Perry also believed there should be standards for aquifer storage and recharge by injection.

WPIC MEETING RECESS

There being no further business, the WPIC recessed at 5:16 p.m.

Thursday, September 13, 2007

(Visitors' List, [Attachment 4](#))

Chairman Elliott reconvened the WPIC meeting at 8:04 a.m. The secretary noted the roll ([Attachment 5](#)).

WELLS EXEMPT FROM PERMITTING PROCESS

DNRC

Curt Martin, Water Resources Division, DNRC, addressed the issue of the number of exempt wells in Montana. Mr. Martin submitted "Wells Exempt from the Permitting Process" ([EXHIBIT 17](#)). Mr. Martin was concerned about previous testimony suggesting the elimination of the exemption or a lawsuit being filed against the DNRC because of adverse affects occurring due to exempt wells. Mr. Martin believed elimination of the exempt well provision would drastically increase the workload of the DNRC. Mr. Martin testified other states have focused on regional or local solutions to address exempt wells.

Questions from the WPIC

Sen. Perry asked about the requirements for construction of a pond to be used by a fire department. Mr. Martin explained fire protection is exempt unless a fire department wants to fill from a pond created solely for that purpose. Mr. Martin stated there has been a specific volume of water assigned for fire protection purposes. Mr. Martin explained there is an ongoing discussion in Great Falls as to whether rural subdivisions need to have water storage facilities for fire protection.

(BREAK)

DEQ—Eric Regensburger

Mr. Regensburger provided a power point presentation entitled "DEQ Subdivision Regulations" ([EXHIBIT 18](#)).

(Tape 1; Side B)

Questions from the WPIC

Rep. Cohenour inquired about the dip in totals for 2001-03. Mr. Regensburger responded the dip probably just represented a lag in the economics and was probably not a direct correlation with what was going on at that time.

Sen. Perry noted the first page indicates high-well density has more chance of contamination due to multiple penetrations into the aquifer and asked Mr. Regensburger to explain how a higher density of wells would cause a higher chance of contamination than pits or ponds that are dug and also penetrate the aquifer. Mr. Regensburger explained both are pathways into the aquifer. A well is sealed around the outside and should be fairly protective of the aquifer; however, a pit is not protected in that way. Mr. Regensburger explained that wells deteriorate over time. An increase in the number of wells increases the chance of contamination because of the number of holes in the ground. Mr. Regensburger suggested monitoring of wells picks up contamination issues a lot sooner. Mr. Regensburger emphasized there are no requirements or regulations requiring people to test their own wells.

Public Comment

Dustin Stewart, Montana Building Association, was very concerned about the exempt well provision. Mr. Stewart believed there are other proactive public policies that could be taken that would protect the growth patterns of the building industry. Mr. Stewart addressed the overall water use patterns in the state of Montana and emphasized 97 percent of the water in the state is used for irrigation, and domestic use occupies less than 1 percent of the total water used in Montana. Mr. Stewart emphasized exempt wells represent a small amount of water used in Montana, and that the building industry is the state's largest industry. Mr. Stewart stated that the correct public policy would be to address the permitting process which is lengthy and driving developers to utilize exempt wells. In addition, Mr. Stewart identified Montana's annexation laws as very strict and thought it should be made easier for subdivisions to annex into a city's water system. Mr. Stewart also suggested the Legislature may need to look at one-time infrastructure funding to local communities to facilitate the expansion of infrastructure out into subdivisions.

Ms. Franz addressed the language in the statute that states an exemption is "35 gpm or ten-acre feet per year . . . except that a combined appropriation from the same source from two or more wells for developed springs exceeding this limitation requires a permit." Ms. Franz explained the language has been interpreted by the DNRC that the two wells actually have to be physically joined to be considered a combined appropriation. Ms. Franz identified a third option as being changing the combined appropriation language.

Mr. Hafferman addressed Rep. Cohenour's question about the dip in 2002-03 and suggested people moving into Montana were either not aware of state law or were resistant to state law and having to file water rights. In 2006-07 the adjudication fee was implemented which resulted in more filings of water rights. Mr. Hafferman suggested 350 gallons per day equates to approximately four-tenths of an acre foot per year, which is substantially less than the one-acre foot. Mr. Hafferman reminded the WPIC that the water goes back to the aquifer in the drainfield. Mr. Hafferman suggested that domestic use, therefore, is almost non-consumptive. Mr. Hafferman admitted lawn and garden is a lot of the consumptive use for domestic wells.

Mr. MacIntyre commented on the esthetic use of water and thought it was a waste of water and not a beneficial use. Mr. MacIntyre believed there should never be a private beneficial use for wildlife since private individuals do not have regulatory authority over that resource.

Committee Discussion and Action, if any

Chairman Elliott was interested in the cost of exempt wells versus a public water supply system. Mr. Stewart did not have the specific information. Chairman Elliott noted Frenchtown is happy about not being annexed and asked Mr. Stewart to comment on annexation of the unwilling. Mr. Stewart stated his association has a general policy that local governments should plan on the municipal and county levels, and that most of the rub occurs over the funding of infrastructure. Mr. Stewart believed most subdivisions are in favor of annexation.

Chairman Elliott suggested government funding of infrastructure does not take care of areas where there are extra-urban subdivisions. Chairman Elliott questioned subsidizing one type of subdivision and not others. Chairman Elliott asked about the percentage of subdivisions that are in an area that could be annexed versus all other subdivisions. Mr. Stewart responded he would need to research the issue. Mr. Stewart clarified that he is suggesting adding a way to provide up-front funding that could be paid back.

Mr. Tubbs depicted creativity regarding Montana landscape and stated the current theme of subdivisions to create county water and sewer districts. Mr. Tubbs explained the trend to build infrastructure under private development and then flip it into a county water and sewer district. Mr. Tubbs stated county water and sewer districts are very creative on how to access public funds.

Sen. Perry inquired about private development of utilities being purchased by a municipality. Sen. Perry wondered whether a private entity such as Utility Solutions could sell to Gallatin County. Mr. Tubbs responded that there have been trends both directions on both the national and state levels where public utilities are looking to transfer to private ownership to keep costs down. Mr. Tubbs summarized the question regarding Gallatin County as whether they consider a county water and sewer district a public entity.

Mr. MacIntyre stated he could not address the ultimate development plan of Utility Solutions, but noted water and sewer districts are utilized for municipal uses. Mr. MacIntyre stated Utility Solutions was developed to provide water and sewer services in the Four Corners area.

Sen. Perry emphasized that water rights established 100 years ago are impacting Montana now, and noted action taken today, could impact what occurs 100 years from now. Sen. Perry believed the WPIC should be cognizant of that fact in its action.

Chairman Elliott commented that if domestic use is such a minimal amount, why not make domestic use exempt. Mr. Tubbs acknowledged that the core of Mr. Hafferman's comments were true and identified the main problem as lawn and garden. Mr. Tubbs identified the big issue as how to develop outside landscapes and identify the local impact of the development. Mr. Tubbs thought the issue needed to be addressed on a case-by-case basis. Mr. Tubbs was skeptical about exempting domestic use but acknowledged it as a discussion point.

Rep. Cohenour commented on laboratory testing and monitoring and stated only a small percentage of people test. Rep. Cohenour stated punching a lot of wells will result in the cumulative effect of contamination.

Mr. Tubbs recommended the WPIC request the DEQ to make a presentation on surface water protection.

(Tape 2; Side A)

MEASUREMENT OF EXEMPT WELL WATER USAGE—Curt Martin, DNRC

Mr. Martin addressed the difficulty of measuring exempt well water usage. Mr. Martin stated domestic wells, even if stock is included, use less than five percent of the total amount of water consumed state wide. Mr. Martin suggested the total amount consumed for beneficial use is equal to the total amount of water consumed by evaporation on the Fort Peck Reservoir.

Questions from the WPIC

There were no questions from the WPIC.

Public Comment

Ms. Woodbury expressed concern about public health and cited difficulties in determining where contaminations are coming from. Ms. Woodbury believed there was a need for more monitoring and control of water quality.

Stan Bradshaw, Trout Unlimited, asked the WPIC to revisit where exempt wells fit into the larger system of protecting a senior water right since exempt wells are exempt from the review that allows an existing water user to object. Mr. Bradshaw believed in a given drainage or basin domestic use could have a substantial impact.

Committee Discussion and Action, if any

Rep. Cohenour believed the timing issue of the use is important and noted domestic use is 100 percent of the time all year long.

Mr. Hafferman agreed timing is important, but pointed out the current water right system makes it very difficult to develop large wells and public water supply systems.

Upon inquiry from Chairman Elliott, Curt Martin informed the WPIC the average annual outflow from the Clark Fork is 14 million acre feet; the Kootenai is 10 million acre feet; the Yellowstone is 8 million acre feet; and the Missouri is 7 million for a combined flow of approximately 39 million.

(RECESS)

ALTERNATIVES FOR WATER IN HIGHLY APPROPRIATED AREAS

Aquifer Storage and Recovery—the Washington Experience—Linton Wildrick, Pacific Ground Water Group

Mr. Wildrick submitted and reviewed "Aquifer Storage and Recovery in Washington State" ([EXHIBIT 19](#)). Mr. Wildrick cautioned that while Aquifer Storage and Recovery (ASR) seems to be a promising technology, it needs to have the right geological setting, and the water table has to be deep enough to create a mound, but not so deep as to cause flooding. Mr. Wildrick also warned against the possibility of introducing contaminants. Mr. Wildrick identified ASR projects as being very expensive and urged the WPIC to proceed cautiously.

Aquifer Storage and Recovery—Montana Feasibility—Kirk Waren, MBMG

Mr. Waren submitted and reviewed "WPIC Panel Discussion, Sept. 13, 2007: Alternatives for Water in Highly Appropriated Areas, Aquifer Storage and Recovery—Montana Feasibility" ([EXHIBIT 20](#)).

(Tape 2; Side B)

Questions from the WPIC

Rep. Cohenour asked Mr. Wildrick if he had the data available from the testing from Lakehaven Utility District. Mr. Wildrick did not have the data readily available, but offered to obtain the data for Rep. Cohenour. Rep. Cohenour asked whether ASR is affordable, and Mr. Wildrick explained the technology is increasingly becoming more affordable.

Clark Fork Basin Alternatives—Mike McLane, Clark Fork Task Force

Mr. McLane gave a power point presentation entitled "Water for Future Projects, Are New Approaches Needed?" ([EXHIBIT 21](#)).

(Tape 3; Side A)

Surface Storage Opportunities—Small and Large—John Tubbs, DNRC

Mr. Tubbs spoke about the significant loss of water that occurs through evaporation when water is stored. Mr. Tubbs suggested future reservoir developments will have even greater evaporation volumes due to their large surface areas and small volumes. Mr. Tubbs believed water storage could provide an opportunity to manage the water over the course of the year. Mr. Tubbs emphasized the issues in eastern Montana are not the same as the issues in western Montana. Many dams are being built in Eastern Montana, but those dams are usually located in coulees and are utilized for stock watering. Mr. Tubbs explained that trust lands have a lot of reservoirs that they cannot account for since the reservoirs are built by trust land lessees. Mr. Tubbs cited the existence of a very strong dam safety program and stated it is difficult to manage dam safety since people continually build homes underneath the dams. Mr. Tubbs identified the liability for owning a dam as very high. Montana owns 25 dams and 23 projects and most of them are high hazard. Mr. Tubbs submitted a copy of "Water Storage in Montana, a Report Submitted to the Sixtieth Montana Legislature" ([EXHIBIT 22](#)). Mr. Tubbs noted the

problems with water experienced by irrigators on the Jefferson River and thought increased storage on the Ruby River could be helpful. Mr. Tubbs cited a need for a significant investment in Montana's existing dams to keep them safe. Mr. Tubbs explained an agreement with the Bureau of Reclamation must be reached before Montana can benefit from the Hungry Horse Dam. Mr. Tubbs stated he has seen several innovative private storage proposals, although the proposals were on a much smaller scale. Mr. Tubbs stated he would like to work with the WPIC to solve the issues with Hungry Horse Dam.

Questions from the WPIC

There were no questions from the WPIC.

Public Comment

Steve Fry, Avista, has been involved with the Clark Fork Task Force. Mr. Fry addressed the *Thompson River Lumber Company* case and explained the reasons Avista objected to the application was because of the amount of water involved, the way the application was written, and the application's reference to no one downstream ever making a call on water and no one ever objecting. Mr. Fry stated Avista pays for headwater benefits for water out of Hungry Horse Dam. Mr. Fry believed there are opportunities at Hungry Horse that should be considered.

Mr. MacIntyre spoke on behalf of the Department of Transportation (DOT) and directed the WPIC to section 85-2-231, MCA, which closes reservations after a certain point in time. Mr. MacIntyre explained if that opens back up, DOT could come back in under the reservation process to get ground water rights for their mitigation efforts when they lose wetlands in the construction of highways.

Committee Discussion and Action, if any

There were no questions from the WPIC.

MILLTOWN DAM WATER RIGHTS—Gerald Mueller

Mr. Mueller represented the Upper Clark Fork Basin Steering Committee. Mr. Mueller agreed that water problems are not uniformly distributed across the state. Mr. Mueller gave a power point presentation entitled "Milltown Dam Water Rights Report to Interim Water Policy Committee" ([EXHIBIT 23](#)).

(Tape 3; Side B)

Questions from the WPIC

There were no questions from the WPIC.

Public Comment

There was no public comment offered.

(LUNCH)

CLARK FORK TASK FORCE UPDATE—Gerald Mueller

Mr. Mueller gave his "Report to Interim Water Policy Committee by the Clark Fork River Basin Task Force" ([EXHIBIT 24](#)).

(Tape 4; Side A)

Questions from the WPIC

Sen. Perry inquired about the delay and asked how the WPIC could be of assistance. Mr. Mueller agreed there has not been much movement and suggested assistance may be needed from the Congressional Delegation. Mr. Mueller hoped the WPIC would be able to help, although he did not have any specific requests yet.

CONFEDERATED SALISH KOOTENAI TRIBE WATER RIGHTS COMPACT NEGOTIATIONS

John Carter, CSKT

Mr. Carter showed maps depicting Montana land ownership and the status of land on the Flathead Reservation in 2007. Mr. Carter believed the state water court, since its inception, has cost approximately \$30 million and has provided no finality for water rights in the state of Montana. Montana's Reserved Water Rights Compact Commission, established in 1979 to negotiate rather than litigate Indian reserved water rights, has reached final compacts on five of the seven Indian Reservations, part of the BLM land, and all of the Forest Service land and has cost Montana less than \$10 million. Mr. Carter explained homestead lands, allotted lands, and those lands' with competing priority dates. Mr. Carter provided a history of the Flathead Indian Reservation and depicted the Tribe's claim to all of the water on the Reservation as strong. The existing Reserved Water Rights Compact Commission will sunset in June 2009 and six months after the sunset, the Tribe and the United States are required to file all of their claims for water. Mr. Carter reported there were in excess of 4,000 non-Indian claims filed on the Reservation. In addition, the Tribe intends to file between 5,000-6,000 on-reservation claims. Mr. Carter specifically requested the WPIC to work on drafting legislation which would extend the life of the Compact Commission. Mr. Carter submitted a copy of the briefing paper for SB 450 (2007) ([EXHIBIT 25](#)).

Questions from the WPIC

Chairman Elliott commented that Mr. Carter works for the Confederated Salish and Kootenai Tribe, and that a representative from the Reserved Water Rights Compact Commission was unable to attend the meeting. However, the Reserved Water Right Compact Commission was comfortable with Mr. Carter attending and presenting at the meeting.

Rep. Cohenour wondered how the negotiations were progressing. Mr. Carter responded that it took six years to resolve the Rocky Boy Compact, which was a fairly small claim. Mr. Carter explained the Tribe has presented a proposal for negotiation; however, the State of Montana has yet to appoint its negotiation team. Mr. Carter explained the other parties are moving forward on a concept of unitary water management which includes joint state and tribal management, federal infusion to improve irrigation system efficiencies, and creating a regional

distribution system for domestic use. Rep. Cohenour asked how much water would be taken from Hungry Horse. Mr. Carter replied the amount is undetermined at this point.

Chairman Elliott stated his understanding was that until the compact is negotiated, no final adjudication can be made on water rights in the Clark Fork Basin. Mr. Carter agreed. Chairman Elliott wondered how the state's decision to not meet with the Tribes put pressure on the Tribes. Mr. Carter replied he could not understand the logic. Chairman Elliott commented that previous litigation on Stephens treaties has been in favor of the Tribes. Mr. Carter agreed that is the case.

Public Comment

Gail Patton, Sanders County Commissioner, asked whether paying off the irrigation project would help in the process of negotiations. Mr. Carter replied the projects are intertwined, and one cannot settle one without settling the other. Mr. Carter urged Mr. Patton to contact the state negotiating team, when it is appointed, with his suggestions. Mr. Carter explained that in 2001 the Tribes submitted a proposal for negotiating water rights on the Flathead Reservation; however, before agreement was reached, many small domestic wells were drilled.

(Tape 4; Side B)

Therefore, an interim agreement was reached; however, the Compact Commission received some fairly stinging criticism.

Chairman Elliott asked who is responsible for appointing the negotiating team. Mr. Carter identified the Governor, Legislature, and the Attorney General.

Mr. Mueller commented that the Clark Fork Task Force recognized from the beginning that the initiative regarding Hungry Horse was a very good sign and did not view the initiative as a conflict.

Mr. Carter noted Mr. Mueller was the individual who planted the seed for the alternative supply on the Reservation. Mr. Carter stated one advantage of wrapping up additional water from Hungry Horse and keeping it in the state in a water rights settlement is that it is a congressional enactment.

Chairman Elliott recalled one of the Bureau of Reclamation's original charges was to promote irrigation. Mr. Hall agreed that was a provision of the Reclamation Act of 1902.

Committee Discussion and Action, if any

HB 831 IMPLEMENTATION UPDATE

DNRC Update—John Tubbs

Mr. Tubbs provided an update on HB 831 and explained there are six applications pending under HB 831, and most of the applications are for development in the Helena Valley. Comments to the proposed net depletion rule are due by September 26, 2007. Additional rules will be proposed regarding objections and correct and complete applications. Mr. Tubbs stated

the DNRC is attempting to provide an opportunity for the public to view the process and to provide certainty for the process. The DNRC will continue to look at the feasibility of aquifer storage and recovery projects and will be looking at what is happening in other states.

Committee questions, discussion, and action (if any)

Rep. Cohenour asked Mr. Tubbs to expand on HB 831 rulemaking. Mr. Tubbs stated the DNRC is in the correct and complete review stage of the rulemaking process. Once an application is determined correct and complete, it means the regional office staff will make the application public and provide an opportunity for objections.

DNRC Rules—Net Depletion Definition (committee discussion)

Ms. Evans emphasized that if the WPIC members wanted to comment on the proposed net depletion rules, they would need to do so at the present meeting.

Public Comment

No public comment was offered.

HB 831 CASE STUDY PROGRESS—Montana Bureau of Mines and Geology

John Metesch, MBMG, provided an update on the HB 831 case study progress. Mr. Metesch submitted two maps of areas that meet the criteria for the case study. The first site was in the Beaverhead drainage ([EXHIBIT 26](#)). Mr. Metesch commented on the Geoduck/Mogus sites and noted those sites are also working on a change application to go from flood to sprinkler and a substantial amount of data has been collected. Mr. Metesch stated the areas represent a coalition of hydrologic conditions. Numerical models will be developed to examine what is occurring with each particular site. The second map Mr. Metesch submitted was in the Manhattan/Churchill area ([EXHIBIT 27](#)). Mr. Metesch stated the wells appear to be in the same aquifer. Mr. Metesch explained one of the issues in the Manhattan/Churchill area is the relationship of the deep wells and surface water. Mr. Metesch informed the WPIC that he has received several requests to look at the competing models in the Four Corners area.

Committee Questions

There were no questions from the WPIC.

Public Comment

No public comment was offered.

Committee Discussion and Action, if any

COMMITTEE DISCUSSION AND ANALYSIS OF DAYS TOPICS

Rep. Cohenour submitted a list of recommendations for prioritization and explained her proposal to the WPIC ([EXHIBIT 28](#)). Rep. Cohenour requested Ms. Evans to make her list of recommendations available to interested parties.

Chairman Elliott expressed concern about facilitating the permitting of community wells. Chairman Elliott explained how he looks for a common theme in all the issues and considers how to identify a policy area and the best way to address the policy. Chairman Elliott believed the policy should enable local control. Chairman Elliott also identified enforcement as important.

(Tape 5; Side A)

Rep. Boggio commented about the importance of listening to public comment. Rep. Boggio identified the need to protect exempt wells as important, and that the evidence shows the amount of water used by exempt wells is small. Rep. Boggio was also concerned about enforcement for senior water rights. In addressing water-quality issues, Rep. Boggio commented that the wells are not the problem, but rather, the problem is septic tanks and municipal systems. Rep. Boggio thought the individuals out in the field in site-specific areas should be empowered to spearhead solutions to the problems.

Rep. McChesney was concerned about water quality and areas with significant development and a substantial amount of new wells and septic systems. Rep. McChesney suggested there is a need to pay particular attention to new development and to empower local entities, so they can address their issues. Rep. McChesney suggested it would be a catch up game for awhile and suggested looking at what is occurring in other states. Rep. McChesney emphasized the need to ensure that future generations in Montana will have access to good clean water.

Rep. Hilbert asked about closed basins and wondered why the basins were closed. Rep. Hilbert did not recall any testimony identifying new development as the cause for their loss of well water.

Mr. Tubbs responded and stated each closed basin came from a unique history. Ground water control areas were created to address dry wells and those control areas address specific aquifers. The Upper Missouri River closure was precipitated by a water reservation process in the 1980s, and the Legislature closed the Upper Missouri River Basin.

Rep. Hilbert recalled hearing the flows are a direct result of climate rather than development. Rep. Hilbert wondered whether that was still a bone of contention between groups. Mr. Tubbs responded it is a bone of a contention, and suggested that flows are impacted by a combination of factors. Mr. Tubbs pointed out that the drought cycle correlates with the growth cycle, so it is difficult to make a differentiation. Mr. Tubbs suggested there may be an underestimate of the impact of exempt wells.

Chairman Elliott acknowledged the correlation of growth and drought, but stated looking at consumptive use of household water, the amount is insignificant until lawns and gardens are added. Mr. Tubbs stated he will provide numbers to the WPIC.

Mr. McLane worked on a number of the basin closures. Mr. McLane stated the Bitterroot has been over appropriated for sixty years. Mr. McLane provided a history of the Bitterroot Basin closure. Mr. McLane believed there are issues with exempt wells, as well as large lawns and ponds. Mr. McLane believed real and existing shortages of surface water and fear of water shortages caused the basin closures.

Mr. Hall reminded the WPIC that the basin closures were in effect only until the issuance of final decrees. Mr. Hall stated the final decrees will not indicate how much water is in the basin, but will state who has the best rights to the water. In the future, the Legislature will have to look at the closed basins and decide whether to continue to have the basin closed.

Rep. Cohenour commented that it is difficult to ascertain how long the drought will last and suggested decisions need to be made before the pressure hits.

Rep. Boggio understood the desire to regulate well drilling in closed basins, but commented he has a hard time accepting the fact that the WPIC can legislatively develop one scenario that will work across the state. Rep. Boggio stressed the need to be cognizant of site-specific differences. Rep. Boggio explained how Carbon County is transitioning from agriculture into subdivision areas and selling water rights along the Rock Creek drainages. Rep. Boggio urged caution and common sense.

Sen. Perry identified water quality as the issue that needs to be paid attention to, more so than quantity. Sen. Perry was concerned about the pharmaceuticals that show up in water supplies. Sen. Perry also identified a need to examine the exempt well issues and look at ways to help developers steer away from individual septic systems and wells and encourage community water systems. Sen. Perry urged caution against pushing development the wrong way. Sen. Perry also recalled testimony indicating a lack of compliance with filing a certificate for an exempt well and suggested the filing of the certificate could be done simultaneously with the filing of the well log. Sen. Perry agreed that blanket legislation that would apply to all areas would be undesirable since all areas are different.

(Tape 5; Side B)

Sen. Perry stated he needed to have an opportunity to review all the data and information, and would also like to take a look at what other states have done, including Washington, Colorado, and California. Sen. Perry noted California ranks first in both total fresh water withdrawals and ground water withdrawals, yet does not regulate or manage ground water.

Rep. Cohenour suggested the WPIC should narrow its focus and look at the list to begin to get to the issues. Rep. Cohenour asked the WPIC members to review her list, Exhibit 28, to decide whether their issues are addressed, so the WPIC can take a more in-depth look at the issues. Rep. Cohenour emphasized the importance of data. Rep. Cohenour stated she is considering the idea of a state-wide hydrogeological study, which would address site-specific problems.

Chairman Elliott agreed data gathering is important and wondered whether the WPIC has the data it needs to make decisions without resulting in unintended consequences in the future. Rep. Hilbert questioned the usefulness of data that is gathered in the middle of a drought.

Chairman Elliott agreed the scope of the WPIC needs to be narrowed and that there is a need to solicit succinct advice from the water experts. Rep. McChesney agreed with Chairman Elliott's suggestion. Rep. Cohenour's list will be a starting point for narrowing the focus of the WPIC. Ms. Evans will distribute the list to interested parties.

The WPIC's next meeting will be in Choteau, Montana, on October 24-25, 2007.

PUBLIC COMMENT on any matter not contained in this agenda and that is within the jurisdiction of the WPIC

Gail Patton, Sanders County Commissioner and a member of the Clark Fork Task Force, believed water rights issues have not been adequately funded.

Rep. Cohenour thanked the town of Thompson Falls for their hospitality.

Don MacIntyre, representing Utility Solutions, spoke about the effort to build more affordable homes in the Four Corners area. Mr. MacIntyre explained that litigation was brought against the water and sewer district and as a result they could not get bonded. Utility solutions was formed to serve what the water and sewer district had intended to serve. Ultimately, the lawsuit was rejected by the Montana Supreme Court, and there was a negotiated contract. One of the options under the contract provides the water and sewer district can buy out the entire infrastructure, including the water rights. Mr. MacIntyre stated the objections that Utility Solutions is receiving through the water permitting process are generally from the same people who objected to the formation of the water and sewer district in the first instance. Mr. MacIntyre pointed out the Elk Grove is now part of Utility Solutions, but because they were not part of the original water and sewer district, they are regulated by the PSC.

Rep. Cohenour asked whether Utility Solutions was regulated as far as Elk Grove is concerned, and Mr. MacIntyre agreed that was correct. Rep. Cohenour asked whether Utility Solutions is required to take anyone within the boundaries of the water and sewer district and how the rate structure is established. Mr. MacIntyre responded the rate is negotiated between the water and sewer district and Utility Solutions. Rep. Cohenour asked about the term of contract, and Mr. MacIntyre stated he did not know the term, but would obtain that information for Rep. Cohenour.

OTHER BUSINESS

There was no other business to come before the WPIC.

INSTRUCTIONS TO STAFF

There were no instructions to staff.

ADJOURN

There being no further business to come before the committee, the meeting adjourned at 3:17 p.m.