



Water Policy Interim Committee

63rd Montana Legislature

SENATE MEMBERS

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

HOUSE MEMBERS

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

COMMITTEE STAFF

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

MINUTES LOG

Date: January 6, 2014

Room 172, State Capitol Building
Helena, Montana

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

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

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

COMMITTEE MEMBERS PRESENT

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

SEN. JENNIFER FIELDER
SEN. BRADLEY MAXON HAMLETT
SEN. SHARON STEWART-PEREGOY

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

STAFF PRESENT

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

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

- The Water Policy Interim Committee (WPIC) approved the minutes from September 9-10, 2013.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Vincent called the WPIC meeting to order at 9:00 a.m. The secretary called the roll, [Attachment 3](#).

00:00:36 Joe Kolman, Legislative Environmental Analyst, Legislative Services Division (LSD) introduced Ms. Dawn Field, the new Research Assistant in the Legislative Environmental Policy Office (LEPO).

Approval of Minutes:

00:02:15 **Motion/Vote:** Rep. Williams moved to accept the September 9-10, 2013 WPIC minutes. The motion carried unanimously by voice vote of those present and voting.

AGENDA

STATE WATER PLAN UPDATE

00:02:53 Tim Davis, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC). Mr. Davis gave a summary of the State Water Plan update, [Exhibit 1](#), and provided a summary of the scoping reports for each of the four river basins, [Exhibit 2](#).

Public comment None

Committee questions and discussion

00:11:36 Rep. Williams asked if the DNRC will allow 30 days for public comment on the draft water plans. Mr. Davis said they will allow time for public comment.

00:12:17 Sen. Fielder asked why there were only four issues identified under the Clark Fork and Kootenai areas. Mr. Davis said there were 21 issue categories that were identified and the advisory board chose to prioritize those four issues.

- 00:12:55 Sen. Fielder asked if cost and the ability for the public to access water without being metered was an issue. Mr. Davis said that he did know if metering was brought up specifically, but would find out.
- 00:13:33 Sen. Hamlett asked about comments and concerns the DNRC has received regarding in-stream flow. Mr. Davis said that comments were made primarily on maintaining the current in-stream flows and the health of fisheries within each of the basins.
- 00:14:18 Rep. Williams asked how much work has gone into looking at other state water plans. Mr. Davis said that prior to initiating the public process the DNRC looked at state water plans primarily in the West.
- 00:15:51 Sen. Stewart-Peregoy entered the meeting.

ADJUDICATION UPDATE

- 00:16:57 Tim Davis, Administrator, Water Resources Division, DNRC, gave an update on the adjudication report, [Exhibit 3](#).

Public comment None

Committee questions and discussion

- 00:21:36 Sen. Hamlett asked about the 90,000 claims to be re-examined and if there is any other additional work . Mr. Davis said the verified claims from temporary preliminary decrees need to be standardized as part of the adjudication process. In addition, he said people who had not previously filed claims for pre-1973 in-stream stock or domestic water rights will be able to file, and that there is a potential for 10,000 tribal claims depending on what happens with the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT) Compact.
- 00:24:49 Sen. Hamlett asked that future reports include all additional claims. Mr. Davis said he will include all claims in future reports. Sen. Hamlett said that it is important for the public to know where the state is in the adjudication process.
- 00:26:17 Sen. Fielder asked about public notice for people filing claims on rights exempt from filing. Mr. Davis said the DNRC is working with the water court on the best way to notify the public.
- 00:27:49 Rep. Connell asked about the exempt from filing claims and the type of response the DNRC has received from people filing claims. Mr. Davis said only a small number of claims have been filed.
- 00:28:18 Rep. Connell said the issue with the claims exempt from filing was a mistake in the process and now that there are filings and a balance to ensure people can become part of the process, WPIC has achieved its goal. Mr. Davis said he will add the number of exempt from filing claims that have been received to the report .

- 00:29:40 Sen. Fielder asked about the extension deadline. Mr. Davis said it opened the filing period to within 90 days of a final decree.
- 00:30:33 Sen. Fielder asked Sen. Hamlett about SB 355 (2013) and the extension of time to file a claim. Sen. Hamlett said the bill gave people an additional opportunity to file because the language in the law was ambiguous. He asked staff to provide a copy of the bill to the committee, [Exhibit 4](#).
- 00:32:19 Mr. Kolman said that SB 355 makes the deadline 90 days before the issuance of the final decree.
- 00:32:50 Rep. Williams asked about the difference between temporary preliminary decree, preliminary decree and final decree. Mr. Davis said the process before a final decree is issued.
- 00:35:57 Rep. Williams asked if temporary preliminary, preliminary and final decrees are all enforceable. Mr. Davis said the decree can be enforced only after the preliminary decree.
- 00:36:22 Rep. Williams asked about an interim decree. Mr. Davis referred the question to Judge McElyea.
- 00:37:05 Sen. Hamlett asked if the DNRC has plans to keep noticing the public about the exempt from filing deadlines. Mr. Davis said they are working with the Water Court about how and when to notice the deadline in each basin.
- 00:38:15 Sen. Vincent asked if the DNRC has sufficient staff to handle the increase in certification cases. Mr. Davis said the Water Court has been given additional FTE to provide assistance.
- 00:39:01 Rep. Fitzpatrick entered the meeting.
- 00:39:24 Russ McElyea, Chief Water Judge, Montana Water Court, said that an interim decree is any decree issued before a final decree. He gave an update on the adjudication process. Mr. McElyea said, in reference to SB 355, they are putting notices into the decree itself so people are aware that they have the opportunity to file exempt rights.
- 00:45:29 Sen. Stewart Peregoy asked if the Water Court is examining objections to the Crow Compact. Mr. McElyea said they did receive a significant number of objections which will be treated like any other court proceeding.
- 00:47:02 Rep. Connell asked about the impact of SB 355. Mr. McElyea said that SB 355 makes the adjudication process a more complete process.

00:49:16 Rep. Williams asked about extending deadlines for objections. Mr. McElyea said that extending deadlines allows more participation by the stakeholders, which will give a better result.

00:55:38 Rep. Williams asked if temporary preliminary decrees were enforceable. Mr. McElyea said they can be enforced.

00:56:38 Sen. Hamlett commented on the decision to extend objections to the Crow Compact.

Public comment None

GROUNDWATER STUDIES: GENERAL WATER CHARACTERIZATION PROGRAM IN PARK AND SWEETGRASS COUNTIES

00:59:07 Mr. John LaFave, Program Manger and Research Hydrologist, Ground Water Assessment Program, Montana Bureau of Mines and Geology (MBMG). Mr. LaFave gave a PowerPoint presentation on updates on the characterization study in Park and Sweetgrass Counties, [Exhibit 5](#).

Public comment None

Committee questions and discussion

01:20:29 Rep. Williams asked whether after a groundwater characterization study is completed in an area if that is sufficient information to move forward with a stream depletion zone petition. Mr. LaFave said they do not routinely do aquifer testing to give the necessary values for a petition.

01:22:49 Rep. Williams asked what it would cost to move forward on a stream depletion zone. Mr. LaFave said the steps to follow and the expenses involved.

01:24:19 Sen. Fielder asked if testing is done before drilling or fracking occurs and if an area is checked for adverse impacts after the operation. Mr. LaFave said that some states require testing. He said drilling companies sample for a set of constituents and there is follow up sampling required after the drilling or fracking has occurred.

01:25:40 Sen. Vincent said there is a process for someone with a water right or interest to apply for a stream depletion zone. Mr. Davis said that DNRC has not received any inquiries or petitions for designated stream depletion zones.

01:26:41 Rep. Williams asked if there are resources available to help applicants pay for the studies required for a designated stream depletion zone. Mr. Davis said resources are available through the Groundwater Investigation Program at the MBMG.

01:27:49 Recess

01:46:58 Reconvene

WATER TRANSFERS IN THE WEST: PROJECTS, TRENDS, AND LEADING PRACTICES IN VOLUNTARY WATER TRADING

01:47:08 Tony Willardson, Executive Director, Western States Water Council (WSWC), provided information about the WSWC, [Exhibit 6](#) and gave a PowerPoint presentation on the Western Governors' Association (WGA) report on water transfers in the west, [Exhibit 7](#).

Public comment None

Committee questions and discussion

02:26:25 Sen. Fielder asked who from Montana is involved with the WSWC. Mr. Willardson said the people on the WSWC from Montana.

02:27:48 Rep. Williams asked if any states have shared concerns about allowing private markets to be involved in water transfers and if so what have the states done. Mr. Willardson said they have recognized that transfers are taking place and it is a growing concern.

02:33:02 Nathan Bracken, General Counsel and Assistant Director, WSWC, said via phone that privatizing public resources is a concern and that states are trying to come up with legal framework to keep water rights in agriculture. Mr. Willardson added that this is a way for the farming community to diversify and increase income.

02:35:34 Rep Connell asked about the working relationship between the WSWC and the U.S. Forest Service (USFS). Mr. Willardson said they have not worked much with the USFS in the past, but are looking at Montana's compact with the USFS.

02:38:07 Rep. Connell asked if Montana's compact is unique. Mr. Willardson said that he is unaware of any other compact with the USFS.

02:40:39 Rep. Connell asked if the federal government recognizes their responsibility toward state rights, under the water, as a water right. Mr. Willardson said that recognition varies by federal agency.

02:43:07 Sen. Fielder asked about the adjudication process in Idaho and how many claims were filed by the Bureau of Land Management (BLM). Mr. Willardson said that several thousand claims were filed by the BLM, but less than 100 claims were valid.

02:44:53 Sen. Fielder asked if the claims were filed deliberately to slow down the adjudication process. Mr. Willardson said that was what was reported by the director of the Idaho Department of Water Resources.

02:45:57 Rep. Williams asked if there are any upcoming initiatives or topics that the WSWC will be looking into that will be of interest to policymakers. Mr. Willardson said that one topic they are looking at is the lack of available data.

- 02:51:41 Sen. Hamlett asked Mr. Willardson if he has read the book *Cadillac Desert* and if he thought the author was conveying the idea that water development in the U.S. has been to move water to where there are people, instead of moving people to where there is water. Mr. Willardson said that he has read part of the book and agreed that the idea was to move water to the people.
- 02:53:58 Sen. Hamlett asked if it is the view of the WSWC that Montana has the responsibility to supply water to other states. Mr. Willardson said that it is the responsibility of each state to provide their own water.
- 02:56:55 Sen. Hamlett asked if the urbanization of state legislatures across the west has lead to a change in policy that agricultural water rights in the future are to supply water to the public. Mr. Willardson said that agriculture is being viewed as a source for water supply.
- 02:59:28 Recess
- 04:02:15 Reconvene

UPDATE OF MONTANA v. WYOMING CASE ON INTERSTATE WATER COMPACT

- 04:02:25 Cory Swanson, Deputy Attorney General, Montana Department of Justice, gave the history and an update on Montana v. Wyoming. He provided a copy of the final pre-trial memorandum, [Exhibit 8](#), in addition to the initial complaint already provided to the committee, [Exhibit 9](#).

Public comment None

Committee questions and discussion

- 04:14:00 Rep. Williams asked about the claims that were won and lost in the case. Mr. Swanson said the legal arguments that were won and lost.
- 04:19:10 Sen. Hamlett asked if the issue of carry water in flood irrigation ever came up in litigation, and if Wyoming continued to take the same amount of water by expanding irrigation systems through pivots. Mr. Swanson said that he did not know because that part of the investigation pre-dated his involvement in the case, but the issue has come up in current litigation and he agreed with the concept.
- 04:21:36 Jennifer Anders, a former State of Montana attorney who worked the case, said that Montana never made it to the factual investigation stage on the question of return flows so they did not go into detail on the question of carry water.

COLUMBIA RIVER TREATY 2014/2024 REVIEW

- 04:22:29 Ms. Anders, Council Vice Chair, Northwest Power and Conservation Council (NWC), gave an introduction and update on the Columbia River Treaty recommendations. She also gave an update on her work on the NWC and provided a copy of the brochure on variable discharge (VarQ), [Exhibit 10](#).

04:27:06 Kerry Berg, Policy Analyst, Montana Office, NWC, gave a PowerPoint presentation providing an overview and current status of the Columbia River Treaty, [Exhibit 11](#).

Public comment

04:45:19 Clark Matt, Arlee, Montana, Flathead Reservation

Committee questions and discussion

04:46:46 Rep. Connell asked if there is unanimity of purpose between the U.S. and Canada on the treaty. Mr. Berg said that they are coming together fairly well on the recommendations.

04:49:21 Sen. Fielder said that Canada has given authority to British Columbia to represent the Canadian interest. She asked about adding ecosystem-based function to the treaty and what it means. Mr. Berg said that it recognizes the environmental conditions in and around the dams.

04:51:47 Sen. Fielder asked if the ecosystem-based function will include what is already being done to protect species. Mr. Berg said that implementation will be worked out later.

04:53:05 Sen. Hamlett asked if Libby Dam has flood rights from the Canadian government and, if so, how long they are good for and whether they have to be renegotiated. Ms. Anders said that she did not know, but would find out the answer.

04:54:00 Sen. Hamlett asked if the dams have improved in-stream flows in the Columbia River Basin for the majority of the year. Mr. Berg said they have stabilized the river as far as flood control.

04:55:21 Sen. Hamlett asked if the problem of pharmaceuticals in the river is being addressed. Mr. Berg said that he has not heard that problem being discussed in regards to the Columbia River Treaty.

04:57:03 Rep. Williams asked if the Canadian principles are available. Ms. Anders said they are in draft form and she will provide a link to the document.

04:57:57 Rep. Williams asked about reaction to the document. Ms. Anders said that it looks positive and that Canada seems to be pleased with the U.S. recommendations.

04:58:52 Sen. Vincent asked if the average flow chart factored in the 2010-12 biological opinion mandate. Mr. Berg said he did not know.

- 04:59:21 Sen. Vincent asked why Canada was now comfortable including the ecosystem-based management approach. Mr. Berg said there was some confusion about the flows from 2010-12 because of the 3-year experiment implemented at Libby Dam. He said they are attempting to educate the general public and Canada that they are trying to stabilize the reservoir.
- 05:02:10 Sen. Vincent asked if Canada is willing to replace recreation with the ecosystem-based management approach. Mr. Berg said that he did not know if they wanted to replace recreation with the ecosystem-based approach or rather include it as one of the purposes of the dam.
- 05:03:22 Sen. Vincent asked about reparations for land that was taken in Lincoln County. Mr. Berg said that they are in the early stages of negotiations.
- 05:05:27 Sen. Hamlett said a historical comment on the dams of the Columbia River.
- 05:06:02 Recess
- 05:20:28 Reconvene

RESERVED WATER RIGHTS COMPACT COMMISSION REPORT ON CSKT

- 05:20:42 John Tubbs, Director, DNRC gave a report from the Montana Reserved Water Rights Compact Commission (RWRCC) on the CSKT Compact, [Exhibit 12](#).

Public comment

- 05:31:46 Jerry Johnson, Mission Irrigation District
- 05:32:05 Rep. Dan Solomon, member RWRCC, and farmer in the Mission Valley, [Exhibit 13](#)
- 05:33:39 Rick Smith, President, Century 21 Big Sky, [Exhibit 14](#)
- 05:34:55 Leroy Lake, Ronan, Montana
- 05:37:34 Mary Stranahan, Jocko Valley
- 05:38:28 Roger Christopher, Jocko Valley
- 05:38:47 Kerry Dony, Jocko District Commissioner
- 05:39:28 Clark Matt, Flathead Reservation
- 05:44:43 Sen. Verdell Jackson, [Exhibit 15](#)
- 06:02:39 Mark Agather Kalispell, Montana
- 06:05:44 Gene Erb, [Exhibit 16](#) (CD not included)
- 06:14:18 Rep. Kerry White
- 06:21:18 Hertha Lund, Attorney
- 06:27:21 John Metropolis, Attorney and Lobbyist, Helena, Montana, representing the Flathead Irrigation District, [Exhibit 17](#)
- 06:50:23 William G. Myers Jr., self and representing Bayside Park and Marine Center, Bigfork, Montana
- 07:03:04 Jim Baker, Commissioner, Flathead Irrigation District and Director, Montana Cattlemen's Association
- 07:04:05 E. J. Redding, Western Montana Water Users Association
- 07:04:48 Steve Tobol, Chairman, Western Montana Water Users Association, [Exhibit 18](#).
- 07:06:52 Tim Orr, St. Ignatius, Montana

07:21:39 Dick Erb, Mission Valley, [Exhibit 19](#)
07:32:35 David Passieri, Charlo, Montana, [Exhibit 20](#)
07:40:52 Randy Doty, Charlo, Montana
07:41:46 Clarice Ryan, Big Fork, Montana, [Exhibit 21](#)
07:50:25 Rhonda Swaney, Attorney, CSKT
07:51:52 Alan Mikkelsen, St. Ignatius, Montana, [Exhibit 22](#)
07:52:44 Wayne Scammon, St. Ignatius, Montana, [Exhibit 23](#)
07:53:06 Jack Lake, Ronan, Montana
07:55:54 Brian Quiqley, Avon, Montana
07:56:26 Dean Brockway, Arlee, Montana
07:57:33 Matt Graveley, Avon, Montana
07:59:45 Robert Starks, Mission Valley
08:00:16 Trudy Samuelson, St. Ignatius, Montana, [Exhibit 24](#)
08:05:19 Shane Orien, Polson, Montana
08:07:27 Julia Fehrs, Big Fork, Montana, [Exhibit 25](#)
08:09:57 Christopher Chavasse, Ronan, Montana, [Exhibit 26](#)
08:16:21 Bret Schlueter, Mission District
08:18:04 Michael Gale, Ronan, Montana
08:19:41 Charlie Lyons, St. Ignatius, Montana
08:20:18 Susan Lake, Ronan, Montana
08:24:32 Mr. Matt

08:25:08 Recess
08:40:38 Reconvene

Committee questions and discussion

08:40:48 Sen. Vincent

08:41:30 Sen. Stewart-Peregoy asked for written information from Mr. Metropolis regarding case law. Mr. Metropolis said that he will provide the information to the WPIC by mid-February.

08:43:19 Sen. Fielder asked for the definition of Indian land. Melissa Hornbein, Staff Attorney, RWRCC, DNRC, said that the Compact defines all land within the exterior boundaries of the Flathead Indian Reservation as being Indian land.

08:46:36 Sen. Fielder asked which water rights are not protected under the Compact. Ms. Hornbein gave an example of an existing water right that is not protected under the Compact.

08:50:26 Rep. Williams asked Sen. Jackson several questions about a no action alternative in a Montana Environmental Policy Act (MEPA) analysis on the Compact.

- 08:56:44 Sen. Vincent asked Sen. Williams if she is suggesting that no action alternatives aren't already speculative. Rep. Williams said you want to avoid being speculative and be able to define your alternatives well enough so they can be analyzed.
- 08:57:25 Sen. Fielder said her concerns about the wells on the Flathead Reservation.
- 09:00:14 Rep. Williams asked why water rights are made out to the federal government. Ms. Hornbein said that it is standard practice and reflects the federal government's trust relationship with the CSKT.
- 09:04:00 Rep. Williams asked about high volumes of water with no purpose. Ms. Hornbein said that every single one of the quantified water rights in the Compact is accompanied by a water rights abstract showing the purpose.
- 09:04:31 Rep. Williams asked Ms. Hornbein to describe the relationship of the Unitary Management Ordinance to the Flathead Irrigation Project. Ms. Hornbein said there is a limited relationship that applies only in the case of a dispute between a project and a non-project irrigator or water user.
- 09:05:40 Rep Williams asked about the model used for appointing the members on the Flathead Joint Board of Control. Ms. Hornbein said she was not aware of a model that was used.
- 09:07:04 Sen. Hamlett asked if the robust river standard exists in the Montana Code Annotated (MCA). Helen Thigpen, Staff Attorney (LSD), said she was not familiar with the term, but would look into it.
- 09:07:47 Sen. Hamlett asked about the appropriation date for off-Reservation water rights, and asked Ms. Hornbein to explain the partnership with the Montana Department of Fish, Wildlife and Parks (FWP), and if FWP is gaining in-stream rights under the Compact. Ms. Hornbein said that for the off-Reservation rights that are quantified by the Compact there are two different types of priority dates. She said the other off-reservation in-stream flow water rights, and said that there are 14 river reaches that have such rights on them and will be co-owned with FWP and CSKT. She also said that FWP would not be gaining any new in-stream rights under the Compact except for Milltown Dam.
- 09:11:33 Sen. Hamlett asked if the water right at Milltown Dam is divided between the Clark Fork and the Blackfoot River. Ms. Hornbein said that was correct.
- 09:12:43 Sen. Hamlett asked how the Hungry Horse Reservoir storage, and use of the water, fits in with the Columbia River Basin Treaty. Mr. Tubbs said a negotiated compact and ultimate federal settlement for the CSKT gives the best chance for an allocation for use of the water in Montana.
- 09:14:40 Rep. Connell asked about the impact of litigation to any proposed new water right. Ms. Lund said that everything will stop pending litigation.

- 09:17:37 Rep. Williams asked about DNRC's approach on sharing information. Ethan Mace, Hydrologist, Water Resources Division, (DNRC) said that any technical information that goes into determinations or water right calculations after being shared with federal, tribal, and state negotiating circles is public document.
- 09:19:21 Rep. Williams asked how much land can be irrigated on the reservation and if there is an analysis indicating how many years a person will not have access to water. Mr. Mace said that there is a list of potentially irrigable lands that is part of the analysis. He said an analysis of the number of years someone does not have access to water because a call is made typically depends on how they have been called for water in the past and involves a statistical analysis.
- 09:22:26 Rep. Williams asked why the report doesn't address the Judith River Upper Missouri Treaty of 1855 that was mentioned by Mr. Myers. Ms. Hornbein said she did not know, but would find out.
- 09:24:05 Ms. Williams asked about the missing pages mentioned by Mr. Orr. Ms. Hornbein said she did not know, but would find out.
- 09:24:57 Rep. Williams asked if stock water is included in the CSKT Compact. Ms. Hornbein said how stock water is dealt with in the water use agreement.
- 09:27:02 Sen. Vincent asked about off-Reservation in-stream water rights. Ms. Hornbein said that the supreme court has not ruled on the question.
- 09:28:45 Sen. Vincent asked if there are any other court rulings on the subject of off-Reservation rights with the Stevens Treaty issue. Ms. Hornbein said that she is unaware of any cases.
- 09:29:00 Sen. Vincent asked Ms. Hornbein if she is aware of any inconclusive court cases or any other decision and why that was not included in the report. Ms. Hornbein said there are other cases that have dealt with the issue and either have side-stepped the issue or answered inconclusively. She said that she will provide a list of the cases.
- 09:29:36 Sen. Vincent asked if Ms. Hornbein believes that the RWRCC feels it has adequately addressed economic, environmental implications and disclosed that in the body of the report and in subsequent public hearings. Ms. Hornbein said that she believes that the RWRCC has done adequate background work, but never specifically targeted economic impacts.
- 09:31:05 Sen. Vincent asked what the recourse for a citizen is under MEPA if it is determined that they will have irreparable harm for an action implemented by ratification of the Compact. Ms. Hornbein said that under current MEPA it is a procedural statute not a substantive one so they would have to bring litigation based on the argument that the review was inadequate to the statute and did not comply with the statute.

- 09:32:30 Sen. Vincent asked how co-management of Murphy rights will be implemented. Ms. Hornbein said, in reference to co-ownership of FWP rights, under the Compact they would function like any other co-owned right.
- 09:34:32 Sen. Vincent asked if leasing would be allowed under a co-management plan. Ms. Hornbein said there is no leasing or other type of consumptive use of co-owned in-stream flow rights or any tribal in-stream flow rights in the Compact.
- 09:35:48 Sen. Vincent asked if the RWRCC looked outside of Montana for other tribes that may have Stevens Treaty claims in the area. Ms. Hornbein said that there was limited analysis of the Kootenai Tribes in Idaho.
- 09:37:05 Sen. Vincent asked if the Upper Pend D'Oreille Tribe will not have any aboriginal claims for water right purposes after July. Ms. Hornbein said that was correct.
- 09:38:17 Sen. Vincent asked if Montana v. Namen was the basis for the tribes owning all of the on-reservation project water. Ms. Hornbein said that Namen did not particularly say that, but did say that the tribes own the water in the southern half of Flathead Lake.
- 09:40:34 Sen. Vincent asked if there are other court cases that could influence what a court can do in adjudicating claims. Ms. Hornbein gave examples of case law that could influence claims.
- 09:41:43 Sen. Vincent asked if Ms. Hornbein was referring to Atkinson Trading case. Ms. Hornbein said that was one of the cases.
- 09:42:53 Sen. Vincent asked who has the sole authority to negotiate for the state of Montana. Mr. Tubbs said that statute directs the Compact Commission to negotiate for the state of Montana and make recommendations to the governor on all tribal reserved rights.
- 09:45:22 Sen. Vincent asked if Congress will consider an agreement ratified by the legislature and the tribal council. Mr. Tubbs said any document that is adopted by the state of Montana, the tribal government, and the U.S. will be a negotiated settlement.
- 09:46:17 Sen. Vincent asked for specific information on the distance affected on the Kootenai River for someone making a call for a water right. Mr. Mace said they have groundwater information for some areas.
- 09:48:43 Sen. Vincent asked if there is any groundwater information for the Kootenai or the Clark Fork Basin and if the information can be made available for the March meeting. Mr. Mace said they have some information for the Clark Fork.
- 09:51:14 Rep. Williams asked if claims filed in the CSKT subsistence range would include all of western Montana. Ms. Lund said it would only include land inside tribal boundaries.

09:52:26 Sen. Vincent referred the committee to the definition of the combined appropriation rule, [Exhibit 27](#), for the meeting tomorrow.

09:53:51 Sen. Vincent recessed the meeting at 6:55 p.m.

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