



## Water Policy Interim Committee

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### 63rd Montana Legislature

#### SENATE MEMBERS

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

#### HOUSE MEMBERS

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

#### COMMITTEE STAFF

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

# MINUTES LOG

Date: September 10, 2013

Room 172, State Capitol Building  
Helena, Montana

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

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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 WPIC voted to send a letter to the Department of Natural Resources and Conservation (DNRC) regarding SB 19 (2013).
- The WPIC voted to ask the Environmental Quality Council (EQC) to object to ARM 36.12.101, definition of combined appropriations.

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

00:00:01 Sen Vincent called the meeting to order at 8:05 a.m. The secretary took the role, [Attachment 3](#).

## **AGENDA**

### **WATER RIGHTS ADJUDICATION UPDATE (85-2-281, MCA)**

- 00:00:38 Russ McElyea, Chief Water Judge, Montana Water Court, gave a water rights adjudication update and discussed plans for the future to help make the water court more efficient.
- 00:07:01 Tim Davis, Administrator, Water Resources Division, DNRC, gave an update on the number of claims left to be examined in order to meet the benchmarks set in 2005, [Exhibit 1](#).

**Public comment** None

### **Committee questions and discussion**

- 00:09:11 Rep. Williams asked about the number of hours that were spent on two certified cases under post decree assistance (see Exhibit 1). John Peterson, Water Adjudication Bureau Chief, Water Resources Division, DNRC, said that the amount of time spent on the cases was considered normal.
- 00:10:41 Rep. Williams asked if there was an average number of certifications per year. Mr. Peterson said that the report from June showed the average from last year.
- 00:11:00 Rep. Williams asked about trends for certification. Mr. Peterson said he expected the number of certifications to decrease in the future.

00:11:49 Sen. Fielder asked if exempt water rights are exempt from adjudication requirements. Judge McElyea said there is not a requirement to file an exempt right as a result of SB 355 (2013).

#### **UPDATE ON PROCESS FOR WATER RIGHTS EXEMPT FROM FILING (SB 355)**

00:13:32 Tim Davis, Administrator, Water Resources Division, DNRC, provided copies of the draft forms that will be available after October 1 to file an existing water right exempt from the claim filing process, [Exhibit 2](#).

00:15:45 Judge McElyea discussed the public notice requirements of SB 355.

**Public comment** None

#### **Committee questions and discussions**

00:19:00 Sen. Fielder asked what form to use for filing a water right. Mr. Davis said that the forms he handed out were for pre-1973 water rights and Form 602 is used for notification of completion for an exempt well.

00:20:10 Sen. Fielder asked how to know if you need to file for a water right. Mr. Davis said that the well driller should let you know that you do not have a water right until it is filed.

00:21:08 Sen. Fielder asked what the steps are to secure a water right if it was never filed. Mr. Davis said there is a link on the Montana Bureau of Mines and Geology (MBMG) website for filing Form 602.

00:22:18 Sen. Fielder asked if it was mandatory to secure the water right. Mr. Davis said that if the water is being put to beneficial use the water right must be secured.

00:22:37 Rep. Williams asked if there are implications if someone doesn't file on a previously exempt claim. Judge McElyea said there are implications.

#### **WATER COURT ROLE IN PERMITTING, CHANGE APPLICATIONS**

00:23:46 Russ McElyea, Chief Water Judge, Montana Water Court, discussed issues related to SB 330 (2013).

00:31:10 Tim Davis, Administrator, Water Resources Division, DNRC, discussed concerns that DNRC had with SB 330 and what improvements may be possible after talking to stakeholders.

**Public comment** None

## Committee questions and discussion

- 00:34:22 Rep. Connell asked for clarification regarding existing water rights. Judge McElyea said that they are trying to simplify the process for water right administration going forward, not change water rights that have already been adjudicated with decrees.
- 00:36:48 Rep. Williams asked if the Water Court Advisory Committee is still active. Judge McElyea said the committee is active and he will be asking it for help in finalizing concepts.
- 00:39:19 Rep. Williams clarified two suggestions that Judge McElyea made about the water court.
- 00:39:57 Sen. Vincent asked what the difference in process would be in reviewing a change application between the water court and the DNRC. Judge McElyea said that the principles are the same, but there could be a difference in how the principles are applied.
- 00:42:16 Rep. Williams asked if the district judges are aware of or support centralizing authority for the water court. Judge McElyea said that they are looking at solutions that would make the process more efficient for judges that are less knowledgeable in enforcement and administration of water rights.
- 00:46:15 Rep. Williams asked about centralizing water responsibilities in the water court. Judge McElyea gave his viewpoint.
- 00:47:57 Rep. Williams said there are advantages of having water rights dealt with by the judge in a home basin. Judge McElyea agreed and said that they are working on multiple solutions and will maintain what is working well in the current system.
- 00:48:54 Sen. Hamlett asked about getting more information to the district judges. Judge McElyea said that they do reach out and provide support to the district judges.
- 00:51:10 Sen. Hamlett asked if there will be more or less litigation as adjudication ends. Judge McElyea said there should be less litigation as the degree of controversy declines.
- 00:52:32 Sen. Hamlett said that SB 330, which was requested by Sen. Larry Jent, should be looked at again because Sen. Jent was unable to be present and answer questions at the hearing during the legislative session.
- 00:53:40 Sen. Fielder said there is an overload of cases in the district courts.
- 00:54:23 Sen. Vincent said a panel discussion will be held in March regarding all of the issues that have been discussed.
- 00:55:58 Rep. Williams requested that staff send out the link for the hearing on SB 330.

00:56:15 Sen. Hamlett suggested that Sen. Jent attend a future WPIC meeting to provide his views on SB 330.

00:56:36 Sen. Vincent said that there has been a Supreme Court ruling since SB 330 was heard and asked that the committee be provided with the opinion.

#### **CLARK FORK RIVER BASIN TASK FORCE UPDATE (85-2-350, MCA)**

00:57:21 Holly Franz, member of the Clark Fork Task Force, introduced the task force members that were present. She gave a history of the task force and an update of current activities.

01:00:03 Sen. Stewart-Peregoy entered the hearing.

01:01:28 Sen. Verdell Jackson, member of the Clark Fork Task Force, commented on some of their future projects.

**Public comment** None

#### **Committee questions and discussion**

01:06:27 Sen. Hamlett asked for the definition of mitigation water. Ms. Franz said the definition.

01:08:07 Sen. Hamlett asked about tributary water. Ms. Franz said that because of early agricultural water rights, tributaries are usually fully appropriated.

01:09:45 Sen. Vincent asked if there would be a hearing in Lincoln County on the Kootenai River Basin. Ms. Franz said that there may be a hearing in Libby or Missoula.

01:11:21 Break

01:58:11 Sen. Vincent reconvened the meeting at 10:03 a.m.

#### **RESERVED WATER RIGHTS COMPACT COMMISSION**

01:58:25 John Tubbs, Director, DNRC, said that the report from the compact staff was not complete, but will be ready before the next WPIC meeting. He introduced Arne Wick, Acting Executive Director, Reserved Water Rights Compact Commission, DNRC.

#### **Public comment**

01:59:32 Jon Metropoulos, attorney, representing the Flathead Joint Board of Control, clarified information in a letter that was sent to the committee from Mr. Tubbs, [Exhibit 3](#).

- 02:04:58 Dr. Kate Vandemoer, Concerned Citizens of Western Montana, commented on the letter from Mr. Tubbs and the Flathead Irrigation Project Water Use Agreement (FLIP).
- 02:07:21 Sen. Verdell Jackson discussed Hungry Horse Reservoir.
- 02:08:37 Susan Lake, irrigator in the Flathead Valley, commented about the importance of the water compact.

### **Committee questions and discussion**

- 02:09:33 Sen. Fielder asked how the acreage was computed that Mr. Tubbs cited in his letter. Mr. Tubbs said that the information was provided by the compact commission staff.
- 02:10:12 Sen. Fielder asked if there was notification that the public comment period had been extended. Mr. Tubbs said that because it is an informal process they continue to receive public comment.

### **ADMINISTRATIVE RULE REVIEW: DEFINITION OF COMBINED APPROPRIATION (ARM 36.12.101)**

- 02:12:17 Helen Thigpen, Staff Attorney, discussed the memo that was prepared for the EQC regarding recent rule activity, [Exhibit 4](#). She highlighted some of the rules that pertain to water and discussed rules recently proposed by the DNRC to define combined appropriation.
- 02:22:13 Tim Davis, Administrator, Water Resources Division, DNRC, stated the proposed definition of combined appropriation. He referenced the combined appropriation timeline, [Exhibit 5](#), and explained how the DNRC drafted the rules. He also discussed the frequently asked questions, [Exhibit 6](#), which clarifies intent and how the rules will apply.

**Public comment**      None

### **Committee questions and discussion**

- 02:40:08 Rep. Williams asked about enforcement of the rule without having the flow rate requirement. Mr. Davis said that individual wells are still capped at 35 gallons per minute.
- 02:41:54 Rep. Fitzpatrick asked if any consideration had been given to the distance between wells if they are geologically connected and if the water in one well will have an effect on the water in another well. Mr. Davis said that there are two separate exemptions if the source of the water is from two different sole source aquifers.

- 02:42:46 Rep. Fitzpatrick asked about DNRC's authority to make a distinction between an open basin and closed basin. Mr. Davis said the DNRC does not have clear authority from the legislature to differentiate between open and closed.
- 02:43:33 Rep. Fitzpatrick asked if the rule compensates for different quantities that can be withdrawn in stream depletion zones versus a general exemption. Mr. Davis said the two would be different.
- 02:44:33 Rep. Williams asked about applications for areas that are not closed basins. Mr. Davis said that applications are site specific.
- 02:45:32 Rep. Connell said that the need for the rule is because SB 19 (2013) was vetoed.
- 02:46:25 Rep. Williams asked Mr. Davis about comments they have received regarding the rule. Mr. Davis said it is still early in the process for public comment.
- 02:47:13 Rep. Connell asked Mr. Davis to explain what "several miles" meant regarding trucking water from two exempt wells. Mr. Davis clarified that "several miles" was used as an example.
- 02:48:33 Rep. Connell asked if the rule applies to two adjoining tracts of land with different owners. Mr. Davis said that the definition of distance applies only to the same tract of record and not across parcels.
- 02:50:07 Sen. Hamlett asked for the definition of a tract as it applies to the rule. Mr. Davis thought that the definition in the governor's amendment was parcel but would verify if that is correct.
- 02:52:08 Rep. Fitzpatrick asked if the rule allocates wells by property owner. Mr. Davis said the rule allows an exemption for each tract of record and that you can have as many wells as you like but the combined appropriation needs to stay under 10 acre feet.
- 02:54:50 Rep. Fitzpatrick asked why the wells shouldn't be evenly spaced regardless of the parcel ownership if the rule is to protect senior water right holders. Mr. Davis said that any tracts created prior to the rule will be allowed to have a combined appropriation of up to 10 acre feet and that they are creating a process for exempt wells on new tracts of land.
- 02:56:17 Rep. Fitzpatrick asked why the rule doesn't stipulate the distance between wells.
- 02:56:36 Mr. Davis said they did not think that would be fair to people that created the tract before the rule.
- 02:57:00 Rep. Williams asked how the rule applies when dividing tracts of land. Mr. Davis explained how the combined appropriation would work.
- 02:58:25 Mr. Davis stated the definition for tract of record.

- 02:59:32 Sen. Hamlett said that the definition used falls under the subdivision laws and he is concerned about how the definition applies to farms and ranches. Mr. Davis said that the term does not just apply to subdivisions.
- 03:01:10 Rep. Fitzpatrick asked about the statement of reasonable necessity and why particular elements of the rule are necessary. Mr. Davis said that their legal staff was comfortable with the rule as it was put together.
- 03:02:42 Rep. Fitzpatrick asked where in the code it referred to 40 acres for stock water use. Mr. Davis said that it was under 85-2-306, MCA.
- 03:03:35 Sen. Vincent asked what would happen if he subdivided his property after the effective date. Mr. Davis said that it would be a combined appropriation and would have to conform to the new rules.
- 03:05:00 Sen. Vincent asked Mr. Davis to explain why the DNRC thinks they have reasonable necessity to create the rule. Mr. Davis said they are attempting to address the definition as it was applied.
- 03:11:21 Sen. Vincent asked Mr. Davis if SB 19 had been signed as written that the stipulated court agreement would not have gone away. Mr. Davis responded that if SB 19 had been signed as written, or with the governor's amendment, it would have voided the requirement that the DNRC adopt a combined appropriation rule.
- 03:12:22 Sen. Vincent said that the legislature would have removed their necessity for the rule if the governor had signed the bill that was passed by the legislature. Mr. Davis said that if the bill had become law it would have voided the requirement.
- 03:12:36 Sen. Vincent asked why the governor vetoed the bill. Mr. Davis said that the governor wanted to amend SB 19.
- 03:13:18 Sen. Vincent asked if the plaintiffs will be satisfied if the rules are adopted. Mr. Davis said that he did not know.
- 03:15:36 Rep. Williams asked Ms. Thigpen about legislative intent. Ms. Thigpen said the court normally looks at the plain language of the statute.
- 03:17:56 Sen. Hamlett said that the court can review audio and video records of the legislative hearings to get a true view of legislative intent. He said that he was concerned about the rule and said that parcel should be defined in law as a tax parcel.
- 03:26:21 Sen. Vincent said that he will have a letter drafted to the DNRC about concerns that were discussed during the meeting.
- 03:27:32 John Metesh, Director and State Geologist, MBMG, provided a handout for the hydrology demonstration occurring after the break, [Exhibit 7](#).



03:28:40 Recess

**HYDROLOGY DEMONSTRATION** (outside on south lawn, not recorded)

John Metesh, MBMG, gave a ground water demonstration to explain and reinforce hydrogeologic concepts using physical "sand-tank" models.

05:32:18 Sen. Vincent called the meeting back to order at 1:40 p.m.

**HJ 26 STUDY: INTERSECTING INTERESTS OF ESTATE OWNERS AND DITCH OWNERS**

05:32:42 Mr. Mohr, Research Analyst, gave an introduction to the HJ 26 study.

05:35:07 Michelle Bryan-Mudd, Director of Land Use Clinic, University of Montana Law School, gave a primer on irrigation ditch easements and discussed the Musselshell Ranch case. She highlighted some laws that deal with ditches and in different parts of the code.

**Public comment**

05:52:25 John Youngberg, representing the Montana Farm Bureau, said that there are a number of laws already in place that deal with encroachment on ditches.

**Committee questions and discussion**

05:54:12 Rep. Connell asked if the courts usually get involved before or after an action takes place. Ms. Bryan-Mudd said that in the cases she has read about the action had already taken place.

05:55:33 Rep. Connell asked if there was a legal method available for the servient right holder to overrule an objection to adjusting or moving the dominant ditch right going through his property. Ms. Bryan-Mudd said that the pattern is that the servient estate owner proceeds even though they have been told not to because they feel confident in their legal position.

05:57:01 Rep. Connell asked if a servient land owner had any legal recourse if they were unable to get cooperation from the primary ditch right holder to make modifications to an existing ditch right. Ms. Bryan-Mudd said they could do a quiet title action.

05:58:30 Sen. Hamlett asked about liability for seepage. Ms. Bryan-Mudd said that statute says the person owning the ditch is not liable.

05:59:52 Sen. Hamlett asked about irrigated land that is subdivided and who is obligated to pay off the federal debt that was incurred when putting in the irrigation system. Ms. Bryan-Mudd said that usually there is a specific contract with the federal government that governs the lot ownership and the transfer will be encumbered by the contract.

06:01:19 Sen. Hamlett asked what happens to the obligation to pay back the federal government if a subdivision is built, irrigation rights are not transferred, and the water is not being used. Ms. Bryan-Mudd said that they are obligated to pay back the funds even if they are not using the water, but that it would also depend on the specific project.

06:02:44 Sen. Hamlett asked if liability can be incurred if the irrigation district wanted to update the canal. Ms. Bryan-Mudd said that they could potentially be liable, but that there are ways to petition out of the liability.

## **UPDATES ON FORESTRY PROJECTS IN MUNICIPAL WATERSHEDS**

06:06:03 Bill Avey, Forest Supervisor, Lewis and Clark National Forest and Acting Forest Supervisor, Helena National Forest, gave an update on the Upper Ten Mile Watershed, [Exhibit 8](#).

06:11:29 Lisa Stoeffler, Bozeman District Ranger, Gallatin National Forest, gave an update on the Bozeman Municipal Watershed project, [Exhibit 9](#).

**Public comment** None

## **Committee questions and discussion**

06:17:03 Rep. Connell asked if there has been any legal opposition to the Ten Mile project. Mr. Avey said that they have not received any objections to the project.

06:18:39 Rep. Connell asked how much of the watershed they anticipate treating to reduce fire risk. Mr. Avey said that the Chessman Flume project is focused on protecting the infrastructure of the flume itself and the area directly around Chessman Reservoir. He said that they are still in the process of developing the proposed action on the Ten Mile project.

06:20:19 Rep. Connell asked about the time frame for getting a contract to proceed with both of the projects. Mr. Avey said the Chessman Flume project has taken a little more than a year to move forward and he hopes to have a contract by fall. He said that the Ten Mile project would take roughly two years.

06:21:46 Rep. Connell asked about the fire risk in the Ten Mile project. Mr. Avey said it will depend on the weather during fire season and that 95% of the watershed has experienced mountain pine beetle mortality.

06:23:38 Rep. Connell ask if they have projected the fire risk for the Ten Mile area and the implications to the water quality. Mr. Avey said that they are working on the analysis.

06:24:53 Sen. Fielder asked about the health of the Ten Mile watershed. Mr. Avey said that the watershed has sustained widespread damage from the mountain pine beetle epidemic resulting in a large scale ecological change.

- 06:26:24 Sen. Fielder asked if anything could have been done differently to manage the area. Mr. Avey said that since he has only recently been appointed as acting supervisor he isn't able to answer the question.
- 06:27:21 Sen. Fielder verified the assessment area for the Bozeman Municipal Watershed project.
- 06:27:43 Sen. Fielder asked how many years have been spent working on the Bozeman Municipal Water Supply project. Ms. Stoeffler gave the time-line for the project.
- 06:28:25 Sen. Fielder asked about the litigation as a result of the project. Ms. Stoeffler said that the litigants were the Alliance for the Wild Rockies and Native Ecosystems Council.
- 06:29:34 Sen. Fielder asked about the prognosis for the outcome of the litigation. Ms. Stoeffler said that she was very optimistic about the outcome of the case.
- 06:30:56 Sen. Fielder asked about the relationship of tree spacing and drought conditions. Ms. Stoeffler said that they have not looked into that specific detail.
- 06:32:29 Sen. Hamlett asked Mr. Avey if he had been contacted by DNRC to work on any projects associated with SB 201 (2013) and SB 217 (2013). Mr. Avey said that he expects their cooperative work with the DNRC to increase.
- 06:33:42 Sen. Hamlett asked if the state could bear more costs to complete cooperative projects if funds from the U.S. Department of Agriculture, Forest Service (USFS) become limited. Mr. Avey said that he did not have enough information to answer the question.
- 06:34:48 Sen. Hamlett said both SB 201 and SB 217 instructed the DNRC to work with federal partners in dealing with wildland urban interface and watershed protection.
- 06:35:56 Rep. Williams asked about the Mt. Ellis timber harvest project and the effect that moving roads would have on water quality. Ms. Stoeffler said that an analysis was done for their water impact statement.
- 06:38:36 Rep. Williams asked if changes in the project happened before or after the appeal, Ms. Stoeffler said that the changes happened during the analysis process.
- 06:39:17 Rep. Williams asked if the USFS was working to improve their lynx analysis because it seems that the same appeal keeps coming up for the same issue. Ms. Stoeffler said that she did not think that the analysis was flawed, but that the issues brought for appeal are a point of interest.
- 06:41:50 Rep. Williams asked about replacing the appeals process with the objection process and the difference. Ms. Stoeffler explained the difference. Mr. Avey added that he believes that the objection process will enable the USFS to make better decisions.

- 06:46:11 Sen. Hamlett asked how long it would take an area to become a healthy watershed again after a catastrophic fire. Bruce Sims, Regional Hydrologist, USFS, said that risks continue for 5-10 years.
- 06:50:18 Sen. Fielder asked about the impact of dead standing trees on the hydrology of a basin. Mr. Sims said that there is an increased flow of water from the watersheds.
- 06:51:46 Sen. Vincent asked about the amount of basal area for a healthy burn to restore native processes that are fire dependent. Mr. Sims said that he wasn't qualified to answer, but he did say that a well planned and executed prescribed fire will have little impact on water quality or water yield.
- 06:52:50 Sen. Vincent asked about fire intensity with high basal area. Mr. Sims said that the amount of heavy fuel on the ground affects severity.
- 06:54:49 Sen. Vincent asked from a hydrologist standpoint about the best method to restore an ecosystem or manage for fire severity. Mr. Sims said that the number of acres burned over the western U.S. has grown considerably since 1988 and that they can't eliminate fire risks they can only mitigate some of them.
- 06:57:14 Sen. Vincent asked how much of the USFS vegetation management is being dictated primarily by their budget. Mr. Avey said that their budget has stayed flat since 2002, but that the amount of fire suppression costs that come out of the budget have grown and that affects the vegetation management budget.
- 06:59:21 Sen. Vincent asked Mr. Avey how litigation costs affects his ability to manage as a forest supervisor. Mr. Avey said that 30 percent of their budget is spent on the changing analysis due to the litigation environment.
- 07:03:16 Sen. Hamlett asked Mr. Sims how catastrophic fires affect municipal watersheds. Mr. Sims said that under the Burned Area Emergency Response Program (BAER), they would spend millions of dollars to try to ameliorate the adverse effect.
- 07:05:21 Sen. Hamlett commented that the general public isn't aware that a fire would have a catastrophic effect on the water supply for a number of years and would be extremely costly for the government.
- 07:06:46 Break
- 07:28:25 Sen. Vincent reconvened the meeting at 3:35 p.m.

## **WILDFIRE UPDATE**

07:28:41 Bob Harrington, Administrator, Forestry Division, DNRC, gave an overview of the 2013 fire season to date and provided a cost breakdown, [Exhibit 10](#). He also gave his perspective on the impact that wildfires have on watersheds and provided a map showing some of the trends they have seen regarding forest health related to mountain pine beetle and wildfires over the last thirteen years, [Exhibit 11](#).

### **Public comment**

07:41:33 Greg Morris, Deputy Director, Fire, Aviation and Air Management for the Northern Region, USFS, indicated that he was available for questions.

### **Committee questions and discussions**

07:41:57 Rep. Connell asked about the effectiveness of fighting fires with helicopters. Mr. Harrington said that when helicopters are used for the initial attack they have had success in preventing larger fires.

07:44:01 Sen. Vincent asked if the DNRC was renewing the Memorandum of Understanding (MOU) which encourages the state to coordinate with the federal government on land management and other issues. Mr. Harrington said he anticipates renewing the MOU when it expires at the end of the year.

07:45:49 Rep. Williams asked if the remaining slash piles/log decks at the Bear Canyon project would be burned. Mr. Harrington said that if they are slash piles and not log decks they will probably be burned.

## **A METHOD OF QUANTIFYING IN-STREAM FLOW: THE WETTED PERIMETER MODEL**

07:47:30 Mr. Mohr gave an overview on the Wetted Perimeter Model.

07:49:43 Eric Johnston, Assistant Director, Renewable Resources Management for the Northern Region, USFS, provided background information on how they arrived at the agreement with the state regarding the use of the wetted perimeter methodology, [Exhibit 12](#).

07:59:11 Jed Simon, Water Rights Program Manager for the Northern Region, USFS, explained the wetted perimeter method, [Exhibit 13](#).

08:05:55 Tim Davis, Administrator, Water Resources Division, DNRC, discussed the state's role when an application is received from the USFS for an in-stream flow reservation.

08:08:12 Mike McLane, Water Resource Specialist, Department of Fish, Wildlife and Parks (FWP), talked about the importance of stream flow and what FWP was looking for when they came up with the wetted perimeter model.

**Public comment**      None

### **Committee Questions**

- 08:20:42      Sen. Fielder asked about the priority date for when the forests were reserved from the public domain lands . Mr. Johnston gave the priority dates for federal reserved rights.
- 08:24:12      Sen. Fielder asked about the purpose of the federal reservation and how it relates to fish. Mr. Johnston gave the purpose and the relationship.
- 08:25:06      Sen. Fielder asked about the reason the USFS accepts later priority dates. Mr. Johnston said that there was a lot that went into the discussions and negotiations.
- 08:25:48      Sen. Fielder asked who would represent the state if the method was challenged. Mr. Davis said that it would be either the attorney general or the compact commission.
- 08:26:03      Rep. Connell asked if the high inflection point or near peak flow constitutes any risk for the adjudication process for water rights when the water flow is low. Mr. Davis said that he did not believe it would affect an existing water right.
- 08:28:28      Sen. Hamlett said he was concerned about the condition of the fishery on the Upper Missouri River because of low flow. Mr. McLane said that they will recover the fishery as long as they do not have back to back low flow years for a long period of time.
- 08:32:14      Rep. Williams asked about peak flow and the inflection point. Mr. Simon explained the upper inflection point and the lower inflection point.
- 08:33:52      Sen. Vincent asked how many in-stream flow applications have been submitted to the DNRC. Mr. Johnston provided a breakdown on the number of applications.
- 08:36:14      Break
- 08:48:59      Sen. Vincent reconvened the meeting at 4:55 p.m.

### **PUBLIC COMMENT ON ANY ISSUE WITHIN THE JURISDICTION OF THE WPIC**

None

### **OTHER BUSINESS**

- 08:49:22      Sen. Vincent gave the committee a copy of the letter drafted to the DNRC of comments on the proposed rule, [Exhibit 14](#).
- 08:49:33      **Motion:** Rep. Connell moved to send a letter to the DNRC regarding SB 19.

### **Committee Discussion**

08:50:13 Rep. Williams  
08:53:18 Sen. Vincent  
08:54:47 Rep. Williams  
08:55:40 Rep. Connell  
08:56:13 Sen. Hamlett

08:58:17 **Vote:** The motion carried 7-1 by roll call vote with Rep. Williams voting no.  
[Exhibit 15.](#)

08:58:49 **Motion:** Rep. Fitzpatrick moved to ask the EQC to object to the rule on combined appropriations (ARM 36.12.101).

### **Committee Discussion**

08:59:15 Rep. Williams  
08:59:21 Rep. Fitzpatrick  
09:00:34 Rep. Williams  
09:01:03 Sen. Vincent  
09:01:35 Rep. Williams  
09:02:28 Sen. Stewart-Peregoy  
09:04:01 Sen. Hamlett

09:05:00 **Vote:** The motion carried 7-1 by roll call vote with Rep. Williams voting no.  
[Exhibit 16.](#)

09:05:25 Joe Kolman

### **ADMINISTRATIVE MATTERS**

09:05:56 Mr. Mohr updated the WPIC on the budget and reviewed the directions to staff.

09:06:59 Rep. Connell commented about the fires near Painted Rocks Reservoir.

09:07:19 Sen. Hamlett discussed the date for the January meeting.

09:08:02 Sen. Vincent adjourned the meeting at 5:20 p.m.

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