

10/9/2017

2017-18 work plan

WATER POLICY INTERIM COMMITTEE
LEGISLATIVE ENVIRONMENTAL POLICY OFFICE

Introduction

This is the work plan for the Water Policy Interim Committee (WPIC) for the 2017-18 interim. This document is meant to be comprehensive, yet flexible. Invariably, topics of interest will rise and fall away during the next 14 months. The committee approved the work plan to provide broad direction to staff.

WPIC staff

- Jason Mohr, research analyst and lead committee staffer
Room 171D, Capitol building
(406) 444-1640 or jasonmohr@mt.gov
- Legal Services Office
(406) 444-3064
- Joe Kolman, director, Legislative Environmental Policy Office
(406) 444-3747 or jkolman@mt.gov
- Nadine Spencer, secretary
(406) 444-4838 or nspencer@mt.gov

How the WPIC Plans its Work

The WPIC was created in 2009 to study water policy. During the legislative interim, the WPIC may focus on the study topics assigned to it as well as any water policy issue. In 2015, the Montana Legislature expanded and focused WPIC duties to include oversight of issues "where the primary concern is the quality or quantity of water."

The WPIC establishes a work plan at the beginning of the interim. The work plan and the accompanying matrix are decision-making tools to help the committee set priorities and decide how and where to spend the WPIC's time and resources.

The primary constraints limiting the agenda for the interim are the number of issues that can be effectively addressed within the available time and resources of the committee and staff. However, the work plan is constructed with enough flexibility to accommodate relevant topics as the committee sees fit.

The adopted work plan is a road map for the 2017-18 interim. Staff develops detailed draft work plans and timetables for each task. A draft timeline, which illustrates the overall schedule that these work plans will fit into once the meeting schedule and work plan are finalized, is presented at the end of this document.

Work Plan Topics

Studies

Studies represent a significant effort by the committee and staff to reach findings and, possibly, legislation focused around an issue. The 2017 Legislature passed no study resolutions that were specific to water. As such, the Legislative Council assigned no study resolutions to the committee.

The WPIC, however, elected to conduct two studies.

Decision: The WPIC dedicates 0.25 FTE toward two studies.

For a study of groundwater wells exempt from permitting, the WPIC and its staff:

- **Shall summarize relevant laws, policies, and legal decisions related to the topic, with a particular focus on House Bill 339 (2017)**
- **Shall coordinate panel discussions**
- **May travel on a field trip**
- **May create a work group of interested parties to suggest options.**

For a study of the process for changing a water right, the WPIC and its staff shall:

- **Review laws, policies, and legal decisions related to the change process**
- **Summarize related information from other states**
- **Host panel discussions on the subject.**

Statutory duties

The 2015 Legislature delegated certain new oversight duties to the WPIC. Following the passage of Senate Bill 82, the WPIC reviews administrative rules and draft legislation, conducts program evaluations (see following), and monitors the functions of these executive branch programs (5-5-231, MCA):

- Water Resources Division (Department of Natural Resources and Conservation)
- Water Quality Division (Department of Environmental Quality).

The committee's oversight duties do not stop there, however, as issues of "the quality or quantity of water" may arise in other agencies, such as the Department of Fish, Wildlife, and Parks or the Department of Agriculture.

Broad duties for the WPIC are cited in 85-2-105, MCA. These include:

- Advise the Legislature on the adequacy of Montana's water policy.
- Advise the Legislature on important state, regional, national, and international developments that affect Montana's water resources.
- Oversee policies and activities of executive branch agencies and other state institutions that affect Montana's water resources.
- Assist with interagency coordination related to water resources.
- Communicate with the public about water policy and water resources.
- Analyze the state water plan.
- Analyze and comment on water-related research by any state agency, institutions, college, or university.
- Analyze, verify, and comment on the water information system.
- Report to the 2019 Legislature.

Other, more-specific statutory duties of the WPIC include:

- 75-1-208, MCA, allows a project sponsor to appear before the WPIC to discuss an agency's environmental review of the project, if that environmental review is primarily concerned with the quality or quantity of water.

- 75-5-313, MCA, requires the DEQ to provide a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and implementation of those standards and variances, including estimated economic impacts to the WPIC.
- 75-5-703, MCA, requires the DEQ to present a biennial report on progress toward developing TMDLs for impaired and threatened water bodies.
- 85-1-203, MCA, requires the DNRC to consult with the WPIC on developing, revising, or carrying out duties of the State Water Plan.
- 85-1-501, MCA, requires the DNRC to submit a biennial update to the Energy and Telecommunications Interim Committee and the WPIC on studies of economic and environmental feasibility of constructing and operating a small-scale hydroelectric power generating facility on a state water project.
- 85-1-621, MCA, requires the DNRC to submit a biennial report to the WPIC that describes the status of the Renewable Resource Grant and Loan Program.
- 85-2-281, MCA, requires the Water Court and the DNRC to quarterly report to the WPIC on the progress of the adjudication of claimed water rights.
- 85-2-316, MCA, requires the DNRC to summarize its reviews of state water reservations by Sept. 15, 2026.
- 85-2-338, MCA, requires the Upper Clark Fork River Basin Steering Committee to report periodically to the legislature.
- 85-2-350, MCA, requires Clark Fork River Task Force to report to the WPIC annually.
- 85-2-436, MCA, requires the FWP to submit a biennial progress report to the WPIC, including a summary of all appropriation rights changed to an instream flow purpose in the previous two years.
- 85-20-1401, MCA, requires the DNRC to provide a periodic report to the EQC or “other appropriate legislative committee” related to U.S. Forest Service state water reservation applications. (This report will be submitted to the WPIC.)
- 85-2-427, MCA, requires the DNRC to report annually on temporary leases of appropriation rights.

WPIC staff also updates two publications – *Water Rights in Montana* and *A Guide to Montana Water Quality Regulations* – to reflect any statutory changes made during the 2017 session.

Decision: The WPIC dedicates 0.10 FTE toward statutory duties. The WPIC and its staff shall:

- Perform all mandatory duties
- Track water issues identified during the 2017-18 interim
- Accommodate public involvement through WPIC meetings
- Continue basic involvement in and oversight of identified programs (Water Quality Division (DEQ) and Water Resources Division (DNRC))
- Review statutorily required reports for committee review, analysis, and comment
- Update water policy publications
- Prepare background papers, legal analyses, committee position letters, and legislation, as necessary

Program evaluation

State law (5-5-231, MCA) requires the evaluation of programs administered by the agencies for which the WPIC has oversight. These division (DNRC's Water Resources Division and the DEQ's Water Quality Division) each contain smaller programs, each of which is explained in the attached spreadsheet. Also attached is a flow chart for each agency that includes the breakdown of each agency.

What - if anything - the WPIC evaluates depends entirely upon the staff resources and time the committee devotes to each evaluation. Committee staff conducted broad evaluations of four bureaus during the last interim. The accompanying Work Plan Decision Matrix shows tasks that could be included in a minimum, medium, and full program review. The intent of this planning process is to not to limit the WPIC scope, but to give the committee a picture of the variety of programs available for statutory program evaluation and to allow for an in-depth and contextual review of a program, including applicable laws, rules, funding, and implementation. So the committee may be content with last interim's review or could elect to review a smaller, single section of that bureau.

Decision: The WPIC dedicates 0.05 FTE toward program evaluation of executive branch programs under its statutory oversight. The WPIC and its staff shall:

- Update previous program evaluations of executive agencies
- Conduct limited follow up.

Member Suggestions

Committee member suggestions drive much of the WPIC's work. Water issues may come before the WPIC in a number of ways, including legislation, committee member suggestions, and the work of entities that deal with water issues. These issues may come up prior to or during the interim.

These committee member suggestions may be covered by as little as a meeting presentation. Or the committee may determine some topics warrant more attention and may elect to devote more time. The committee may also choose not to cover certain member issues.

Decision: the WPIC dedicates 0.25 FTE toward discussion of committee member issues. For each member issue, the committee and its staff:

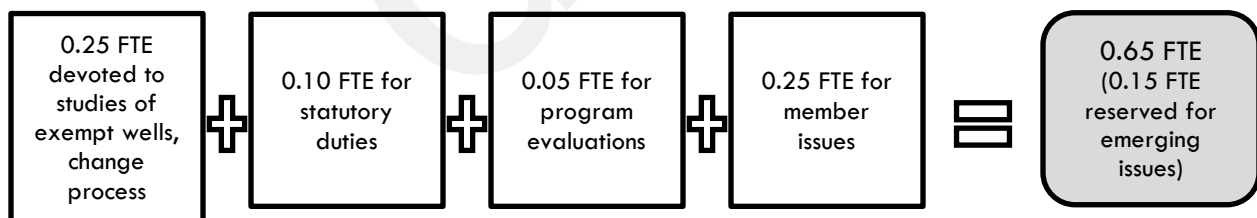
- Shall host an agency or expert presentation
- May prepare a short report (“white paper”) or accompanying legislation.

Committee member issues include:

- AIS (aquatic invasive species) issues
- Best Management Practices (BMPs) for Streamside Management Zones (SMZs) in forestry projects
- CSKT water rights settlement implementation, legislation in Congress
- Floodplain permitting
- Forest Service water rights compact
- Future federal funding of water-related programs in the DEQ, DNRC
- HB433 (2017), which proposed prohibiting towns, cities, and regional water authorities from using eminent domain powers to condemn water or water rights used primarily for agriculture
- Improvements to Montana’s water quality
- Montana State study of impacts of silvicultural activities on watersheds
- Montana Water Court, including a follow up on the WPIC’s 2015-16 interim report (*Considerations for the future of water rights*) and potential court-related legislation for the 2019 session
- Regular reports from BLM, NRCS, USFS on water issues
- Water right permitting process by DNRC, including an update on the implementation of HB40 (2009)
- Water storage, including recommendations in the State Water Plan.

Resource Allocation

There is approximately 0.8 FTE of staff time available to conduct the work identified by the WPIC. These priorities - and the amount of staff hours devoted to a specific topic - are determined by the committee using the Work Plan Decision Matrix, which accompanies this document. The basic equation for the 2017-18 interim:



WPIC leadership history

Interim	Presiding officer	House	Party	Vice presiding officer	House	Party
2007-08	Jim Elliott	Senate	D	Gary Perry	Senate	R
2009-10	Walt McNutt	House	R	Dave Wanzenried	Senate	D
2011-12	Brad Hamlett	Senate	D	Walt McNutt	House	R
2013-14	Chas Vincent	Senate	R	Kathleen Williams	House	D
2015-16	Brad Hamlett	Senate	D	Carl Glimm	House	R
2017-18	Pat Connell	Senate	R	Zach Brown	House	D

Work Plan Time Line, Meeting Calendar

Date	Tasks
July 31-Aug. 1, 2017	<ul style="list-style-type: none"> ▪ Elect officers ▪ Review 2017 water legislation ▪ Agency/program overviews - DEQ, DNRC, FWP, Ag, MBMG ▪ Adjudication update (85-2-281, MCA) - DNRC, WC ▪ Update on drought, water supply, wildfires ▪ Nutrient standards update (75-5-313, MCA) - DEQ ▪ Discuss possible study issues ▪ Discuss and adopt draft work plan ▪ Adopt committee rules ▪ Review budget ▪ Adopt meeting dates ▪ Public comment
Oct. 9-10, 2017	<ul style="list-style-type: none"> ▪ Study of exempt groundwater wells ▪ Study of water rights change process ▪ Adjudication update (85-2-281, MCA) - DNRC, WC ▪ Clark Fork River Basin Task Force update (85-2-350, MCA) ▪ Temporary leasing report (85-2-427) - DNRC ▪ Water supply/fire update - DNRC ▪ Agency rulemaking update - LSD staff ▪ Additional issues identified in work plan ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Adoption of final work plan ▪ Public comment
Jan. 8-9, 2018, Helena	<ul style="list-style-type: none"> ▪ Study of exempt groundwater wells ▪ Study of water rights change process ▪ Adjudication update (85-2-281, MCA) - DNRC, WC ▪ Water studies - MBMG ▪ Instream leasing report, (85-2-436, MCA) - FWP (<i>HB142 review</i>)* ▪ U.S. Forest Service water reservations (85-20-1401, MCA) - DNRC, USFS ▪ Implementation of State Water Plan (85-1-203, MCA) - DNRC ▪ Additional issues identified in work plan: <ul style="list-style-type: none"> ○ Legal analysis of “distribution lists” (2-16-1017, MCA) ▪ Agency rulemaking update - LSD staff ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Discussion of draft report, legislation, if necessary ▪ Public comment

<p>March 5-6, 2018, Helena</p>	<ul style="list-style-type: none"> ▪ Study of exempt groundwater wells ▪ Study of water rights change process ▪ Renewable Resource Grant and Loan Program update, (85-1-621, MCA) - DNRC (<i>HB142 review</i>)* ▪ Agency rulemaking update - LSD staff ▪ Additional issues identified in work plan ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Discussion of draft report, legislation, if necessary ▪ Public comment
<p>May 21-22, 2018, Helena</p>	<ul style="list-style-type: none"> ▪ Study of exempt groundwater wells (draft findings and conclusions) ▪ Study of water rights change process (draft findings and conclusions) ▪ State Water Plan update, (85-1-203, MCA) - DNRC ▪ Adjudication update (85-2-281, MCA) - DNRC, WC ▪ Nutrient standards update (75-5-313, MCA) - DEQ ▪ Water studies - MBMG ▪ Update on drought, water supply - DNRC ▪ Agency rulemaking update - LSD staff ▪ Additional issues identified in work plan ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Discussion of draft report, legislation, if necessary ▪ Public comment

<p>July 16-17, 2018, Helena</p>	<ul style="list-style-type: none"> ▪ Draft report for study of exempt groundwater wells ▪ Draft report for study of water rights change process ▪ Nutrient Work Group – biennial summary report (75-5-313, MCA) <i>(HB142 review)*</i> ▪ TMDL list update (75-5-703, MCA) – DEQ <i>(HB142 review)*</i> ▪ Hydroelectric potential report (85-1-501, MCA) <i>(HB142 review)*</i> ▪ Temporary leasing report (85-2-427, MCA) <i>(HB142 review)*</i> ▪ Clark Fork River Basin Task Force update (85-2-350, MCA) <i>(HB142 review)*</i> ▪ Clark Fork River Basin Steering Committee update (85-2-338, MCA) <i>(HB142 review)*</i> ▪ Water and Wastewater Operators’ Advisory Council (2-15-2105, MCA) <i>(HB142 review)</i> ▪ Water Pollution Control Advisory Council (2-15-2107, MCA) <i>(HB142 review)</i> ▪ Drought, water supply, wildfire update – DNRC ▪ Agency rulemaking update – LSD staff ▪ Additional issues identified in work plan ▪ Identify areas where more information is needed ▪ Revisions to work plan, if necessary ▪ Discuss and revise draft report, legislation ▪ Public comment
<p>Sept. 10-11, 2018 -- Helena</p>	<ul style="list-style-type: none"> ▪ Final report on study of exempt groundwater wells ▪ Final report on study of water rights change process ▪ Adjudication update (85-2-281, MCA) – DNRC, Water Court <i>(HB142 review)*</i> ▪ Agency rulemaking update – LSD staff ▪ Additional issue identified in work plan ▪ Overview of proposed agency legislation - DNRC, DEQ, FWP ▪ Review public comment on draft report, committee legislation ▪ Approve proposed committee legislation ▪ Selection of committee bill sponsors ▪ Approve WPIC report(s) ▪ Consider/propose areas of study for 2019-20 interim ▪ Public comment

** HB142 review refers to 2011 legislation, which requires interim committees to review required reports and recommend to the Legislature retaining or eliminating these reports (5-5-215, MCA).*