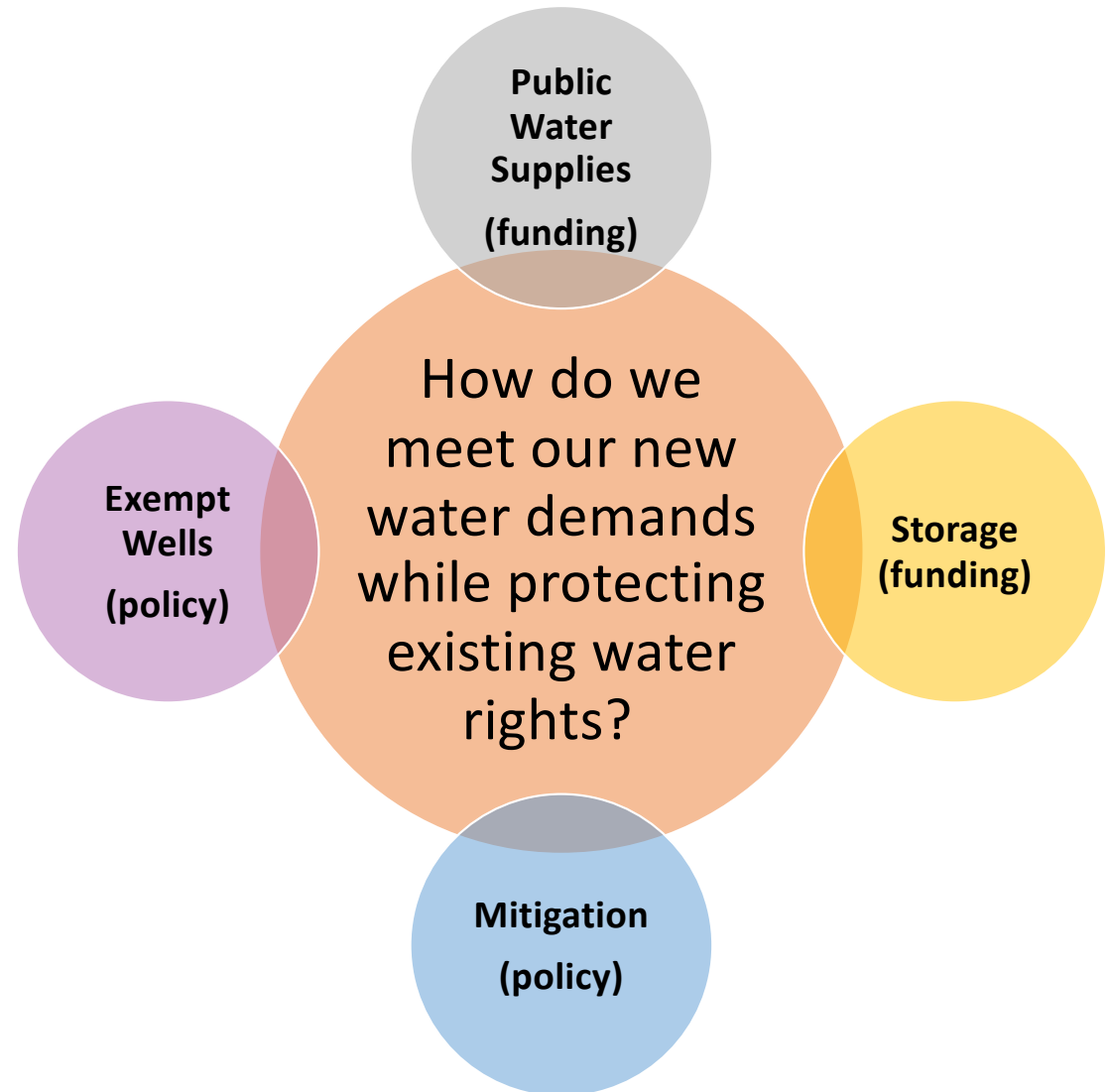


# PGE

Comprehensive Water Review

6/3/2024



# Public Water and Sewer

**Issue:** How do we incentivize utilizing existing infrastructure for water supply?

**Policy:**

- How to make it easier for cities to fully utilize their *existing water rights* and systems: Brian, Ryan, Nate, Spencer (June)

**Funding:**

- Kelly, Mark funding package (July)

# Storage

**Issue:** How can we utilize storage to increase availability and timing of supply?

**Funding:**

- Clayton, Anna- funding package for new storage (July)
- DNRC- funding package for existing storage (July)
  
- Policy changes that need to be explored

# Mitigation

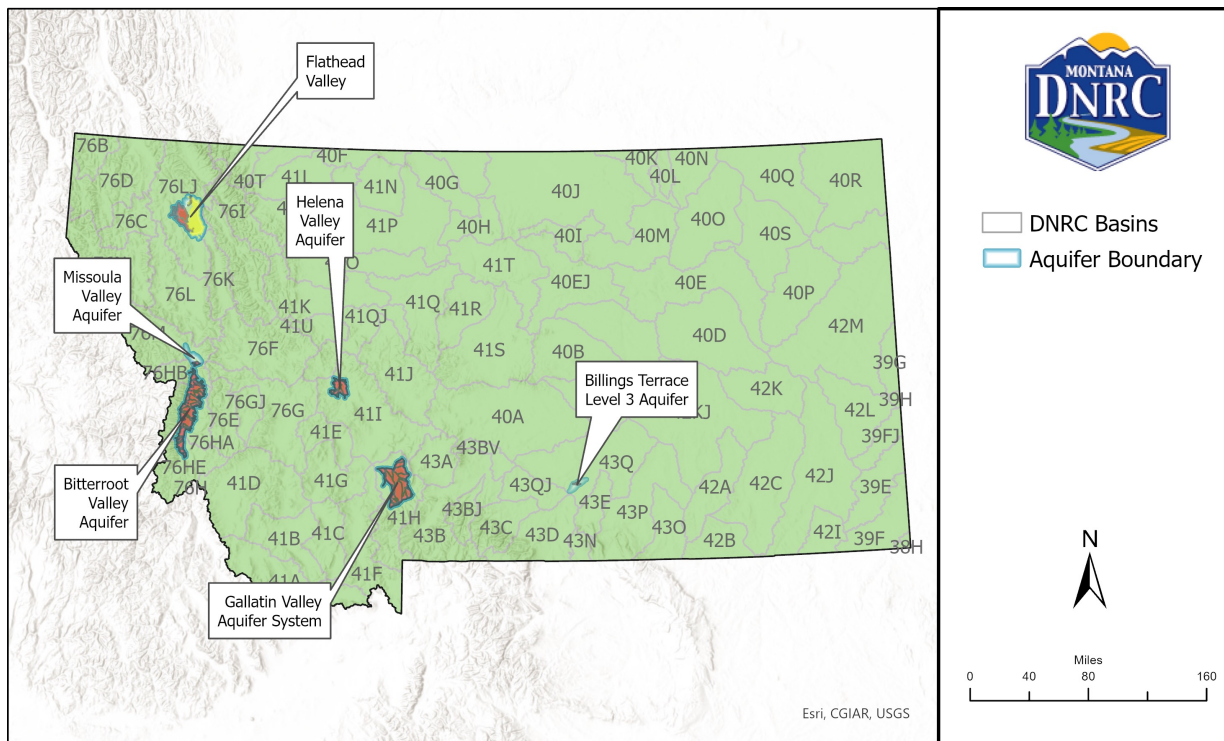
**Issue:** How can we create more accessible and meaningful mitigation to meet growing water needs?

**Policy:**

- Bringing back waiver of adverse effect
- DNRC establishes a technical advisory group to work through technical information used to establish mitigation

# Exempt Wells

**Issue:** Not one size fits all policy for MT, science-based criteria and variable policy based on needs and impacts to existing water rights



# Controlled Groundwater Areas (Red)

- No exceptions- tie into PWS or get a permit with mitigation
- Exigent circumstances (sub working group stuck this)
  - Kelly, Mark, Spencer, Andrew
- **Grandfathering in subdivisions that have been approved by counties or DEQ?- there is no more water for new appropriation**
  1. Authorizations that existed as of 10/17/2014 (in statute, keep)
  2. Sanitation Act (phased subdivisions) (not grandfathered)
  3. Sanitation Act (not phased)(maybe grandfathered)
    - DNRC subdivision predetermination letter & COSA approval. People's expectations.
    - There was a court case that found that predetermination letters were inappropriate.
  4. Platting Act (any parcels < 160 acres)(not grandfathered)
- Metering & reporting
- MCA 85-2-506/ new statute
- **Timing of red and yellow, prior to green (new); tying them together**
- **Do we do all 5 focus areas in 2025 or staggered?**
- **Implementation, notice and outreach plan developed**
- **Water Quality/DEQ metrics**

# Green- two pathways for an exception

## 1. Not subdividing land

- Status quo
- Combined appropriation is applied via DNRC

## 2. Subdividing land (Platting or Sanitation Act) (24 lots or less)

- Combined appropriation is defined as an *up to* amount of water by lot with a cap

\* SWG discussion- do we want two paths...?

# Not dividing land

1. Not dividing land
  - Stock water
  - Isolated homes; limited and defined development
2. 10AF/35 gal per min, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit
3. Notice and objection period
4. Put the definition in rule into statute
5. The department will consider the following factors when evaluating combined appropriations:
  1. Source aquifer
  2. Physically manifold and system design
  3. Place of use
  4. Tract of land
  5. Purpose
  6. Ownership
  7. Proximity
  8. Topography



# Subdividing land (Platting or Sanitation Act)

1. Subdivided pursuant to Sanitation Act or Platting Act
  - **Tract of record** in existence on 10/17/2014 (original tract of record)
2. Subdivided to create 24 lots or less
  - Allowed/appropriated *up to* **0.5 acre-feet per acre** and **no more than 1AF** (cap) per lot (24 AF)
  - 35gal/min per gw development
  - **Should this number be more or less**
3. **Can not combine individual lot allocations for one use (i.e., stacking)**
4. **Timeline for perfection/earlier in the process**
5. If one of the 24 lots is greater than 20 acres, than **one** is eligible for up to 10 AF (10 AF)
  - 35gal/min per gw development
  - **Should this number be more or less**
6. Once you subdivide the original tract of record to create 25 lots or more = need a permit
  - This can occur over multiple divisions
  - **Should this number be more or less**

# Subdividing land (Platting or Sanitation Act)

5. Require metering and reporting
6. Combined appropriation is defined as
  - Water is an *up to* amount by lot with a cap (.5 AF/Acre and no more than 1AF/lot)
  - 35gal/min per gw development
7. No lawn and garden on exempt well; need to get a permit for that use
8. Cap on the number of wells used to obtain that volume on exception
9. Notice and objection period
  - Notice to water users that could be adversely affected (GW/SW)
  - If someone files objection, additional burden to show no adverse effect
10. Grandfathering requirement for parcels 10/17/14
  - DNRC predetermination letter/DEQ approval?
  - Platting Act (but not sanitation act) divisions?

# Scenario – general (not subdividing)

- **Draft concept:**
- Someone can still drill a well on their property, put in a stock well, and get an exception (up to **10AF total**)
- The department will consider the following factors when evaluating combined appropriations:
  1. Source aquifer
  2. Physically manifold and system design
  3. Place of use
  4. Tract of land
  5. Purpose
  6. Ownership
  7. Proximity
  8. Topography

# Scenario- 30 acre (not subdividing)

## 30-acre parcel

1. **Draft concept:** 10 – 20AF depending on factors.
2. **Spacing guidance:** 20 AF (2 wells-corners, 10AF each, depends on lot size)
3. **Post HCH:** 10 – 20AF depending on factors.



# Scenario- 30 acre (subdividing)

## 30-acre parcel

### 1. Draft concept (14.75 AF):

- Subdivide (<25 lots): 23 lots @ 0.43 acres each
  - .5AF per acre, no more than 1AF per parcel/lot.
  - 23 lots/parcels= 4.95 AF
- Remainder tract = up to 10 AF

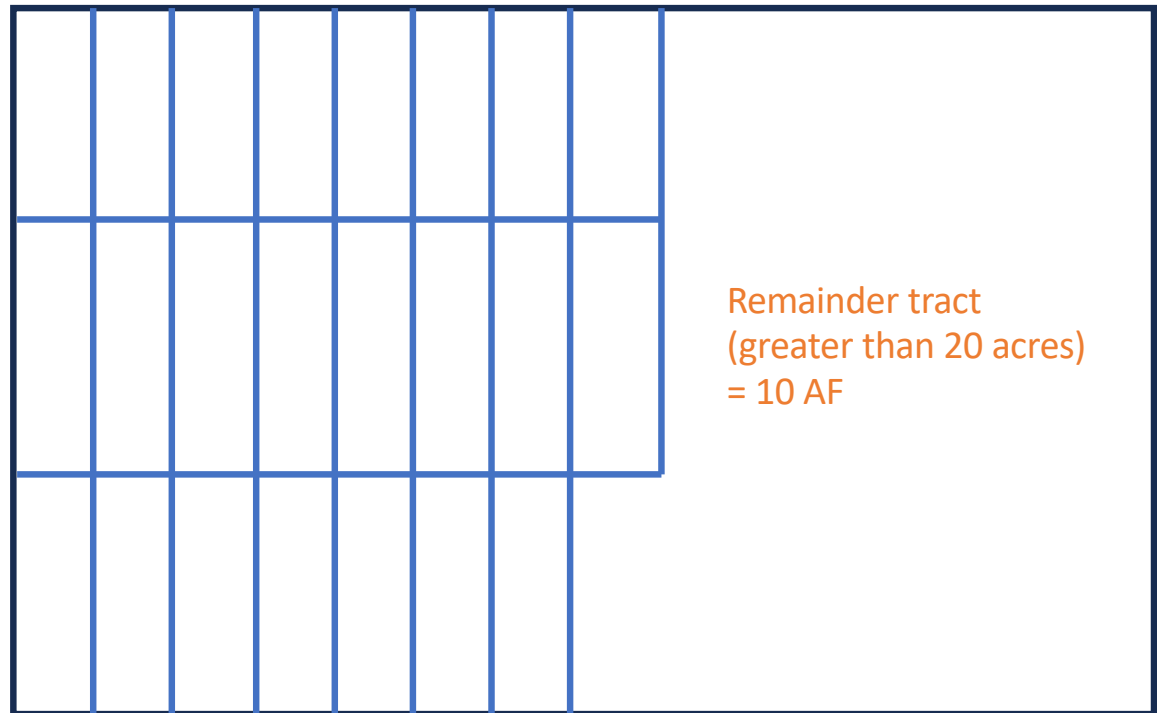
### 2. Spacing guidance:

- 20 AF (2 wells- corners, 10AF each, depends on lot size)

### 3. Post HCH/Path 1:

- 10 – 20AF depending on factors.

23 lots/parcels created on 10 acres = 4.95AF



# Scenario- 40 acre (subdividing)

## 40-acre parcel

### 1. Draft concept (19.89 AF):

- Subdivide (<25 lots): 23 lots @ 0.86 acres each
  - .5AF per acre, no more than 1AF per parcel/lot.
  - 23 lots/parcels = 9.89 AF
- Remainder tract = 10 AF

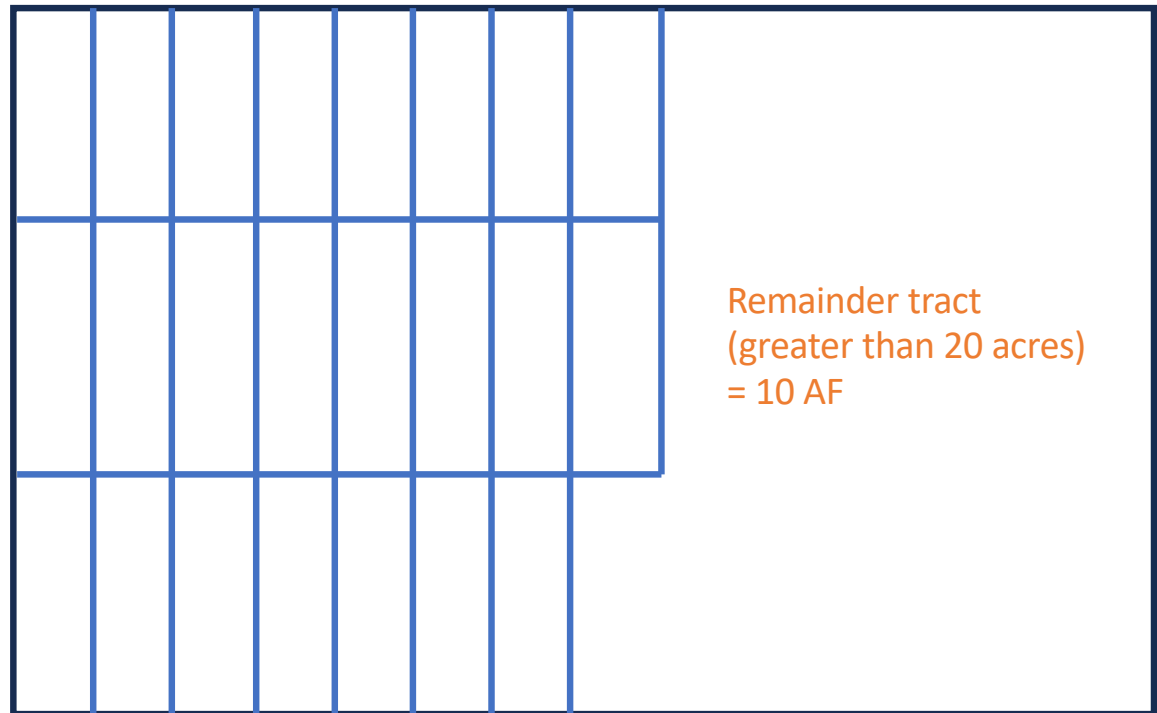
### 2. Spacing guidance:

- 20 to 40AF (2-4 wells, 10AF each, depends on well location and parcel layout)

### 3. Post HCH/Path 1:

- 10 – 20AF depending on factors.

23 lots/parcels created = 9.89 AF



# Scenario- 66 acre (subdividing)

## 66-acre parcel

### 1. Draft concept (33AF):

- Subdivide (<25 lots): 23 lots @ 2 acres each
  - .5AF per acre, no more than 1AF per parcel/lot.
  - 23 lots/parcels = 23 AF
- Remainder tract = 10 AF

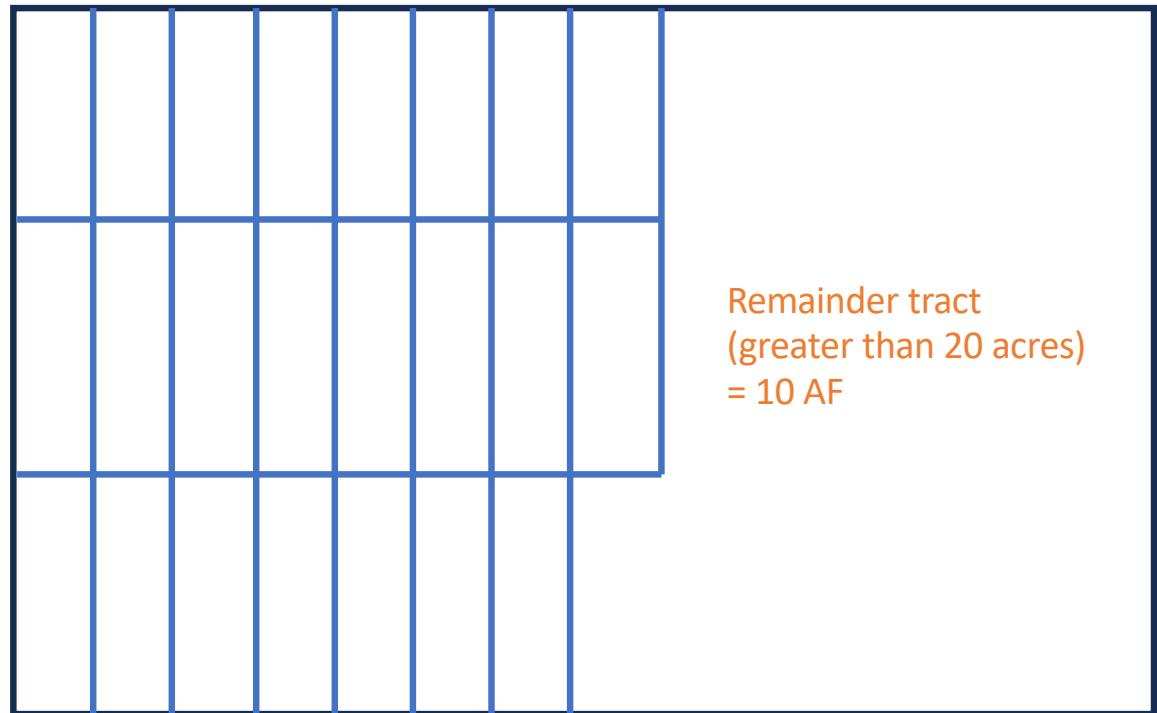
### 2. Spacing guidance:

- 20 to 40AF (2-4 wells, 10AF each, depends on well location and parcel layout)

### 3. Post HCH/Path 1:

- 10-20AF depending on factors

23 lots/parcels created = 23 AF



# Scenario- 640 acre (subdividing)

## 640-acre parcel

### 1. Draft concept (15.75 AF):

- Subdivide (<25 lots): 23 lots @ 0.5 acres each
  - .5AF per acre, no more than 1AF per parcel/lot.
  - 23 lots/parcels created = 5.75 AF
- Remainder tract = 10 AF

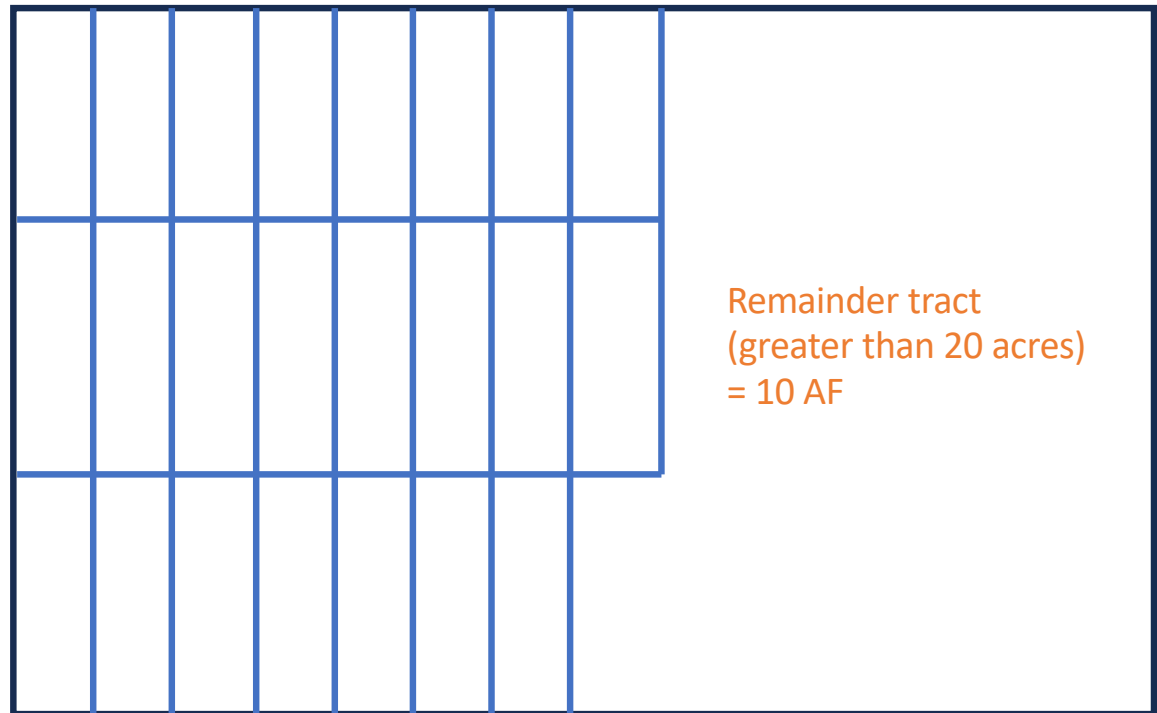
### 2. Spacing guidance:

- ~ 250AF (25 wells, 10AF each, depends on lot dimensions)

### 3. Post HCH/Path 1:

- 10 to ?

23 lots/parcels created = 5.75AF





# Scenario- 640 acre (subdividing)

## 640-acre parcel

### 1. Draft concept (33AF):

- Subdivide (<25 lots): 23 lots @ 2 acres each
  - .5AF per acre, no more than 1AF per parcel/lot.
  - 23 lots/parcels = 23 AF
- Remainder tract = 10 AF

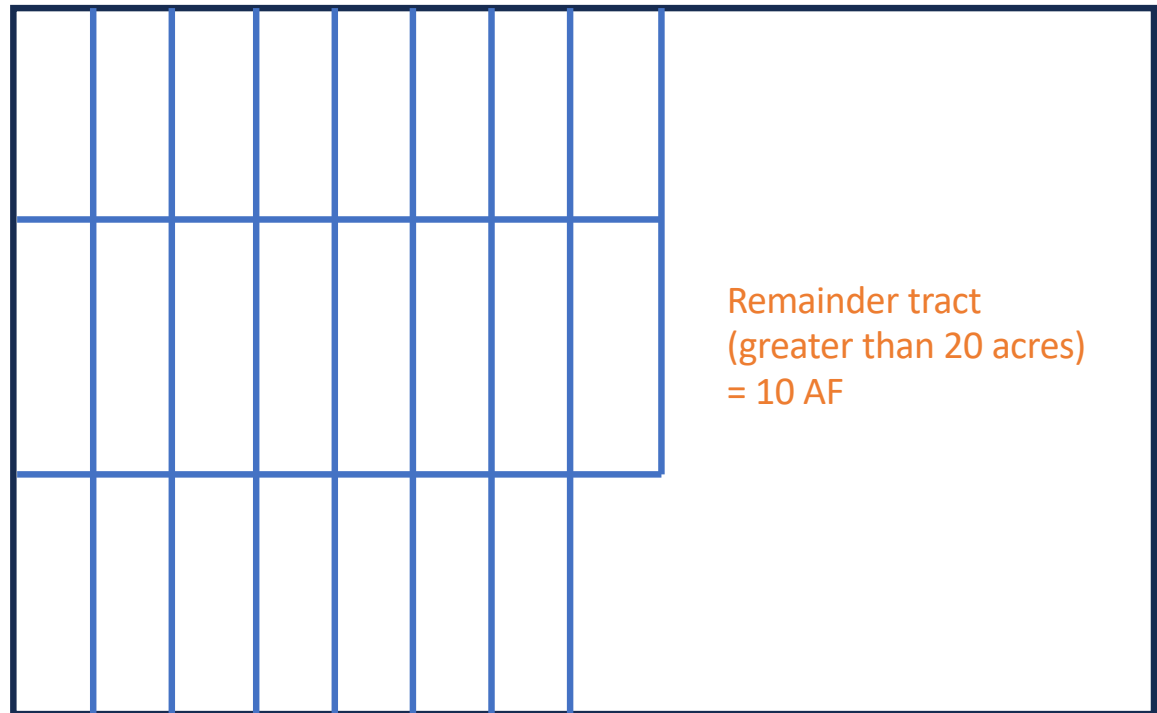
### 2. Spacing guidance:

- ~ 250AF (25 wells, 10AF each, depends on lot dimensions)

### 3. Post HCH/Path 1:

- 10 to ?

23 lots/parcels created = 23AF



# Temporary Monitoring Areas (Yellow)

## Draft Science Criteria

- Groundwater quantity limitations where a decreasing groundwater level trend has been documented but is statistically insignificant;
- Where recharge is dependent on artificial sources and/or aquifer is vulnerable to major land use changes or recharge is variable, and the variability is a result of climate, not extraction or artificial recharge.
- Groundwater connection to Surface Water with Legal Availability limitations where the legal demand on connected surface water is within 10% above or below the appropriation threshold of the stream (physical availability) for any months.
- **Need DEQ water Quality Criteria**

## Draft Policy

- Green restrictions apply
- **Other restrictions?**
  - **So that yellow doesn't become red**
- **Change the application process and burden for exempt wells**
- Monitoring as long as needed
- Metering & reporting
- Funding incentives
- MCA 85-2-506/ new statute

# Homework- red

1. **Red areas: Need Data on the capacity/distance PWS & growing into water rights (Kelly, Brian, DNRC)**
  1. Distance to PWS
  2. Access to tie into the supply
  3. No water available (paper/wet)/service area in the PWS
  4. City won't take on new uses
  5. Municipalities, public water and sewer districts new or existing
2. Red areas: how realistic is mitigation & permit, barriers
3. Exigent circumstances
  1. Given 1 & 2 above, what are exigent circumstances?
4. Grandfather- there is no more water for new appropriation
  1. \* Data on how many under #3 in red areas could be grandfathered.

# Permitting lite

- Earlier application process
- Notice and objection
- Certain max volume in an area

# Subdivision Water Coordination Bill

## Water Use Act 85-2-xxx

- No requirements for Sanitation Act or Platting Act subdivision review
- DNRC writes predetermination letters for sanitation act approval pursuant to MOU with DEQ. Predetermination letters are not a water/property right.
- Water right filed when put to beneficial use (notice of completion), which could be years after predetermination letter to DEQ.
- Nothing ties a predetermination letter to the exempt well notice of completion. To the extent that the predetermination letter is inconsistent with the law at the time, DNRC must follow the law.

## Sanitation Act 76-4-xxx

- No requirements in statute for DNRC participation
- 76-4-104(7) (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed.
- ARM 17.36.103(1)(n) letter from the Department of Natural Resources and Conservation stating that the water supply... either exempt from water rights permitting requirements or has a water right

## Platting Act 76-3-xxx

- No requirements in statute for DNRC participation

## Agency subdivision water coordination bill- objectives

- Create statute to allow the coordination between Water Use Act, Sanitation Act, Platting Act = efficient process (red tape & customer service)
- Provide clear roles and responsibilities for each agency involved in subdivision review process (customer service)
- Create certainty for developer and home buyer that they will have water when they build a home (consumer protection)
  - Today, last one to file the 602 might not have water

# Subdivision Water Coordination Bill

Platting Act (76-3)	Water Use Act (85-2)	Sanitation Act (76-4)
Initial Platting Application	Allocation of Water Application (new section)	Initial Subdivision Application
5-day Review of Elements of the Application	Evidence of water use: permit, change, existing water right, or allocation of water [new section] (76-3-608) (76-3-622)(76-4-104)	15-day Element Review
15-day Sufficiency review		Complete Technical Review
Public Hearing		Local Health Dept Approval
Preliminary Plat Approval Issued		If Platting Act review required: Public Comments and Preliminary Plat Approval
Review whether PP conditions met		Final Review
Final Plat Approved		Final COSA Issued
Subdivision recorded with Final Plat (with evidence of water use) and COSA and evidence of Water Use (76-4-114)		
Notice of Completion for Allocation of water (85-2-306)		



## Criteria Bill (Water Use Act)

## Subdivision Water Coordination Bill

### CGWA (red)

- No exceptions
- Exigent Circumstances
- Metering & reporting
- Funding incentives (PWS & Storage)

### Monitoring

- Monitoring
- Green Policy
- Metering & reporting
- Funding incentives (PWS & Storage)

### Statewide (green)

#### Non-subdivision

- Status Quo
- 10AF/35 gal per min
- Review for combined appropriation

#### Subdivision (Platting and Sanitation)

- Same tract of record in existence on or before 10/17/2014
- Subdivided to create less than 24 lots of land will be allowed up to 0.5 acre-feet per acre and no more than 1AF per parcel (24 AF)
- One of the lots over 20 acres is eligible for up to 10 AF (10 AF)
- Metering and reporting

### WUA

- Allocation of water
- Notice of completion

### Platting

- 76-4- xxx
- Final Platt

### Sanitation

- 76-4-xxx
- COSA





## Comments – 6.3.24 SWG Discussion

- Don't want to wait for a permit in coordinated bill.
- Counties are not moving forward without water rights (DNRC reach out)
- GW discharge: DEQ GW permit issued before DNRC can act. Can we work in parallel?

## Option 2: New exception/Permit lite (green)

### notes from 6.3.24 SWG discussion

- Replace 85-2-306(3)(a)- other than the Sherlock decision
- Do not have to comply with basin closures (?)
- Filing- earlier; ask for permission
  - File for proposed water right when drill a well
  - Information need: purpose, place
  - Confirmation not in the red or yellow
- Criteria:
  - Limited- like temp lease statute (85-2-410) – no adverse effect criteria; **with notice and objection**; aquifer analysis. How to make it so it is not my NIMBY?
  - No criteria and no notice and no objection
- Department needs to affirmatively say that water is available
- Amount & Cap (one number for everyone)
  - 0.5 AF/acre
  - 1 AF/lot; or **parcel in existence as of 10/17/2014 gets up to 10AF**
  - 35gal/min per well
  - More than that, full permit
- Monitoring and reporting
- Maintain the spirit of combined appropriation; need hook in statute
- No serial minors before becoming a full permit

# Combined appropriation

- When multiple groundwater developments are counted against one exception (10AF/35 gallons per minute per well)
- An appropriation of water from the same source aquifer by means of two or more groundwater developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Groundwater developments need not be physically connected nor have a common distribution system to be considered a "combined appropriation." They can be separate developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments. The amount of water appropriated from the entire project or development from these groundwater developments in the same source aquifer is the "combined appropriation."

# 10 AF, what does that mean?

- 3.28 to 6.75 acres of irrigation depending on climatic area
- 4 acres of lawn & garden irrigation (2.5AF/acre)
- water for 588 cows for a year (or 7,056 AUM\*)
- water for 35 average families (DEQ Std- 250 gal/day; 0.28AF/yr)
- 14 houses with  $\frac{1}{4}$  acre of lawn & garden (0.28+0.63)
- produce 93,100 yards of concrete in a year (46,550 concrete trucks/year) (average 35 gallons/yard and 8 yards/concrete truck)

\*rule change on how DNRC assigns volumes for stock use

## Action items – 6.3.24 SWG Discussion

- PWS funding incentives: Kelly and Mark
- Storage funding: DNRC and Clayton
- Mitigation proposal: Julie, DNRC, Clayton
- Cities ability to grow into water rights: Brian H, Ryan M.,
- Drafting:
  - Permit Lite
  - Two track