

COMPREHENSIVE WATER REVIEW



Water Rights and Subdivision Coordination
 Exempt Wells



STAKEHOLDER WORKING GROUP

- Vicki Baker (irrigation)
- Jocelyn Cahill (irrigation)
- Krista Lee Evans (irrigation)
- Spencer Woith (domestic, new development)
- Mark Taylor (domestic, new development)
- Kelly Lynch (municipal)
- Brian Heaston (municipal)
- Nicole Rolf (stock water)
- Raylee Honeycutt (stock water)
- Jan Thomson-Rouse (hydropower)
- Alan Olson (industrial)
- Arnold Bighorn (tribal)
- Andrew Gorder (conservation)
- Clayton Elliott (recreation)
- Abby Brown (attorney, multiple)
- Ryan McLane (attorney multiple)
- Julie Merritt (consultant multiple)



TOPICS OF THE COMPREHENSIVE WATER REVIEW

Final Decree Transition

How do we transition from statewide water adjudication to long-term administration of water rights?



Water Planning, Growth, and Exempt Wells How do we meet our new water demands while protecting existing water rights?

FINAL DECREE TRANSITION

Bill 1: Efficient Administration of Water Rights

Bill 2: Alignment of Provisional Water Rights with Final Decrees

PLANNING, GROWTH, AND EXEMPT WELLS

Storage:

Funding 1: Montana Water Development Fund

Mitigation & Change Process:

Bill 3: Waiver of Adverse Effect

Bill 4: Exceptions to the Change Process

Public Water and Sewer:

Funding 2: Incentivizing Connection to Public Water and Sewer

Exempt Wells:

Bill 5: Water Rights and Subdivision Coordination Bill 6: Exempt Wells

PLANNING, GROWTH AND EXEMPT WELLS

How do we meet our new water demands while protecting existing water rights?



HOLISTIC POLICY AND FUNDING PACKAGE





EXEMPT WELLS

 Bill 5: Agency Coordination and Notice of Intent for Exempt Wells

• Bill 6: Exempt Wells

EXEMPT WELL vs WATER RIGHT PERMIT



Water Right Permit (85-2-311)

- Criteria Analysis conducted
 - Physical water availability
 - Legal water availability
 - No adverse effect analysis
 - Beneficial use
 - Possessory interest
- Public Comment and Objection
- Water Right upon approval

Exempt Wells (85-2-306)

- Intended for de minimis uses
- Water right filed when put to beneficial use
- No water availability analysis
- No adverse effect analysis
- No public notice or input
- No evaluation of cumulative impacts
- 10AF/year 35 gal/min

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BILL 5: WATER RIGHTS AND SUBDIVISION COORDINATION

- 1. Addresses *some* Horse Creek Hills litigation challenges.
- 2. Provides coordination, concurrence and clear processes: Water Use Act (DNRC), Platting Act (local government) and Sanitation Act (DEQ).
 - Water Right information used in the Platting Act review process.
 - Ensures each lot in subdivision has a pathway for a water right.
- 3. Creates a certainty on qualification for exempt wells before investment:
 - Notice of Intent to Appropriate is a review of combined appropriation and meeting the exception before use.

BILL 5: WATER RIGHTS AND SUBDIVISION COORDINATION

- 1. Platting Act (76-3-604 & 76-3-622) Process for receiving an applicant, element and sufficiency review, information to accompany preliminary plat (i.e., going to public comment)
 - a water right,
 - completed technical analyses for a permit or change application, or
 - a notice of intent to appropriate groundwater.
- 2. Platting Act (76-3-608) Approval of preliminary plat, conditions, and final plat approval.
 - requiring the applicant to obtain approval to appropriate water (i.e., water right or notice of intent)
- 3. Sanitation Act (76-4-104) Rules for administration and enforcement
 - clarifies DEQ is reviewing <u>physical</u> quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed
- 4. Water Use Act (85-2-306) Exceptions to permit requirements
 - Prior to appropriating groundwater by means of a well or developed spring a person must file a notice of intent to appropriate groundwater with the department.

BILL 6: EXEMPT WELLS

- 1. Site specific policy recommendations.
- 2. Addresses exempt well policy statewide (green).
- 3. Scientific and legal criteria to establish basin closures and monitoring areas (yellow and red).
- 4. Certainty, legal defensible, implementable.

STATEWIDE

- Two paths to exempt wells depending on if you are dividing land
- Metering and reporting for NEW subdivision of land.

MONITORING

- Monitoring
- Metering & reporting for all NEW uses

CLOSURES

- Limited/no use exempt wells
- Metering & reporting for all NEW uses

STATEWIDE: TWO PATHWAY OPTION

1. NOT DIVIDING LAND (analysis of combined appropriation is status quo)

- a) DNRC review of combined appropriation: **source aquifer; physically manifold and system design; place of use; tract of land; purpose of use; ownership; proximity of wells; and topography**
- b) 10AF per exception; 35 gal/min

2. DIVIDING LAND

- a) Trigger: creation of a parcel pursuant Subdivision and Platting Act (<160 acre).
- b) Lot cap: divided to create 24 lots or less, create 25 lots or more = need a permit.
- c) Volume Cap: up to 0.5 acre-feet per acre and no more than 1AF per lot
- **d) Snapshot:** parcel as of 10/17/2014. Any divisions or exempt wells used post-2014 will count towards caps.
- e) Grandfathered: COSA and predetermination letter.
- f) Metering and reporting: required for Sanitation or Subdivision and Platting Act.

STATEWIDE: TWO PATHWAY OPTION



STATEWIDE: TWO PATHWAY OPTION COMPARISION

Acreage	Up to acre-foot		
	NOT Dividing Land (Combined Appropriation Review*)	Dividing Land	
30 acre	10 – 20 AF (2 exceptions)	15AF	
40 acre	10–20AF (2 exceptions)	20 AF	
48 acre	10–20AF (2 exceptions)	24 AF (if you have 24 lots)	
160 acre	10 to 20+AF (2+ exceptions)	24 AF (if you have 24 lots)	

* Review of combined appropriation is application and factors specific

STATEWIDE: TODAY vs WITH BILL (30 acres)



* Review of combined appropriation is application and factors specific

STATEWIDE: TODAY vs WITH BILL (48 acres)



* Review of combined appropriation is application and factors specific

STATEWIDE: TODAY vs WITH BILL (160 acres)



24 AF TOTAL AVAILABLE

MONITORING AND CLOSURE AREAS

- 1. Site specific policy recommendations.
- 2. Addresses exempt well policy statewide (green).
- 3. Scientific and legal criteria to establish basin closures and monitoring areas (yellow and red).
- 4. Certainty, legal defensible, implementable.

STATEWIDE

- Two paths to exempt wells depending on if you are dividing land
- Metering and reporting for Platting and Sanitation Act

MONITORING

- Monitoring
- Metering & reporting for all new uses

CLOSURES

- Limited/no use exempt wells
- Metering & reporting for all new uses

SCIENCE & LEGAL CRITERIA TO DESIGNATE MONITORING AND CLOSURE AREAS



High Concentration of
Exempt Wells and
1. Surface Water Criteria
2. Ground Water Criteria
3. Water Quality Criteria

SCIENTIFIC & LEGAL CRITERIA TO DESIGNATE AREAS

CLOSURE AREAS

High concentration of exempt wells and

Criteria 1: Surface Water

- Scientific: Groundwater hydraulically connected to surface water; and
- Legal: 100% or more of the legally available surface water has been appropriated for any month

Criteria 2: Groundwater

- Scientific: Groundwater level is projected/declining due to pumping (consultation MBMG/other agencies)
- Legal: 80% or more of the legally available groundwater has been appropriated

Criteria 3: Water Quality (DEQ)

- Source Aquifer: high septic system density; AND nitrate concentration, exceedance of any ground water human health standard; exceed health advisory
- Connected Surface Water: water quality impaired and the cause includes nonpoint sources

MONITORING AREAS

High concentration of exempt wells and

Criteria 1: Surface Water

- Scientific: Groundwater hydraulically connected to surface water; and
- Legal: 90% or more of the legally available surface water has been appropriated for any month

Criteria 2: Groundwater

- Scientific: A decreasing groundwater level trend or limited storage potential (consultation MBMG/other agencies)
- Legal: 80% or more of the legally available groundwater has been appropriated.

Criteria 3: Water Quality (DEQ)

 Source Aquifer: moderate septic system density; AND nitrate concentration, exceedance of any ground water human health standard; exceed health advisory



 High Concentration of Exempt Wells (85-2-506)(1)(a)(i)

SCIENTIFIC CRITERIA LEGAL CRITERIA CRITERIA 1: SURACE WATER CRITERIA 1: SURACE WATER SURFACE WATER 85-2-506(1)(a)(iv) 85-2-506(1)(a)(iv) **CRITERIA 2: GROUNDWATER CRITERIA 2: GROUNDWATER** GROUNDWATER 85-2-506(1)(a)(iii) 85-2-506(1)(a)(ii)

SCIENTIFIC CRITERIA LEGAL CRITERIA CRITERIA 1: SURACE WATER CRITERIA 1: SURACE WATER WATER 85-2-506(1)(a)(iv) 85-2-506(1)(a)(iv) SURFACE **CRITERIA 2: GROUNDWATER CRITERIA 2: GROUNDWATER** GROUNDWATER 85-2-506(1)(a)(iii) 85-2-506(1)(a)(ii) Groundwater level is projected/declining due to pumping (consultation MBMG/other agencies)

	SCIENTIFIC CRITERIA	LEGAL CRITERIA
VATER	CRITERIA 1: SURACE WATER 85–2-506(1)(a)(iv)	CRITERIA 1: SURACE WATER 85-2-506(1)(a)(iv)
URFACE V		
SI		
TER	CRITERIA 2: GROUNDWATER 85–2-506(1)(a)(ii)	CRITERIA 2: GROUNDWATER 85-2-506(1)(a)(iii)
GROUNDWA	Groundwater level is projected/declining due to pumping (consultation MBMG/other agencies)	80% or more of the legally available groundwater has been appropriated

SCIENTIFIC ഉ **LEGAL CRITERIA** TO **DESIGNATE AREAS**



SURFACE WATER

GROUNDWATER



MONITORING AREAS

WATER

SURFACE

GROUNDWATER



agencies)

has been appropriated.

AQUIFER BOUNDARIES



Mapped alluvial aquifer

- Rapid (time) connection
 to surface water
- Notice to landowners within the boundary

DESIGNATION OF CONTROLLED GROUNDWATER AREAS AND MONITORING AREAS

The department **shall** designate **controlled groundwater areas** for the following locations:

- The Gallatin Valley Alluvial Aquifer
- The Helena Valley Alluvial Aquifer
- Bitterroot Valley Alluvial Aquifer
- Missoula Valley Alluvial Aquifer
- Other Aquifers in the future if criteria are met (petition or DNRC)

The department **shall** designate **monitoring areas** for the following locations:

MONITORING

CLOSURE

- Flathead Valley Aquifer
- Billings Terrace Aquifer
- Other Aquifers in the future if criteria are met (petition or DNRC)

POLICY OF EXEMPT WELLS IN THE DIFFERENT AREAS

STATEWIDE

- Two paths to exempt wells depending on if you are subdividing land or not.
- Metering and reporting for all NEW subdivisions of land.

MONITORING AREAS

- Statewide policy applies.
- Monitoring as long as needed.
- Metering & reporting for all *NEW* uses.

CLOSURE AREAS

- Exempt Well use only for
 .5AF for single-family
 home on an existing lot,
 which is unable to
 connected to public water
 and mitigation is not
 available; and stockwater.
- Grandfathering subdivisions w/COSA approval and DNRC predetermination
- Metering & reporting for all NEW uses.

FINAL DECREE TRANSITION

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LEGAL DEMAND AND PHYSICAL AVAILIBILITY



COMBINED APPROPRIATION

- When multiple groundwater developments are counted against one exception (10AF/35 gallons per minute per well)
- **Rule**: 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."