

# WPIC Findings and Options for Recommendations

DRAFT -- 6/10/08

## Introduction

At the April meeting of the WPIC, the committee directed staff to draft findings and recommendations for the WPIC to discuss in June. The draft findings include those suggested by the WPIC work group as well as possible findings as culled from the information the committee has reviewed over the last year. Again, at the direction of the WPIC, staff drafted options for the WPIC to discuss that may lead to recommendations.

The findings and options are not all inclusive. These are only intended to give the WPIC a starting point for discussion and possible action. Some options, if adopted by the WPIC, may require legislation to implement. Others would not.

## Water Policy

**1. Finding:** The continued and expanded study of groundwater resources is vital to shaping statewide policy as well as providing the data necessary for local decisions regarding water.

A. **Option:** No action.

B. **Option:** Fund expanded MBMG study. (LC5007)

C. **Option:** Require a well in new subdivisions to be included in the groundwater monitoring network.

D. **Option:** Strengthen access to existing wells in the groundwater monitoring network.

**2. Finding:** Water is one of Montana's most important natural resources and is vital to economic development, agriculture, recreation, wildlife habitat and the high quality of life experienced by residents and visitors.

**3. Finding:** Water policy is a complex subject not easily understood in a short time. Planning for future water use should not be done piecemeal.

**4. Finding:** The state water plan is outdated and does not reflect recent court decisions and legislation. There is a need to set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses.

**5. Finding:** The Legislature should play a key role in crafting Montana water policy and overseeing the implementation of those policies.

A. **Option:** No action.

B. **Option:** Make the WPIC a permanent interim committee.

C. **Option:** Create a standing subcommittee of the Environmental Quality Council that is dedicated to the study of water policy.

- D. **Option:** Combine the water policy committee with another interim committee.
- E. **Option:** Update the state water plan or do water planning through another process.

## General Water Quantity & Quality

1. **Finding:** The Controlled Groundwater Area statutes need revision.
2. **Finding:** The petitions for CGWA could help guide MBMG studies.
  - A. **Option:** No action.
  - B. **Option:** Revise CGWA statutes.
  - C. **Option:** Encourage education about CGWA.
3. **Finding:** To comply with the federal Clean Water Act, the Montana Department of Transportation must obtain federal wetland credits when a highway project affects an existing wetland.
4. **Finding:** A clear mechanism is needed for MDT to establish a water right to protect wetlands.
  - A. **Option:** No action.
  - B. **Option:** Create a certificate of water right for aquatic resource activities carried out by the MDT in compliance with and as required by the federal Clean Water Act. (LC5012).
5. **Finding:** Water quality is a concern in closed basins as well as statewide.
6. **Finding:** Current law requires that aquifer recharge plans utilizing sewage must obtain discharge permits.
  - A. **Option:** No action.
  - B. **Option:** Require discharge permits for any mitigation and aquifer recharge plan, if necessary. (LC5009).
  - C. **Option:** Encourage public education about controlled groundwater areas and water quality districts.
7. **Finding:** There is a need for a comprehensive groundwater study in many basins. Such a study could provide baseline data for local studies - such as the Ruby Valley analysis - that would provide planning and decision-making information.
  - A. **Option:** No action.
  - B. **Option:** Funding for statewide study. (LC5007)
  - C. **Option:** Encourage new groundwater monitoring wells and access to existing wells.

## Government Issues

1. **Finding:** The DNRC averages 245 days to issue a water right, based on a six-year average.
2. **Finding:** Permit applications in closed basins generally take the most time to evaluate. The passage of House Bill 831 made evaluating those applications more complex.
3. **Finding:** Permitting in closed basins as well as statewide should be easier to understand and more timely.

- A. **Option:** No action.
- B. **Option:** DNRC proposed changes to simplify HB831 statutes.
- C. **Option:** DNRC proposed changes to permitting process.
- D. **Option:** Don MacIntyre proposal for municipal negotiation process.
- E. **Option:** Don MacIntyre proposal for contracted permitting.

**4. Finding:** Subdivisions have 60 days to be approved by DEQ if there are no denials. Over the last five years, 25 percent were approved in 60 days, 28 percent within 120 days and 18 percent within 180 days.

- A. **Option:** No action.
- B. **Option:** Some incentive at state or local level for public systems versus wells and individual septic systems. (LC5014)

**5. Finding:** Both DEQ and DNRC express a desire and willingness to work with each other.

- A. **Option:** No action.
- B. **Option:** Encourage DEQ and DNRC to coordinate with each other on water issues.

**6. Finding:** Not all exempt wells are reported to DNRC. There appears to be discrepancy between the number of wells reported to DNRC, the MBMG, and the number of subdivision lots with exempt wells recorded by the DEQ.

- A. **Option:** No action.
- B. **Option:** Encourage or require the agencies to investigate methods for increasing the accuracy of exempt well reporting.

## Water Use Enforcement

**1. Finding:** The DNRC does not have a system in place to enforce statutory limits on exempt wells.

**2. Finding:** While the DNRC does have statutory authority to investigate illegal water use - and does exercise that authority - there are concerns that senior water rights are not being protected.

**3. Finding:** There are several options available to water users to resolve conflicts including mediation, filing for court action, and, in some areas, petitioning for a water commissioner.

**4. Finding:** The DNRC and county attorneys have limited resources to investigate and prosecute illegal water use.

**5. Finding:** The waters of Montana belong to the state, but the use of those waters is a private property right.

- A. **Option:** No action.
- B. **Option:** Increase state funding to DNRC to investigate illegal water use.
- C. **Option:** Allow district court to appoint special master from Water Court to hear cases.
- D. **Option:** Delegate authority and funding to the Attorney General to investigate illegal water use.

E. **Option:** Don MacIntyre proposal to allow complainant to request DNRC to petition in district court as long as complainant agrees to pay legal costs.

**6. Finding:** Statewide adjudication of water rights with enforceable decrees is a major

component of water right enforcement that will allow water commissioners to distribute water by priority date.

A. **Option:** No action.

B. **Option:** Encourage the continued allocation of funding and resources to adjudication.

## Water Supply & Sewage Disposal

**1. Finding:** Current law does not require a permit for a well with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. A combined appropriation from the same source is interpreted to mean the wells are physically connected by a pipe.

**2. Finding:** The use of individual water wells exempt from permitting and individual septic systems is appropriate in many parts of Montana and the use of public water and sewer systems is not always feasible, practical, or affordable.

**3. Finding:** Statewide, the DNRC estimates that exempt wells, including stock and domestic wells, represent less than 5 percent of total consumption.

**4. Finding:** In some areas, particularly those in closed basins that are experiencing population growth, there are concerns about the effect of exempt wells on water quantity and the effect of individual septic systems on water quality.

**5. Finding:** DNRC records show 38,372 exempt well certificates since 1991 when the 35 gpm, 10 acre feet a year limit was implemented.

**6. Finding:** DNRC estimates that by 2020, there could be between 32,000 and 78,000 additional exempt wells.

**7. Finding:** Not all exempt wells are filed with the DNRC. For those that are filed, the DNRC does not meter whether or not the wells are exceeding the allowed rate or volume.

**8. Finding:** DNRC records show that there are thousands of purposes listed for wells. Some of the most common include domestic (75%), stock watering (32%), lawn and garden (24%), irrigation (6.5%), commercial (2.6%), multiple domestic (1.9%), and fish, waterfowl wildlife, recreation-related purposes (1.7%).

**9. Finding:** Domestic and multiple domestic purpose automatically include one-quarter acre of lawn irrigation per household. Therefore when the purpose lawn and garden or irrigation appears on the certificate, it is for more than one-quarter acre of irrigated area.

**10. Finding:** For DEQ subdivision review, the average in-house diversion is about .22 acre-feet per year and much of that is non-consumptive. Based on an 18 week irrigation season, a quarter acre lawn takes .55 acre feet annually.

**11. Finding:** According to the DNRC, the limiting factor to irrigation from an exempt well would probably be the annual volume, not the rate. It may be possible to irrigate four acres with an exempt well; enough to feed three horses.

**12. Finding:** Exempt wells in Colorado are 15 gpm for up to one acre of irrigation; Idaho is 18 gpm for one-half acre; North Dakota 7.6 gpm up to 12.5 acre feet a year for one acre; and Wyoming is 25 gpm for up to one acre.

**13. Finding:** The water right permitting process for a public system may take longer and be more expensive for a subdivision than using exempt wells.

**14. Finding:** Incentives are needed to encourage public water and sewer systems.

A. **Option:** No action.

B. **Option:** Create a new program to fund public water and sewer systems.

C. **Option:** Increase funding to existing programs to fund extensions of municipal systems to new development.

D. **Option:** Provide an easier water right permitting process for public water systems.

E. **Option:** Clarify that local governments may require public water and sewer systems and may provide incentives for public water and sewer systems. (LC5014)

F. **Option:** Encourage state agencies and the residential development community to educate the public about water conservation and water quality.

G. **Option:** Continue to study the effect of exempt wells on surface and groundwater resources.

H. **Option:** Require minor subdivisions to undergo environmental assessment for effects on water supply. (76-3-609)

I. **Option:** Extend subdivision review criteria to include water consumption impacts on services, agriculture, wildlife, habitat, and public health. (76-3-608)

J. **Option:** Limit the exemption for domestic wells.

K. **Option:** Change the rate or volume for exempt wells.

L. **Option:** Clarify and/or change the definition of a "combined appropriation."

M. **Option:** Implement minimum lot size for exempt wells; increase minimum lot size for individual septic system.

N. **Option:** Require subdivisions with exempt wells to undergo the closed basin groundwater appropriation process.

O. **Option:** Require that exempt wells purchase a mitigation credit.

P. **Option:** Limit the use of exempt wells for fish ponds.