

WPIC Findings and Options for Recommendations

DRAFT

Reflects August 2008 changes and proposals

Introduction

The findings below relate to the study tasks assigned to the Water Policy Interim Committee as well as other issues examined by the committee. Where appropriate, the recommendations refer to the corresponding bill draft proposal. These findings and recommendations will be reviewed and may be revised by the WPIC at its Sept. 11-12 meeting.

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. Recommendation: Fund expanded Montana Bureau of Mines and Geology study. (LC5007).

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.~~ **(Cohenour)**

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 Finding: The state water plan is outdated and does not reflect recent court decisions and legislation.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 is responsible to the citizens of Montana to provide continuous and comprehensive water planning. **(Cohenour)** 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.

A. Recommendation: Pending outcome of subcommittee deliberations of WPIC/EQC.

General Water Quantity & Quality

1. Finding: The Controlled Groundwater Area statutes need revision.

2. Finding: The petitions for CGWA could help guide MBMG studies.

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).

A. **Recommendation:** Undetermined.

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. **Recommendation:** Require discharge permits for any mitigation and aquifer recharge plan, if necessary. (LC5009).

7. Finding: There is a need for a comprehensive groundwater study in many basins statewide hydrogeologic study. (**Cohenour**) 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. **Recommendation:** Fund expanded MBMG study. (LC5007).

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. **Recommendation:** Allow DNRC and applicant to meet informally on a permit application and provide for preliminary determination. (LC5020)

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.

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

A. **Recommendation:** The DEQ and the DNRC should continue to coordinate efforts regarding 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.

7. Finding: The DNRC is coordinating with other agencies to improve exempt well tracking and

will start requiring more information on the notice of completion, including flow rate and volume.

A. **Recommendation:** The agencies should continue working to increase 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: As stated in the Constitution, the waters of Montana belong to the state for the use of its people. but the use of those waters is a private property right. (Cohenour/Perry)

A. **Recommendation:** When requested by a district court and approved by the chief water judge, water masters may serve as special masters in certain water disputes. (LC5021).

B. **Recommendation:** When enforcing water law, priority should be given to protecting the rights of senior users. The DNRC may attempt to obtain voluntary compliance, but the attorney general and the county attorney do not and they may act independent of a request by the DNRC. (LC5021)

6. Finding: The 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.

7. Finding: New requirements for enforcement of water rights must be accompanied by adequate resources and should not take precedence over the continued adjudication of water rights. (Cohenour)

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.~~ **As defined by administrative rule, a combined appropriation is "an appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system."**

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. Recommendation: *Local government subdivision regulations should include a requirement that when a residential subdivision creates 30 or more lots with an average lot size of less than 5 acres, a subdivider must provide public water and sewer systems unless an alternative is approved by the local government. (LC5022)*

B. Recommendation: *State law should clarify that, under certain conditions, local governments may require public water and sewer systems in subdivisions.*

B. Recommendation: *Create a revolving loan program that would fund public water and sewer systems as an alternative to individual wells and septic systems in subdivisions. (LCs 5015, 5023, 5024)*