WPIC Interim Study of Water Availability and Supply

Growing Community Issues - City of Bozeman

Background: A request for information concerning issues surrounding water supply for growing communities was received by the City of Bozeman from WPIC staff Jason Mohr on October 21, 2015. WPIC is seeking information to gain an understanding of what works well, what doesn't, and what issues are relevant to supplying water to growing communities. It appears this information will be used by WPIC to undertake particular case studies which would be packaged into an interim Study of Water Availability and Supply. Presumably, this study could serve as a fountainhead for future legislative actions.

Municipal Water Rights Place of Use - A municipal corporation should not be decreed a limited place of use for its municipal water rights based on pre-1973 historical beneficial use. Attaching the corporation's rights to specific lands frustrates its ability to provide water to annexed lands that are serviceable by its municipal system. Place of use should match the extents of the municipal limits or service area of its municipal customers. WPIC should evaluate the need to recognize the great and growing cities doctrine as a component of Montana water law.

MS4 General Permit Stormwater Reuse – The MS4 (Municipal Separated Storm Sewer System) General Permit requires implementation of low-impact development practices for new development or redevelopment projects that infiltrate, evapotranspire, or capture for reuse the stormwater runoff generated from the first 0.5" of a 24 hour storm. Capture of stormwater for reuse requires a water right, which in a closed-basin is not practicable if not impossible to obtain. An important tool is thus eliminated from the MS4 general permit compliance toolbox. WPIC should evaluate a water rights exception for reuse of captured stormwater.

Groundwater Mitigation Bank – Permitting of new groundwater rights in a closed-basin is an incredibly difficult undertaking resulting in high costs for applicants to navigate the permitting process to a successful completion. A groundwater mitigation bank aims to establish an administrative system with DNRC-vetted tools that add certainty to the permitting process. Certainty in permitting will reduce the time and financial commitment needed to obtain a water right permit. Certainty would also serve to reduce the reliance on exempt wells to provide water for new development occurring outside of a municipal service area, thus protecting senior water rights by virtue of a shift away from exempt rights towards permitted rights. WPIC should evaluate the challenges and identify legal barriers to creating viable groundwater mitigation banks within the current administrative framework of the Montana Water Use Act and its respective Administrative Rules.

Exempt Wells Within a Municipal Service Area – A municipal water system owner should have the authority to limit the use of new exempt wells for irrigation of existing and future properties that are served by its municipal water system. Exempt irrigation wells erode the ability of the municipality to conserve water and establish fair and equitable water rates that promote water conservation. The current legal framework controlling the use of exempt wells allows for an exempt appropriation of water for any existing development. Thus, all existing parcels in a municipality can legally drill an exempt well for irrigation. WPIC should evaluate how the use of exempt irrigation wells impacts a municipality's ability to implement an effective water conservation program and to engage in water supply planning.

Nutrient Trading for Wastewater Permit Discharge Limits Compliance – A State policy establishing a framework for nutrient trading to meet wastewater discharge permit limits does not recognize nutrient trading downstream of the permitted point source discharge. This unnecessarily hampers a Permittee's flexibility to utilize nutrient trades as an effective permit compliance tool in instances where limited upstream trading opportunities exist and ample downstream trading opportunities are available. WPIC should evaluate the costs and benefits of recognizing nutrient trading at a watershed scale.