



HB 681 Implementation and Water Rights Overview

**Local Government Interim Committee
November 20, 2025**

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Agenda

- Water law overview
- Subdivision of land and water rights
- Waterkeepers et al. vs Broadwater County- Impacted subdivision
- HB 681 implementation

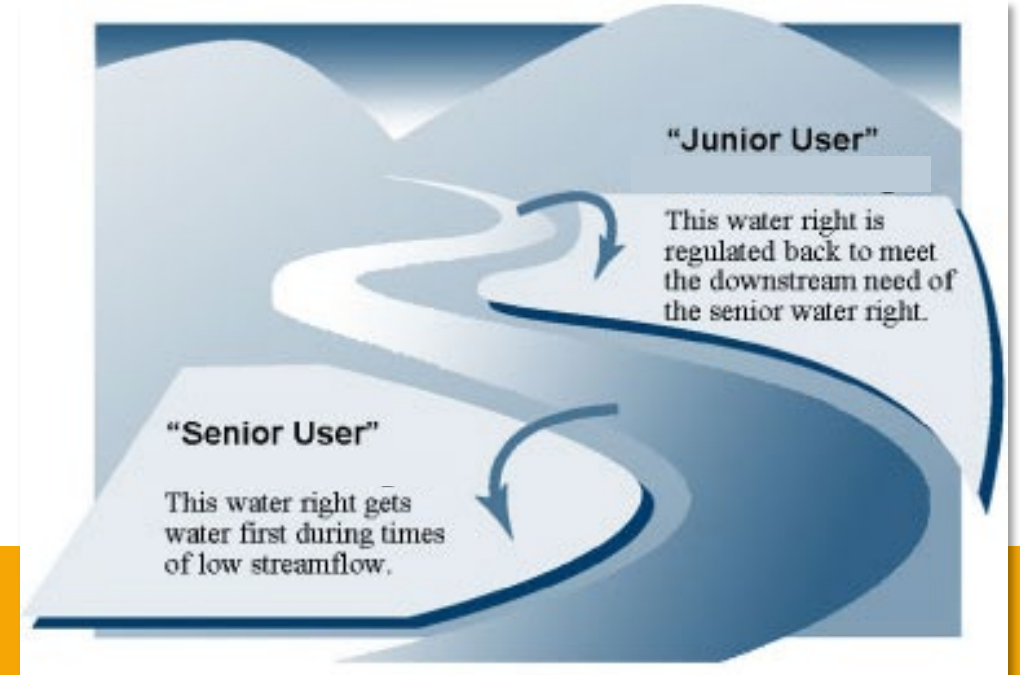




Water Law Overview

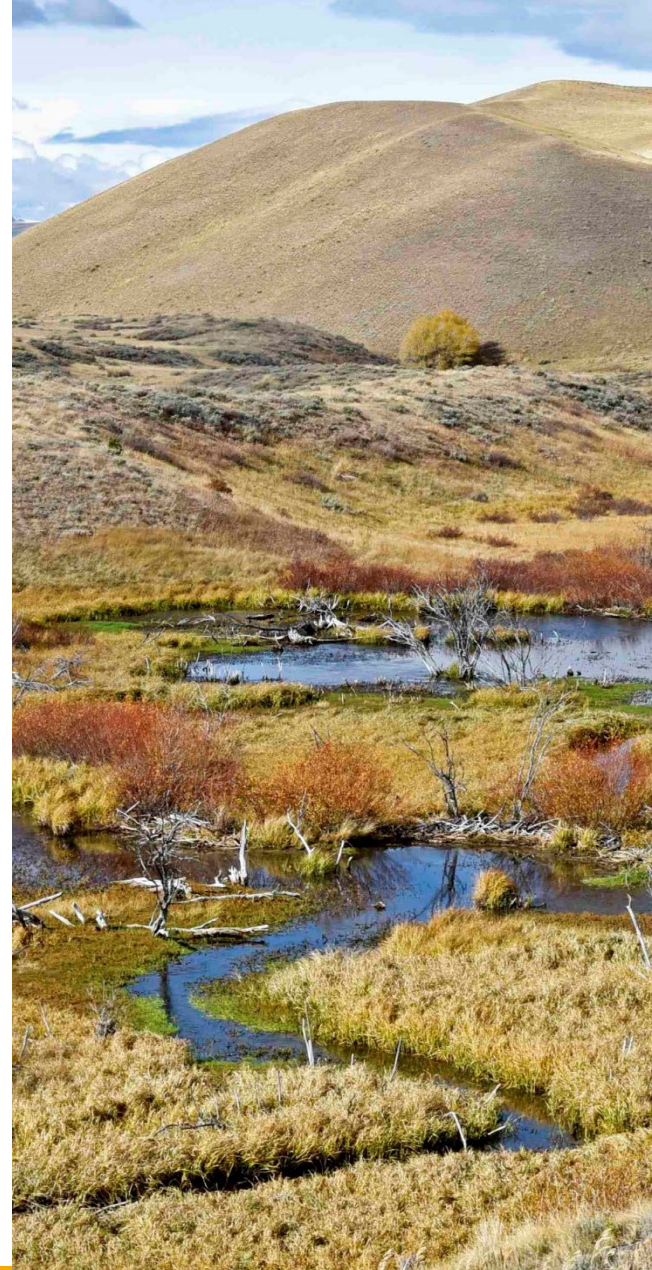
Water Law Overview

- Prior appropriation doctrine - "first in time, first in right" (**priority date**)
- The State owns all the water in Montana – the owners of water rights possess only *the right to use* some of that water (**property right**)
- Intent to apply water to **beneficial use**
- GW and SW are treated as **connected**



Water Rights

- All new uses of water after June 30, 1973, require a water right from DNRC
 - Permit process
 - Exceptions to the permit process



Use of Groundwater



www.epa.gov

Water Right Permit (85-2-311)

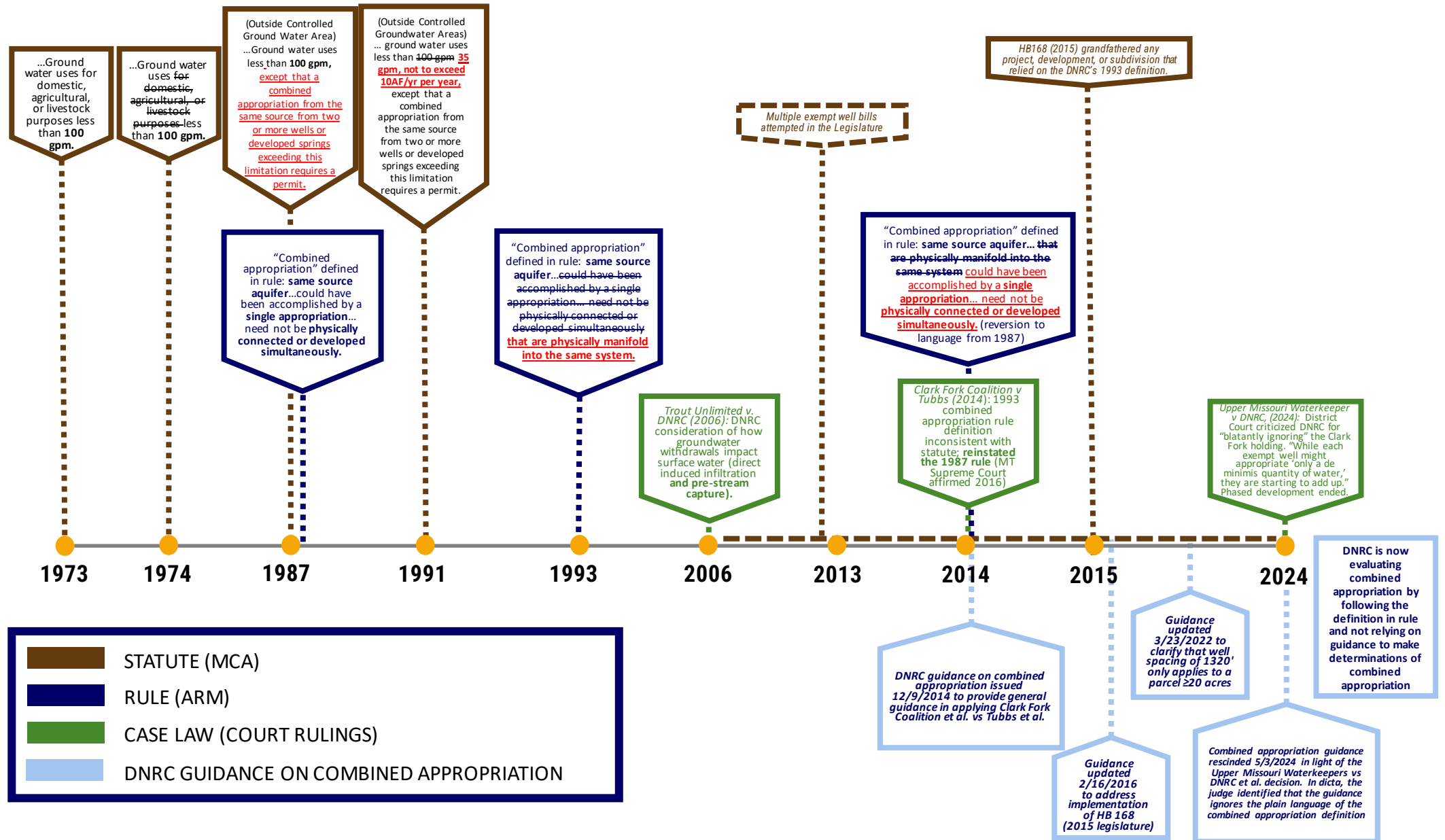
- Criteria analysis conducted
 - Physical water availability
 - Legal water availability
 - No adverse effect analysis
 - Beneficial use
 - Possessory interest
- Public comment and objection
- DNRC can condition as necessary to satisfy criteria/protect seniors
- Water Right upon approval

Exempt Wells (85-2-306)

- Intended for *de minimis* uses
- Up to 10 acre-feet/year; 35 gal/min
- No criteria analysis
- No public comment and objection
- No evaluation of cumulative impacts
- DNRC can not condition to protect senior water right holders
- Cannot file for water right until the water is put to beneficial use *

HISTORY OF DEFINING EXEMPT WELL USE:

A permit is not required for





Subdivisions of land & water rights

Subdivisions of land & water rights

- When subdividing and developing property, prior approval:
 - **Sanitation in Subdivisions Act**, Department of Environmental Quality
 - **Subdivision and Platting Act**, local reviewing authorities (most often counties)
 - Both contain provisions related to the adequacy of the proposed water supply
- When want access to water: **Water Use Act**, requires a water right from the DNRC.



Subdivisions of land & water rights

- The law prior to 2025, there was no authority for coordination with water rights processes administered by the DNRC
- Approval from Counties and DEQ occurred prior to development
- Approval for water right under the exception occurred after water was put to use



DNRC Subdivision Review Letters

- DEQ required a subdivision review letter from DNRC for their process
- DNRC subdivision review letters clearly stated that they were not water rights.
- Many local governments chose to rely on DNRC subdivision review letters by incorporating them into their assessments under the Platting Act- without any policy or MOU in place with the DNRC.
- Because subdivision review letters were not water rights, developers and eventual homebuyers were without legal protection during the time between issuance of a subdivision review letter and filing of their Notice of Completion of Groundwater Development (Form 602)



Waterkeepers et al. vs Broadwater County & DNRC

- Court ruled DNRC incorrectly applied the law and DNRC was required to treat all phases of a multi-phased development as part of the same combined appropriation.
- “DNRC's own rule wisely does not allow the developer to determine which appropriations are combined **but rather requires the department to exercise its own judgment over whether multiple appropriations could be accomplished by a single appropriation.** Mont. Admin. R. 36.12.101(12)” P. 78”



ARM 36.12.101(12)- combined appropriation

- “Combined appropriation” an appropriation of water from the same source aquifer by two or more groundwater developments, the purpose of which, **in the department's judgment, could have been accomplished by a single appropriation** (i.e., need to share 10 acre-feet)
 - need not be physically connected nor have a common distribution system
 - can be separate developed springs or wells
 - need not be developed simultaneously
 - can be developed gradually or in increments (ARM 36.12.101(12))



DNRC Guidance

Groundwater developments constitute a combined appropriation if:

1. The groundwater development provides water for the same purpose, project, or development as one or more existing groundwater development;
2. The groundwater developments appropriate water from the same source aquifer; and
3. The groundwater developments could have been accomplished by a single appropriation.

<https://dnrc.mt.gov/Water-Resources/Water-Rights/Apply-for-Water-Rights/DNRC-Guidance-on-Combined-Appropriations.pdf>

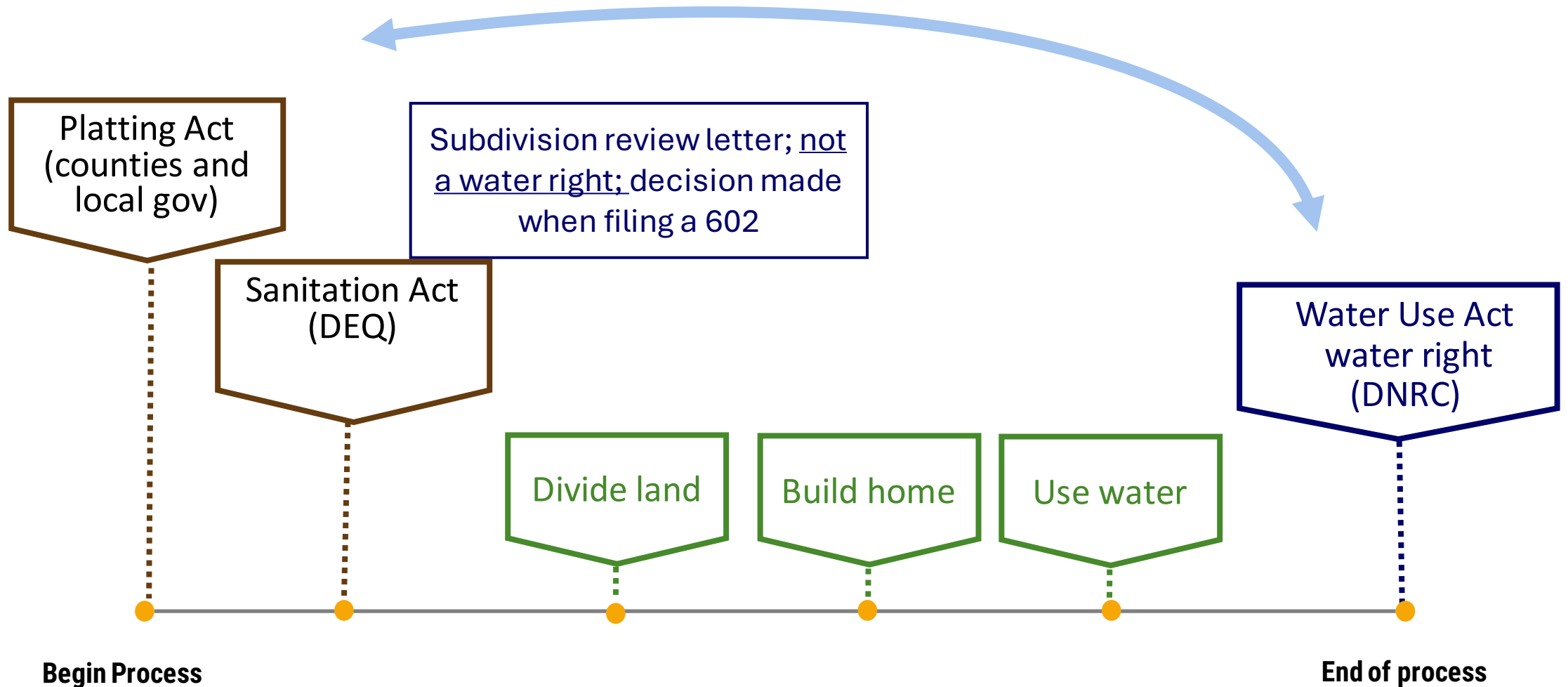




Waterkeepers et al. vs Broadwater County Impacted subdivision

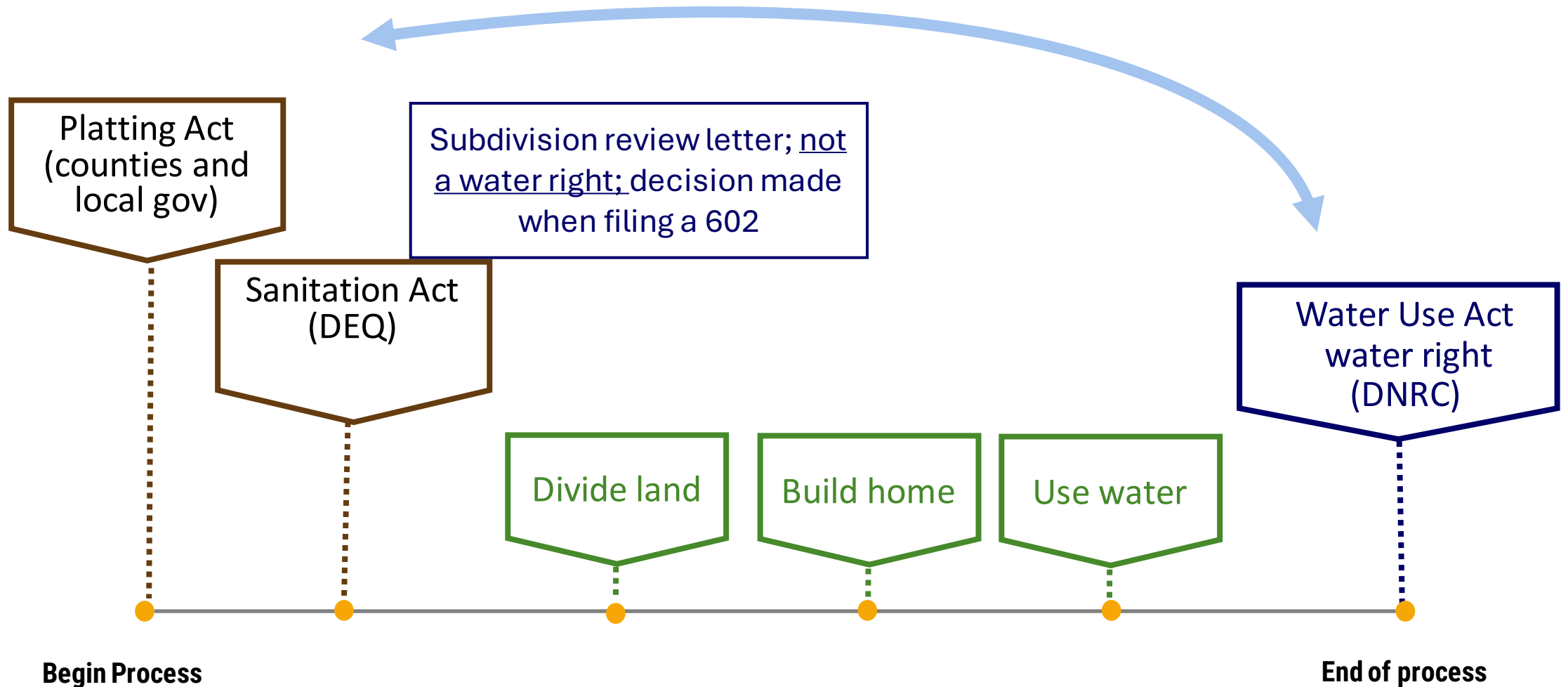
Challenges we face today:

1. Historic disconnect between Platting, Sanitation, Water Use Act



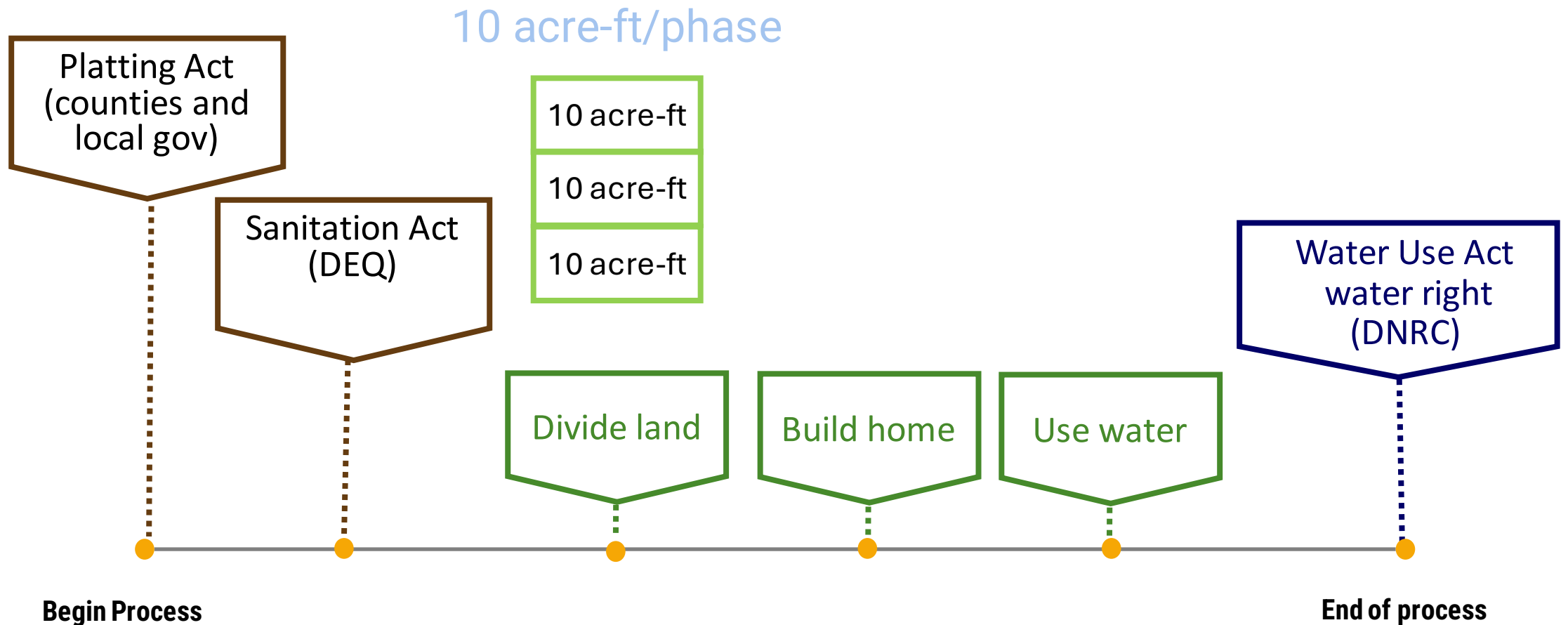
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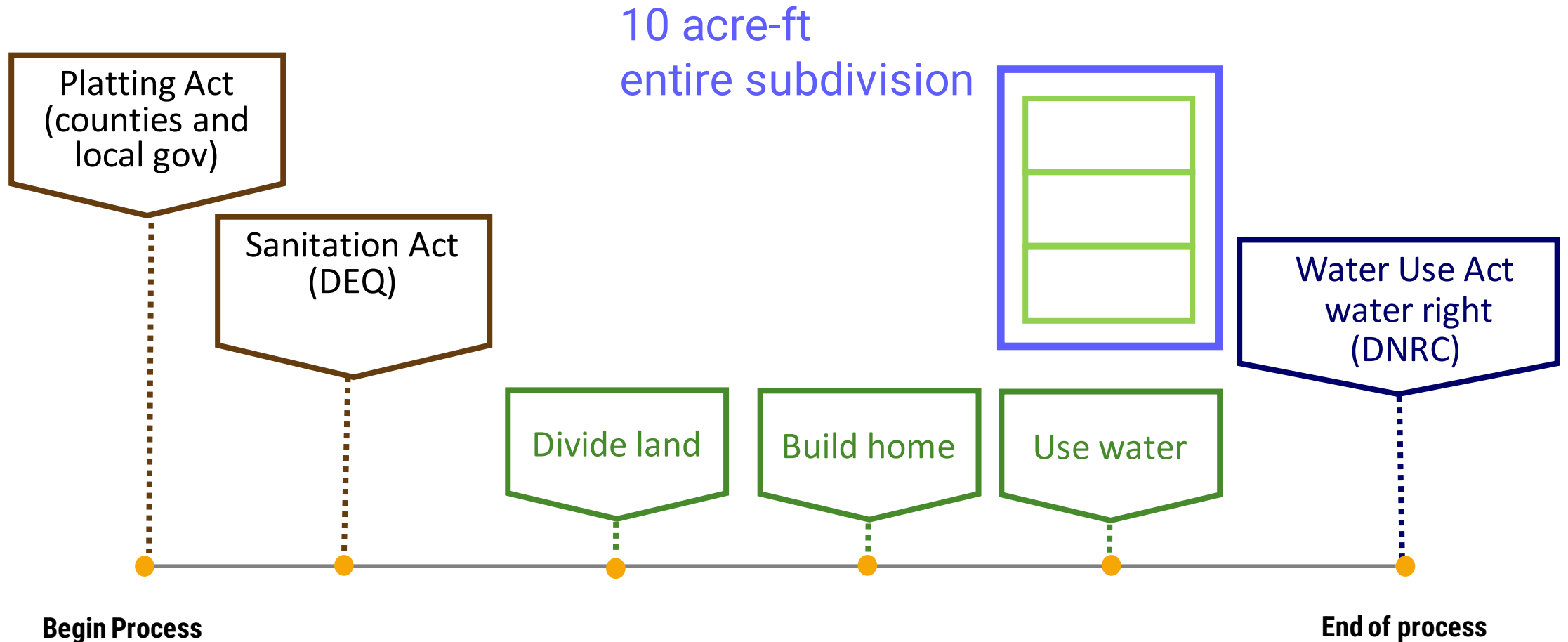
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- 2. Developer plan to obtain water under permit exception**
3. Waterkeepers et al. vs Broadwater County & DNRC (2024)



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DNRC Outreach and next steps

- Letters to lot owners
- Letter to developers and consultants
- Outreach to Legislators, County Commissioners, Federal Delegation
- DNRC commitment to work with stakeholders and legislators for 2027 legislative solutions

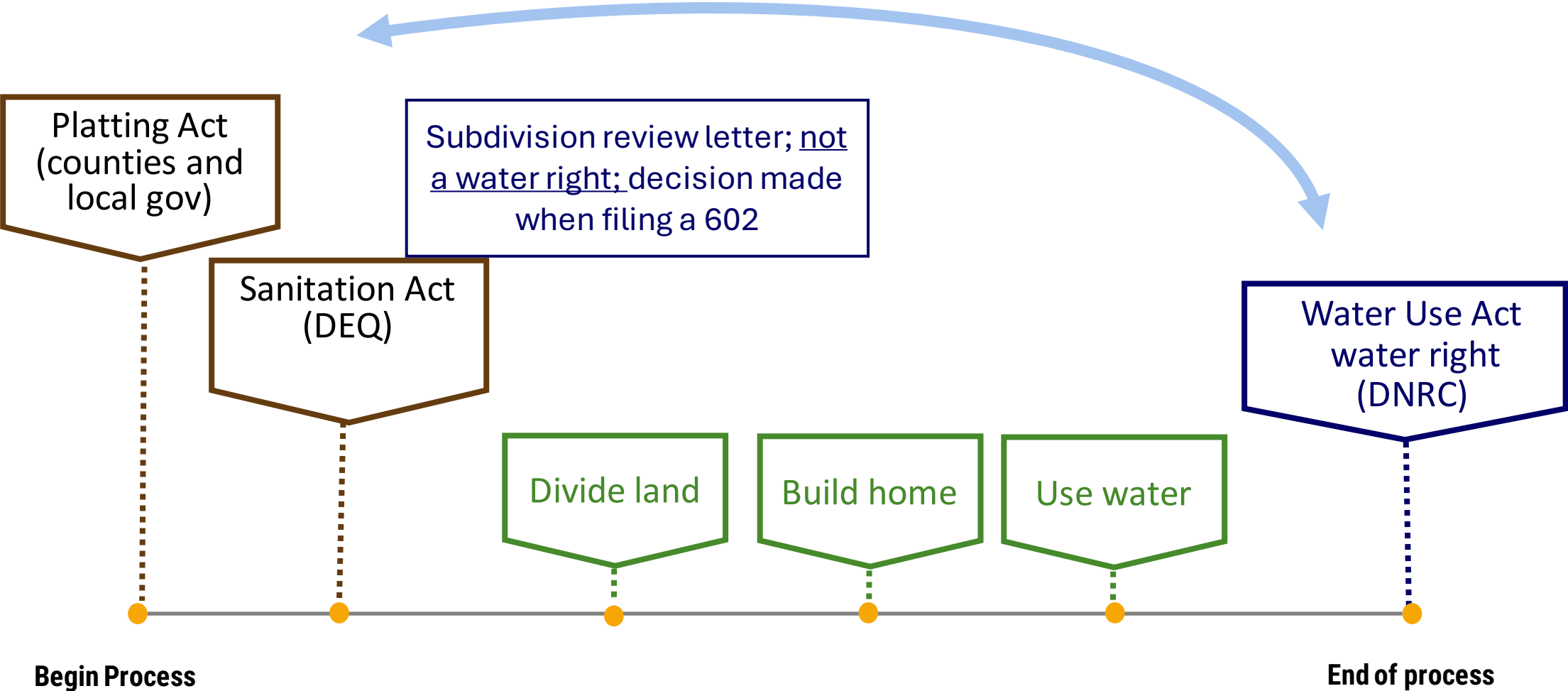




HB 681 implementation

Recall challenge:

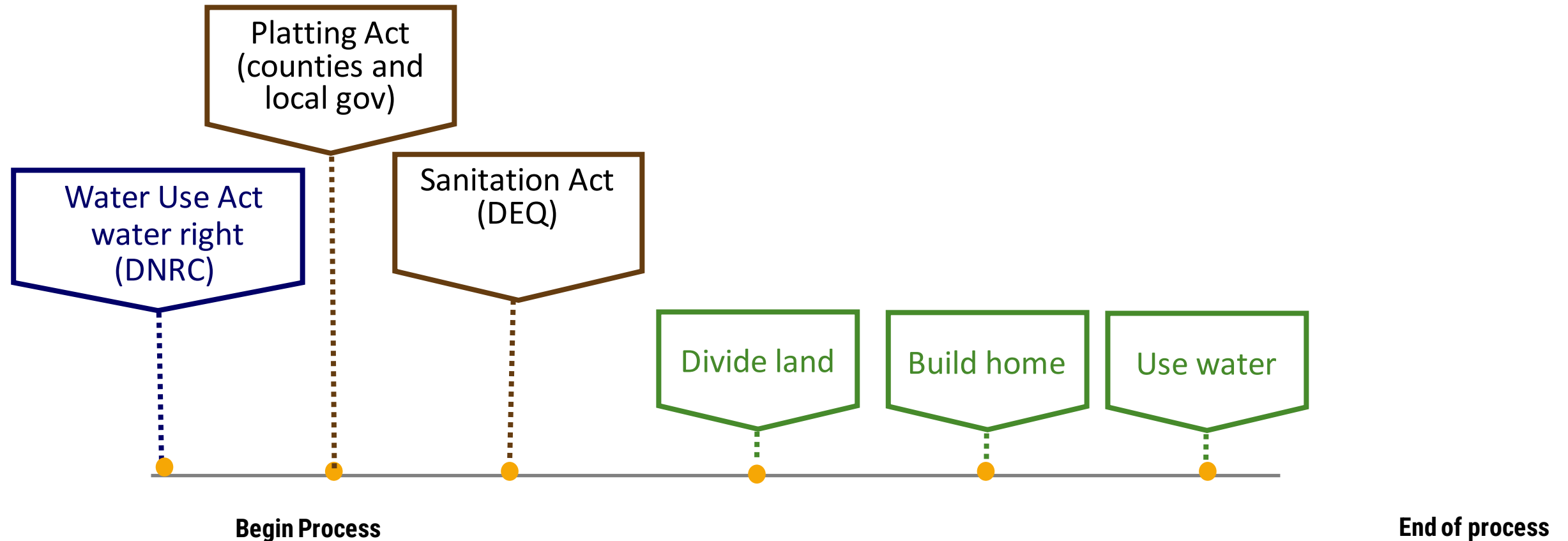
Historic disconnect between Platting, Sanitation, Water Use Act



HB 681 solution:

Historic disconnect between Platting, Sanitation, Water Use Act

HB 681 (2025)



HB 681: Agency Coordination Bill

Effective January 1, 2026

- **Bill Intent**

- Provide for concurrent processing timelines of DNRC water rights applications and county subdivision applications
 - Allows for local reviewing authority to have certainty on water rights when approving subdivisions
 - If water right permit is being applied for, technical analyses by DNRC can be used to determine water physical availability
- Provide authority for local reviewing authority to condition subdivisions on approval from DNRC to appropriate water
- Provide certainty to individuals planning to use groundwater under exceptions to the permitting process prior to investing time and resources into a project.

Statutory Changes to Permit Exception

AKA “Exempt Wells”

- Introduces Notice of Intent (NOI) for use of exempt wells
 - Water user files NOI before using water
 - Changes timing of DNRC evaluation of qualifications
- An authorized NOI is not a water right until project completion notice received and certificate issued by DNRC.
 - Does assure that if a project is completed in timely fashion as authorized, user will get a water right.
- Does not affect other permit exceptions (Fire training, geothermal)

Notice of Intent to Appropriate Groundwater

Overview of the Process- effective 1/1/2026

- Step 1: Notice of Intent
 - Prior to putting water to use, one must have an authorized NOI.
 - Water user can wait to drill their well until an NOI is authorized (though this is not required).
 - A filer will submit a Form 602I detailing the planned water use.
 - If filing meets permit exception criteria, DNRC will authorize NOI
 - Extensions
 - Unless extended, a Notice of Completion of Groundwater Development must be filed within 5 years of authorization.
 - One extension may be granted for an additional 5 years to complete water use.

Notice of Intent to Appropriate Groundwater

Overview of the Process- effective 1/1/2026

- Step 2: Groundwater Certificate
 - After putting water to use, water users submit Notice of Completion (Form 602).
 - Form 602s must be filed in 'substantial accordance' with authorized NOIs.
 - Can't expand use
 - If completed in substantial accordance, DNRC issues Groundwater Certificate
 - If water use is not completed and filed upon by the completion deadline, NOI expired.

Notice of Intent to Appropriate Groundwater

FAQs

- When is combined appropriation evaluated?
 - DNRC will evaluate combined appropriations during Notice of Intent processing (before the water is used) instead of during Notice of Completion processing.
- Is combined appropriation evaluation changing?
 - No.
- When does a well need to be drilled?
 - **A filer can submit a Form 602I before or after drilling a well.** DNRC does not regulate when wells are drilled, rather we regulate water use.

Water Right Implications for Local Govt.

Changes to Subdivision Review

- Can require a *demonstration* of water rights for “complete and sufficient” application determination.
 - Active water right for purposes of use which cover water use of planned development.
 - Exempt wells: demonstration consists of authorized NOI’s by DNRC.
 - Obtaining permit or change: demonstration consists of completed technical analyses for the water right application.
- Can condition preliminary plat to require that an applicant obtain approval from DNRC to appropriate water.
 - Exempt wells: approval consists of authorized NOI’s by DNRC.
 - Obtaining permit or change: approval consists of authorized permit/change by DNRC.

Notice of Intent to Appropriate Groundwater

Overview of the Process

- An authorized NOI **will identify** the following:
 - Proposed place of use (including proposed lot name, if applicable)
 - Proposed purpose & maximum volume for each purpose
 - Proposed point of diversion (general location)
 - Source aquifer authorized
 - Combined appropriation evaluation
- An authorized NOI **will NOT identify** the following:
 - Specific well information (actual depth, coordinate location, etc.)
 - Flow rate (eventual filing must be ≤ 35 GPM)
 - Priority date (no priority date until 602 filing)

DNRC Implementation

How can you find information on Notices of Intent?

- Water Rights Query System (WRQS), find NOI:
 - NOIs will be searchable
 - Searching by water right type (Groundwater Certificate) and water right status (Authorized NOI and/ or Pending NOI), OR
 - Searching by water right type (Groundwater Certificate) and filtering by version type (Intent to Appropriate).
 - <https://gis.dnrc.mt.gov/apps/WRQS/>
- Water Mapper
 - NOIs visible/distinct from issued Groundwater Certificates (by water right version type and/or status)
 - <https://arcg.is/0T54ya>



Questions?

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