

## Summary of WPIC work group meeting of April 1, 2008

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In March, the WPIC asked that a work group meet to discuss possible changes to LC 5004, 5006 and 5001, but the work group was not limited to those items. On April 1, about 20 people met for five hours and discussed a wide range of issues. A list of attendees is attached.

With so many people, it was difficult to reach consensus and the conclusions here do not necessarily mean that all interests would support a specific bill draft. Nevertheless, the group did have some general agreement.

Participants were encouraged to provide additional points of view and information to the WPIC.

### LC5006

In general, representatives of the DEQ, the DNRC and the development community said this legislation would have a negative impact. Requiring a water right before final subdivision approval while still allowing exempt wells would drive more development away from public systems and toward exempt wells. Currently, DEQ requires that a development have a water right before a well is put into use. (DEQ Circular 1, Chapter 1.1.8.2.g)

If the intent of the draft was to require cooperation from DNRC and DEQ, representatives of both agencies say communication has improved and they do consult each other on many developments.

### LC 5004 – LC5014

The group generally agreed to some changes, which are reflected in the attached LC5014.

The previous draft, LC5004, included this language in 76-3-504:

(3) In implementing the provisions of subsection (1)(g)(iii), the governing body may, as provided in 76-3-511, require community water systems and public sewer systems based upon specified criteria such as population density, soil conditions, or public health or environmental concerns. Public health and environmental concerns may be based upon the types of information enumerated in 76-3-622 or other relevant factors.

That passage essentially clarified how a local government could require public water and sewer systems, based on specified criteria.

The work group agreed to eliminate that section and try to incorporate the intent into 76-3-504 (1)(g)(iii). It would require that subdivision regulations prescribe standards for:

subject to the provisions of 76-3-511, water supply and sewage, including the requirement of community water systems and/or public sewer systems, and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres;

However, after staff review, it appears the work group amendment would require that counties "at a minimum" must prescribe standards for requiring public water and sewer.

Under the original amendment (3), it gave counties the discretionary power to require public water and sewer.

While the work group amendment may still keep the power to require public water and sewer discretionary, it does seem to require all counties to prescribe standards under which they would require public water and sewer.

In keeping with the intent of the work group, staff proposed simplifying the new (3) to read: **(3) In implementing the provisions of subsection (1)(g)(iii), the governing body may, as provided in 76-3-511, require public water systems and/or public sewer systems.**

The group discussed, but could not reach agreement, on an item not included in the original bill draft. In 76-3-511, there is a provision outlining how a local government may adopt regulations more stringent than state regulations or guidelines. As it reads now, the governing body may not adopt a regulation under 76-3-501 without meeting certain conditions.

That statute reads as follows:

The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (1) the orderly development of their jurisdictional areas;
- (2) the coordination of roads within subdivided land with other roads, both existing and planned;
- (3) the dedication of land for roadways and for public utility easements;
- (4) the improvement of roads;
- (5) the provision of adequate open spaces for travel, light, air, and recreation;
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;**
- (8) the avoidance or minimization of congestion; and
- (9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

The Montana Association of Counties contends since (7) includes "the regulation of sanitary facilities" then the provisions of 76-3-511 should apply only to those facilities and not to the other areas of 76-3-501. The development community disagrees.

While this may be a legislative issue, it appears that public sewer and water would be subject to 76-3-511 regardless if changes are made or not. There are references to water in 76-3-501, including (6) which require providing adequate water and (9) which

references avoiding subdivisions with a lack of water. However, water and sewer systems are still subject to the 76-3-511 process under 76-3-504 (1)(g)(iii).

The draft includes language whose intent was to give local governments and health boards, or the DEQ, leeway offer an incentive for public water and sewer systems by expediting permits. For example, 76-3-601 included this proposed language:

The governing body may give priority to applications that provide for a community water system and a public sewer and wastewater system.

Similar language is also included in 76-4-125.

Local government representatives in the work group said the language was too vague. Regardless, they added that there is little they can do to expedite processing of application or offer other incentives. However, the group generally agreed that offering incentives for public systems is desirable and pledged to think about options, either in these statutes or others.

#### **LC5001**

The DNRC reviewed its draft revisions to the HB831 statutes. The work group discussed various aspects of the proposal. An updated version of what was provided to WPIC is attached.

#### **Other items**

The group had a wide-ranging discussion on exempt wells, but no agreement.

Most agreed on a need for the DNRC to issue new permits faster. Agency representatives agreed that is a priority. The representative of Utility Solutions suggested a negotiated permit or change process for municipalities and public water supply systems in closed basins. That proposal is attached.

There also was general agreement that incentives should be offered for public water and sewer systems. Some also advocated disincentives for exempt wells.

Sign In - WPIC Working Group

4/1/08

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RUSSELL LEVENS	DNRC
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Eric Regensburger	MT DEQ
Toni McLaughlin	DNRC
JEN BENNION	MT Chamber
DON MACINTYRE	U. Solutions
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