EXHIBIT 5
DATE 1.25.13
HB 244

January 25, 2013

Testimony of:

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Gallatin Gateway County Water & Sewer District
Gallatin Gateway, MT

Mr. Chairman, members of the committee,

I am here in support of HB244. This bill addresses a fairness issue with respect to water law without significantly impacting the current status quo with respect to water and wastewater interrelationships. I would like to develop two key points about the bill and to follow with real-world examples of why this bill is needed.

Key points:

- HB244 seeks to address a fairness issue related to discharge permit applicants. Under current law, a discharge permit applicant who has accrued considerable expenses may see the application denied and expenses lost because a well was placed in the applicant's mixing zone AFTER THE APPLICATION WAS FILED. The expenses for a residential discharge permit applicant may be $10k or more, and for a Water/Sewer District or municipality may be $100k or more.
- HB244 does not upset the current balance between water and wastewater uses, established over the course of the past decade.
    - ✓ Owners of wells in existence before the discharge permit application is filed would not be impacted by HB244. (It would be very difficult for a discharge permit applicant to show malicious intent if the well existed prior to the discharge permit application.)
    - ✓ Owners wishing to drill a well after an adjacent landowner is issued a discharge permit would fall under current law, and would not be impacted by HB244.
    - ✓ Agencies would not need to implement additional review procedures or expend additional time.

Examples:

I provide three real-world examples below. In one example HB244 has a high likelihood of applicability; in a second example the applicability is questionable, and may be a matter for the courts; in the third example there would be a low likelihood of applicability (status quo). It is important to note that though these are real-world examples, they are very rare and they are only temporary. Once either a well or discharge permit are established, existing law applies.

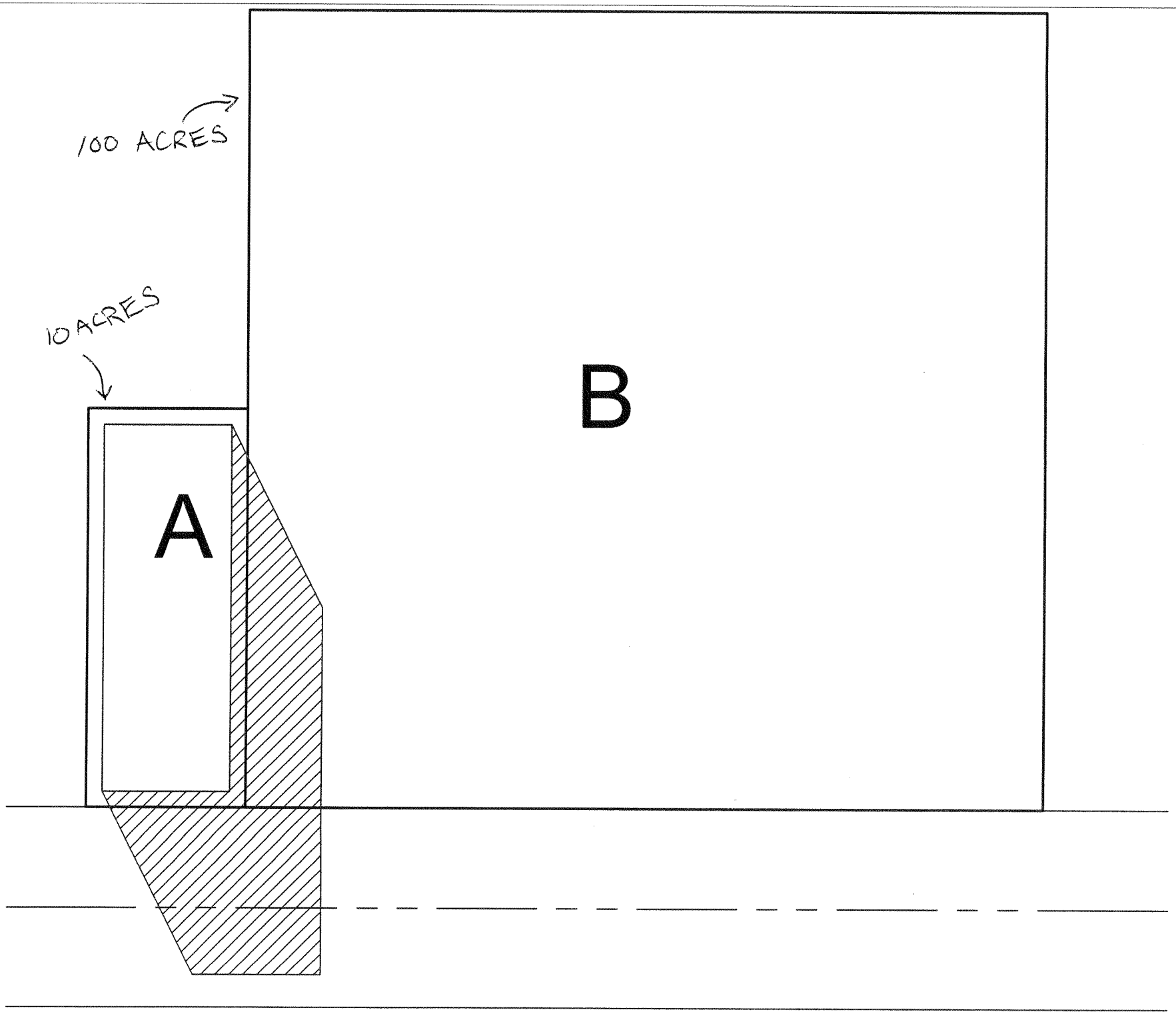
1. "A" seeks to acquire 10 acres for purposes of using the land as a recharge site; "B" owns 100 adjacent undeveloped acres. In the circumstance where "A" applies for a discharge permit and "B" places a well in the mixing zone during the 6 month period while the discharge permit

application is being reviewed, HB244 may be applicable if "A" can show that "B" had plenty of other options for placement of the well.

2. "A" seeks to permit a residential drainfield on 20 acres; "B" owns 20 adjacent undeveloped acres. In the circumstance where "A" applies for a discharge permit and "B" places a well in the mixing zone during the period while the discharge permit application is being reviewed, HB244 may be applicable if "A" can show that "B" had plenty of other options for placement of the well.
3. "A" seeks to permit a residential drainfield on ¼ acre; "B" owns adjacent ¼ acre. In the circumstance where "A" applies for a discharge permit and "B" places a well in the mixing zone during the period while the discharge permit application is being reviewed, HB244 would probably not be applicable because "B" could probably easily show a beneficial use for the well.

HB244 seeks to address a fairness issue related to discharge permit applicants. The proposed legislation does not "upset the apple cart" with respect to established legislation. It only seeks to address an issue that arises rarely, and only for a limited time window. HB244 does not put additional procedural burdens on state agencies. I urge you to move this bill through your committee.

Thank you.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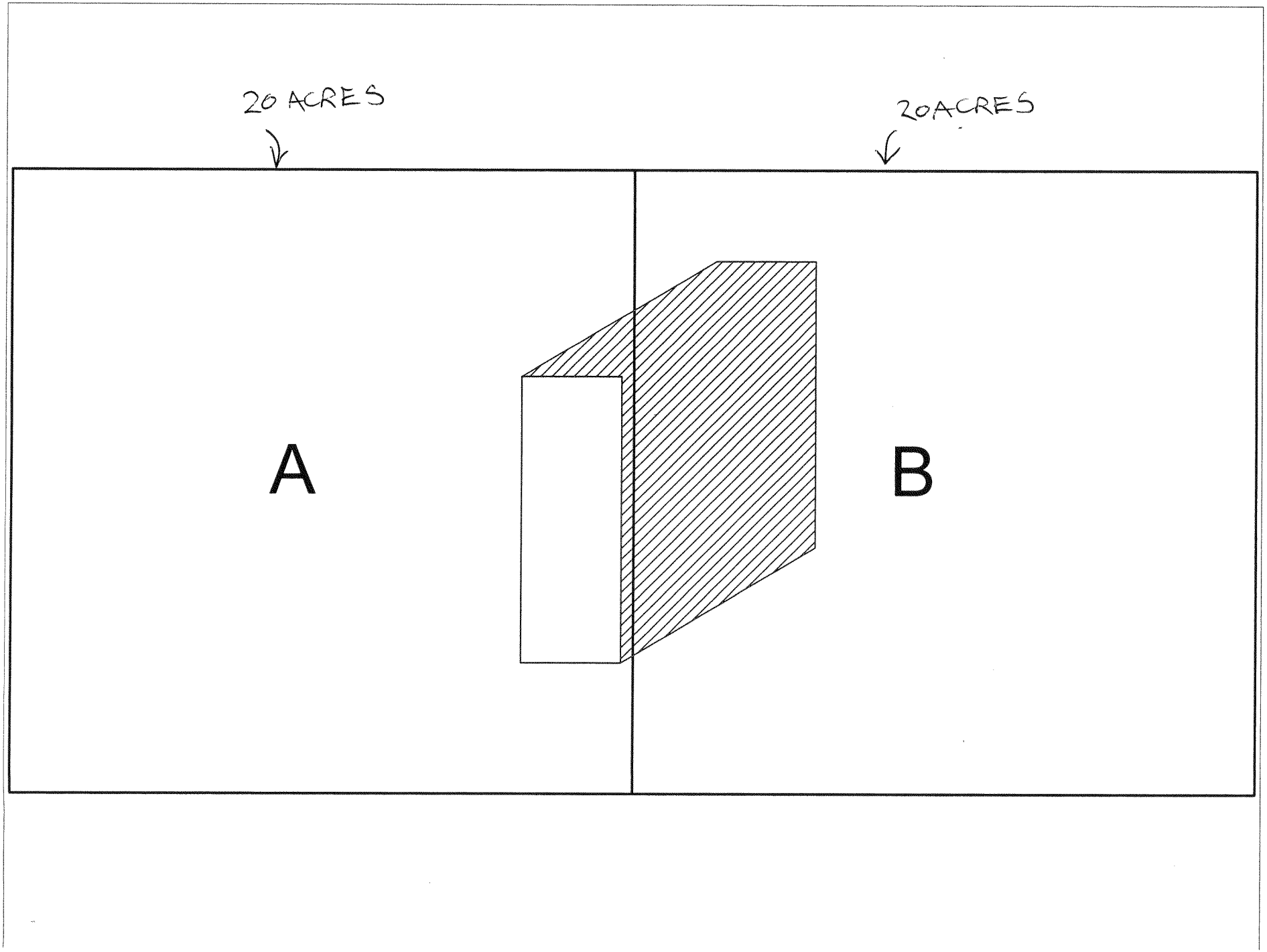
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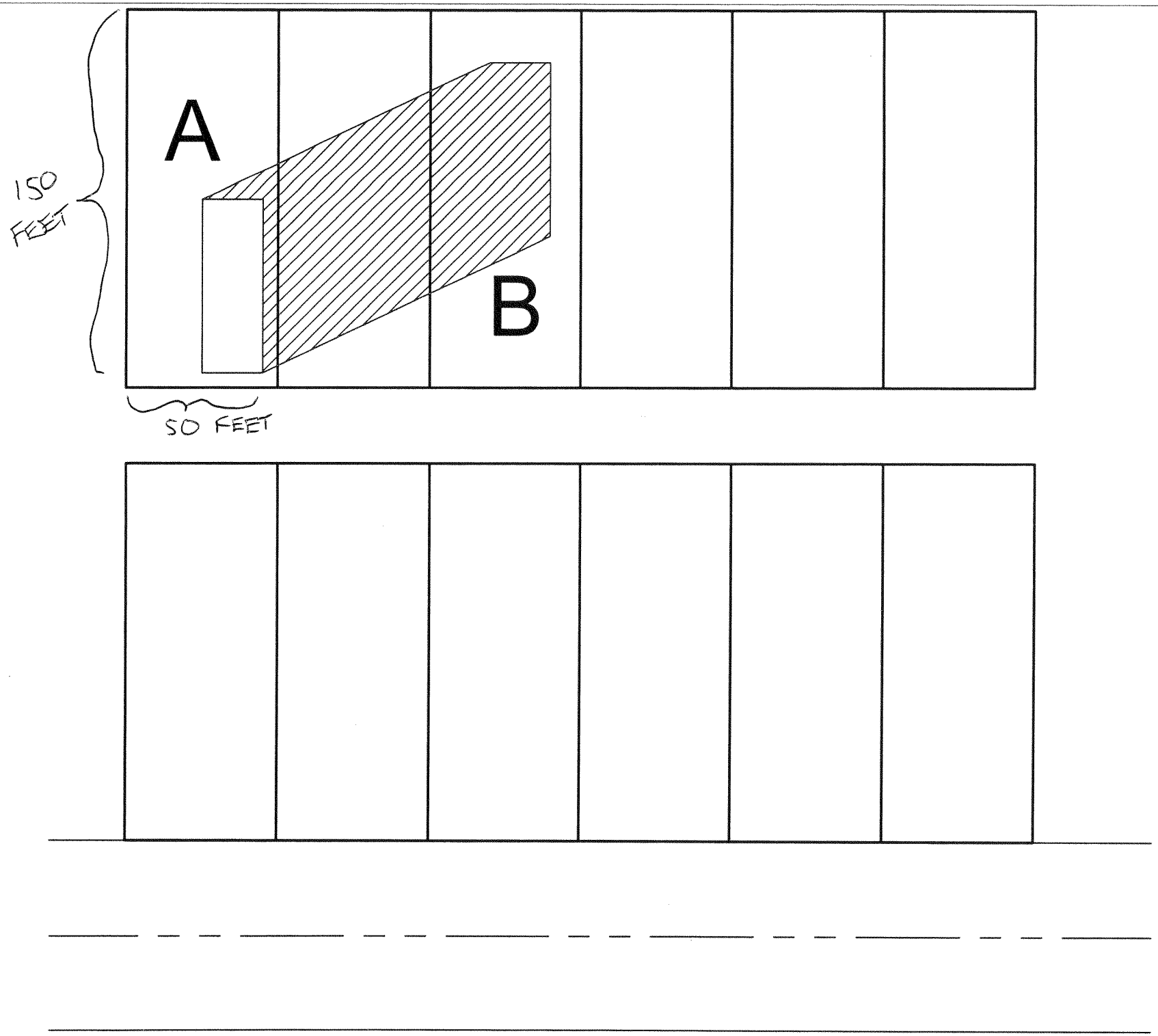
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