

Surface & Ground Water

Managing a Connected Resource



*Before the
Environmental Quality Council
March 16, 2006
Mary Sexton, Director DNRC*

Work Group Concerns

1. *Protect senior surface water rights.*
2. *Ground water appropriations in closed basins.*
3. *Increase in use of permit exemptions.*
4. *Administration of surface and ground water rights under a common listing of priorities.*



Surface & Ground water Work Group

- *First meeting July 25, 2005.*
- *Formed around volunteers from:*
 - *The Roundtable listening session;*
 - *Invited Stakeholders; and*
 - *Interests requested to participate.*
- *Eight Work Group meetings held.*
- *Numerous subcommittee work sessions.*

Work Group Membership

- *Thirty individuals*
- *Twenty organizations*
- *Open to public*
- *Approximately 60 people on distribution list*

Work Group Membership

- Montana Building Association – Michael Kakuk
- MT Association of Realtors – Glenn Oppel
- MT Water Resources Assn. – Mike Murphy
- Trout Unlimited – Stan Bradshaw, John Wilson
- MT Stockgrowers Association – Jay Bodner
- MT Rural Water – Kristi Kline, Bill O’Connell
- Montana Farm Bureau – John Youngberg
- Gallatin Irrigators – Walt Sales, Mick Seeburg

Membership (cont.)

- Montana FWP – Bill Schenk
- MACD – Steve Merritt, Sarah Carlson
- Consultant – Rick Bondy, P.E.
- MDT Wetlands – Lawrence Urban
- PPL Montana – Holly Franz, Franz & Driscoll
- Montanans for Smart Growth – Tim Davis
- MT Bureau Mines & Geology - Tom Patton
- Friends of Wild Swan – Steve Kelly

Membership (cont.)

- Montana DEQ, Subdivisions – Steve Kilbreath
- DNRC, Chief Legal Counsel – Tim Hall
- DNRC, Water Resources – Jack Stults, Admin.
- Water Rights Bureau Chief - Terri McLaughlin

Technical Support Members:

- DNRC Hydrogeologist – Bill Uthman
- DNRC Hydrogeologist – Russell Levens
- DNRC Water Rights, Bozeman – Scott Compton

Issues

- *Hardship on senior water right holders of objecting to numerous new applications.*
- *New development of ground water is limited by status quo.*
- *Presently, DNRC cannot process applications for ground water if it is "immediately or directly connected" to surface water, even if adverse effects could be mitigated.*
- *Applicants cannot now augment out of an "immediate or direct" connection.*

Issues (cont.)

- *Provide for future development by allowing use of augmentation to mitigate adverse effects and depletions to existing water rights through replacement of water, especially in closed basins.*
- *Delete "immediately or directly connected" language.*
- *Define augmentation as a beneficial use of water in the Water Use Act.*

Obtaining a New Water Right

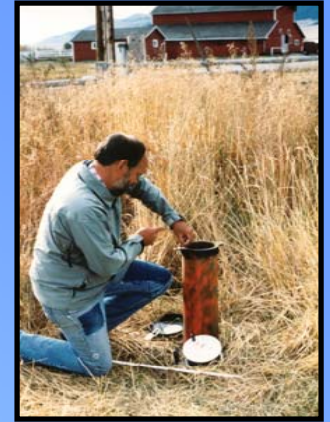
- *Apply & receive a permit from DNRC.*
- *Apply before development.*
- *Evaluate:*
 - **Project design**
 - **Adverse effect to other users, and**
 - **Legal and physical water availability**



Permit Process Exemption

Small ground water uses, that

- Withdraw less than 35 gallons per minute, &*
- Less than 10 acre-ft. / year.*



Records indicate 96,163 developments since 1973.

- 141,000 uses of which*
- 98,000 are for domestic, multiple-domestic, & lawn / garden*
- 31,400 are for stock water*

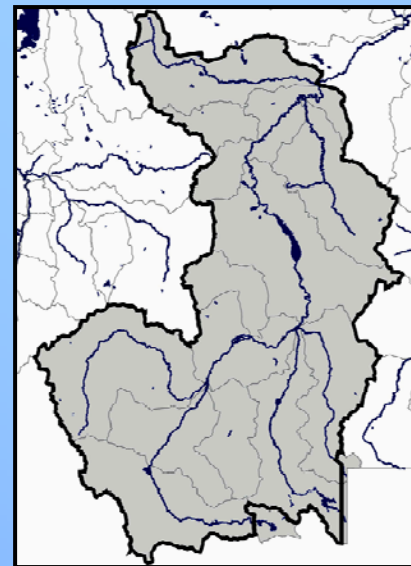


Closure Exemptions

- *Exemptions often tailored to the basin.*
- *Common exemptions include:*
 - Surface water for stock;
 - Storage of surface water;
 - Surface water domestic and municipal; and
 - Ground water.

Upper Missouri Closure

Ground water means, “*Water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water that is **not** immediately or directly connected to surface water.*”



**“Immediately or Directly Connected
to Surface Water...”**

“means ground water which, when pumped at the flow rate requested in the application and during the proposed period of diversion, induces surface water infiltration.”

ARM 36.12.101 (33)

“Induced Surface Water Infiltration...”

*“means that water being pumped
from a ground water source is
pulling surface water into the cone
of depression.”*

ARM 36.12.101 (34)

Surface & Groundwater Work Group

Recommendations

Topics Addressed

1. *Appropriation of ground water in Closed Basins*
2. *Augmentation*
3. *Changes to Basin Closure Statutes*
4. *Exemptions to permit process*
(Remains under consideration)

Appropriation of Ground Water

- 1. Allow ground water to remain open to appropriation.*
- 2. Eliminate language & test for:*
 - “Substantially connected” and “immediate or direct.”*
- 3. Recognize, as a matter of state policy...*
 - That ground water appropriations have a consumptive impact on surface water.*
- 4. Mitigate depletions to surface water.*
- 5. Ensure new ground water applications include:*
 - a. A Hydrologic Report, &*
 - b. An Augmentation Plan.*

Augmentation

1. Define augmentation as,

- a. A tool to mitigate adverse effects and depletions.*
- b. An action that increases the legal water supply.*

2. Ground Water Augmentation should,

- a. Mitigate for "adverse effects";*
- b. Mitigate surface water depletions by new use;*
- c. Address amount, location, & timing of surface water replacement; and, in closed basins,*
- d. Mitigate surface water depletions in the "affected reach."*

Changes to Basin Closure Statutes

1. Eliminate ambiguous language

(“substantially connected” and “immediate or direct”)

2. Retain existing exemptions for new surface water rights used for:

- a. Livestock;
- b. Municipalities (defined narrowly); and
- c. Storage of high spring flows.

3. Eliminate surface water exemptions for:

- a. Domestic and multiple domestic uses;
- b. “Non-consumptive” uses, **except** instream hydropower

4. Add exemption for statutorily required wetland and stream mitigation projects.

Exemptions to Permit Process

(Still under consideration)

1. Maintain existing ground water exemptions for:

- Stock water wells and springs.
- Stock water pits and ponds under 15 acre-feet in size.
- Ground water well (no springs) for domestic uses.

2. Eliminate exemptions for:

- Alluvial pits, wells to fill mirror ponds.

3. Create a new process for subdivision wells.

- Major subdivisions have permitted well (greater than 5 lots);
One well per lot, domestic use only; 35 gpm flow rate;
2 acre-feet per year; irrigation of one-quarter acre yard.
- Augmentation required to replace surface water depletions.

March 3, 2006 Report to DNRC Director.

March 16, 2006 Report to EQC



Next Steps ?

- EQC Deliberations
- Legislative Process