

## EXEMPT WELLS IMPACT ON RANCHES

WPIC MEETING IN HAMILTON, MT      JANUARY 15 & 16, 2008

### BACKGROUND:

I am BOB SIMS 1554 N Hwy 69 Boulder, Mt 59632 (406) 287-5117

My wife and I own and operate a small cow/calf ranch in Boulder Valley 10 miles north of Cardwell.

We have water rights dating back to 1881

More and more often the Boulder River goes dry in mid to late August

Jefferson drainage is a closed drainage since the State has allocated more water than is available in most years but we still have a major problem in that the State keeps giving away our water. This give away preempts even the most senior water rights.

### THE PROBLEM:

I could not decide to irrigate another quarter section on the bench since I could not get additional water rights for this land. Even if I could get water rights, they would be very junior and I would have to stop using the water as soon as anyone with more senior right objected to my use.

However, if I decide to "grow houses" on this same quarter section I can divide the area into 30 (or more) lots, drill 30 (or more) EXEMPT wells and draw more water (300 acre feet for 30 wells) out of the aquifer than if I was growing alfalfa. These EXEMPT water rights have a higher priority than even the most senior water rights held by anyone in the valley in that you can keep pumping even after every other source of water in the valley has gone dry. No one is going to demand that a homeowner stops using water.

This flaw in Montana Water Allocation Law will, sooner or later, force all of the ranchers out of business by cutting off their ability to grow forage. I know of no ranches in this area that would be economically viable without an irrigated forage base. Furthermore, this flaw encourages ranches to sub-divide as soon as possible to maximize their land value by grabbing the shrinking supply of available water before someone else gets to the limited available water, before they do. This lost of viable ranches and their replacement

by “water grab” subdivisions will have a profound impact on the quality of life in Montana, not just on the ranches but in every small town in the State.

We invited the County Commissioners from Jefferson, Madison and Broadwater Counties to come to a watershed council meeting and explain what they are doing to make sure we do not out grow our available water supply. They did! They are doing nothing and claim they can do nothing because of State laws. They claim that this is DEQ’s responsibility.

To make matters even worse, the DEQ does have some involvement in water issues related to subdivisions. This allows the County Commissions to claim that since DEQ said the water was OK for the subdivision the County Commission has no control over nor any responsibility for this water grab. Of course, as you know, all the DEQ does is try to predict if one home in the proposed subdivision can drill a well and draw at least 10 gpm for 1 hour, 6 gpm for 2 hours or 4 gpm for 4 hours. DEQ does NOT even try to determine the impact of a proposed subdivision on existing wells or other water sources or on any future wells in the area. I believe Eric Regensburger, of DEQ, discussed this with you at your Thompson Falls meeting on September 12 of last year. The fact that a proposed subdivision will put an adjacent rancher out of business by stealing his irrigation water is NOT DEQ’s concern. Nor, it appears is it the concern of anyone else in government. Something must be done, NOW.

Action must be taken at the State level before the County governments in their mindless quest for economic development and increased tax base give all the available water to the developers and realtors. Too many County Commissioners see increased tax revenue, even with the greatly increased demand for services, as increasing their power and importance. Of course, the developers, the realtors, the housing construction industry and too many retiring ranchers think this water give away is just fine. Us folks that are still trying to ranch DON’T!

#### POTENTIAL SOLUTIONS:

First, we need to get over the erroneous concept that ground water and surface water are different waters. Surface water is the only source of ground water. When you draw out ground water, surface water, from some place, must flow in to refill the aquifer or you are depleting the aquifer and “stealing” water from under your neighbors land. Most surface water is ground water at some time during its trip from rain to ocean. Believing that you can use ground water without impacting surface water is like believing drawing water from the bottom of the lake does not impact the water on the surface of the lake. To get diverted in a discussion of “how closely the ground water is connected to the surface water” as you have with the exception to issuing new water rights for some ground water is to let the problem continue to get worse. Is it OK if your well doesn’t impact the surface water until a year from now? Five years from now? Just when is the impact OK? Once you have allowed these wells and they do impact the surface water just how do you

propose we recover? You, as a group, will never have the political will to make existing houses turn off their water. You need to act before houses tap into the aquifer.

#### WHAT NEEDS TO BE DONE: SOME SUGGESTIONS

1. Limit the exempt well density to no more than one per section (this is the population density the State of Montana was, apparently, addressing when they allowed the well exemptions).
2. Require that all (major and minor) subdivisions have public water and sewer systems for which they purchase existing water rights and band the use of exempt wells in subdivisions.
3. Require that developers acquire water rights which total 35 gpm for each lot in any development and transfer these rights to the homeowners in that development. This is the same requirement Montana currently has for irrigation of crops.
4. Require that the developer provide empirical proof that all of the (exempt) wells needed to support their subdivision do not impact any other wells, other sources of water or the potential for other, future developers to develop their land and drill more 35 gpm wells in the same aquifer. Otherwise, the first land that is developed gets all the water (and value) while the neighboring land's value goes to zero since it can never be developed.
5. Limit the exempt wells per household to 1. Limit the use of water from exempt well to household use only, with NO IRRIGATION of lawns, trees, gardens, or pastures. This will not fix the problem but it will slow down the depletion of our available water by decades.

I am sure there are several other potential solutions to this problem but you must act NOW. I suggest you stop all new exempt wells until you all develop a viable, long term solution to this very serious problem.