



2023-2024 Stakeholder Working Group

FRAMING QUESTIONS

Updated August 8, 2023

This document captures the framing questions to be addressed by the 2023-2024 Comprehensive Water Review Stakeholder Working Group (SWG). These framing questions are intended to provide a basis for the SWG to engage in a broad discussion, thoroughly analyze the issues and bring forth additional information, and collectively develop recommendations. Framing questions will be updated by the SWG as needed.

FRAMING QUESTION #1: FINAL DECREES AND ROLE OF THE JUDICIARY¹

1. Starting with the work product of the 2022 Transition Working Group (SB72):
 - a. What are the lessons learned from the 2023 Legislative Session?
 - b. What modifications are needed to the work product?
 - c. What outstanding issues need to be addressed?
2. Evaluation of the WUA that have termination clauses and needed changes:
 - a. Basin closures and final decrees
 - b. Upper Missouri Basin Reservations set to expire in 2025
 - c. DNRC appeals and the Water Court, role expires in 2025

FRAMING QUESTION #2: EXEMPT WELLS, WATER PLANNING, AND GROWTH

1. What is the role of exempt wells now that the permit and change process has been overhauled? Are additional changes to the permit and change process needed to take pressure off the use of exempt wells? Why and how are people using exempt wells now and in the future? What is the continued need and use of exempt wells?
2. How are exempt wells impacting permitted uses? What are potential impacts of increased use of exempt wells.
3. How is the DNRC assessing/monitoring impact of exempt wells?
4. Combined appropriation and cumulative impacts analysis:
 - a. How and when is it applied by the DNRC?
 - b. What water right bears the burden, all water rights, or the last water right?
 - c. How are cumulative impacts evaluated temporally?
5. Can exempt wells policy be developed based on the type of use?
6. If and how mitigation should be used in the exempt well process?
7. In what situations should the full permit process, a streamlined process, or exceptions be utilized or allowed?
 - a. In what situations is a full permitting process necessary?
 - b. When would a modified/streamlined/temporary permitting process be acceptable?

¹ Revised Framing Question from the 2022 Transition Working Group

- c. When is the use of an exception appropriate and reasonable?
- 8. What changes are needed to encourage development of new large scale uses of water (e.g., subdivisions) to not use exemptions (e.g., controlled GW areas, stream depletion zones, county planning, regional water systems)?
 - a. Cost and incentives to use public water supplies?
 - b. What tools are available for new water development, growth, and security (e.g., expand service areas, perfected water rights, and groundwater reservations)?
 - c. What information is available to inform land use planning and accommodate growth while protecting existing water rights?
 - d. How does service area and municipal place of use modified SB382 chance the reliance and demand on exempt wells? How does the risk of the change process impact municipal use of exempt wells.
 - e. Regional water systems- opportunity to have a regional approach to domestic water supply.

FRAMING QUESTION #3: WATER MEASUREMENT²

1. How is water measurement, data, and analytics currently being used in water administration today?
 - a. DNRC
 - b. District court and commissioner measurement requirements
 - c. MBMG
2. What are the administrative needs and shortcomings for water measurement?
3. How does the cost of water measurement impact its use? Are there additional tools and resources that can be used (e.g., incentives, other means of measuring, public off sets)? Where does and should measurement occur (supply/use)?
4. Questions on water measure data: what database, is it consistent, is it usable, accessible by the public,
5. Are changes in water measurement requirements needed to meet growing water needs, protecting existing uses, and enforcing water rights?
6. Should water measurement requirements vary by permit type (e.g., exempt wells, mitigation, in new permits and changes)?
7. Is seepage waste/tail water or beneficial use? Measure and monitor?

² Framing Question and brought up by both 2022 Working Groups

FRAMING QUESTIONS ADDRESSED AFTER 2025

The framing questions below are proposed to be addressed after the 2025 Legislative Session. If the 2023-2024 Stakeholder Working Group has time to address these questions, they can be prioritized for work.

FRAMING QUESTION: WATER PLANNING AND GROWTH

FRAMING QUESTION: MITIGATION AND MARKETING FOR MITIGATION FRAMEWORK

1. What are the existing tools in statute, rule, or policy for mitigation, mitigation banking, and marketing for mitigation (e.g., finding willing sellers, affordable mitigation)?
 - a. How do we create incentives and make existing tools more workable?
 - b. How do we provide flexibility in the timing & location of impact to allow for greater mitigation opportunities?
 - c. Is additional flexibility in storage rules or policy needed to allow for development and mitigation (high spring flows, aquifer recharge, aquifer recharge storage and recovery)?
 - d. Does the mitigation process need to be simplified?
2. What are the lessons learned from existing mitigation projects?
3. What additional statutes, regulations, and/or policies are needed to allow for innovations? What are other solutions beyond mitigation/marketing for mitigation would help meet future water needs?
4. Should the State consider a pilot approach to exploring potential mitigation options?
5. Should the change process for potential mitigation water have a more streamlined change process?
6. If and how does monitoring and reporting need to be included?

FRAMING QUESTION: WATER DISTRIBUTION AND DISPUTES

1. How should final decree and post-1973 appropriated water be distributed?
 - a. Are additional rules, statutes and authority needed to better manage and distribute water?
2. What is the role of water commissioners? Should every basin have a water commissioner?
3. Who is responsible for water commissioner management and supervision?
 - a. To whom should water commissioners report (District Court/Agency/Other)?
 - b. How should Water commissioners be hired, trained, and managed?
 - c. How are water commissioners represented in dissatisfied water user complaints?
4. Is the current structure to train, support, and fund water commissioners adequate?
5. What additional tools are needed to support water commissioners?
6. How are water commissioners' records maintained and standardized?
 - a. Should water records be standardized?
 - b. How should they be standardized?
 - c. Who should be responsible for maintaining water commissioners' records?
 - d. Should yearly water commissioners' records be maintained locally, centrally, or both?
 - e. Should records be digitized and added to individual water right records?
7. What is the relationship between water commissioners and the District Courts? Is there a need to improve consistency?

FRAMING QUESTION: WATER COMPLAINTS AND ENFORCEMENT

1. In what circumstances do stakeholders want water enforcement? Are there certain times of the year or locations where enforcement is more efficient and beneficial?
2. Are there additional statutory or administrative remedies needed to enforce water rights?
3. Are there additional judicial remedies needed to enforce water rights?
4. Are there sufficient mechanisms to allow water users to enforce against other water users for “illegal” water use?
5. What role, if any, should water measurement and reporting serve in enforcement?

QUESTIONS DISCUSSED BY 2022 WORKING GROUPS

FRAMING QUESTION: PERMIT AND CHANGE PROCESS (ADDRESSED IN HB 114-2023 LEGISLATIVE SESSION)

1. How can the water permit and change process have more clearly defined expectations (certainty and transparency) for applicants?
2. How can the water permit and change process be more accessible, understandable, and affordable (including costs of process and opportunity costs) for applicants? Working group describe what these terms mean.

FRAMING QUESTION: FINAL DECREES

1. What is the best way for adjudicated pre-1973 rights and new permits and changes (both as certificates of water rights) to be cohesively administered?
2. Are the current statutes and rules adequate to meet that vision?
 - a. Are the current statutory provisions for corrections of mistakes and errors in final decrees adequate?
 - b. What notification process should be used?

FRAMING QUESTION: ROLE OF THE JUDICIARY

1. Are there concerns with the current post-final decree system of judicial administration of water rights? If so:
 - a. Identify concern(s);
 - b. Identify the current statutory and regulatory frameworks and tools available to address those concern(s);
 - c. Identify any additional tools or resources needed to address those concern(s);
 - d. Identify potential statutory, regulatory, and policy solutions; and,
 - e. Evaluate pros and cons of potential solutions.
2. Additional considerations for any potential statutory, regulatory, and policy solutions developed (e.g., overlapping jurisdictions, appointment of judges)?