

March 24, 2026

**Public Hearing Statement**  
**Montana Water Policy Interim Committee Meeting**

My name is Ron Rogers. My wife, Stefanie, and I live at 85 Riparian Way in Bozeman, Montana.

We purchased our home in 2022 with the intention of caring for Stefanie's elderly mother, bringing her into our home so we could provide daily support and ensure her well-being. At the time of purchase, we believed, based on all available information, that the property had valid and secure water rights.

In 2024, my mother-in-law passed away. In 2025, I was diagnosed with a rare and incurable cancer. As a result, in February 2026, we made the difficult decision to put our home on the market so that we could relocate closer to a specialized cancer center with expertise in treating my condition.

It was only then that we first learned of the exempt water rights issue.

We had two qualified buyers prepared to move forward. However, as documented by our listing broker, both walked away due to uncertainty about water rights and the inability to secure mortgage financing for a property without clear, recognized water rights (**see attached PDF**).

We did everything we were supposed to do. We relied on the information available to us and followed the rules in good faith. Now, we are being asked to bear the consequences of a regulatory shift that we could not have anticipated and had no role in creating.

This is not just a policy issue; it is a human one. It affects families making responsible decisions, caring for loved ones, and, in our case, seeking access to life-saving medical care.

I respectfully ask that you consider the real people behind this issue and take action to ensure that homeowners are not penalized for relying on the State's own guidance.

Thank you for your time and consideration.

Sincerely,  
Ron Rogers



Joy Vance, CEO and Broker  
The Agency Bozeman & Big Sky  
9 E Main Street, Suite E  
Bozeman, MT 59715  
JoyVance@TheAgencyRE.com  
(406)241-1921

Date: March 22, 2026

To Whom It May Concern,

I am a licensed real estate broker in the State of Montana and the listing agent for the property located at 85 Riparian Way, owned by Ron Rogers and Stefanie Snow. I am writing to provide a professional account of the impact the current uncertainty surrounding exempt wells and water rights is having on this property's marketability and value.

The home at 85 Riparian Way is a completed residential property with a well that was drilled in October of 2021, and the property has been continuously occupied and served by that well since 2022. At the time of construction and occupancy, the use of an exempt well was consistent with standard practice and understanding within the local real estate and development community.

The property was listed for sale on February 23, 2026. Since that time, I have personally engaged with multiple prospective buyers, including two qualified parties who expressed strong interest and intent to submit offers. In both instances, after conducting due diligence and learning of the uncertainty related to the ability to secure or confirm water rights due to the ongoing DNRC matter, these buyers chose not to proceed.

From a professional real estate perspective, this is a clear and direct indicator that the current situation is materially affecting buyer confidence and willingness to transact. The issue is not with the property itself, but with the perceived and actual risk associated with future water rights.

In addition, I have observed increasing concern among buyers regarding the potential challenges in obtaining financing for properties within subdivisions affected by this issue. While lending policies may vary and I cannot definitively speak for all institutions, the perception of financing uncertainty alone has contributed to hesitation in the marketplace. Based on my experience and active involvement in this transaction, it is my professional opinion that the property is currently experiencing a measurable loss in marketability and value as a direct result of the uncertainty surrounding water rights. Properties that would otherwise be considered desirable and marketable are being overlooked due to this issue.

This situation is not theoretical, it is actively impacting real buyers, real transactions, and real property owners. In this case, it has directly prevented the sellers from entering into contract despite demonstrated demand.

I respectfully submit this statement to provide the Court with a real-world perspective of how the current regulatory uncertainty is affecting homeowners and the residential real estate market in affected areas.

Please feel free to contact me if additional information or clarification would be helpful.

Sincerely,  
Joy Vance  
Licensed Real Estate Broker  
The Agency

Dear Members of the Water Policy Interim Committee,

We represent the homeowners of Red Fox Meadows Prestige and wish to address the revocation and denial of water rights impacting residents in the Prestige at Red Fox Meadows subdivision. We appreciate the Committee's willingness to consider legislative reforms to Montana's water policy, including models informed by Idaho's recent efforts to modernize water administration.

Our request is straightforward: any changes to Montana law must include enforceable statutory timelines for DNRC to process water right determinations and notify affected property owners. The current system permits indefinite delay, which has caused real harm to families who built and occupied homes in good faith—only to be notified years later that legally valid water rights were not in place.

This is not merely an administrative inconvenience. It is a due process and governmental overreach issue. When a state agency can delay or withhold determinations indefinitely, yet later invalidate homeowners' access to water long after irreversible financial and life decisions have been made, the balance of power shifts unfairly against private citizens. Regulatory authority without timely notice or decision-making undermines basic procedural protections and public trust.

DNRC has stated in public meetings that its timelines are "the best we can," and that the Department is often unaware of developments until the tap is turned on. Respectfully, this does not align with how subdivisions move through Montana's regulatory pipeline. DNRC participates in subdivision review processes and tracks groundwater development; the information exists earlier than the point of beneficial use. The Department retained possession of the permits for a minimum of eighteen months in some cases, and potentially for a longer duration in the Red Fox Prestige subdivision. The problem is not lack of awareness—it is the absence of a legal duty to act within a defined timeframe.

We urge the Committee to include the following in any legislative proposal:

1. **A statutory 30-day determination requirement.**

DNRC should be required to issue a water availability or combined-appropriation determination within 30 days of receiving a complete application or subdivision-related water review request. If additional staffing is necessary to meet this standard, that is an internal operational matter for the Department to resolve—not a justification for placing homeowners in indefinite regulatory limbo.

2. **Provisional approvals subject to later mitigation.**

Where DNRC cannot complete full technical review within the statutory timeframe, the law should require provisional approvals that allow development to proceed, subject to later mitigation or conditions if adverse impacts to senior rights are identified. This approach preserves DNRC's authority to protect senior water rights while preventing families and HOAs from being trapped for years without a decision.

3. **Early alignment of water rights review with subdivision approval.**

DNRC review should occur before final subdivision approvals, not after homes are built

and occupied. This change would prevent the current “build now, find out later” trap that exposes families to *catastrophic financial risk* after the purchase of property.

4. **Grandfathering of the subdivisions already harmed by DNRC’s prior decision-making process.**

We respectfully request that any legislation explicitly grandfather the twelve subdivisions currently affected by DNRC’s reinterpretation and recent court-driven changes, and that water rights be granted to existing homeowners in those subdivisions. These families relied on approvals and regulatory practices in place at the time of subdivision and home construction. Rewriting the rules after the fact and retroactively stripping access to water imposes severe and inequitable harm on innocent homeowners.

Additionally, DNRC’s current interpretation reveals a substantive weakness in the administrative rules themselves: nowhere in the Administrative Rules of Montana is there language stating that the redivision of an already-platted subdivision “resets the clock” for purposes of combined appropriation or exempt well treatment. In the case of Red Fox Meadows Prestige, this raises a legitimate legal question as to whether DNRC’s application of newer interpretations to later replatting is even supported by existing rule text. While we believe this issue is legally contestable, our preference is to avoid protracted and costly litigation. A narrowly tailored legislative grandfathering provision would resolve this issue equitably, efficiently, and without burdening the courts.

These reforms do not weaken Montana’s prior appropriation doctrine, do not diminish protections for senior water right holders, and do not erode environmental safeguards. They simply require timely, transparent government action, prevent retroactive harm, and restore predictability for families, lenders, developers, counties, and the State alike.

Montanans should not bear the consequences of regulatory delay and shifting interpretations that they neither caused nor could reasonably foresee. We respectfully ask the Committee to ensure that any legislative reforms include clear statutory timelines, provisional approvals with later mitigation, and explicit grandfathering of the subdivisions already harmed by DNRC’s recent reinterpretations. The consequences of this action have significantly impacted and caused *considerable distress* to the residents of Prestige area in Red Fox Meadows.

Thank you for your consideration and for your work on this complex and consequential issue.

Sincerely,



On behalf of Red Fox Meadows Prestige Homeowners

Jan Miller      Eric & Victoria Taylor

ANTHONY      Timothy P. Shanks

Laurie Rodriguez      James Kleinsasser



## WPIC 3-26-26 agenda topics. Comments.

### Exempt Groundwater Wells

Thoughts and questions on Stakeholder policy options: The De Minimis Exception to the Permit Process (2027)

#### 1. Exceptions:

If the goal of making changes to the Exempt Wells policy is to conserve more water inside Control Ground Water Area (CWGA) boundaries why has the stakeholder policy group only made changes to how water is used, not how much water is allotted ? (with the exception of more than 160 acres inside CWGA boundaries being cut in half for stock water.)

The DNRC water calculation guide says .28 AF are sufficient for a household. Why did the stakeholder group not reduce inside CWGA boundaries to <20 Ac parcel=up to .28 AF per tract and >20 Ac parcel=up to .5 AF?

I have no issues with xeriscaping instead of green lawns in areas that can not support them naturally. However, I think people must be allowed to have a food sustenance garden, even if this means watering. Look at our current situation of on going foreign wars, rising oil prices, producer inputs rising, persistent inflation. You can make a law that people can't water their vegetable gardens to feed their families but no one will follow it.

If some kind of Outside and Inside boundaries of CWGA definitions for water become law, all new tracts created under the Inside CWGA boundary authority should require a statement in their tract deed stating they are governed by water permitting rules for Inside CWGA boundaries.

The Idaho guests at your January meeting noted grumbling from their "new rule" land owners about "old rule" properties that had irrigated green lawns. A statement of CWGA inside boundaries requirements in a deed would help minimize lawsuits about water requirements before sale of tracts.

The issue of Accessory Dwelling Units and guest homes will need to be addressed. Will ADU be allowed inside CWGA boundary areas? If so, do they share the water limit of the existing household?

### Shared wells

When the stakeholder policy says all shared wells must stay within the volume of the exception, does that mean two households using one well combine their .5 AF allotment for the well to product 1 AF total? Or do they split the .5 AF between two households? What happens if a new household on the same street wants to "share" the existing well?

Sharing sounds sensible but also raise a lot of questions.

### Limit on Cumulative Impacts of the Exception

What the stakeholder policy group states here makes no sense because they have not quantified “a tract of record.” A tract could be 1 Ac or 100 Ac. Hopefully, the stakeholder presentation will clarify this better.

### 4. Metering, reporting, and enforcement.

I support requiring metering on all future exempt wells. The state needs to be able to determine water use versus water availability to make any useful future assumptions. It will take many years before sufficient data is collected to be useful but we must start now.

It is important that metering is a data collection metric not a punishment metric. Make compliance of reporting metering numbers user friendly and bureaucracy light. No increase in DNRC workforce should be necessary. Simple periodic consumer email reporting, like co-op electric meter billings used to be. Presume people are innocent not guilty. Metering should be for data collection on aquifer supply /size not possible government penalties and punishment.

Consider requiring well meter installation on pre-metering law wells when these homes/properties change ownership (sell) in the future. This will take many years but every new datapoint builds a better state wide water picture for us.

At previous WPIC meetings a well drilling specialist stated that submerged water meters fail because of corrosion in MT water. It would make sense to require the newer out of water electronic meters be used. Broken meters give broken data.

Please consider making legislation on well metering a separate bill from Exempt Wells. Striving to get a grip on what Montana water assets and usage are is too important to get dragged down and left by the wayside in the controversial Exempt Wells conversation.

### 5. Grandfathering

Yes please help these people.

### HJ 74 Study: Water Reuse and Storage.

I fully support a fixed state fund for repairing, upgrading and building new water storage facilities if such a fund does not already exist. This work is the lifeline that help us through dry times, continues research, and brings forth solutions.

Thank you for your continuing work searching for solutions toward water security for Montanans.

Sincerely,

Ann Hallowell

PO Box 1445, Livingston, MT 59047

# MEMORANDUM

**Date:** March 24, 2026  
**To:** Water Policy Interim Committee  
**From:** Russ Radliff & Dave Baldwin, Water Rights Specialist, HydroSolutions  
**Subject:** Response to Proposed De Minimis Exception Framework

---

## Overview

This memorandum provides comments, questions, and suggested clarifications regarding the proposed de minimis exception framework for exempt wells. The information below corresponds to numbered sections in the De Minimis Exception to Permit Process 3/5/2026 and provides additional considerations.

## 1. Exception

### Volume Allocations

The framework is unclear regarding whether volume allocations are tied to an existing tract of record or to parcels created after subdivision. If the intent is to allocate water based on the original tract of record, this should be explicitly stated to prevent misinterpretation. If the intent is to allocate volumes upon subdivision, the language should clearly reflect that.

For example, the framework could state: “A parcel less than 20 acres that is proposed for subdivision shall be allocated up to 0.5 acre-feet per tract of record...”

The framework appears to apply to post-October 17, 2014, parcels and tracts; however, the term “tract of record” requires a clear definition. While a related concept is referenced under Limit the Cumulative Impacts of the Exception (page 2) as “a tract of record is defined at first filing to DNRC,” it is unclear whether “first filing” refers specifically to filings associated with this exception process or to preexisting post-October 17, 2014, tracts. This distinction should be clarified.

Additionally, language should be added to cap total volume of the parcel being subdivided at 10 acre-feet.

### Mitigation Without a Permitting Process

The concept of mitigation outside the permitting process requires further explanation. It appears this provision is primarily intended to address uses beyond in-home domestic and stock water (e.g., lawn and garden irrigation); however, this is not explicitly stated.

The framework should clarify how such mitigation would be accomplished. Potential examples may include:

- Mitigation already approved through a Marketing for Mitigation change authorization
- Use of DNRC-approved mitigation plans that do not require a change authorization (e.g., Bureau of Reclamation water, mitigation banks, or mitigation trusts)

Additionally, the framework should explicitly require a review of existing mitigation rules to ensure consistency and feasibility.

### Shared Wells

The reference to shared wells requires clarification. Shared wells are already permissible under existing law, and it is unclear whether the framework proposes new requirements or modifications. The framework should specify whether any changes are intended or whether this provision simply reaffirms current practice.

### Limit the Cumulative Impacts of the Exception

The term “First Filing” is not defined and introduces ambiguity. It is presumed that this refers to the filing of a Notice of Completion of Groundwater Development (DNRC Form 602). If so, this term should be included to ensure consistent interpretation and application.

Further clarification is also needed regarding:

- The allowable limits for parcels greater than 20 acres, and
- How the referenced cap of up to 80 lots is applied within the allocation framework.

## **2. Protecting Over-Appropriated Areas (Controlled Groundwater Areas)**

With respect to the creation of Controlled Groundwater Areas (CGWAs), the framework should require that DNRC base its designations on sound scientific evidence, including field-based data collection and analysis such as aquifer testing and monitoring. Reliance solely on predictive modeling should be avoided to improve accuracy and confidence in regulatory decisions.

In addition, the Department should:

- Consult with the Montana Bureau of Mines and Geology (MBMG), and
- Provide opportunities for public input during the designation process.

## **3. Promoting Municipal Tie-In and High-Density Development**

The framework should specify that within an existing municipal or county water and sewer district, no new exceptions are allowed where water is both legally and physically available.

Consideration should also be given to whether availability must be at a “practical cost,” and if so, that term must be clearly defined.

Additionally, the framework should clarify:

- What triggers the requirement to offset approved exceptions, and
- What occurs if mitigation or municipal connection is not available.

## 4. Metering, Reporting, and Enforcement

The proposed metering, reporting, and enforcement provisions would significantly increase administrative workload. The framework should acknowledge that DNRC may need additional staffing or resources, including the use of outside consultants, to implement these requirements effectively.

## 5. Grandfathering

The framework should provide greater clarity regarding grandfathered developments. Specifically, it should include a list of subdivisions previously identified by DNRC as “Limbo Subdivisions.” This would reduce uncertainty and provide more equitable treatment for affected landowners.

## Additional Considerations

### Phased Development Definition

The framework should consider including a definition of “Phased Development” consistent with the HCH decision.

### Volume Standards

The framework should ensure consistency with existing administrative rules, particularly ARM 36.12.115 (Volume Standards). Any new allocation framework should align with these standards.

### Effects of Controlled Groundwater Areas Implementation

Given current conditions, implementation of new CGWAs is not recommended at this time. Effective mitigation water is not readily available in many basins, and establishing CGWAs would restrict exempt well development while significantly increasing demand for mitigation water. This creates a supply-demand imbalance with no clear resolution.

If CGWAs are to be implemented, the framework must first ensure:

- Accessible and functional mitigation markets, and
- Additional legal and administrative pathways for securing mitigation water.

While legislation could be considered to encourage water right holders to make mitigation water available for marketing, mandatory conversion or involuntary abandonment of water rights raises significant policy concerns and may not be appropriate

## Conclusion

The proposed framework is an important step toward clarifying limitations on the use of exempt wells. However, key terms, processes, and implementation mechanisms require further refinement to ensure the framework is sound, consistent, and equitable. Addressing the issues outlined above will improve both the clarity and effectiveness of the proposal.

It is critical that any legislation adopted regarding exempt wells avoid ambiguous language that could lead to misinterpretation. The statutory language should be precise, comprehensive, and clearly convey legislative intent. Absent this level of clarity, there is a significant risk of

inconsistent interpretation by state agencies, which will likely result in continued legal challenges and the need for additional legislative action in the future.