

May,11,2026 Legislative Concept  
Modifying the Permit Process to Permit De Minimis Uses  
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**GOALS:**

1. Streamline permitting for efficient permitting of de minimis uses of groundwater.
2. Safeguard the existing legal demands of water rights on the state water supply, as well as the projected legal demands of water rights.
3. Ensure all uses of water rights are equally enforceable rights and are enfolded into the adjudication process and in compliance with constitution.

**BILL CONCEPTS:**

1. Ensure that § 85-2-311, MCA allows for efficient, effective permitting for those de minimis uses in areas where sufficient water (physically and legally) is available and there is no adverse effect on a senior water right.
  - Utilize closed basins to determine where there is a presumption that water is available. In areas outside of closed basins, a presumption of a de minimis use is available for de minimis uses, which shall be defined by a quantitative and qualitative value and by being singular, small uses and not for combined appropriations from the same source.
  - Allow for objections so that these permits are treated similar to other water rights in the prior appropriation adjudication and administration.
  - Clarify all enforcement so that all water users know that these permits can be included in any admeasure and distribution by water commissioners or other water rights enforcement.
2. Ensure that §§ 85-2-311 and 85-2-360 MCA allow for efficient, effective permitting for combined appropriations and amend all statutes to ensure that the homeowners that purchase lots have adequate and enforceable water rights.
  - Ensure that mitigation and a robust water market are available for those areas that are already over appropriated in any way to allow for development.
    - Mitigation
    - Water storage
    - Water markets
    - Continuing to streamline the change of use process
  - Continue to allow for objections so that these permits will be treated similarly to other water rights in the prior appropriation adjudication and administration.

- No prioritization of uses.
  - Clarify all enforcement statutes so that all water users know that these permits should be included in any admeasure, supervision, administration and distribution of water rights.
  - Provide incentives for senior water rights holders to engage in change of use process for mitigation.
3. Incentivize the extension of municipal or other water distribution systems to incentivize efficient use of water.
  4. Provide a process to assist those subdivisions that fell into the illegal use of water definition by law so these systems can be permitted and have a legally enforceable water right.

### **WHY THIS TYPE OF FIX**

- Certificates for exempt wells that are given without notice, due process and/or ability for other water rights holders to object are absolute evidence of the unconstitutionality of exempt wells because only after final decree will all other (surface and ground water permits) have certificates. And exempt wells seem to have a water certificate that is not enforceable and outside the adjudication.
- Enforcement of exempt wells both to protect the exempt well use and also by those who have senior water rights seems practically and legally impossible.
  - Legally, based on § 85-2-311, MCA there is valid legal question whether one can enforce exempt wells because these are not included in the water rights decrees resulting from adjudication.
- If those who rely on exempt wells for development and invest hundreds of thousands and sometimes millions of dollars are building without an unenforceable property right, modifying the law so that home builders can use permitting will solve this issue.
- Fixing permitting would keep all water uses to be supervised, administered and distributed within the prior appropriation doctrine and allow for the responsible beneficial of water and legal solutions during times when there is not enough water.