

January 27, 2026

Senate Resources and Environment Committee

Statehouse

Boise, ID 83702

Re: SB 1222

Dear Chairman and Members of Committee:

My name is Bruce Smith. I live in Boise. I want to bring to your attention certain issues related to SB 1222 which seeks to amend provisions contained in SB1803, which was enacted in 2025. The two bills combine to change laws related to domestic wells and water rights. As acknowledged in committee hearings in 2025, these changes are huge- they change water laws that have been in place for decades. , Given their scope and complexity, the bills could be described as a 7.5 earthquake. As such, they demand much greater scrutiny than has been provided thus far.

Domestic water right issues have been around for as long as domestic water rights themselves. The bills immediately bring to mind Representative Dell Raybould's counsel a few years ago regarding these issues. A few years ago, in response to the governor's questions about the subject of domestic wells and water rights, Representative Raybould advised "a domestic well costs about \$50 a foot, but they are worth four votes. I suggest not kicking a sleeping dog." It appears because of these bills the dog is not only awake but now finds he has broken ribs. It is not an understatement that these bills reflect a policy choice that punishes those needing a domestic water right rather than focusing on those who may be abusing their water rights.

Things have changed since the adoption of SB1803 last year. The complexity of the changes resulting from the bills is confirmed by the fact the IDWR has had to issue 17 pages of instructions that try to interpret and implement last year's bill. (A copy of the IDWR's instructions is attached.) Fortunately, there is now some history and information for the committee to consider as it looks to amending the changes enacted through SB1803.

A couple of examples to consider:

No provision is more unreasonable than the restriction that a domestic right can only be used in the house. While the bills retain the 13,000 gallons/day authorization in the definition of a domestic right, this is undermined by limiting the use to only in house. The original 13,000 gallon authorization was based on the possibility for one half- acre of irrigation. Now, watering a tomato plant in your back yard is illegal and requires mitigation- despite no one explaining how that tomato plant impacts the ESPA or anywhere else. Viewed differently, if you are given a \$1,000,000.00 but can only spend it in five cent increments on every third Sunday in odd number months and not for clothes, food, rent, or other

necessities, the \$1000.000.00 is a façade. The absolute restriction on outside the house use is by definition and implementation unreasonable.

Similarly, since the ESPA boundary has been extended to the Montana line, domestic water right holders in areas such as Island Park have no options for their tomato plant since there is no determination of injury and no mitigation is even available. Someone needs to explain this assumption of injury and how anyone could mitigate even if there was an injury.

In the 2025 hearing on SB1803, there was testimony that these bills were actually about "parity"-i.e., if certain users can be curtailed, domestic right holders should be as well. This suggests an alternative motive behind the drastic changes to domestic water rights. This is an incorrect explanation of parity. If there is \$100 in damages and one party is responsible for 99.99 % of the impact, parity does not mean the party causing .01% of the impact has to pay fifty percent of the damages or be treated the same way especially when there are alternative, less punitive measures available.

These changes to long-established water rights are huge. They carry long term and substantial impacts to the state's economy and domestic water users. The necessity for 17 pages of interpretation and explanation by IDWR is an indicator of potential problems. It would seem prudent for the committee to table SB1222 and schedule additional hearings so the committee can ask detailed questions and actually understand these issues. The committee should require IDWR and others to appear and address these matters. After that, the Committee can proceed with reasonable amendments that fix the identified concerns.

Thank you,

Bruce Smith

208-805-0133

This Guidance Document is not new law but is an agency interpretation of existing law. For more information or to provide input on the document, please contact the Water Right Section Manager at 208-287-4800.

ADMINISTRATOR'S MEMORANDUM

Application Processing No. 80
Adjudication No. 62

To: Water Allocation Bureau and Regional Offices
From: James R. Cefalo JRC
RE: Guidance for Implementing Revised Statutes for Domestic Uses
Date: June 25, 2025

On March 20, 2025, Governor Little signed Senate Bill 1083a, which, among other things, revises certain statutes dealing with ground water wells and domestic uses. The legislation becomes effective on July 1, 2025. This memo summarizes some of the revised statutes and provides guidance to Department staff in determining when a water user is required to complete the statutory permitting and licensing process ("permit process") to establish a water right for a new water use starting on or after July 1, 2025, and when a proposed use is exempt from the permit process.¹ Senate Bill 1083a revised several statutes dealing with domestic uses, shared wells, and subdivisions, including statutes outside of the Department's purview. This memo only addresses the revisions to Idaho Code §§ 42-111 and 42-227.

Because certain domestic uses do not require a water user to complete the permit process prior to diversion and use, the Department does not have an opportunity to review such uses through an application for permit evaluation. The primary role of Department staff related to domestic use is to answer customer questions about when a property owner is required to complete the permit process. To ensure Department staff are providing accurate information and responses to inquiries are consistent across the state, the Department has developed this guidance memorandum to assist staff in responding to inquiries about domestic uses. This memo sets forth several fact scenarios, a decision table (Appendix A), and flow charts (Appendix B) to help Department staff respond to such inquiries.

¹ The permit process involves filing an application for permit, obtaining an approved permit, developing the authorized beneficial use, and filing a statement of completion for proof of beneficial use. Once proof of beneficial use is filed, the Department conducts a licensing review and issues a final water right license confirming the extent of beneficial use developed under the permit.

As revised by Senate Bill 1083a, Idaho Code § 42-111 states:

42-111. DOMESTIC PURPOSES DEFINED.

(1) For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243, and 42-1401A, Idaho Code:

(a) The phrase "domestic purposes" or "domestic uses" means:

(i) The use of water for homes, organization camps, public campgrounds, livestock, and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use does not exceed thirteen thousand (13,000) gallons per day; or

(ii) The use of water for any other purpose, if the total use does not exceed a diversion volume of two and eight-tenths (2.8) acre feet per year.

(b) "Domestic purposes" or "domestic uses" shall not include water for the following purposes, unless the use meets the diversion rate and volume limitations set forth in paragraph (a) of this subsection:

(i) Mobile home parks or recreational vehicle parks;

(ii) Apartments, condominiums, and similar developments with multiple dwelling units;

(iii) Except as provided in subsection (3) of this section, subdivisions, as defined in chapter 13, title 50, Idaho Code; or

(iv) Commercial or business establishments or mixed-use establishments where the water is used primarily for commercial or business purposes.

(2) Except as provided in subsection (3) of this section, multiple water rights for domestic uses or domestic purposes shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section. The purpose of this limitation is to prohibit the diversion and use of water, under a combination of domestic purposes or domestic uses as defined in this section, to provide a supply of water for a use that does not meet the exemption of section 42-227, Idaho Code, and is required to comply with the mandatory application and permit process for developing a right to the use of water pursuant to chapter 2, title 42, Idaho Code.

(3) Multiple water rights for domestic purposes or uses may be established and exercised from the same point or points of diversion if the use is limited to residential, in-home use. This subsection does not affect any other permitting

requirement or other requirement that may apply to the use of water within a subdivision. For the purposes of this section, the term "in-home use" means the utilization of water within a residence or household, including all activities that require water, such as drinking, cooking, bathing, and cleaning within and around the household. It does not include irrigation of lawns, gardens, landscaping, pastures, or other open spaces.

As revised by Senate Bill 1083a, Idaho Code § 42-227 states:

42-227. DRILLING AND USE OF WELLS FOR DOMESTIC PURPOSES EXCEPTED.

(1) Except as provided in subsection (4) of this section, excavation and opening of wells and the withdrawal of water therefrom for domestic purposes or uses as defined in section 42-111, Idaho Code, shall not be subject to permit requirements under section 42-229, Idaho Code. Rights to ground water for such domestic purposes may be acquired by withdrawal and use.

(2) Wells and withdrawal devices for domestic purposes or uses shall be subject to inspection by the department of water resources and the department of environmental quality.

(3) Well drillers shall be licensed pursuant to the licensing provisions of section 42-238, Idaho Code.

(4) For purposes of new diversions within subdivisions, as defined in chapter 13, title 50, Idaho Code, in any area where the director of the department of water resources has issued a moratorium order on the development of new water rights or has designated a critical ground water area or ground water management area, an application for permit, pursuant to section 42-229, Idaho Code, shall be required for the diversion of water for any new domestic purposes or uses, as defined in section 42-111, Idaho Code, other than for in-home uses, as defined in section 42-111, Idaho Code, or watering livestock.

Domestic Exemption – General Principles

For most beneficial uses, prior to diverting and using water in Idaho, a person must acquire or establish a water right authorizing such use. See Idaho Code § 42-201. IDWR administers the statutory permitting and licensing process for establishing new water rights. See Idaho Code § 42-202. Idaho Code § 42-227 states that, with some exceptions, the diversion of water from a ground water well for domestic purposes does not require a water user to go through the permitting process. Instead, water rights for domestic purposes may be established by withdrawal and use. Idaho Code § 42-111 defines the term "domestic purposes." Therefore, Idaho Code §§ 42-111 and 42-227 work together to designate certain domestic uses of ground water that may occur

without a recorded water right.² This combined effect of Idaho Code §§ 42-111 and 42-227 is commonly referred to as the “domestic exemption” because qualifying diversions are exempt from needing a recorded water right.

Senate Bill 1083a did not change the basic elements of the standard domestic exemption. Idaho Code § 42-111(1)(a)(i) confirms that the term “domestic purposes” still includes water for homes, organization camps, public campgrounds, livestock and any other purposes in connection with those uses, including irrigation of up to ½ acre of land, as long as the total use does not exceed 13,000 gallons per day.

Idaho Code § 42-111(1)(a)(ii) now states that the term “domestic purposes” also includes the use of water for any purpose, other than those set forth in Idaho Code § 42-111(1)(a)(i), if the total use does not exceed 2.8 acre-feet per year. This constitutes a slight expansion of the domestic exemption. Prior to Senate Bill 1083a, this part of Idaho Code § 42-111 limited other types of domestic use to 2,500 gallons per day and 0.04 cubic feet per second (approximately 18 gallons per minute). Now, the domestic exemption is available to uses that exceed these limits, as long as the total diversion does not exceed 2.8 acre-feet per year (approximately 912,000 gallons per year). Therefore, uses that have a high daily or instantaneous water demand, but an annual water demand of less than 2.8 acre-feet, may now qualify for the domestic exemption.

It is important to note that the phrases “domestic uses” or “domestic purposes” can be misleading. There is a common misconception that domestic use must be associated with a home or some type of culinary use. However, the definition of domestic purposes in Idaho Code § 42-111(1)(a)(i) includes campgrounds and stock watering. Also, as noted in Idaho Code § 42-111(1)(a)(ii), domestic use can be for “any other purpose.” Therefore, the domestic exemption described in Idaho Code § 42-111(1)(a)(ii) may include water diverted for uses like dust abatement, cleaning, humidifiers, industrial applications, mining exploration, etc. There is no limit on what water may be used for under Idaho Code § 42-111(1)(a)(ii), as long as the total use does not exceed 2.8 acre-feet per year.

Revised Quantity Restrictions

Idaho Code § 42-111(1)(b) states that the term “domestic purposes” does not include water for mobile home parks, RV parks, apartments, condominiums, developments with multiple dwelling units, business establishments, or commercial establishments unless the total use meets the diversion rate and volume limitations³ set forth in Idaho Code § 42-111(1)(a). Section 42-111(1)(a) does not include a rate limitation but does include a daily volume limitation (13,000 gallons per day) and an annual volume limitation (2.8

² The term “recorded water right” means a permit, license, or decree.

³ The term “diversion rate and volume limitations” appears to be carried over from the previous version of the statute by mistake, as there is no rate limitation described in Section 42-111(1)(a) of the revised statute. The Department is aware of interest in amending this portion of the statute to remove the reference to a rate limitation and for Section 42-111(1)(b) to only refer to the annual volume limit described in Section 42-111(1)(a)(ii).

acre-feet per year). If a water user proposes to divert water for any of the uses listed in Idaho Code § 42-111(1)(b), and the proposed use would exceed either 13,000 gallons per day or 2.8 acre-feet per year, the water user must apply for a permit or otherwise acquire a recorded water right for the full proposed use.⁴

Subdivisions

Idaho Code § 42-227 states that if a proposed domestic use is (1) within a subdivision as defined in Chapter 13, Title 50, and (2) within an area where ground water development is restricted (moratorium area, GWMA, CGWA), the domestic exemption is limited to in-home use. If a property owner intends to use ground water for irrigation of lawn, garden, landscaping, etc., the property owner must obtain a recorded water right authorizing such use.

The term "subdivision" is defined in Idaho Code § 50-1301(18) as follows:

A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of this definition.

For purposes of applying Idaho Code §§ 42-111 and 42-227, if Department staff receive an inquiry about whether a city or county has adopted a different definition of the term "subdivision," Department staff should refer the customer to the city or county planning department.

Common Wells

Previously, Idaho Code § 42-111 stated that the term "domestic purposes" did not include water diverted from a common well for multiple ownership subdivisions. This meant that two homes on separately owned parcels served by a common well could not each qualify as a distinct exempt domestic use. This restriction has been removed from the statute. Now, exempt domestic uses may be developed on multiple, separately owned parcels served by a common well. There are, however, restrictions on such exempt domestic uses.

⁴ Idaho Code § 42-111(1)(a) includes two volume limits: 13,000 gallons per day (subsection (1)(a)(i)) and 2.8 acre-feet per year (subsection (1)(a)(ii)). The Department is aware of interest in amending this section so that the uses described in Idaho Code § 42-111(1)(b) would only be limited to 2.8 acre-feet per year. Until the statute is revised, Department staff should apply the statute as adopted. This means that the uses listed in Section 42-111(1)(b) would need to satisfy both volume limits found in Section 42-111(1)(a) to qualify under the domestic exemption.

acre-feet per year). If a water user proposes to divert water for any of the uses listed in Idaho Code § 42-111(1)(b), and the proposed use would exceed either 13,000 gallons per day or 2.8 acre-feet per year, the water user must apply for a permit or otherwise acquire a recorded water right for the full proposed use.⁴

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For purposes of applying Idaho Code §§ 42-111 and 42-227, if Department staff receive an inquiry about whether a city or county has adopted a different definition of the term “subdivision,” Department staff should refer the customer to the city or county planning department.

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Idaho Code § 42-111(3) states: "*Multiple water rights for domestic purposes or uses may be established and exercised from the same point or points of diversion if the use is limited to residential, in-home use.*" (emphasis added). When determining whether multiple water rights for domestic purposes are being diverted from the same well, Department staff should rely on the definition of domestic purposes or domestic uses in Idaho Code § 42-111(1), rather than the beneficial use listed on the face of a water right. A recorded water right that authorizes the beneficial use of "domestic" does not necessarily satisfy the definition of "domestic purposes."

There is a difference between the beneficial use "domestic," and the terms "domestic uses" and "domestic purposes" set forth in Idaho Code § 42-111. As noted in the opening sentence of Idaho Code § 42-111, the definition of domestic uses and domestic purposes only applies to Idaho Code §§ 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243, and 42-1401A. It does not necessarily apply to Idaho Code § 42-203A, which describes the process for acquiring a new water right.

There are many water rights in Idaho that list domestic as an authorized beneficial use, where the authorized use does not satisfy the definition of domestic purposes set forth in Idaho Code § 42-111. For example, a fifty-lot subdivision may hold a water right for domestic use, which allows for in-home use and outside irrigation, all occurring under the domestic beneficial use. This type of domestic use does not satisfy the definition of domestic purposes set forth in Idaho Code § 42-111.

Therefore, when applying Idaho Code § 42-111(3), Department staff should only consider exempt domestic uses. If an exempt domestic use has been developed from a well, any additional exempt domestic uses from the same well would be limited to in-home use. If the only water diverted from a well is diverted pursuant to a recorded water right, regardless of the authorized use, then one exempt domestic use may be developed from the same well, without violating the restriction on multiple exempt water rights set forth in Idaho Code § 42-111. Once an exempt domestic use has been developed from a well, however, all future exempt domestic uses from the same well would be limited to in-home use.

It is now possible for multiple homes on separately owned parcels to divert water under a single domestic exemption. Because the language about multiple ownership subdivisions has been removed from Idaho Code § 42-111, separately owned parcels can now be supplied water under a single domestic exemption. Idaho Code § 42-111(1)(a)(i) states that the use of water for homes meets the definition of domestic purposes as long as the total use does not exceed 13,000 gallons per day and ½ acre of irrigation. Therefore, two or more homes on separately owned parcels could divert water from a common well for domestic use under a single domestic exemption as long as the total combined use for all of the homes does not exceed 13,000 gallons per day and ½ acre of combined irrigation.

Prohibition on Stacking Domestic Exemptions

Idaho Code § 42-111 continues to prohibit the stacking of domestic exemptions to satisfy a single combined water use that would exceed the thresholds for an exempt domestic use. Drilling multiple ground water wells on a single parcel of land does not create separate exempt domestic uses for each well. A property owner may develop multiple wells on their property, but the property owner may only develop a single exempt domestic use from the wells. When the ground water use on the property exceeds the limits established in Idaho Code § 42-111, a recorded water right is required.

Applying Amended Domestic Use Laws to Common Fact Scenarios

As stated above, because exempt domestic uses do not require a water right, the Department does not have an opportunity to review such uses through an application for permit evaluation. Department staff are often asked to answer customer questions about the domestic exemption and about when the exemption applies. To ensure that Department staff are providing accurate information and that responses to inquiries are consistent across the state, staff are encouraged to review and understand the following scenarios and to use the decision table (Appendix A) and flowcharts (Appendix B) to respond to customer inquiries.

Scenario 1: Sunbeam Subdivision is in Jefferson County, which is within the Amended Snake River Moratorium area. The subdivision plat was approved in 2015 for 100 lots, each lot encompassing one acre of land. The developer expected each lot owner to drill their own individual domestic well and develop their own domestic use and corresponding water right. As of July 1, 2025, homes had been constructed on half of the lots in the subdivision. On August 1, 2025, Curry drills a domestic well for a home on his lot in the subdivision. Curry intends to irrigate ½ acre of landscaping from his domestic well. Does Curry's proposed use require a recorded water right?

Response 1: Curry's proposed well site is in a subdivision and is within an area with restrictions on ground water development. Pursuant to Idaho Code § 42-227(4), Curry may divert water for domestic use from the well without applying for a water right. The exempt domestic use, however, would be limited to in-home use and stockwater. Any diversion of water from the Curry well for irrigation would negate the exemption and trigger the requirement to apply for a water right or otherwise obtain a water right.⁵

Scenario 2: Williams owns a 50-acre tract of land in Bingham County, which is within the Amended Snake River Moratorium area. Williams proposes to drill a well for domestic use on her property and intends to irrigate ½ acre of landscaping. Does Williams' proposed use require a recorded water right?

⁵ The Department is aware of interest in revising Section 42-227 to allow property owners in subdivisions existing prior to July 1, 2025, to irrigate up to ½ acre in conjunction with their in-home use under the domestic exemption. If the statute is amended, this memo will be updated to reflect the change. Until the laws are changed, Department staff should administer the statute as adopted.

Response 2: Even though Williams' property is within an area with restrictions on new ground water development, her property is not in a subdivision, as that term is defined in Idaho Code § 50-1301(18). Therefore, Williams may divert water from her well for domestic purposes without applying for a water right. Consistent with Idaho Code § 42-111(1)(a)(i), the exempt domestic use would be limited to 13,000 gpd and no more than ½ acre of irrigation. Any use beyond those limits would require a recorded water right.

Scenario 3: Crosby owns a property in Cassia County, which is within the Amended Snake River Moratorium area. The property includes a home and a domestic well that were constructed in 1958. There is no recorded water right associated with the 1958 domestic use. Crosby diverts 1,000 gallons per day on average and irrigates 0.3 acres from his domestic well. Crosby's daughter, Vonn purchases an adjacent property and wants to build a home and connect to Crosby's domestic well. The property owned by Vonn is not in a subdivision. Does Vonn's proposed use require a recorded water right?

Response 3: Even though Vonn's property is within an area with restrictions on ground water development, her property is not in a subdivision, so the in-home restriction set forth in Idaho Code § 42-227(4) would not apply. Idaho Code § 42-111(1)(a)(i) states that the term "domestic purposes" includes the use of water for homes. This allows a single domestic exemption to cover more than one home. The language about multiple ownership subdivisions has been removed from Idaho Code § 42-111, so the term "homes" may now include homes on separately owned parcels. The combined domestic use for Crosby and Vonn could qualify as an exempt use, as long as the combined domestic use on their properties does not exceed 13,000 gallons per day or ½ acre of irrigation. Vonn would be able to irrigate 0.2 acres around her home and divert a volume of water, in combination with Crosby, that does not exceed 13,000 gallons per day. In theory, even more homes could be connected to the Crosby well under an exempt domestic use, without a recorded water right, as long as (1) none of the homes are in a subdivision and (2) the combined domestic use for all of the homes from the Crosby well is less than 13,000 gallons per day and no more than ½ acre is irrigated from the well.

Scenario 4: Moonbeam Subdivision is in Butte County, which is within the Amended Snake River Moratorium area. The twenty lots in Moonbeam Subdivision are supplied water from a common well. Moonbeam Homeowners Association holds a water right license which authorizes the diversion of 0.15 cfs for domestic use at twenty homes. Wilson, who owns a parcel adjacent to Moonbeam Subdivision, but outside of the subdivision, wants to connect a newly constructed home on her property to the Moonbeam community well. Wilson's parcel is not in a subdivision. Wilson proposes to use water for ¼ acre of landscaping. Does Wilson's proposed use require a recorded water right?

Response 4: Even though Wilson's property is within an area with restrictions on ground water development, her property is not in a subdivision, so the in-home restriction set forth in Idaho Code § 42-227(4) would not apply. Idaho Code § 42-111(1)(b)(iii) states that, for purposes of that section, the term "domestic uses" does not

include water for subdivisions, unless the use is limited to in-home use. The water diverted from the Moonbeam Well for Wilson will not be used for a subdivision. Therefore, the restrictions stated in Idaho Code §§ 42-111(1)(b)(iii) and 42-111(3) do not apply to Wilson's use of water from the Moonbeam well. Wilson would be able to divert water for domestic purposes under Idaho Code § 42-111(1)(a)(i), without a water right, up to 13,000 gpd and up to ½ acre of irrigation. Wilson would be the first exempt domestic use diverted from the Moonbeam Well. Therefore, any future exempt domestic uses from the well would be limited to in-home use, consistent with Idaho Code § 42-111(3).

Scenario 5: Starlight Subdivision in Valley County is comprised of thirty 2.0-acre lots. The Department has not imposed any restrictions on ground water development in Valley County. Rodman owns a lot in Starlight Subdivision and proposes to drill an individual domestic well to serve one home on her property and to irrigate ¼ acre around the home. Does Rodman's proposed use require a recorded water right?

Response 5: Idaho Code § 42-111(1)(b)(iii) states that, for purposes of that section, the term "domestic purposes" does not include water for subdivisions, unless the use is limited to in-home use. The water diverted from the Rodman well will not be used for a subdivision. Rather, the water would only be used for one home, the home on Rodman's property. Therefore, the restrictions stated in Idaho Code §§ 42-111(1)(b)(iii) and 42-111(3) do not apply to Rodman's well. Further, because Valley County is not in an area with restrictions on ground water development, the in-home limitation set forth in Idaho Code § 42-227(4) would not apply to Rodman's well. Rodman would be able to divert water for domestic purposes under Idaho Code § 42-111(1)(a)(i), without filing an application for a water right, up to 13,000 gpd and up to ½ acre of irrigation.

Scenario 6: Comet Subdivision in Boundary County is comprised of ten 1.0-acre lots. The Department has not imposed any restrictions on ground water development in Boundary County. Comet Subdivision is supplied with water from a common well. Comet Subdivision's HOA holds a water right license which authorizes the diversion of 0.12 cfs for nine lots and allows up to ½ acre of irrigation per lot. When the water right was originally developed in 2007, Comet Subdivision was made up of only nine lots. Sometime after the water right was licensed, the subdivision was revised and now contains ten lots. There are ten homes connected to the Comet well. Does the additional home connected to the Comet system require a recorded water right? Is the additional home limited to in-home use?

Response 6: This scenario is similar to scenario 4, except that in this scenario the additional home is within the subdivision. Even though the additional lot is in a subdivision, it is not within an area with restrictions on ground water development. Therefore, the in-home limitation set forth in Idaho Code § 42-227(4) would not apply to the additional home. However, under Idaho Code §§ 42-111(1)(b)(iii) and 42-111(3), the domestic exemption does not include water for subdivisions unless the use is limited to in-home use. Therefore, if the owner of the additional home does not use water for outside irrigation, they can continue to divert water from the Comet system under the

domestic exemption without filing an application for a water right. If, however, the owner of the additional home uses water from the Comet system for irrigation, the irrigation use must be authorized by a recorded water right. Because Boundary County does not have any restrictions on ground water development, it may be possible for the lot owner to simply acquire a new water right for in-home domestic and irrigation use.

Scenario 7: Galaxy Subdivision is a recently approved ten-lot subdivision in Franklin County, which is within the Bear River GWMA. The developer proposes to provide water to the lots from a community well. One of the lot owners, McDavid, proposes to irrigate his property from an individual domestic well on his property. McDavid assures the Department that he will not divert more than 2.8 acre-feet per year from the well. Does Galaxy Subdivision need a water right to supply water for in-home use for the ten homes in the subdivision? Does McDavid's proposed use for irrigation around his home require a recorded water right?

Response 7: Pursuant to Idaho Code § 42-111(1)(b)(iii), the term "domestic purposes" may include subdivisions as long as the use is limited to in-home use. Further, Idaho Code § 42-111(3) states multiple domestic exempt uses may be developed from the same well if the use is only for in-home use. Therefore, the developer of Galaxy Subdivision does not need a recorded water right to provide water for in-home use to the ten lots in the subdivision. Each lot owner would develop their own unrecorded, exempt domestic use at the time they connect to the system and begin to use water. McDavid's proposal to divert water for irrigation use from a separate domestic well on his lot without filing for a water right is not consistent with the law. Because McDavid's property is in a subdivision and is within an area with restrictions on ground water development, the only exempt use that can be developed from a well on McDavid's lot is water for in-home domestic use or stockwater. Furthermore, establishing a second exempt domestic water right on McDavid's property would be inconsistent with the Idaho Code § 42-111(2) prohibition on stacking multiple exempt water rights. If McDavid intends to irrigate from a well on his property, he would need to obtain a ground water right for irrigation use prior to diversion.

Scenario 8: Morgan owns a ten-acre parcel in Bear Lake County, which is within the Bear River GWMA. Morgan wants to develop an RV park which will include rows of trees between the RV sites, a shower and laundry facility, and a large common area with irrigated lawn. Morgan cannot afford to purchase and move an existing ground water right, so she proposes to drill a well for domestic purposes under the domestic exemption. Does Morgan's proposed use require a recorded water right?

Response 8: Pursuant to Idaho Code § 42-111(1)(b), the term "domestic purposes" does not include RV parks unless the total use meets the diversion rate and volume limitations set forth in Idaho Code § 42-111(1)(a). That subsection includes multiple volume limitations. Subsection (1)(a)(i) describes a volume limit of 13,000 gallons per day. Subsection (1)(a)(ii) describes a volume limit of 2.8 acre-feet per year. Idaho

Code § 42-111(1)(b) is somewhat ambiguous.⁶ It is not clear whether both the 13,000 gpd and the 2.8 acre-feet per year limitations should apply. Section 42-111(1)(b) uses the term “limitations” which suggests that there is more than one limitation. In the absence of clear language to exclude the 13,000 gpd limitation, the Department should apply both volume limitations to the domestic use on Morgan’s property. If Morgan intends to divert under the domestic exemption, without a water right, she would be limited to 13,000 gpd and 2.8 acre-feet per year for all uses from the domestic well. If her proposed use exceeds those limits, Morgan must obtain a recorded water right prior to diversion.

Scenario 9: Quasar Subdivision is a thirty-lot subdivision located in the City of Pocatello, which is within the ESPA GWMA. Quasar Subdivision has been fully built out for fifty years. A home has been constructed on every subdivision lot. All homes are supplied with water for inside and outside use from the City of Pocatello municipal system. Sanders owns a lot in Quasar Subdivision and is no longer interested in paying the city water rate for his outdoor uses. Sanders proposes to construct an individual domestic well on his property to water his lawn and trees. Does Sanders’ proposed use require a water right?

Response 9: Sanders proposed use would require a water right. Because Sanders property is in a subdivision and within an area with restrictions on ground water development, pursuant to Idaho Code § 42-227(4), the only exempt use from the Sanders well would be in-home domestic use. Any other use, including irrigation, would require a recorded water right prior to diversion.

Scenario 10: Pedri owns a 20-acre tract of land in Bingham County, which is within the Amended Snake River Moratorium area. There is no home on Pedri’s land. Pedri proposes to drill a well for stockwater use and intends to irrigate up to ½ acre of pasture grass around the stockwater trough. Does Pedri’s proposed use require a recorded water right?

Response 10: Pursuant to Idaho Code § 42-111(1)(a)(i), the phrase “domestic use” includes water for livestock, including irrigation of up to ½ acre of land. Pedri’s property is not in a subdivision. Therefore, Pedri may divert water from the well for stockwater and up to ½ acre of irrigation, as long as the total use does not exceed 13,000 gallons per day. If the proposed use exceeds 13,000 gallons per day or ½ acre of irrigation, Pedri must obtain a water right.

Scenario 11: Neptune Subdivision is a twenty-lot subdivision in Twin Falls County, which is within the Amended Snake River Moratorium area. The original developer for Neptune Subdivision intended for each lot owner to drill their own domestic well and develop their own exempt domestic use. Bellingham owns a lot in the subdivision. Because he is aware of the changes to the domestic laws, Bellingham hires a well drilling company to construct a well on his property on June 30, 2025, one day prior to

⁶ As noted above, the Department is aware of interest in amending Idaho Code § 42-111(1)(b) to only refer to the volume limit set forth in Idaho Code § 42-111(1)(a)(ii) (2.8 acre-feet per year).

the change in statute. Bellingham does not construct a home on the property until May 2026 and does not use any water from the well until the home is constructed. Bellingham plans on using water from the well for in-home domestic use and to irrigate ¼ acre of landscaping around his home. Does Bellingham's proposed use require a recorded water right?

Response 11: Bellingham's well is in a subdivision and is within an area with restrictions on ground water development. The fact that Bellingham's well was constructed on June 30, 2025, is of no consequence. An exempt domestic use is developed the day the water begins to be beneficially used. Although Bellingham's well was constructed prior to July 1, 2025, his domestic use was not established until May 2026. Pursuant to Idaho Code § 42-227(4), Bellingham may divert water for domestic use from the well without applying for a water right. The exempt domestic use, however, would be limited to in-home use and stockwater. Any diversion of water from the Bellingham well for irrigation would negate the exemption and trigger the requirement to apply for a water right or otherwise obtain a water right.⁷

⁷ As noted above, the Department is aware of interest in revising Section 42-227 to allow property owners in subdivisions existing prior to July 1, 2025, to irrigate up to ½ acre in conjunction with their in-home use under the domestic exemption. If the statute is amended, this memo will be updated to reflect the change. Until the laws are changed, Department staff should administer the statute as adopted.

APPENDIX A

DOMESTIC EXEMPTION DECISION TABLE

Application of the domestic exemption after updates to
Idaho Code §§ 42-111 and 42-227, as of July 1, 2025.

DOMESTIC EXEMPTION DECISION TABLE

AFTER JULY 1, 2025

Within "Regulated Area" ¹	Shared Well(s) - No				Shared Well(s) - Yes			
	Not in a Subdivision ²		Use is within a Subdivision		Not in a Subdivision		Use is within a Subdivision	
	"In-home use" &/or domestic irrigation	In-home use ³ only	Domestic Irrigation ⁴ included	In-home use only	In-home use only	Domestic Irrigation included	In-home use only	Domestic Irrigation included
No	Exempt⁵ 42-111(1)(a), 42-227(1)	Exempt 42-111(1)(a), 42-227(1)	Exempt 42-111(1)(a), 42-227(1)	Exempt 42-111(3)	Permit required if collective use exceeds 1/2 acre of irrigation or diversion of more than 13,000 gpd. 42-111(a)(i)	Exempt 42-111(b)(iii), 42-111(3)	Permit Required 42-111(1)(b)(iii), 42-111(3)	
Yes	Exempt 42-111(1)(a), 42-227(1)	Exempt 42-227(4)	Permit Required⁶ 42-227(4)	Exempt 42-227	Permit required if collective use exceeds 1/2 acre of irrigation or diversion of more than 13,000 gpd. 42-111(a)(i)	Exempt 42-227	Permit Required 42-111(1)(b)(iii), 42-111(3), 42-227(4)	

¹ **Regulated Area** - An area where the Director of the Department of Water Resources ("IDWR") has issued a moratorium order on the development of new water rights or has designated a critical ground water area or ground water management area.

² **Subdivision** - Idaho Code § 50-1301(18) defines "subdivision" as "[a] tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development"

³ **In-home use** - Pursuant to Idaho Code § 42-111(3) the term "in-home use" means the utilization of water within a residence or house hold, including all activities that require water, such as drinking, cooking, bathing, and cleaning within and around the household. It does not include irrigation of lawns, gardens, landscaping, pastures, or other open spaces.

⁴ **Domestic Irrigation** - Total irrigation use does not exceed 1/2 acre. Pursuant to Section 42-111(1)(a)(i), the phrase "domestic use" includes water for livestock, including irrigation of up to 1/2 acre of land. This means use could include stockwater with up to 1/2 acre of irrigation even if there is no home on the property.

⁵ **Exempt** - A water right permit is not required to diver and use water.

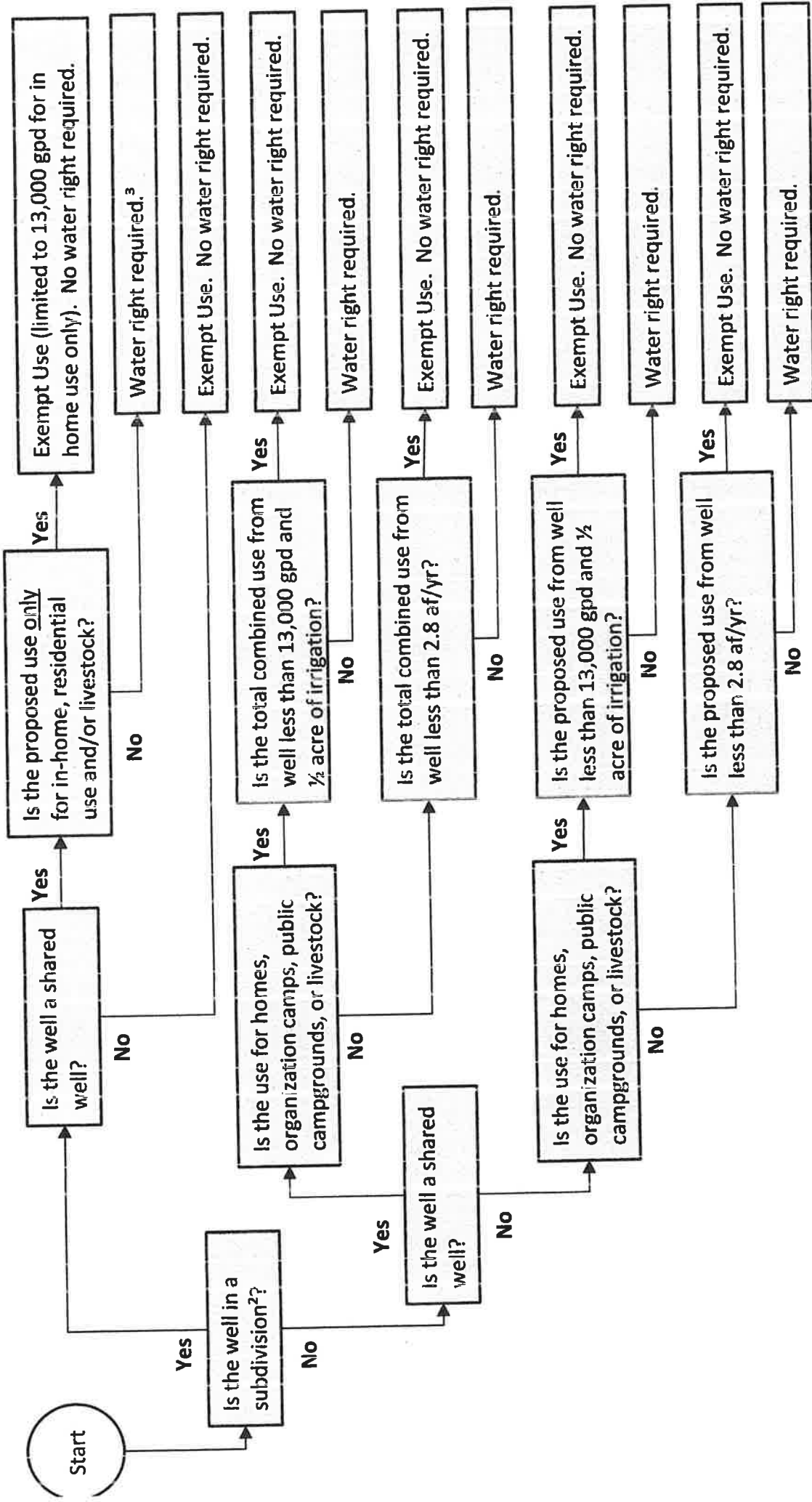
⁶ **Permit Required** - A water right permit issued by IDWR is required to divert and use water.

APPENDIX B

DOMESTIC EXEMPTION FLOW CHART

Application of the domestic exemption after updates to
Idaho Code §§ 42-111 and 42-227, as of July 1, 2025

Domestic Exemption Flow Chart for Areas Not Under GW Regulation¹

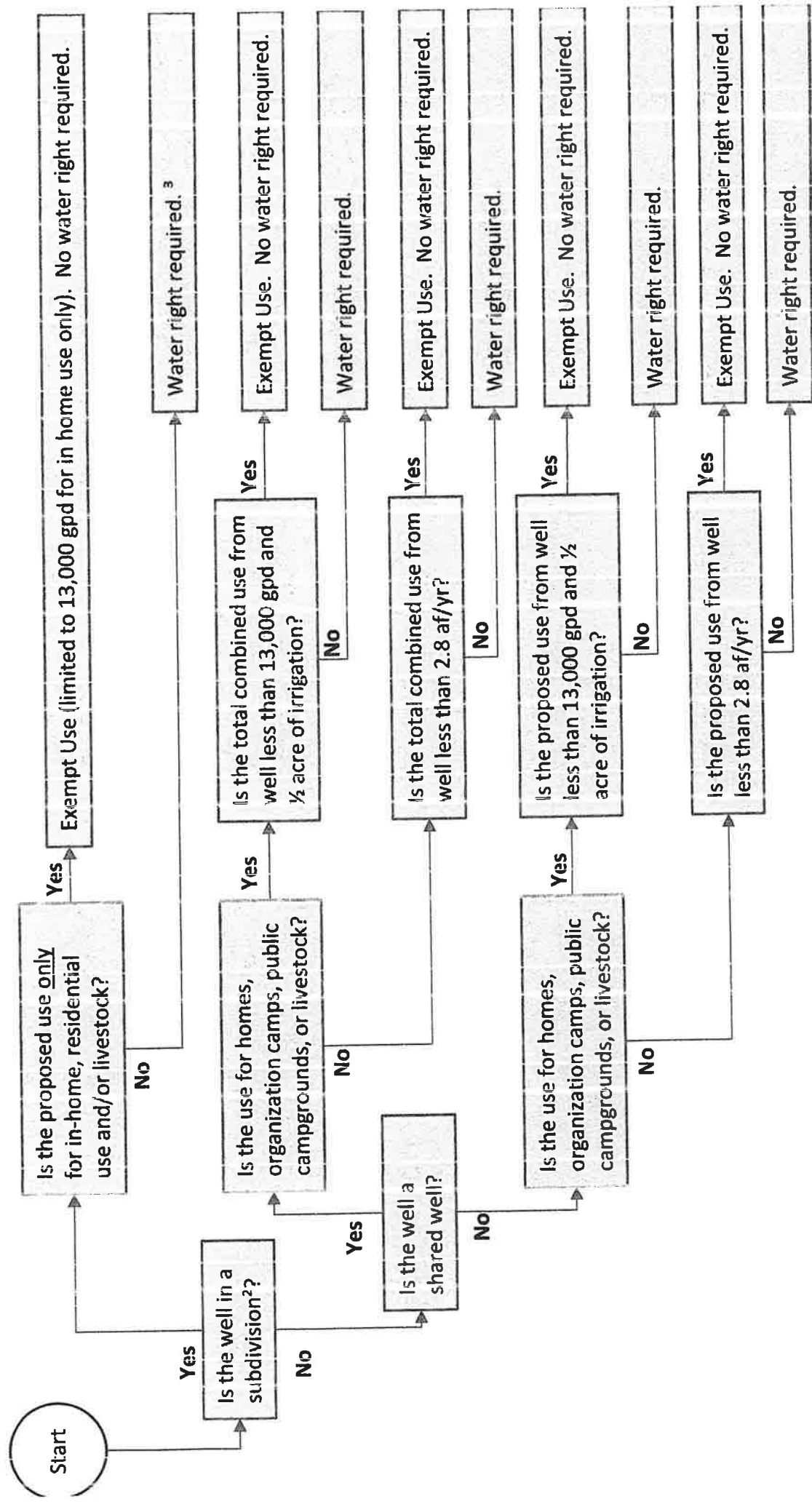


¹ **Areas Under GW Regulation** - An area where the director of the department of water resources has issued a moratorium order on the development of new water rights or has designated a critical ground water area or ground water management area.

² **Subdivision** - Idaho Code § 50-1301(18) defines "subdivision" as "[a] tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development"

³ **Water Right Required** - Obtain a new water right or transfer an existing water right. Applications for Permit will require mitigation for new consumptive uses such as irrigation.

Domestic Exemption Flow Chart for Areas Under GW Regulation¹



¹ **Areas Under GW Regulation** - An area where the director of the department of water resources has issued a moratorium order on the development of new water rights or has designated a critical ground water area or ground water management area.
² **Subdivision** - Idaho Code § 50-1301(18) defines "subdivision" as "[a] tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development"
³ **Water Right Required** - Obtain a new water right or transfer an existing water right. Applications for Permit will require mitigation for new consumptive uses such as irrigation.