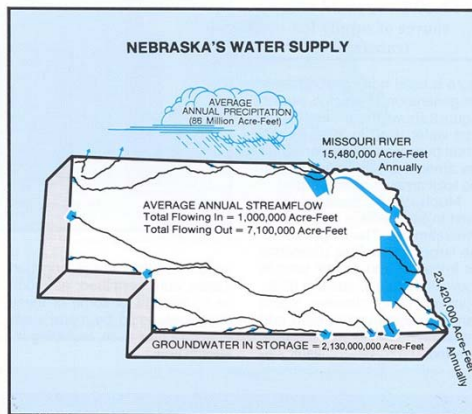


# Ground Water Management.

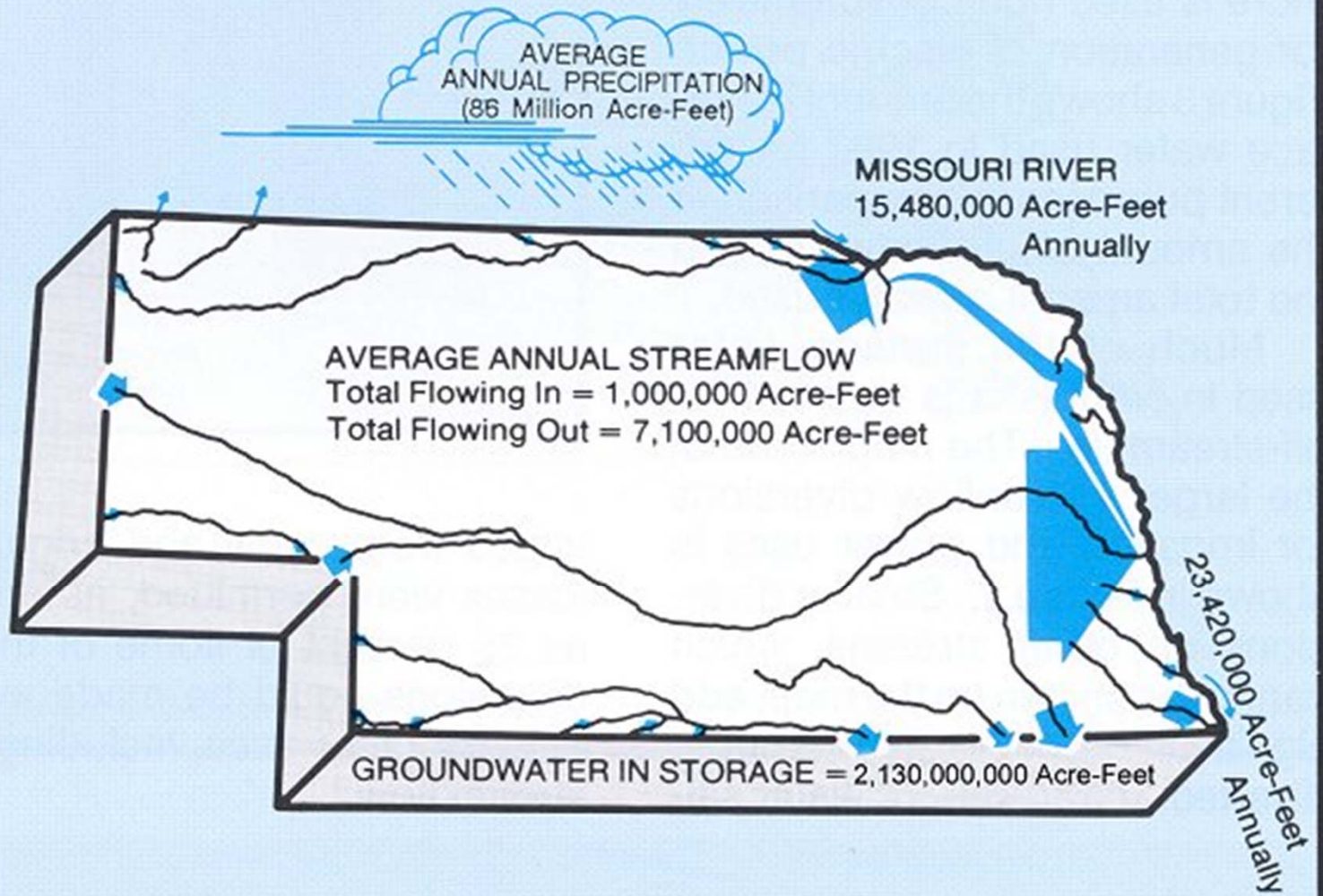
## Who? What? Where? Why?

### GWM Act *Neb Rev Stat* § 46-706



(2) **Ground water** means that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land...

# NEBRASKA'S WATER SUPPLY





# What Is The Law Now?

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- Who owns the water?
- Who owns the right to use it?
- What regulations restrict Irrigation in the LENRD?
- What is proposed for LENRD?

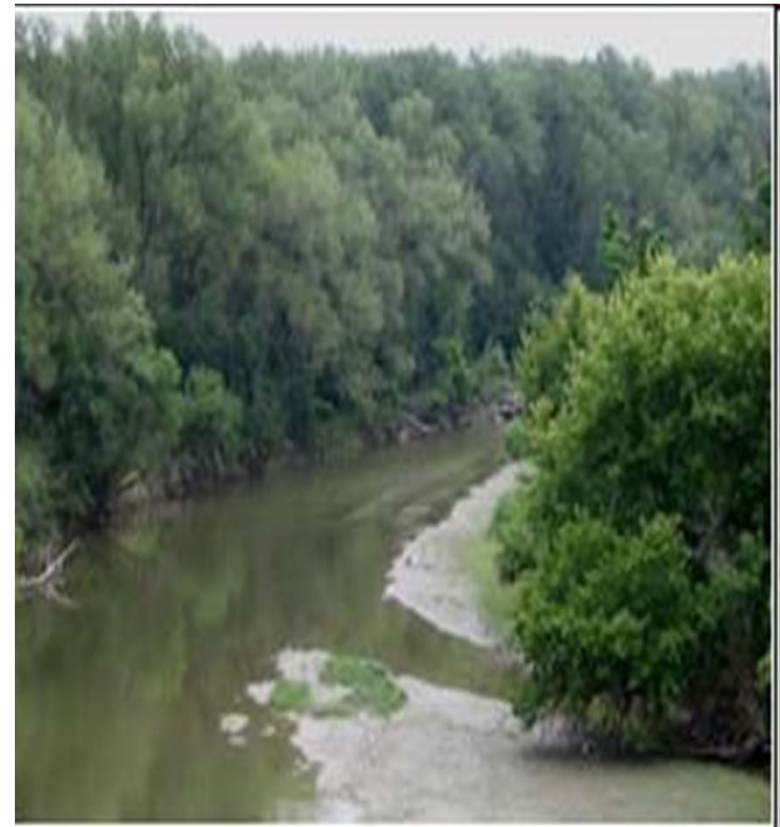


# What is Brewing?

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- What Can be Done to Protect Allocations?
- What Management Tools Can Resolve Well Conflicts without Costly Meters or Excessive Regulations?
- What are the limits of NRD power?
- Are things worse if the State steps in?

# The Water Belongs to the People





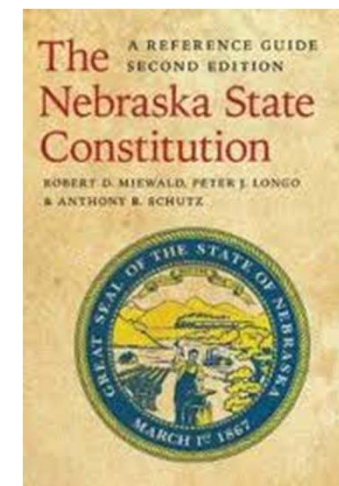


# The Nebraska Constitution

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## Article XV

- §4. Water is a “Natural Want” for Domestic & Irrigation Uses
- § 6. Water must be used under these priorities:
  - Domestic Use
  - Agricultural Use
  - Industrial Use





## Neb Const Art XV Leaves Unanswered

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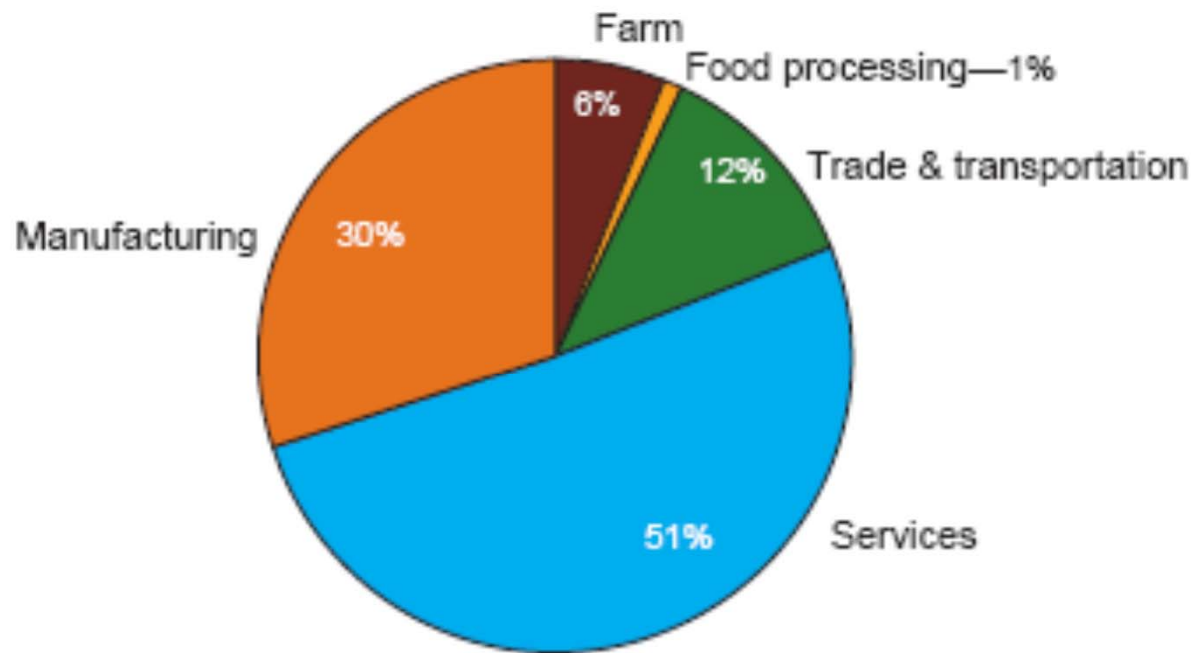
- Shallow domestic wells.
- Priorities conflicts resolution.
- Relation of ground & surface water.
- Correlative rights / abatement.



# Farm Products:

## \$1 Farm = \$16 to Whole Economy

Bulk agricultural exports, 2006, distribution of supporting activity



Source: Analysis by Economic Research Service, USDA, based on U.S. Census Bureau trade data, using Bureau of Economic Analysis input-output methodology.





# The GWMPA

*Neb Rev Stat §46-701*

- Conditional right to use water beneath land
  - Subject to law & correlative rights if supply is insufficient for all users
- Management of hydrologically connected water is necessary
- Management Areas permitted & include
  - Control Areas
  - Spec GW Quality Protection Areas



# NRD Powers

*Neb Rev Stat § 46-707*

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- Issues Rules & Regulations
- Require Reports, Acres, Usage, etc.
- Require meters on any water wells
- Decommission wells
- Report to DEQ
- Issue Cease & Desist Orders, Assess Fees, Penalties
- Conduct Hearings



# Why Do GW Management Areas Exist?

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There is a need to provide for the orderly management of ground water quality in areas where available data, evidence, and other information indicate that present or potential ground water conditions require the designation of such areas as management areas.

*Neb Rev Stat* 46-704(7)

DOMINALAW Group pc llc

*Trial Practice. Not Just Talk.™*

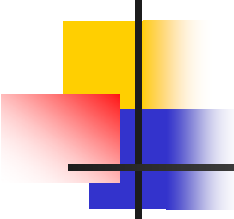


# Shallow Laws Cause Problems Like Shallow Wells

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- The Legislature finds that the pumping of water for irrigation purposes from water wells located within fifty feet of the bank of a channel of any natural stream may have a direct effect on the surface flow of such stream.

*Neb Rev Stat § 46-636*



# What Elements Are Required in An NRD GWM Plan?

*Neb Rev Stat §46-709*

- (1) Ground water supplies ...including transmissivity, saturated thickness maps, & other GW reservoir information;
- (2) Local recharge characteristics and rates from any sources;
- (3) Av annual precipitation and variations;
- (4) Crop water needs;
- (5) Current ground water data-collection programs;
- (6) Past, present, potential GW use;
- (7) Possible augmentation, supplemental supplies, including a GW reservoir life goal;
- (8) Relative economic value of different water uses.



# Management Area Controls

## Permitted

*Neb Rev Stat § 46-739-740*

**Limit withdrawals.  
Rotation schedules.  
Well-spacing.  
Measuring Devices.  
Reduce or Limit Acres.  
Require Best Mgmt Prac.  
Require Water, Soil Tests.  
Record Transfers &  
Interests against Title.**

**Min. Domestic Well Depth.  
Water Use Transfers.  
Spot Specific Rules.  
System Based Allowances.  
IMP for Hydrologically  
Connected Areas.  
Education Programs.  
Financial Incentives.  
Allocation Averaging/ Yrs.**



# What Else Should Be Said?

---

- Go Beyond Reporting to Planning.
- Work Together.
- Cannot Sell in a Global Market & Work in an Isolated Operation.
- Cannot be Stubborn, or Shy, or Scared Any More

# The Solution Might Hurt.

## Participate to Limit the Pain.

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- *First they came for the Socialists, and I did not speak out-- Because I was not a Socialist.*
- *Then they came for the Trade Unionists, and I did not speak out-- Because I was not a Trade Unionist.*
- *Then they came for the Jews, and I did not speak out-- Because I was not a Jew.*
- *Then they came for me--and there was no one left to speak for me.*
  - Pastor Martin Niemoeller, Germany, 1945 (after 7 yrs in concentration camps)



# What Can Be Done?

---

- What Can be Done to Protect Allocations?
- What Management Tools Can Resolve Well Conflicts without Costly Meters or Excessive Regulations?
- What are the limits of NRD power?
- Are things worse if the State steps in?



# Proposed NRD Tools

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•  
**R 1. Penalties, Including Denial of Water.  
Enforcement Actions.**

**R 17. Creates Quantity SubAreas:  
Madison County  
Pierce County  
Wayne County**

**R 11. Flow meters Now Required**

**R 12. Action Level 2: spring GW level is  
down 15 ft --3 of 4 yrs, in area of at  
least 9 sq miles in 80% of  
Monitored Wells**

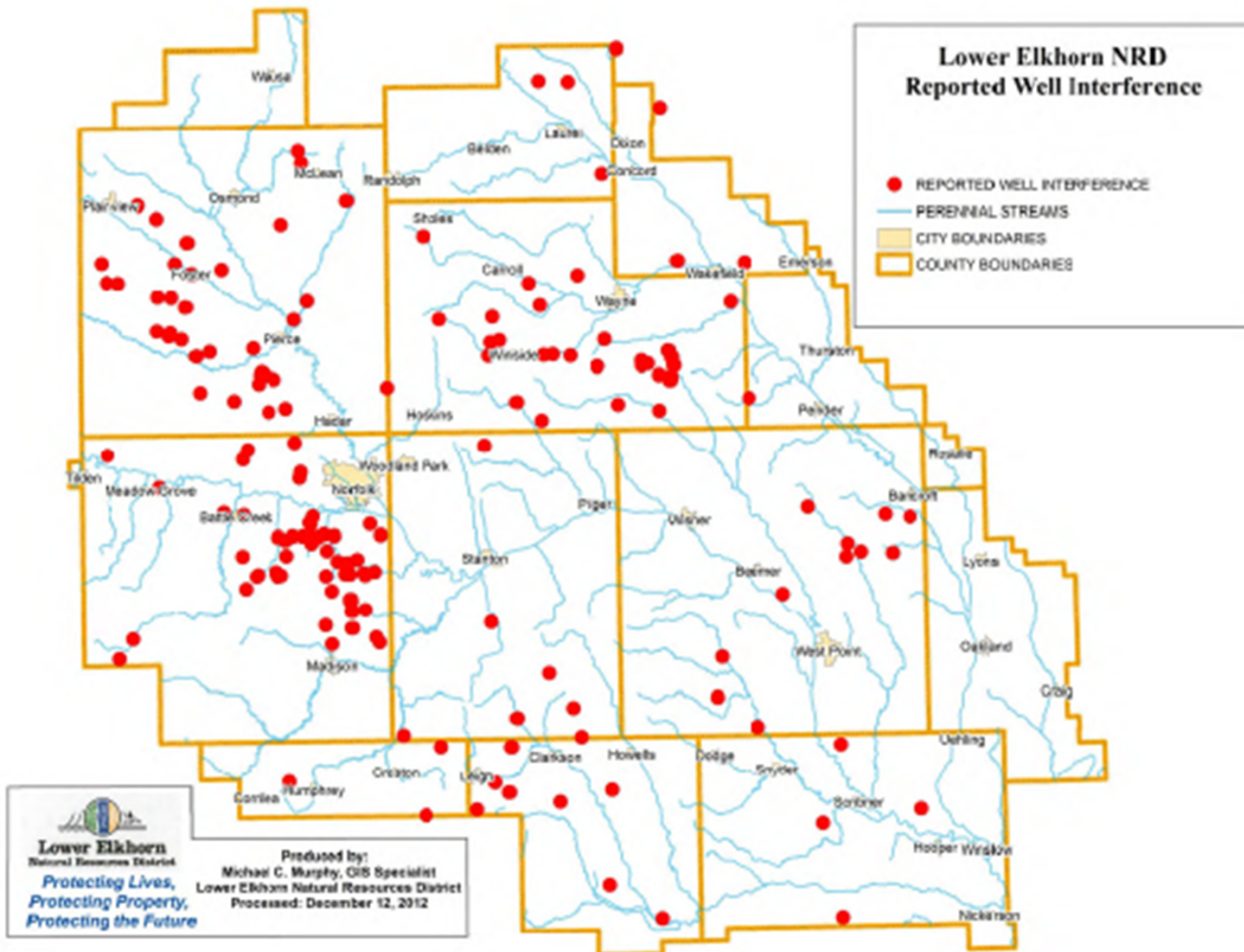
**Action Level 3: 20 ft**

**Can require tensiometers  
Can close area for 1 yr.**





# 2012 Well Interference Reports



# Controls – All Areas

- Allocation
- No New Acres
- Rotational System
- BMPs
  - No Off Season Irrigation
- Mandatory Education
- Measuring Devices
- Domestic Well Depth Limits





# How Far Could It Go?

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- Rotational retirement of acres.
- Decommissioning of wells.
- Water restrictions related to rainfall
- Irrigation as Supplement
- Reports
- Water sales

HOW FAR IS  
TOO FAR?

JOIN THE CONVERSATION ~



# Are There Solutions?

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Neb GWMP Act

Troublesome Judicial Review

No Standard of Proof

Vagueness for Prosecution

Delegation of Legislative Duties

Regulatory Veto of Elected Body





# Can You Beat It In Court?

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- Small Victories, Probably
  - Judicial Review Issues
  - Vagueness Issues
  - These can be fixed.
- Ultimately, Controls Are Coming, or Here
  - Must Seek Long Term Policy
  - Seek Predictability, not Annual Uncertainty



# What To Do?

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- No Meters Goal : Domestic Wells Assessment
  - Voluntary Reduction in Usage
  - Graduated Assessment.
  - Transfers
  - 2 Year Averaging
  - Allocations by November 1 [now Dec 1]
  - Use Pro Rata Abatement, Not Priority Claims



# Ideas to Consider

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- Don't Go Too Far Too Fast.
- Plan *For* the Worst, but Don't Plan *On* the Worst.
- Make the Comparison Between Common Wells.
- Compare Average Demand.
- Transition, Don't Shock
- Consider BMPs
  - Schedules; Measure Use; Microsystems; Alt crops.

# Spend for Long Term: BMP's

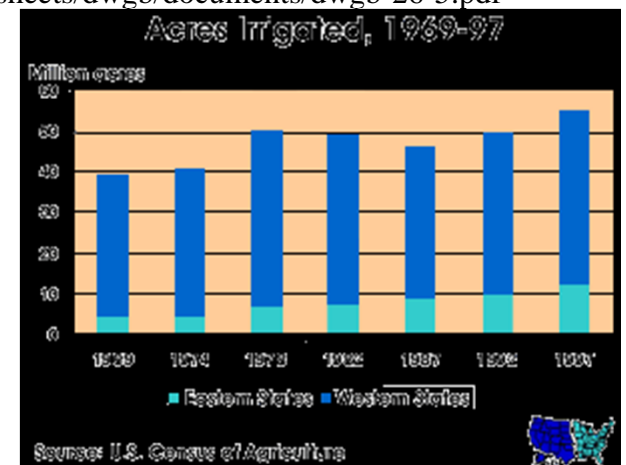
## ■ Best Management Practice Models to Consider

Texas: [http://www.tsswcb.texas.gov/files/docs/waterconservation/water\\_conservation\\_bmp.pdf](http://www.tsswcb.texas.gov/files/docs/waterconservation/water_conservation_bmp.pdf)

Colorado: <http://npscolorado.com/xcm173.pdf>

Florida: <http://www.floridaagwaterpolicy.com/bestmanagementpractices.html>

New Hamp: <http://des.nh.gov/organization/commissioner/pip/factsheets/dwgb/documents/dwgb-26-5.pdf>





# Consider A Menu of Choices

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- Sell Water; Excalating Scale
- Crop Allowances to Encourage Diversity
- Full Use-some Land;other land Reduced
- Measure Recharge
- Incentify Recharge
- Change Zoning to Require Rural Water
- Severe Penalties for Overuse



# Present Menu of Actions at 4 Year Intervals

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- Make Plans follow Elections by 1 Year
- Require 3 hearings before Adoption
- Education Credit for Hearing Attendance
- Prohibit Changes During 4 Years w/o Super  
– Majority Vote (2/3; 80%, e.g.)
- Refuse domestic well permits in Control Areas.



# Discussion

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- Your Ideas
- What do you want presented?
- What common goals may be expressed?
- What solutions are out?
- What solutions are most palatable?



# Domina Law Group pc llo

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Thank you for Reading This  
Presentation!