

# History of exempt wells

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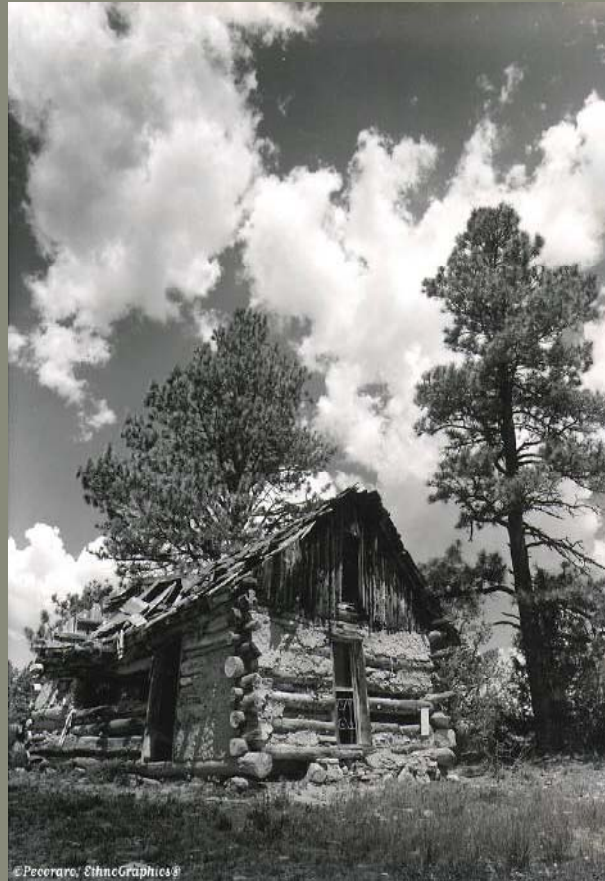


# The history of exempt water wells in Montana



Water Use Act of 1973

# Permit required to pump more than 100 gallons per minute



No permit required for less than 100 gpm for livestock, domestic, or agriculture



# What does the exemption mean?

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- No objections
- Not required to show if existing water rights are affected by new exempt use



# How to get an exempt well

- Drill the well
- Put the water to use
- Submit notice of completion to DNRC that includes:
  - Flow rate
  - Type of use
  - Location
- Pay \$125
- DNRC issues certificate of water right with priority date same as filing of notice



# 1987 Legislation

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- Less than 100 gpm still exempt ...  
"except that a **combined appropriation** from the **same source** from two or more wells or developed springs exceeding this limitation requires a permit."



# 1987 Rule

## What is a combined appropriation?

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- An appropriation of water from the same source aquifer by two or more ground water developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation.
- *Ground water developments need not be physically connected nor have a common distribution system to be considered a “combined appropriation.”*
- They can be separate developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments.
- The amount of water appropriated for the entire project or development from these ground water developments in the same source aquifer is the “combined appropriation.”

# 1991 Legislation

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- 100 gpm reduced to 35 gpm
- Limit of 10 acre-feet a year.





# 1993 Rule

What is a combined appropriation?

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- An appropriation of water from the same source aquifer by two or more ground water developments, *that are physically manifold into the same system.*

# Failed Legislation

- 2009 – WPIC proposed mandatory public water & sewer in subdivisions:

- 30 or more lots
- Average lot size 3 acres or less



- 2009 – Forbid exemption to supply fish ponds
- 2007 – Exempt stock water on 40 acres or more
  - Limit domestic and commercial uses to 1 AF
  - Limit lawn and garden use to quarter acre or less
- 2005 – Combined appropriation means two or more wells in a subdivision – need not be connected

# Petition for Rulemaking

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- 2-4-315, MCA – (Administrative Procedure Act)
  - Petition to adopt, amend, or repeal rule.
  - Interested person or legislator on behalf of an interested person when legislature is not in session.
  - 60 days to deny petition or initiate rulemaking.
  - May hold hearing/receive comments.
  - Decision must be based on “record evidence.”

# Declaratory Ruling

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- 2-4-501, MCA, *et seq.*
  - Declaratory ruling on validity or application of rule.
  - Rule OR threatened application of rule interferes with or impairs or threatens to interfere with or impair legal rights or privileges.
  - Sought when “doubt exists as to how a statute or rule administered by an agency affects the party’s legal rights.”
  - Arbitrary or capricious disregard for the purpose of authorizing statute.
  - Binding between agency and petitioner.
  - Subject to judicial review.

# 2006 Gallatin County Commission

- “Combined appropriation” requiring a permit means ~~an appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system.~~ an appropriation of ground water from the same source by:
  - (a) a second or any subsequent well, drilled after [the effective date of this rule], on a tract of record in existence on [the effective date of this rule] that together with all wells on that tract exceed the flow rate or volume limitations of 85-2-306(3)(a), MCA; or
  - (b) any well on a tract of record, which is created by subdivision after [the effective date of this rule] and is subject to review under Title 76, Chapter 4, MCA;
  - (c) Except that a ground water appropriation for use by livestock only is not considered to be part of a combined appropriation.



# 2009 Clark Fork Coalition & Senior Water Right Holders

- Filed in 2009
  - Petition for rulemaking & request for declaratory ruling.
- Amended definition:
  - (13) “Combined appropriation” means an appropriation of water from the same source aquifer by two or more groundwater developments wells or developed springs that are part of the same project, development, or subdivision. physically manifold into the same system. Two or more wells or developed springs that are part of the same project, development, or subdivision are presumed to appropriate water from the same source aquifer.
- Petition granted (in part)
- August 2009 – declaratory ruling – consistent with Water Use Act but granted petition for rulemaking.
- Appealed to District Court (Fall 2010)
- Stipulated agreement

# House Bill 433

- 2011 Session
- Representative Jerry Bennett (Libby)
- “Combined Appropriation” –
  - means an appropriation of water from the same source aquifer by two or more wells or developed springs for the same beneficial use that are physically connected through a distribution system.
- Immediate effective date
- Termination date



# House Bill No. 602

- Mandated WPIC study
- \$15,000
- Outreach meetings
- Delay DNRC rulemaking

