



SANDERS COUNTY

ENVIRONMENTAL HEALTH

Water Rights

For new appropriations of groundwater from either a well or developed spring there are two ways to obtain a water right.

1. Under the permit exception of MCA 85-2-306 3 (iii), for smaller appropriations where the pumping rate is no greater than 35 gpm and the volume is no greater than 10 acre-feet per year, a water right may be filed on after water is put to a beneficial use (i.e. domestic household use, lawn and garden irrigation use, stock water use, etc.) a Notice of Completion of Groundwater Development, Form No. 602 can be filed when either:
 - a. The tracts, parcels or lots, under 20 acres, that are part of a subdivision of land created since October 17, 2014 have a combined appropriation from all wells on those properties that does not exceed 10 acre-feet per year and the pumping rate from any well is no greater than 35 gpm.
 - b. The tracts, parcels or lots that are part of a subdivision of land created prior to October 17, 2014 and where the appropriation of any single well or manifoldeled wells (wells connected into a system) on those properties does not exceed 10 acre-feet per year and the pumping rate from any well is no greater than 35 gpm.
2. A Groundwater Application for Beneficial Water Use Permit, Form No. 600 GW must be applied for and granted prior to putting water to a beneficial use from a well that exceeds a pumping rate of 35 GPM or the 10 acre-foot per year limit as a combined appropriation under 1.a. or any well or manifoldeled wells that exceeds the 10 acre-foot per year limit under 1.b.

After determining which applies from above, select one of the two actions below:

- Send Notice of Completion of Groundwater Development, Form No. 602, and appropriate fees to the Department of Natural Resources and Conservation, 655 Timberwolf Parkway, Suite 4, KALISPELL MT 59901-1215
- Prior to making a Groundwater Application for Beneficial Water Use Permit, Form No. 600 GW contact a Water Resource Specialist at the DNRC Water Resource Kalispell Regional Office by phone at (406) 752-2288.

Combined Appropriation, Legal Determination

In Clark Fork Coalition, et. al. v. DNRC, et. al., 2016 MT 229, 384 Mont. 503, 380 P.3d 771, the Montana Supreme Court concluded that the definition of "combined appropriation" in Admin. R. Mont. 36.12.101(13) was invalid. The Court reinstated the Department's 1987 Rule defining "combined appropriation" as: "An appropriation of water from the same source aquifer by

means of two or more groundwater developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Groundwater 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 from the entire project or development from these groundwater developments in the same source aquifer is the "combined appropriation."

Under this Rule, the Department interprets subdivisions that are pending before the Department of Environmental Quality for approval on October 17, 2014 or filed after that date to be a single project that can be accomplished by a single appropriation. Consequently all wells in such a subdivision will be considered a "combined appropriation" for the purposes of Mont. Code Ann. 85-2-306. The only exception to this interpretation is that a subdivision which has received preliminary plat approval prior to October 17, 2014 will not be considered a project under the "combined appropriation" 1987 Rule; individual lots will still be evaluated under the 1987 Rule at the time of an application to the Department. 2015 Mont. Laws § 1, Ch. 221.