

House Bill 561
February 22, 2013
Presented by Bill Schenk
House Natural Resources Committee

Mr. Chairman and committee members, I am Bill Schenk, Legal Counsel for the Montana Department of Fish, Wildlife and Parks (FWP). I am here today on behalf of the Director in opposition to House Bill 561.

The Montana Water Use Act generally requires that all new development or appropriations of water be permitted. However, the Act provides an exception to the permitting requirement. Section 85-2-306, MCA, provides that "a permit is not required before appropriating ground water by means of a well or developed spring . . . with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year. But, the Act further provides a limitation on the exception. It says that a "combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit ..." Therefore, any discussion of the definition of "combined appropriation" is really a debate over the limitation on the use of the exemption.

Currently, the term "combined appropriation" is not defined by statute, but by administrative rule, and basically says that wells that are "manifold together", or share the same plumbing, are combined. HB 561 defines the term "combined appropriation" within the Montana Water Use Act (at §85-2-102) as "an appropriation of water from the same source aquifer from two or more wells or developed springs that are physically manifold and part of the same delivery system when the water is put to use on the same parcel where the wells or developed springs are located." The effect of this language would be to allow a developer to put in multiple exempt wells and plum them into a single distribution system, as long as the water is used on different parcels of land. Thus, the maximum flow rate and volume contemplated by the exemption are easily exceeded. In other words, it makes it even easier to serve a subdivision, of any size, with exempt wells.

The exempt well provision has been highly controversial. Conservation advocates and senior water users alike have long complained that the cumulative impacts from the proliferation of exempt wells, particularly in areas of dense residential development, are diminishing surface water flows. As a result, there are many who believe that existing, senior water right holders and instream flow values are being harmed, which is more likely during low flow conditions. Many stakeholders have worked for years to try to address the issue. Importantly, FWP doesn't believe that anyone who is concerned with the use of the exemption thinks it will be eliminated, nor do we believe anyone would want that. Exempt wells have their place for things like stock use and isolated homes on larger tracts. But a compromise that offers some greater protections for existing water users is necessary. HB 561 is not a compromise. It is a one-sided approach that resolves an issue in favor of one set of interests at the expense of the other. Therefore, FWP requests that you vote no on HB 561.