

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

SENATE NATURAL RESOURCES  
COMMITTEE NO. 6  
DATE 1-18-13  
BILL NO. SB 19



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**TESTIMONY OF TIM DAVIS, ADMINISTRATOR WATER RESOURCES DIVISION  
DNRC  
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE  
IN OPPOSITION TO SB19 (January 18, 2013)**

Chairman Vincent and Members of the Senate Natural Resources Committee:

Please consider this written testimony in addition to my verbal testimony before the Committee on January 18, 2013.

The Department currently defines "combined appropriation" in ARM 36.12.101(13) as "an appropriation of water from the same source aquifer by two or more groundwater developments that are physically manifold into the same system." SB 19 seeks to codify a similar definition in 85-2-102.

The combined appropriation language was added to statute in 1987. In 1991 the legislature lowered the exempt well amount from 100 gpm to the current amount of 35 gpm up to 10 AF. The primary concern in amending the statute was to limit larger appropriations, especially for irrigation. Multiple wells from separate distribution systems were not economical thus the only way to circumvent the permitting process to irrigate larger parcels was to physically connect multiple wells into a single distribution system. The existing definition, implemented in 1993, was created based on those assumptions.

On November 30, 2009 the Department received a Petition for Declaratory Ruling requesting that the administrative rule definition of "combined appropriation" be declared invalid and that the Department initiate rulemaking to amend the definition. Recognizing that this had statewide implications, the Department requested input from interested parties statewide by providing opportunity to file briefs or statements of position, response briefs or statements of position, or give comment during a public hearing held June 17, 2010. Based on the information received, a Declaratory Ruling was issued August 17, 2010.

The Declaratory Ruling found that while the Department's definition of "combined appropriation" is not inconsistent with the statute, there have been a proliferation of exempt wells for a variety of uses that were not anticipated when the current version of the rule was adopted. Those unanticipated uses of multiple exempt wells include but are not limited to artificial wetland cells, subdivisions, networks of ponds, multiple wells within close proximity for a wide variety of uses, etc.

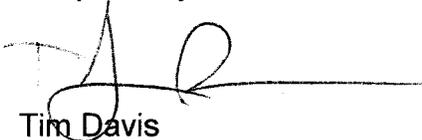
Due to the similarity of the definition of "combined appropriation" being proposed in SB 19 with the Department's definition, it is limited for the same reasons found in the Declaratory Ruling. This definition does not fully consider the current potential abuses of the permitting process under 85-2-402. For example, the definition proposed in SB 19 does not allow consideration of multiple exempt wells in a subdivision versus a public water supply well. The definition does not allow for consideration of wetland complexes that are in excess of 10 AF where the cells are separated solely by a burm.

In order to preserve the legislative intent behind the exempt well statutes to allow them to provide water for small dispersed uses with low probability of any adverse affect to neighboring water rights, any definition of combined appropriation must be more flexible enough for the Department to be able to determine whether two or more wells are a "combined appropriation." After all, the Department has the fundamental mandate to protect the prior appropriation doctrine.

If two or more wells are a "combined appropriation" that exceeds the limits set in statute for flow and volume then they must go through the new appropriation permitting process set out under MCA 85-2-311 to determine if water is legally available and the new appropriation will not cause an adverse affect. This is the same process that any other appropriation must go through with the same volume and/or flow rate.

Additionally, the Department has been working diligently for the last several years to continually make the permitting process simpler, less expensive, and faster while not undermining our mandate to protect the prior appropriation doctrine. For these reasons, the Department opposes SB 19.

Respectfully,



Tim Davis  
Water Resources Division Administrator  
Montana Department of Natural Resources and Conservation

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