

- Montana Water Use Act provided for an exemption from the Act's permitting requirements for groundwater wells and developed springs "with a maximum appropriation of 100 gallons per minute or less not to exceed 10 acre-feet per year". The gallon per minute limit was amended to 35 gpm in the 1991 Legislative session.
- Exempt provision does not apply to a "combined appropriation from the same source from two or more wells or developed springs" exceeding the 35 gpm/10 acre-feet limitation.
- **Water Use Act did not define "combined appropriation"**.
- In 1987 DNRC defined "combined appropriation" as an appropriation of water from the same source aquifer by 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".
- In 1993 DNRC changed the definition of "combined appropriation" to meaning an appropriation of water from the same source aquifer by two or more groundwater developments that are physically manifold into the same system. This was done because the prior rule was very subjective and difficult to implement uniformly statewide.
- In the 2005 Legislative session Mike Jopek introduced legislation which would remove the exemption for a water right permit for a water allocation from ground water where the withdrawal from a well or developed spring is 35 gpm or less and 10 acre-feet a year or less from the same source from two or more wells or developed springs, regardless of whether their diversion works are physically connected or not. The legislation failed.
- In 2006 DNRC received a petition from Gallatin County to change the definition of "combined appropriation" to a definition which included tract of record language. The petition was denied mainly because of the questionable appropriateness of the rule and cost of implementation.
- In the 2007 Legislative session a bill was drafted by DNRC and introduced by Kevin Furey which would have reduced the exemption amount from 10 acre-feet to 1 acre-feet and limited lawn and garden to ¼ acre. The bill died in committee.
- In the 2009 Legislation session a bill was introduced which would "Require public water and sewer systems for certain subdivisions". The bill never got out of committee.
- In December 2009 a petition for declaratory ruling and request to amend the "combined appropriation" rule was received. DNRC is moving forward with a declaratory ruling.

Steps for Review of the *Petition for Declaratory Ruling* from the Western Environmental Law Center and several individuals—Request is based upon an allegation that our Administrative Rule conflicts with the Statute.

Because the question arises as to whether more than one well may withdraw water for the same source, it is an issue of state-wide importance, and thus will be given notice across the state with opportunity for participation from all interested parties.

We generally intend to proceed as follows:

PROCEDURAL SCHEDULE DECLARATORY RULING

1. **Notice of Intent to Hold Declaratory Ruling Proceeding** – Major papers and press release
 - a. Post the Petition and Schedule on the Web site
 - b. Appointment of Hearing Examiner in an Order and place that Order on website
 - c. Order setting the process – contested case with all interested parties provided an opportunity to file briefs.
 - d. Provide a statement of the Issue and describe the process.
 - e. Deadline for filing briefs and responses.
 - f. Provide an opportunity for argument by those filing briefs.
 - g. Provide an opportunity for general public comment/input.
 - h. Make a ruling on the application of the rule to the statute.

2. **We will refrain from taking up the issue of the Petitioners Request to Amend Rule 36.12.101(13) until a determination is made on the issue for the Declaratory Ruling.**