



Date: March 23, 2022
To: Water Rights Bureau and Regional Offices
From: Anna Pakenham Stevenson, Administrator
Subject: Combined Appropriations Guidance-Updates for consistency

BACKGROUND

- Combined Appropriation is a term arising in § 85-2-306 (3), MCA. The term Combined Appropriation only applies to exceptions to the permitting process.
 - There has been a long history of controversy in the state surrounding Combined Appropriation. The last attempt to invoke new rulemaking on the definition of Combined Appropriation occurred from 2006-2014 and included stakeholders and the Legislature.
- The Department defines Combined Appropriation in rule (ARM 36.12.101 (12)).
- The Department's Combined Appropriations Guidance document was created to provide DNRC employees and water users with clear direction on how the Department applies the Combined Appropriation definition.
 - For parcels created after October 17, 2014, DNRC uses the DEQ subdivision definition to decide what constitutes a combined appropriation under § 85-2-306 (3), MCA.
 - The entire subdivision is considered a Combined Appropriation and is limited to 10 acre-feet (AF) total.
 - For any parcels 20 acres or larger, regardless of when they were created, the Department considers any groundwater developments completed in the same aquifer and located within 1320' of each other to be combined appropriations, and the total volume of these developments is limited to 10 AF under the exception to the permitting process.
- Combined Appropriation and DNRC subdivision review under the DNRC/DEQ MOU are separate issues that overlap in part because of how DNRC has judged a project to be a Combined Appropriation.
- Through discussions with Regional Managers on the Department's guidance on Combined Appropriations in the context of subdivision reviews under the DNRC/DEQ MOU, it has become clear that there have been inconsistencies in the way that Combined Appropriations have been reviewed and applied across the state. This inconsistency is due to recent turnover in multiple regional offices and within the Water Rights Bureau.
- To ensure consistency, the Department has updated its Combined Appropriations guidance to clarify how the Department reviews and determines a Combined Appropriation.

CURRENT SITUATION

- Guidance given by the Central Office on Combined Appropriations and implementation in the regional offices has been inconsistent over time for DNRC subdivision reviews. Some offices have considered a distance of 1320' between wells to constitute separate projects, including scenarios when that spacing is within the boundaries of a subdivision. Other offices have only allowed a spacing of 1320' on wells if they are on a parcel of land 20 acres or larger.
- The Combined Appropriations guidance dated 2/16/2016, states the 1320' spacing is only applicable to wells on parcels of land 20 acres or larger. DEQ does not review parcels 20 acres or larger as subdivisions.
- Inconsistencies in applying combined appropriations guidance has created challenges for applicants and consultants attempting to understand and navigate the exception to the permitting process. Additionally, inconsistencies have caused confusion in the regional offices on the correct application of Combined Appropriation.

- The Water Division has embarked on a Comprehensive Water Review to meet current and future water needs. Specifically, a Working Group has formed to address changes, mitigation, and permit exceptions. It is anticipated that this Working Group will develop recommendations that will impact the Combined Appropriations Guidance. However, it is anticipated that these recommendations will not be brought forth from this Working Group for over six months to a year. In the interim, DNRC needs to ensure that guidance for combined Appropriation is consistently applied throughout the State. Any future recommendation from the Comprehensive Water Review will be incorporated at a future date.

ACTION

- For subdivision reviews already completed, the Department will not re-evaluate combined appropriations unless lot configuration changes.
- Starting March 23, 2022, the Department will apply combined appropriations as identified in the Combined Appropriation Guidance document dated March 23, 2022. The guidance has been updated to clearly define that a well spacing of 1320' only applies to parcels equal to or greater than 20 acres. For parcels created after October 17, 2014, the entire subdivision is considered a Combined Appropriation and is limited to 10 AF total, regardless of well spacing.

OUTREACH TO STAKEHOLDERS AND PARTNERS

- DNRC recognizes that there are stakeholders directly involved with the changes being made. DNRC Regional offices will distribute this memo and updated guidance document via direct email to consultants, engineers, DEQ contacts, County Planning Office contacts, and Cities within their service areas to ensure clear communication with groups directly involved in development in the State. In addition, DNRC will provide notice to the Changes, Mitigation, and Exceptions Stakeholder Working Group at the group's first meeting as part of the Comprehensive Water Review.

ATTACHMENTS

- Updated Combined Appropriations Guidance document, dated March 23, 2022