



History of Exempt Wells in Montana – an overview

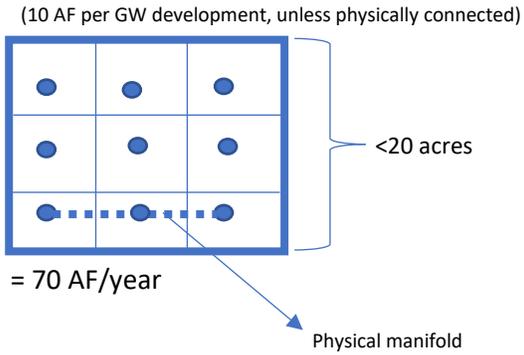
HISTORY OF EXEMPT WELLS

- Title 85, chapter 2 MCA (1973) of the Water Use Act established a permit system to be administered by the DNRC. Groundwater uses for domestic, agricultural, or livestock purposes under 100 gpm were exempt from the permit process. RMC, § 89-880(4) (1973).
- RMC § 89-880(4) amended 1974 to remove exemption restriction of “domestic, agricultural or livestock purposes.”
- Section 85-2-306(1), MCA (1987), provided an exemption to the permit requirement as follows: Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.
- ARM 36.12.101(7) (1987) defined “Combined appropriation”- An appropriation of water from the same source aquifer by two or more ground water developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Ground water 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 for the entire project or development from these ground water developments in the same source aquifer is the “combined appropriation.”
- Section 85-2-306(3)(a)(iii), MCA (1991), was amended: [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, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.
- ARM 36.12.101(13) amended (1993): Definition of “combined appropriation”: An appropriation of water from the same source aquifer by two or more ground water developments, that are physically manifold into the same system.
- Section 85-2-306(3)(a)(iii), MCA (2013), was amended: [W]hen the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit.
- (2014) Montana’s First Judicial District Court, Judge Sherlock, invalidated the 1993 rule and reinstated the 1987 rule. *Clark Fork Coalition v. Tubbs*, Cause No. BDV-2010-874, Order on PJR (1st Jud. Dist. Oct. 17, 2014).
- H.B.168 (2015)- grandfathered any project, development, or subdivision that relied on DNRC’s definition limiting combined appropriations to physically manifold into the same system if: 1) it was in existence on or before October 17, 2014 or 2) the application and required fees were received by the Department of Environmental Quality in accordance with § 76-4-125, MCA, or by the local reviewing authority in accordance with § 76-3-604(1)(a), MCA, on or before October 17, 2014.
- (2016) Montana Supreme Court in *Clark Fork Coal. v. Tubbs* upheld the district court and concluded “that the 1993 rule was inconsistent with the plain language of § 85-2-306(3)(a)(iii), MCA, and that it grafted an additional requirement on the exempt well statute that wells or developed springs be ‘physically manifold into the same system.’ By narrowing the exception to only those wells or developed springs physically connected, the 1993 rule expanded the narrow exemption to the permitting process provided by § 85-2-306(3)(a)(iii), MCA, and was inconsistent with the stated statutory purpose of the Act.” 2016 MT 229, ¶ 28.
- (3/23/2022) DNRC clarification on 2016 guidance: well spacing of 1320' only applies to a parcel ≥20 acres.

DEFINITIONS OF COMBINED APPROPRIATION

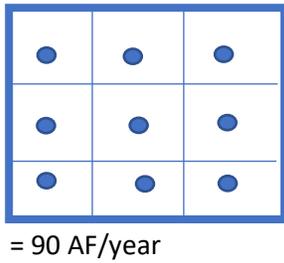
Parcels <20 acres

Physical manifold definition



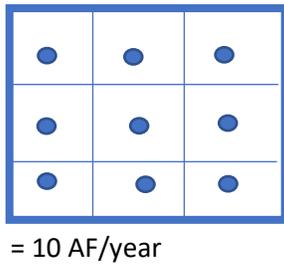
Current Policy: Parcels created on or before 10/17/2014

(10 AF per GW development (e.g., wells))



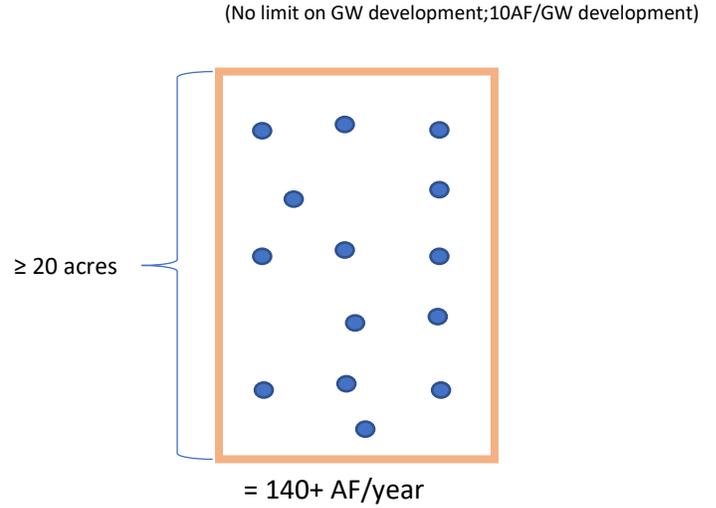
Current Policy: Parcels created after 10/17/2014

(10 AF for entire subdivision that created the parcel)



Parcels ≥ 20 acres

Physical manifold definition



Current policy

(Spacing of >1320' applies to all GW developments; 10AF/GW development)

