

Water Rights in Montana


Jim Ferch
New Appropriations Program Manager
DNRC – Water Rights Bureau



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Friggatriskaidekaphobia

- Frigga—Norse goddess for whom Friday is named after
- Triskaidekaphobia—Fear of the number 13



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DNRC WRD Mission Statement...

The Water Resources Division promotes and coordinates the beneficial use, conservation, protection and development of Montana's water resources for present and future generations.

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What is a Water Right?

Article IX of the Montana Constitution...any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses...(§ MCA 85-2-101)

[a] "water right" means the right to use water...(§ MCA 85-2-422)

"Appropriate" means: to divert, impound, or withdraw...(§ MCA 85-2-102)

"Beneficial Use" (§ MCA 85-2-102)

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A Water Right is...

A property right

Protected by the Constitution

Has Value – can be bought and sold

Can't be taken away without due process

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Basic Principles of Montana Water Law

- Doctrine of Prior Appropriation
 - First in time first in right

Also called "Western Water Law" – originated in Western States to accommodate irrigation and mining needs of the developing west

- Limited to beneficial use (no waste, no reserving)
- Includes agricultural, stock water, domestic, fish & wildlife, industrial, irrigation, mining, municipal, and power
- Other beneficial uses include instream flow to benefit the fishery, aquifer recharge, mitigation, or an aquifer storage and recovery project

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Basic Principles, Cont.

- No hierarchy of uses
- Use it or lose it (perfection)
- Limited to historic use (no expansion)
- Existing water users have the right to unchanged stream conditions
- No adverse effect

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1973 Water Use Act

- Effective July 1, 1973
- Set-up a process to account for previously appropriated water rights
- DNRC became the record keeper of water rights
- Set-up a system for new appropriations and making changes on any existing water rights

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Post 1973 Water Rights

GROUNDWATER CERTIFICATE (NOTICE)
Not exceeding 35 GPM & 10 acre feet/year

PERMIT TO APPROPRIATE WATER
Any Surface water
Groundwater > 35 GPM or 10 acre feet/year

CHANGE AUTHORIZATION
Change in place of use, point of diversion, purpose, or place of storage

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Groundwater Filing Requirements (Wells, Pits & Developed Springs)

Form 602

- * Any New or Additional Use of Water not exceeding 35 GPM or 10 acre feet per year
- * Water has to be put to a beneficial use before form can be filed
- * Priority date is date of DNRC receiving form and fee of \$125.00
 - * Map of property is helpful
 - * Well log is recommended but not required

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Form 602 (2022)

NOTICE OF COMPLETION OF GROUNDWATER DEVELOPMENT
Use this form for completed groundwater developments where the water has been put to use for the purposes identified with a maximum use of 35 GPM not to exceed 10 AC-FT per year.

Incomplete forms will be returned.
Filing Fee \$125.00
Make checks payable to DNRC.

Your priority is determined by the date of filing. If it is determined that form use is necessary then your priority date may be changed.
If your development is within a Controlled Groundwater Area, this form cannot be used. Contact your Regional Office for more information.

FOR DEPARTMENT USE ONLY

Form No. _____	Date _____	ASST/TA _____
County _____	Year _____	
Project # _____	Check No. _____	
Fee Paid \$ _____	Checked By _____	
Checked By _____	Checked By _____	
Checked By _____	Checked By _____	

1. NAME(S) _____

MAILING ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE # HOME _____ WORK _____ CELL _____

EMAIL ADDRESS _____

2. HAS THIS WATER BEEN PUT TO USE FOR THE PURPOSES ON WHICH YOU ARE FILING?
 Yes No (IF YOU ANSWER NO, YOU CANNOT FILE THIS FORM AT THIS TIME)

3. DIVERSION USED TO OBTAIN GROUNDWATER
 Well - Attach well log, if available. Water Well Contractor Name: _____
 Developed Spring (Discipline performed at the spring location)
 Pit/Pond - Surface Area _____ Acres _____ Depth _____

4. FLOW RATE USED: _____ GPM (Checked Exceed 35 GPM)

5. COMBINATION OR SHARED DEVELOPMENT
 a. Are there other groundwater developments on your property? Yes No
 If yes, how far away are the existing groundwater developments from this new groundwater development? Provide a DNRC water right number for each.
 b. Is this development used for another water right or by another user? Yes No
 If yes, please explain how and provide a DNRC water right number for each.

6. PURPOSE AND PERIOD OF USE: Check those that apply and answer applicable questions
 Domestic: Number of homes supplied _____
 Your month used: Yes No If no, from _____ to _____ inclusive of each year.

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Lawns & Gardens: include any watered area. Do not include house footprint, driveway, gravelled areas, etc.
 Total size of lawn & garden - length x width _____ OR Number of Acres _____
 April 1 - October 31 Yes No If no, from _____ to _____ inclusive of each year.


Irrigation: (Do not include Lawns & Garden irrigation)
 Title of Crop _____ Total Crops Irrigated _____
 April 1 - October 31 Yes No If no, from _____ to _____ inclusive of each year.

Stock:
 Number & Type (Ex: 100 Cows & 1 Horse) _____
 Year round used? Yes No If no, from _____ to _____ inclusive of each year.

Other: (Do not include purposes described above)
 Describe the purpose of the use _____
 Amount of water used _____ gallons per day Number of days used _____
 Year round used? Yes No If no, from _____ to _____ inclusive of each year.

7. POINT OF DIVERSION - Location of the groundwater development
 1/4 _____ 1/4 of Section _____ Township _____ N _____ S Range _____ E _____ W
 County _____ Tract # _____ COB # _____ Section _____
 Subdivision Name _____ Lot _____ Block _____
 Street Address, including City/State/Zip Code _____

8. PLACE OF USE: Enter the 1/4 spot (provide) applicable to the place of use legal land description. Occurs on the tract if owner records the agreement or a 30-day continuous occupation.
 Occurrence: _____
IS THE PLACE WHERE WATER IS USED THE SAME AS THE POINT OF DIVERSION? Yes No
 If No, enter the place of use land description below. Attach additional sheets if necessary.
 1/4 _____ 1/4 of Section _____ Township _____ N _____ S Range _____ E _____ W
 County _____ Tract # _____ COB # _____ Section _____
 Subdivision Name _____ Lot _____ Block _____
 Street Address, including City/State/Zip Code _____

9. AFFIDAVIT OF OWNERSHIP OR WRITTEN CONSENT
 I have possessory interest in the property where the water has been put to beneficial use and I have the exclusive property right in the groundwater development works OR I have attached written consent of the person owning the groundwater development works and/or written notification to the land owner pursuant to MCA 95-2-326(1).
 Please note, you must submit ORIGINAL owner signatures, copies will not be accepted.
 I declare under penalty of perjury and under the laws of the State of Montana that the foregoing is true & correct.
 Printed Name: _____
 Applicant Signature _____ Date: _____
 Printed Name: _____
 Applicant Signature _____ Date: _____
 Visit <http://dnrc.mt.gov/eiservices/water> for additional water right related information. 

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A Well Log is NOT a Water Right!

- Well Driller Files Well Log
- “Owner” of well log doesn’t get updated
- Water User Files For Water Right
- Well Log Information Available At <http://mbmaggwic.mtech.edu/>
- Water Right Forms Available At <http://dnrc.mt.gov/divisions/water/water-rights/water-right-forms>

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Combined Appropriation

1987 – “Combined Appropriation” introduced into law – but not defined

Appropriations of less than 100 GPM from wells

1991 – Legislature changes exemption to 35 GPM/10 AF

2013 – SB19 passed Legislature defining combined appropriation as: An appropriation of water from the same source aquifer by two or more wells or developed springs that are physically connected into the same system.

Vetoed by the governor and rule making goes to DNRC

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What does that mean for a subdivision of land today?

- October 17, 2014 – CFC Decision (Clark Fork Coalition) concluded the Department’s ruling “was inconsistent with applicable law and therefore invalid”.
- DNRC’s 1987 Rule was reinstated and the order took effect on 11-21-2014 – basically states that the groundwater developments do not have to be physically connected nor have a common distribution system to be considered a “combined appropriation”.
- Supreme Court has upheld 1987 rule

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PONDS

- A Pond Does Need a Water Right!!!
- Certificate if using groundwater which does not exceed 35 GPM or 10 acre feet (including evaporation)
- Permit if surface water or over 35 GPM/10 acre feet (including evaporation)



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Special Circumstances

- Basin Closures
- Controlled Groundwater Areas
- Compact Closures



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Getting a water right

- If you are going to divert, impound, or withdraw water from a source for a beneficial use, you must obtain a water right.
- Some areas may be more difficult to obtain a water right than others (i.e. basin closures, CGWA).
- If you are going to change the point of diversion, place of use, purpose of use, or place of storage, you must get a Change Authorization.
- Takes time!!!

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Easements/Access?

While this is more in the legal realm, at DNRC we often hear of issues with a well on a neighbor's parcel with no formal easement or of ditches being "landscaped" or "restored" without appropriate consent of the owner of the ditch easement

An easement is not a water right and a water right is not an easement!!

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Water Rights & Real Estate

- By law, Water Rights transfer with property unless specifically stated otherwise
- Exemption from sale or severing from the land have to be done in a recorded document.
 - *on the face of the deed*
 - *in a separate document that should appear in a title search of the property*

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Ownership of Water Rights

- Historically...
- Transfer of land with water right or a severed water right required to file Water Right Ownership Update Form 608 was used
- http://dnrc.mt.gov/wrd/water_rts/wr_general_info/wrforms/608.pdf
- Seller was legally responsible
- File within 60 days of recording deed or other instrument of transfer of property

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Why are accurate ownership records important?

- Montana's Constitution requires central record of water rights
- Adjudication of water rights by Water Court (judicial proceeding, due process implications)
- Notice of new permit and change applications to existing water right owners – gives opportunity to object to new, neighboring water uses

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HB 39...

- Went into effect July 1, 2008
- Transfer of property is given to DNRC in a "data dump" from Department of Revenue
- Goal: Maintain reliable record of water right ownership
 - Buyer is now responsible for updates

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T	1/4	1/4	1/4
O	S	S	S
C	W	E	E
O	N	C	C
U	S	T	T
N	H	I	B
T	I	O	L
Y	P	N	K
30	-	1285	-
	-	30	-
	-	1	-
	-	01	-
	-	01	-
	-	0000	

County Number (1-56) - Corresponds to the individual county numbers assigned for vehicle licensing system.

Township Code - Each Township in Montana is assigned a unique number, which identifies both the township and range that is a part of the rectangular survey system.

Section Number - Actual section number the property is located in. This is also a part of the rectangular survey system.

Quarter Section Each quarter section is assigned a number:
 1-NE 1/4 2-NW 1/4 3-SW 1/4 4-SE 1/4

Quarter Section Block - designates a "block" of ownership parcels. This is usually bounded on all sides by physical features or by boundaries, which must be retained for taxing purposes.

Quarter Section Lot - Each contiguous individual ownership is assigned a "lot" number within the ownership block.
 1-NE 1/4 2-NW 1/4 3-SW 1/4 4-SE 1/4

Unit Number - Identifies the property rights associated with the parcel. Commonly used for: Mobile Homes, Condos etc.

The unit number represents an ownership other than 100% fee simple land and buildings. This unit numbering is identified in the CAMAS manual Sec. 32. Briefly:

- 9000 series - Mobile Home Courts
- 8000 series - Mobile Homes on Private Land
- 7000 series - Condominiums
- 6000 series - Fractional Interest properties
- 5000 series - Townhouses
- 4000 series - Improvements Only
- 3000 series - Oil Field Improvements
- 2000 series - Leased railroad right of way properties
- 0000 identifies the owner's own all land and improvements

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HB 39 Process

- The Place of Use of a Water Right is tied to a geocode of the parcel where used—unless the water right is severed/exempted from the land.
- Dept. of Revenue and DNRC have connected databases by geocode.
- Any time that water right's geocode transfers in the Dept. of Revenue, DNRC is notified of a transfer of the associated water right (theoretically!).
- Exempts/Severs have separate forms, along with splits

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HB 39 Process

Filing Fee – \$50 for the first water right to transfer and \$10 for each right after up to \$300

Submit an ownership update form and the filing fee with DNRC

Regarding splits, exempts, and severs—these are separate forms that will be processed manually

<http://dnrc.mt.gov/divisions/water/water-rights/water-right-forms>

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Form 400 Revised 07/01/15

File in File # _____

DNRC WATER RIGHT OWNERSHIP UPDATE

This form is for DNRC record keeping purposes only as required by § 89-2-101(2), MCA. The deed is the legal document transferring the water right.

Use a new form for each deed transaction. Mail the completed form and fee to your local water resources office at the address on the next page.

Filing Fee
\$50.00 for 1 water right and \$10.00 for each additional right up to a maximum of \$300.00. *Water checks payable to DNRC.

FOR DEPARTMENT USE ONLY	
Name By _____	Check No. _____
Fee Rec'd \$ _____	Payor _____
Received Date _____	Dispute Receipt # _____
County _____	Map _____
City _____	Divide _____
For complete instructions, see the _____	

- SELLER (Owner)**
MAILING ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____ EMAIL _____
- BUYER (Owner)**
MAILING ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____ EMAIL _____
- CLOSING/CONTACT INFORMATION**
DATE OF CLOSING _____ If applicable, provide plot file number _____
NAME _____ ADDRESS _____ PHONE # _____
- ATTACH A COPY OF RECORDED DEEDS OR OTHER DOCUMENTS OF CONVEYANCE SHOWING TRANSFER OF THE PROPERTY INTERESTS FROM THE DNRC RECORDS OWNER TO THE CURRENT OWNER. If a full chain-of-conveyance from DNRC record owner to the current/new owner is not attached, the form cannot be processed.**
- LIST ALL WATER RIGHTS THAT REQUIRE UPDATED OWNERSHIP.** Attach a list of additional rights if needed.
If the buyer did not receive 100% of the subject interest in the water rights, do not use this form. File Form 644.

County	Geocode of Property Being Transferred	Water Right Number

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SB55...

- Need full Chain of Conveyance
A → B → C, not just B → C
- DNRC has 30 days to take a formal action
- Owner has 60 days to respond to a def letter
- Additional penalty for not paying fees
- Ownership dispute process

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Ownership Update Tips

- Do homework on water rights – call DNRC any time with questions
- Can verify that water right has correct geocode based on owner knowledge and the water right itself
- Encourage checking after the fact to verify transfer was processed
- Buyer and Seller should both receive an Acknowledgement showing new owners of right
- DNRC Water Right Query System
<http://wrqs.dnrc.mt.gov/>

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DNRC Home » DNRC Water Resources Division » Water Rights Query

Water Rights Web Guide | Videos: How to Use the Query System | How to Search by GEOCODE or Township, Range, and Section

Simple Search **Advanced Water Rights Search**

To search, choose ONE of the three criteria below.

WRNumber: Basin Code (ex 41K) Number
(ex 1) 130067 00 (ex 2) 123456 00 (ex 3) 300000123

OR

Owner:
Partial names are allowed. Not case sensitive. (ex1) lastname
firstname (ex2) lastname (ex3) firstname

OR

GEOCODE:
(ex 1) 05-1994-25-3-03-15-0000 (ex 2) 05199425303150000
*Please note that not all geocodes have been validated in DNRC records. If the geocode search does not return any records, you may need to contact your local DNRC regional office for additional information.

Search Clear

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Internet Resources

DNRC Water Resources Division
<http://dnrc.mt.gov/divisions/water/water-rights>


GWIC Well Log Website
<http://mbmgwic.mtech.edu/>

Montana Cadastral Mapping
<http://svc.mt.gov/msl/mtcadastral/>

DNRC Water Right Query System
<http://wrqs.dnrc.mt.gov/>

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Questions?



DISCUSSING WATER RIGHTS—A MONTANA PASTIME

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