



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.

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

4



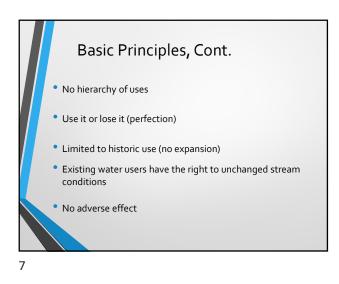
Basic Principles of Montana Water Law

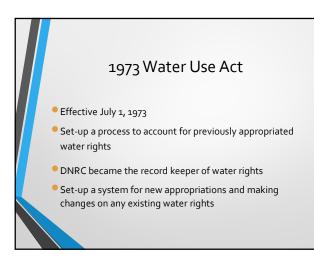
Doctrine of Prior Appropriation

• 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

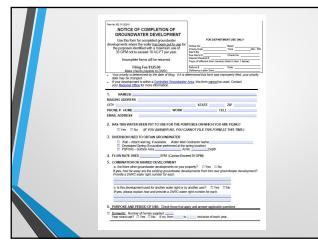
- Limited to beneficial use (no waste, no reserving)
- Includes agricultural, stock water, domestic, fish & wildlife, industrial, irrigation, mining, municipal, and power
- Other beneficial uses include instream flow to benefit the fishery, aquifer recharge, mitigation, or an aquifer storage and recovery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





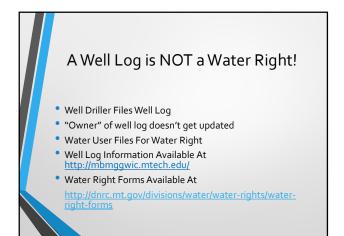


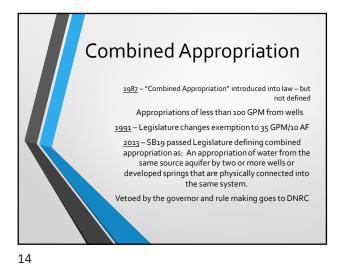












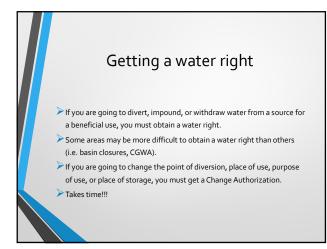
What does that mean for a subdivision of land today?
October 17, 2014 - CFC Decision (Clark Fork Coalition) concluded the Department's ruling "was inconsistent with applicable law and therefore invalid".
DNRC's 1987 Rule was reinstated and the order took effect on 11-21-2014 - basically states that the groundwater developments do not have to be physically connected nor have

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

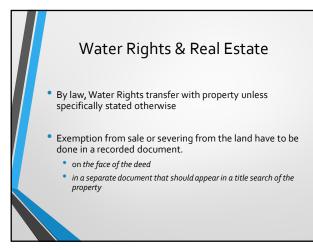






Easements/Access? While this is more in the legal realm, at DNRC we often hear of issues with a well on a neighbor's parcel with no formal easement or of ditches being "landscaped" or "restored" without appropriate consent of the owner of the ditch easement An easement is not a water right and a water right is not an easement!!

19





- http://dnrc.mt.gov/wrd/water_rts/wr_general_info/wrform s/608.pdf
- Seller was legally responsible
- File within 60 days of recording deed or other instrument of transfer of property

