

Water Rights in Montana

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DNRC Water Resources



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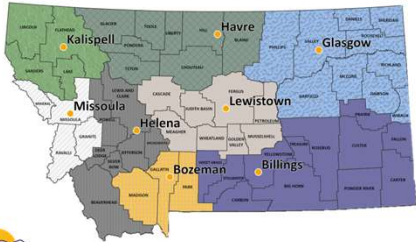
DNRC Regional Offices /Managers

- Billings – Kathy Olsen (Acting)
- Bozeman – Kerri Strasheim
- Glasgow – Lih-An Yang
- Havre – Matt Miles
- Helena – Jenn Daly
- Kalispell – Jim Ferch
- Lewistown – Steven Hamilton
- Missoula – Jim Nave



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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...(85-2-101, MCA)

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

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


"Beneficial Use" (85-2-102, MCA)



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Water Measurement Terms

- Flow Rate
 - **GPM:** Gallons Per Minute
 - **CFS:** Cubic Feet per Second: 448.8 GPM
 - **MI:** Miner's Inches: 11.22 GPM or 1/40 CFS
- Volume
 - **AF:** Acre-Foot: 325,581 Gal or 43,560 Cubic Feet (1 Gal = 7.48 CF)




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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 historical use (no expansion)
- Existing water users have the right to unchanged stream conditions
- No adverse effect

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Elements of a Water Right

- Priority Date
- Source
- Period of Diversion
- Diversion rate (CFS or GPM)
- Volume (AF/year)
- Place of Use
- Purpose of Use
- Period of Use




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1962 – 1973 Groundwater

- While domestic and stock groundwater appropriations were exempt from the Statement of Claim filing in the early 1980s, filing of these appropriations was required at the county level from 1962-1973.
- If a groundwater appropriation from this time period was not filed at the county, the appropriation must be filed with the state.
 - The priority date is the date it is filed with the DNRC.


Unless a SB355 or HB110 was filed



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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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Pre-1973 Water Rights



- Subject to Adjudication Process – aka Decree process
- “Most” Claims Filed Early 1980s (some exceptions)
- Claim filing dates: 1982, 1996 (late claims), 2013-2019 (SB355 and HB 110)
- Montana Water Court Administers Adjudication Process
- Water/District Courts Administer Decreed Water use
- Exceptions from filing process; still valid rights (no priority)
- Surface Water – stock & domestic direct from source
- Groundwater – stock & domestic



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Pre – 1962 water use

Small groundwater for domestic and stock have an “exempt right” from any filing

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SB 355


- Allowed for filing of previously exempt stock water and domestic claims
- Failure to file does not result in forfeiture of an existing water right, but does result in subordination of the existing right to all other water rights except similar unfiled claims
- There was a filing fee of \$160 and needs to be public noticed
- Took effect October 1, 2013



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HB 110 – Exempt Claim


- Single domestic and stock use from groundwater (well or developed spring) –or–
- Domestic or stock use direct from surface source
- Put to use prior to July 1, 1973
- If you did not file, your water right will NOT be enforceable against other water rights
- Filings had to be postmarked on or before **June 30, 2019**
- These rights will be decreed by the Water Court
- What if I have an **Exempt Notice?**



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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 and Water Right Forms links will be provided at end of presentation



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Ponds

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





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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 must be done in an executed document.
 - Either on *the face of the deed*,
 - Or in a separate document that should (hopefully) appear in a title search of the 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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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
- Seller was legally responsible
- File within 60 days of recording deed or other instrument of transfer of property



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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
- File the Form 608, or we hopefully get from Department of Revenue
- Goal: Maintain reliable record of water right ownership



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HB 39 Process

Realty Transfer Certificate:

PART 7 – WATER RIGHT DISCLOSURE -- This Disclosure is only applicable to the property identified in PART 3 above

A. Property is served by a public water supply, i.e., city, irrigation district, or water district provides water. B. Seller has no water rights on record with DNRC to transfer C. Seller is transferring ALL water rights on record with DNRC to the Buyer. D. Seller is dividing or exempting (reserving) water rights. Seller must file Water Right Update form.


Seller (Grantor) Signature _____ Date _____



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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.
- Department of Revenue and DNRC have connected databases by geocode
- Any time that water right’s geocode transfers in the Department 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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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=NE1/4 2=NW1/4 3=SW1/4 4=SE1/4


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=NE1/4 2=NW1/4 3=SW1/4 4=SE1/4

Unit Number - Identifies the property rights associated with the parcel. Commonly used for: Mobile Homes, Condominiums, 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 owns all land and improvements




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HB 39 Process

- Filing Fee - \$100 for the first water right to transfer and \$20 for each right after up to \$600
 - As of 10/01/2025: If an owner is deceased and the entire interest in the water right transfers to another current owner on the water right, no fee is required.
- Submit ownership update form, filing fee, and deeds (if required) to DNRC
- Regarding splits, exempts, and severs—these are separate forms that will be processed manually




<https://dnrc.mt.gov/Water-Resources/Water-Rights/Apply-for-Water-Rights/Application-Forms-Guidance-Documents>



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SB55... October 1, 2021


- 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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Online Resources

GWIC Well Log Website



<https://mbmgwic.mtech.edu/>



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Online Resources

Montana Cadastral Mapping




<http://svc.mt.gov/msl/mtcadastral/>




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Online Resources

DNRC Water Right Query System



<https://gis.dnrc.mt.gov/apps/WRQS/>



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Online Resources

DNRC Water Rights Forms




<https://dnrc.mt.gov/Water-Resources/Water-Rights/Apply-for-Water-Rights/Application-Forms-Guidance-Documents>



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Summary


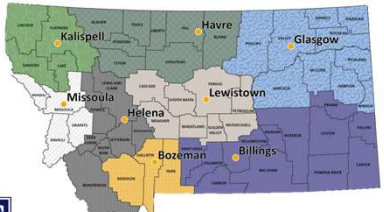
- Water Rights – Important Property Right
- Ponds – Do Need a Water Right, Size & Source are Factors of What Type of Filing is Needed
- Check Easements and Access for Water Conveyances
- Ownership – help DNRC verify records are accurate
- Water Rights Information on online



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Questions?

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