

DNRC SUBDIVISION REVIEW PREDETERMINATIONS

JENNIFER DALY, REGIONAL MANAGER
DNRC WATER RESOURCE HELENA REGIONAL OFFICE

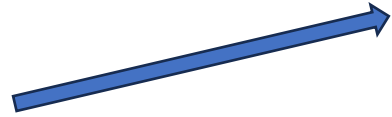
WATER RESOURCES



- WHY ARE WE DOING THEM?
- WHAT ARE SUBDIVISION REVIEW PREDETERMINATIONS?
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WHY ARE WE DOING THEM?

- SUBDIVISIONS GETTING APPROVED WITH CHALLENGES OBTAINING WATER RIGHTS
- DEQ ADDED ARM 17.36.103(1)(s)
- DEQ DNRC MOU
- Clark Fork Coalition et al v. DNRC et al. Cause No. BDV-2010-874 Decision



MEMORANDUM OF UNDERSTANDING
BETWEEN
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

WHEREAS, the Department of Natural Resources and Conservation (DNRC) administers the Water Use Act;

Whereas, the Department of Environmental Quality (DEQ) administers the Sanitation in Subdivisions Act;

Whereas, DEQ has recently adopted ARM 17.36.103(1)(s), which applies to an application for approval of a subdivision that would obtain its water from wells or springs and requires that the application contain either proof of a water right for the water supply or a letter from DNRC stating that the water supply is exempt from water rights permitting requirements;

Whereas, DEQ and DNRC have established a procedure for expeditious and coordinated review of applications for subdivisions that obtain water from wells or springs and wish to memorialize this procedure;

Now, therefore, DEQ and DNRC have agreed as follows:

Review of Applications

1. DNRC will make a predetermination on the necessity of a water right permit or certificate for the proposed water supply serving the subdivision within 20 working days of request by an applicant or person who intends to apply for subdivision approval or will notify the person or applicant and DEQ of any additional review time needed for its determination.
2. DNRC will make its determination based upon representations from the person or applicant and will include in that review any information provided by DEQ regarding the subdivision project.
3. DNRC will provide DEQ and the person or applicant with its determination in a format agreed upon by DNRC and DEQ, which may include an electronic format.
4. Each agency will promptly answer a request for information or clarification from the other agency. The agencies agree that the prompt transfer of such information is necessary to assist the agencies in making a timely decision under their respective statutory and regulatory authorities.

Liaisons


DEQ designates Barbara Kingery, Bkingery@mt.gov, Subdivision Section Supervisor and DNRC designates Millie Heffner, MHeffner@mt.gov Water Rights Bureau Chief, to act as liaisons between DEQ and DNRC for the operation of this MOU.

Effect, Termination, and Modification

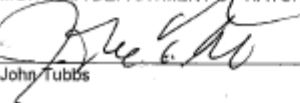
This MOU shall take effect on the date it is signed by both agencies and shall remain in effect until terminated by mutual agreement of the agencies. This MOU may be modified in writing whenever the agencies agree that modification is necessary to simplify or modify the procedures described herein.

By:

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY


Tracy Stone-Manning
9-19-14
Date

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION


John Tubbs
9-13-14
Date

WHAT ARE SUBDIVISION REVIEW PREDETERMINATIONS?

The purpose of our Subdivision Review Predetermination process is to inform the requester whether (1) their proposed project will need a water right permit (and if that permit exists) or (2) if their proposed water use plans meet statutes/ rules for using water right permit exceptions (certificates).

Updated 03.14.2023

DNRC WATER RIGHT PREDETERMINATION REQUEST ARM 17.36.103(s)

Complete this form if you have a proposed project which will be subject to DEQ or county sanitation or subdivision review. All information described in the instructions below must be submitted. Use of this specific form for submittal of the information to DNRC is required. See page 3 for additional guidance about this process.

Name(s)/Business Name _____
Mailing Address/City/St/Zip _____
Preferred Phone _____ E-Mail _____

• Project and Location Information

Identify the type of project:

- Release of Sanitary Restrictions/Rewrite Family Transfer
 Boundary Line Adjustment Subdivision of Property Other

Provide a brief description of the proposed project:

Geocode of Existing Property: _____

Legal Land Description of Project Area:

1/4 _____ 1/4 Section _____ TWP _____ RGE _____ County _____
1/4 _____ 1/4 Section _____ TWP _____ RGE _____ County _____

• Subdivision Plat Information

Subdivision/Plat Name: _____

Total number of proposed lots: _____ Lot sizes: _____

Current landowner: _____

Is this a rewrite? Yes No If yes, briefly explain the details of the rewrite below.

• Existing Water Use

Describe all existing water uses within the footprint of the project area. If the project will connect to an existing public system, describe that system and the water rights in place for it.

Before DNRC can make a predetermination, all existing water uses within the project area must have a water right. If existing uses do not have a water right, you cannot file this predetermination request at this time. If you have questions, please contact your local Regional Office for assistance. See Page 4 for contact information.

Identify water right numbers of the existing water uses. _____

Explain how the existing water uses will operate with the proposed project and new uses of water.

• Project Information

Purpose – Identify all new water uses proposed for the subdivided property. Be sure to adhere to applicable CC&Rs. Refer to DNRC Form 615 for information on general water requirements.

Type of Use	Details of Use	Volume Required (AF)
Domestic	Number of new households proposed: _____	
Lawn & Garden	____ Acres/Lot x ____ Lots = ____ Total Acres	
Commercial or Industrial	Type: _____	
Stock	Type and number of animal units proposed: _____	
Other	Describe: _____	

If more than one lot is involved in your project and you intend to meet the exception to the permitting process, how will the maximum volume of 10 AF/year allowed under the permit exception be divided between the lots, parcels or tracts being reviewed:

Diversion Means

New Well Existing Well: GWIC ID _____ Water Right Number _____

Developed Spring Pit

Flow rate: _____ GPM

Total number of wells: _____

If multiple wells are being proposed, explain the use for each well.

• Attach the Following Required Documents

- Proposed Plat Map/Lot Layout Map
 - General Location Map
 - Copy of recorded documents (COS, Final Plat) that created parcels under 20 acres in this review.
 - Well log(s), if well has been drilled
- Attach any additional information that may be helpful to DNRC on a separate sheet.

• Signatures of Property Owners

This proposal must be reviewed by owners of all parcels involved in the proposed project; signatures from all property owners are required. Use additional sheets if necessary.

Parcel	Owner Signature
_____	_____
_____	_____
_____	_____
_____	_____

WHAT INFORMATION IS REQUIRED?

- **PROJECT AND LOCATION INFORMATION**
 - TYPE OF PROJECT, LEGAL LAND DESCRIPTIONS, GEOCODES
- **SUBDIVISION PLAT INFORMATION**
 - NUMBER OF PROPOSED LOTS, IS THIS A REWRITE ONLY
- **EXISTING WATER USE**
 - IS WATER CURRENTLY BEING USED?
 - IF SO, LIST WATER RIGHT NUMBER(S).
 - IF NOT FILED ON YET, IT MUST BE BEFORE DETERMINATION CAN BE MADE
- **PROPOSED WATER USE AMOUNTS BY PURPOSE**
 - VOLUME QUANTIFICATION NEEDS TO BE MADE FOR EACH PROPOSED PURPOSE. USE DNRC FORM 615 FOR STANDARDS.
 - DNRC DOMESTIC STANDARD IS 1AF BUT WILL ACCEPT DEQ STANDARD OF 0.28AF PER HOUSEHOLD
- **REQUIRED DOCUMENTS:**
 - PROPOSED PLAT
 - MAP OF PROJECT LOCATION
 - COPY OF RECORDED DOCUMENT (COS, FINAL PLAT) THAT CREATED THE TRACT PROPOSED TO BE SUBDIVIDED. THIS INFORMATION IS NEEDED TO DETERMINE IF THE TRACT/LOT WAS CREATED BEFORE OR AFTER OCTOBER 17, 2014
 - WELL LOGS, IF WELL(S) HAVE BEEN DRILLED
- **SIGNATURES OF ALL PROPERTY OWNERS**
 - THIS IS REQUIRED SO ALL OWNERS OF PROPERTY SUBJECT TO REVIEW ARE AWARE OF THE PROPOSED WATER USE ALLOCATION FOR THEIR PROPERTY

HOW IS THIS INFORMATION USED?

- PERMIT NEEDED
- FITS EXCEPTIONS
- CONNECTING TO PUBLIC SYSTEM

THIS LETTER DOES NOT SERVE AS A PRE-APPROVAL FOR A WATER RIGHT

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Water Resources Division • Helena Regional Office
1424 9th Ave, Helena, MT 59620-1401 Phone: (406) 444-0999 Fax: (406) 444-0217



GREG GIANFORTE, GOVERNOR

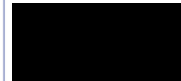
1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2074
FAX: (406) 444-2054

PO BOX 201491
HELENA, MONTANA 59620-1491

March 10, 2023



Re: HRO 23-10 DNRC Water Right Review of [REDACTED] Family Transfer from 16.9 acre Parcel D, C.O.S. 247354, in the SE of Section 24, Township 11N, Range 4W, Lewis and Clark County.

Determination: Based on the information provided in your February 16, 2023 DNRC water right review request, the referenced parcel and well locations do fit the current statutes and rules pertaining to filing a water right using a DNRC Notice of Completion of Groundwater Development (Form 602). See full details below.

Dear Requestor:

This letter is in response to your request for DNRC review of water rights for the referenced project in accordance with Administrative Rules of Montana (ARM) 17.36.103(1)(s).

Proposed Project

The proposed project is to create 7 lots (lots 1-7) between 1.34 and 3.34 acres each from Parcel D. Each lot is proposed to be developed with a single family residence served by an individual well. Lot 4 will retain existing Groundwater Certificate 41I 26370 and the associated 4.8 AF volume. The proposed new volume for lots 1-3 and 5-7 will be 1.68 AF for domestic use (0.28 AF x 6 lots) and 3.45 AF for irrigation (.23 acres x 2.5 AF/acre x 6 lots) on each lot for a total project volume of 9.93 AF. The project is located in the SE of Section 24, Township 11N, Range 4W, Lewis and Clark County.

The applicant estimates the proposed uses will require 9.93 AF/year at a pumping rate not to exceed 35.0 gallons per minute (GPM). Any unallocated volume available for additional future appropriations under the water right permit exceptions of MCA §85-2-306(3)(a)(iii) will be split evenly between the lots.

Existing Water Use

Existing Groundwater Certificate 41I 26370 for Domestic and Stock use with a volume of 4.8 AF will be retained by proposed Lot 4.

DNRC Conclusion

Based on the information provided in your proposal receipt date DNRC water right review request, the referenced parcel and well location does fit the current statutes and rules pertaining to filing a water right using a DNRC Notice of Completion of Groundwater Development (Form 602). The proposed appropriation is considered a combined appropriation because proposed Lots 1-7 have not been approved with Lewis and

Clark County prior to October 17, 2014. As noted on Form 602, the diverted flow rate and volume may not exceed 35.0 GPM/well and 10.0 AF/year per development or per combined appropriation. Form 602 must be filed within 60 days after first putting water to beneficial use. If a well's flow rate exceeds 35.0 GPM or a development's volume exceeds 10.0 AF/year, then a beneficial water use permit (DNRC Form 600-GW) must be obtained prior to putting water to beneficial use.

In Clark Fork Coalition, et. al. v. DNRC, et. al., 2016 MT 229, 384 Mont. 503, 380 P.3d 771, the Montana Supreme Court concluded that the definition of "combined appropriation" in Admin. R. Mont. 36.12.101(13) was invalid. The Court reinstated the Department's 1987 Rule defining "combined appropriation" as:

An appropriation of water from the same source aquifer by means of two or more groundwater developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Groundwater 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 from the entire project or development from these groundwater developments in the same source aquifer is the "combined appropriation."

Under this Rule, the Department interprets subdivisions that are either pending before the Department of Environmental Quality for approval on October 17, 2014, or filed after that date, to be a single project that can be accomplished by a single appropriation. Consequently, all wells in such a subdivision will be considered a "combined appropriation" for the purposes of Mont. Code Ann. § 85-2-306. The only exception to this interpretation is that a subdivision which has received preliminary plat approval prior to October 17, 2014, which will not be considered a project under the "combined appropriation" 1987 Rule; individual lots will still be evaluated under the 1987 Rule at the time of an application to the Department. 2015 Mont. Laws § 1, Ch. 221.

This letter does not serve as a pre-approval for a water right. The determination above is based upon the information provided in your request. Prior to issuance of any water right, the owner must make an application or notice to the DNRC for a water right. Applications are processed on a first-come, first-served basis. To ensure timely processing of your water right, please contact DNRC at your earliest convenience to discuss filing requirements.

A copy of this letter and your DNRC review request has been provided to the Department of Environmental Quality (DEQ). If you have any questions, please contact me at rgates@mt.gov.

Sincerely,

Russ Gates
Hydrologist/Water Resource Specialist
Helena Regional Water Resource Office

cc: DEQ, Leata English- via email only

WATER RESOURCES



MORE INFORMATION :

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

Subdivision Review Predetermination Form and Guidance

[DNRC Predetermination Submittal Form \(Fillable\)](#) - (Updated 03-14-2023)

Use this required form when requesting a water rights predetermination from DNRC for a proposed project which will be subject to DEQ or county sanitation or subdivision review.

[Subdivision Review Predeterminations Guidance](#) - (Updated 03-14-2023)

This guidance was written to assist DNRC staff processing predetermination requests, but may also help the public understand processing considerations.

[Combined Appropriations Guidance](#) - (Updated 03-23-2022)

<p>BILLINGS:</p> <p>406-247-4415 DNRCBillingsWater@mt.gov</p> <p>Airport Industrial Park 1371 Rintop Dr Billings MT 59105-1978</p> <p>Serving: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, & Yellowstone Counties</p>	<p>HELENA:</p> <p>406-444-6999 DNRCHelenaWater@mt.gov</p> <p>PO Box 201601 Helena MT 59620-1601</p> <p>Serving: Beaverhead, Broadwater, Deer Lodge, Jefferson, Lewis & Clark, Powell, & Silver Bow Counties</p>
<p>BOZEMAN:</p> <p>406-586-3136 DNRCBozemanWater@mt.gov</p> <p>2273 Boot Hill Court, Suite 110, Bozeman MT 59715</p> <p>Serving: Gallatin, Madison, & Park Counties</p>	<p>KALISPELL:</p> <p>406-752-2288 DNRCKalispellWater@mt.gov</p> <p>655 Timberwolf Parkway, Suite 4 Kalispell MT 59901</p> <p>Serving: Flathead, Lake, Lincoln, & Sanders Counties</p>
<p>GLASGOW:</p> <p>406-228-2561 DNRCGlasgowWater@mt.gov</p> <p>PO Box 1269 Glasgow MT 59230-1269</p> <p>Serving: Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, & Wibaux Counties</p>	<p>LEWISTOWN:</p> <p>406-538-7459 DNRCLewistownWater@mt.gov</p> <p>613 NE Main St, Suite E Lewistown MT 59457-2020</p> <p>Serving: Cascade, Fergus, Golden Valley, Judith Basin, Meagher, Musselshell, Petroleum, & Wheatland Counties</p>
<p>HAVRE:</p> <p>406-265-5516 DNRCHavreWater@mt.gov</p> <p>PO Box 1828 Havre MT 59501-1828</p> <p>Serving: Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, & Toole Counties</p>	<p>MISSOULA:</p> <p>406-721-4284 DNRCMissoulaWater@mt.gov</p> <p>PO Box 5004 Missoula MT 59806-5004</p> <p>Serving: Granite, Mineral, Missoula, & Ravalli Counties</p>

CONTACT YOUR LOCAL
DNRC WATER RESOURCES
REGIONAL OFFICE WITH
ANY QUESTIONS

THANK YOU!

WATER RESOURCES

