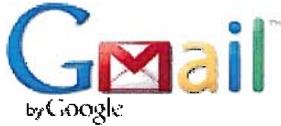


**SOURCE WATER  
CAPACITY STUDY:  
EMAIL  
CORRESPONDENCE**

Ron Edwards &lt;wsd363@gmail.com&gt;



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**Fwd: Permit Question**

1 message

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**Mark Cunnane** <markc@westerngroundwaterservices.com>  
To: Ron Edwards <wsd363@3rivers.net>

Tue, Jun 30, 2015 at 6:44 AM

Ron,  
See email correspondence with DNRC below regarding permitting approach to increase rate with no new volume.

Sincerely,  
**Mark Cunnane, PE, PG**  
Western Groundwater Services, LLC  
6595 Bear Claw Lane  
Bozeman, MT 59715  
Office: (406) 585-5947  
Field: (406) 579-1493

----- Forwarded message -----  
From: **Benn, Troy** <TBenn@mt.gov>  
Date: Wed, Apr 1, 2015 at 2:51 PM  
Subject: RE: Permit Question  
To: Mark Cunnane <markc@westerngroundwaterservices.com>  
Cc: "Strasheim, Kerri" <kstrasheim@mt.gov>

Mark-  
Your approach sounds reasonable.

Troy.

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**From:** Mark Cunnane [[markc@westerngroundwaterservices.com](mailto:markc@westerngroundwaterservices.com)]  
**Sent:** Wednesday, April 01, 2015 11:21 AM  
**To:** Benn, Troy  
**Subject:** Permit Question

Project will develop a new well with 250 gpm capacity and annual volume target of 150 af. Existing water right, not yet completed, is determined to have 150 af of unused capacity, but the rate is fully used.

Filing for new well will include change to existing water right adding new well as diversion, and a beneficial use app to appropriate 250 gpm and 0 af. So, the well volume would be permitted under the existing permit by change, and the rate would be newly appropriated.

As the new well is being located to have no additional depletion beyond what already exists for the existing permit, there would be no adverse effect to surface waters.

Is there any problem you see with this permitting approach?

Sincerely,  
**Mark Cunnane, PE, PG**  
Western Groundwater Services, LLC  
6595 Bear Claw Lane  
Bozeman, MT 59715  
*Office: (406) 585-5947*  
*Field: (406) 579-1493*

**Ron Edwards**

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**From:** Mark Cunnane <markc@westerngroundwaterservices.com>  
**Sent:** Monday, August 10, 2015 11:19 AM  
**To:** Ron Edwards  
**Subject:** Re: Souce Cap Update - Rev3  
**Attachments:** 634.pdf

Hi Ron,

Will get that finalized and send you one hard copy plus CD with PDF. Will also email you PDF version. Regarding questions, have responded below:

1. Challenging drilling a replacement well not designated as municipal use. Do you have any idea what the challenge would involve?.

This approach was suggested by Mike Cusick. You would challenge the need to demonstrate historic use for a replacement well that requires the filing of a change application. Prior to filing you would evaluate historical use as compared to present use and potential maximum use of the well. If there were no curtailment to the water right anticipated, you would simply file the change. If the water right would be curtailed and District would realize a reduced rate/volume for the well, then I would expect you would discuss this with DNRC. You may then find you could still file a change and they would agree not reduce the rate/volume (I think this reasonable, but unfortunately doubtful). If DNRC position was to reduce the rate volume (to that perfected at completion (1996 - MTN4) or statement of claim filing date (1974 - MTN1, MTN2, & MTN3)), I think you would file the change without historical use analysis, let DNRC publish their finding of denial on this basis, and then sue DNRC on grounds that historical use for a replacement well should not be required. Mike discussed (6/29 meeting) a Supreme Court opinion where it was found that DNRC could not ask for extra info just because they wanted to, but rather had to limit the info provided to that which is germane to the project. It could be argued that a replacement well of the same dimensions as the existing well should not require historical use analysis.

2. You also recommend that we “monitor the status of these rights through the adjudication process” for the mountain wells. Will we be notified when these well water rights are being adjudicated?

I don't think the Water Court will be sending you any info regarding adjudication, other than final findings, but it looks like the correspondence dated 6/5/15 re: 'Water Right Filed in the Courthouse after July 1, 1973' is the start of the process to move the MTN1, MTN2, and MTN3 water rights out of the Water Court jurisdiction and the adjudication. This letter is addressing only MTN2 (41H 122637 00), but would expect you will get the same for MTN1 and MTN3. In reviewing this info this morning, I think the District will want to make further inquiry. It may be an opportunity to change the type of use to MUNICIPAL as per the completion form. I'm not sure if the 35 gpm limit indicated on the form would apply -- it would appear not since they are attaching an abstract for 80 gpm (otherwise they have sent you the wrong form and there must be another one for larger capacity wells). Possibly the District should be proactive on this and contact DNRC and make submittal to update MTN1, MTN2, and MTN3 to MUNICIPAL using the rates/volumes of the existing claims. If this step could be taken through this process, would be very useful for future well replacements. You would also need to consider the remark on MTN5,6 water right that limits overall volume and how this effects MTN1, 2, & 3.

3. When we drill new Mountain Well 8 and use HV 2's water right will the place of use for this water right be taken care of through the Change Application?

You would first file the simpler replacement well form to indicate the new MV-8 is replacing HV-2 (Form attached). You would need to properly abandon HV-2 prior to submittal. There is no change in the place of use when filing the replacement well form. If MV-8 could produce at greater capacity and volume than the HV-2 water right, you would then add MV-8 via a change application onto the District's other water rights. The place of use can be updated if this change were filed, otherwise you would update it in a subsequent change filing (e.g., MV-9). The change would update the place of use and include a remark that lists all other District rights with connection to the manifold system, thereby extending these rights place of use to the same as that designated by the change.

Sincerely,  
**Mark Cunnane, PE, PG**  
Western Groundwater Services, LLC  
6595 Bear Claw Lane  
Bozeman, MT 59715  
*Office: (406) 585-5947*  
*Field: (406) 579-1493*

On Fri, Aug 7, 2015 at 12:22 PM, Ron Edwards <[ron@wsd363.com](mailto:ron@wsd363.com)> wrote:

Hi Mark.

Jim and I read through the changes to the 3<sup>rd</sup> revision and have no other comments that require any changes so please finalize the report and appendices.

I do have a few questions though as follows:

1. Challenging drilling a replacement well not designated as municipal use. Do you have any idea what the challenge would involve?.
2. You also recommend that we "monitor the status of these rights through the adjudication process" for the mountain wells. Will we be notified when these well water rights are being adjudicated?
3. When we drill new Mountain Well 8 and use HV 2's water right will the place of use for this water right be taken care of through the Change Application?

Thanks

**From:** Mark Cunnane [mailto:[markc@westerngroundwaterservices.com](mailto:markc@westerngroundwaterservices.com)]  
**Sent:** Thursday, July 02, 2015 10:00 AM  
**To:** Ron Edwards  
**Subject:** Souce Cap Update - Rev3

Hi Ron,

As per voice mail. Here is 3rd revision. The only changes made were as I discussed on voice mail. They occur in the first paragraph of Word document page 8.

Sincerely,

**Mark Cunnane, PE, PG**

Western Groundwater Services, LLC

6595 Bear Claw Lane

Bozeman, MT 59715

*Office: (406) 585-5947*

*Field: (406) 579-1493*

**Ron Edwards**

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**From:** Mark Cunnane <markc@westerngroundwaterservices.com>  
**Sent:** Monday, August 10, 2015 3:31 PM  
**To:** Ron Edwards  
**Subject:** Re: Souce Cap Update - Rev3

Ron...your earlier question regarding replacement also has another aspect to it that I address below...

1. Challenging drilling a replacement well not designated as municipal use. Do you have any idea what the challenge would involve?.

The response I gave earlier also is valid, but the report text states in parentheses that challenge may be possible with consideration of the fact that the types of water use the District serves are no different than Municipal Use. In this case, I think you would file a replacement well form for a water right with type of use other than Municipal and provide a written case supporting your filing--in that the uses were identical. If DNRC denied your use of the replacement well form, you would then pursue the challenge by legal means. Mike Cusick would best address this process.

Sincerely,

**Mark Cunnane, PE, PG**

Western Groundwater Services, LLC

6595 Bear Claw Lane

Bozeman, MT 59715

Office: (406) 585-5947

Field: (406) 579-1493

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Thanks

**From:** Mark Cunnane [mailto:[markc@westerngroundwaterservices.com](mailto:markc@westerngroundwaterservices.com)]  
**Sent:** Thursday, July 02, 2015 10:00 AM  
**To:** Ron Edwards  
**Subject:** Souce Cap Update - Rev3

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**Mark Cunnane, PE, PG**

Western Groundwater Services, LLC

6595 Bear Claw Lane

Bozeman, MT 59715

*Office: (406) 585-5947*

*Field: (406) 579-1493*

**REPLACEMENT WELL NOTICE**

Use this form to inform the DNRC of a well that has been replaced.  
For municipal wells that do not exceed 450 gpm or for all other wells that do not exceed 35 gpm and 10 ac-ft per year.

**WATER RIGHT:** Attach a copy of the existing water right.  
**WELL LOG:** Attach a copy of the well log for the new well.  
Also attach a copy of the old well log, if available.  
**MAP:** Attach a map showing the new & old well locations.

**FILING FEE: \$100.00**

**FOR DEPARTMENT USE ONLY**

Notice No. \_\_\_\_\_ Basin \_\_\_\_\_  
Date Received \_\_\_\_\_ Time \_\_\_\_\_ AM / PM  
Rec'd By \_\_\_\_\_  
Fee Rec'd \$ \_\_\_\_\_ Check # \_\_\_\_\_  
Deposit Receipt # \_\_\_\_\_  
Payor \_\_\_\_\_  
Refund \$ \_\_\_\_\_ Date \_\_\_\_\_

**If your development is within a Controlled Ground Water Area, the regional office will contact you to explain the correct filing requirements.**

**READ AND ANSWER THE QUESTIONS BELOW TO DETERMINE IF YOU CAN FILE YOUR WATER USE ON THIS FORM.**

- Yes  No Is the groundwater aquifer the same for the new well and the old well?  
 Yes  No Is the flow rate used from the new well the same or less than the maximum flow rate of the old well?  
 Yes  No Is the new well used for the same purposes (there is no increase in the use) as the old well?  
 Yes  No Was the old well properly abandoned? The proper abandonment procedures can be found in the Board of Water Well Contractor rules, ARM 36.21.670.

**If the answer to all of the above questions is "yes", you can file this form. Complete the information below.**

1. **WATER RIGHT OWNER(S)** \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Work Phone \_\_\_\_\_ Home Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_

2. **WATER RIGHT NUMBER (for the old well being replaced)** \_\_\_\_\_  
If you do not have a DNRC water right number, you may have an Exempt Existing Water Right. Please see the instructions on the back of this form.

3. **WELL DEPTHS & STATIC WATER LEVEL**  
Old well depth: \_\_\_\_\_ feet New well depth: \_\_\_\_\_ feet  
Old well static level: \_\_\_\_\_ feet New well static level: \_\_\_\_\_ feet

4. **NEW WELL LOCATION**  
The new well is located approximately \_\_\_\_\_ feet \_\_\_\_\_ (direction) from the old well.  
\_\_\_\_ 1/4 \_\_\_\_ 1/4 \_\_\_\_ 1/4 Section \_\_\_\_ Twp \_\_\_\_ N / S Rge \_\_\_\_ E / W County \_\_\_\_\_  
Lot \_\_\_\_\_ Block \_\_\_\_\_ Tract No. \_\_\_\_\_ Subdivision Name \_\_\_\_\_  
Government Lot No. \_\_\_\_\_ COS No. \_\_\_\_\_  
Street or Road Address, including City, State & Zip Code of the Well \_\_\_\_\_

5. **AFFIDAVIT**  
I affirm that statements appearing here are to the best of my knowledge true and correct. I also affirm I have possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use.

Appropriator's Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

**INSTRUCTIONS**  
**REPLACEMENT WELL NOTICE (FORM 634)**

For municipal wells that do not exceed 450 gpm or for all other wells that do not exceed 35 gpm and 10 ac-ft per year.

If your new well is located within the boundaries of a controlled groundwater area that restricts this type of change, the regional office will contact you to explain the filing requirements.

**Questions:** Your well can be considered a replacement well and you can file this form if:

- The old and new wells must be drawing water from the same groundwater aquifer.
- The flow rate used from the new well cannot exceed the maximum flow rate used from the old well.
- The new well must be used for the same purpose. For example, if the old well was used for one house and 100 cows, the new well must be used for those same amounts. If the new use is more than the old use, contact the Water Resources Regional Office to determine the correct filing requirements.
- The old well must have been properly abandoned. If a licensed well driller was used, the correct procedures will have been followed. If you plan to do the work, you must follow the abandonment guidelines found in the Administrative Rules of Montana at 36.21.670. These rules are available at the DNRC Website: (<http://www.dnrc.mt.gov/wrd/>).

**Complete items 1 through 5 ONLY if you have determined this is the correct form to file.**

**1. Water Right Owner:** Enter the complete name, mailing address, and phone numbers of the owner of the existing water right. If you own the existing water right, but it is not in your name, contact the Water Resources Regional Office for information on completing an Ownership Update Form.

**2. Water Right Number:** Enter the water right number of the old well that was replaced.  
You must attach a copy of the filed water right.

If your well does not have a DNRC water right number, please read the following information:

Water rights for stock and domestic uses from groundwater sources (well or developed springs) were exempt from the general adjudication filing requirements for claims of existing water rights if they met either of the following criteria:

- A. The water was put to use prior to January 1, 1962, or
- B. The water was put to use between January 1, 1962 and July 1, 1973, and a notice was filed in the courthouse records.

If your old well meets one of the above criteria, complete this form **and** a 634 NFWP Addendum. The addendum can be obtained from the DNRC Website. <http://www.dnrc.mt.gov/wrd/>.

If your well does not meet these criteria, call the regional office serving your area.

**3. Well Depths:** Enter the well depths and static water levels for both the old and new wells.  
You must attach a copy of the new well log and a copy of the old well log, if available.

**4. Well Location:** This is the actual location of the replacement (new) well.  
**You must attach a map showing the old and new well locations.**

- Enter the approximate distance and the direction that the new well is located from the old well.
  - Enter the land description for the location of the development. Describe the location to the nearest 10 acres if possible. Legal land descriptions may be obtained from the well log; the county records; or from the Montana Cadastral system at: <http://gis.doa.state.mt.us/cadastral/maps.html>
- Subdivisions – In addition to the above description, enter the lot and block or tract number, subdivision name.  
Government Lots – In addition to the land description, enter the government lot number.  
Certificate of Survey – In addition to the land description, enter the survey number.  
Street or Road Address – Enter the physical address of the development including city, state, and zip code.

**FOR ANY OTHER QUESTIONS OR FORMS, CONTACT THE REGIONAL OFFICE RESPONSIBLE FOR YOUR COUNTY.**

**BILLINGS:** AIRPORT INDUSTRIAL PARK, 1371 RIMTOP DR., BILLINGS MT 59105-1978  
PHONE: 406-247-4415 FAX: 406-247-4416  
SERVING: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, and Yellowstone Counties

**BOZEMAN:** 2273 BOOT HILL COURT, SUITE 110, BOZEMAN MT 59715  
PHONE: 406-586-3136 FAX: 406-587-9726  
SERVING: Gallatin, Madison, and Park Counties

**GLASGOW:** 222 6TH STREET SOUTH, PO BOX 1269, GLASGOW MT 59230-1269  
PHONE: 406-228-2561 FAX: 406-228-8706  
SERVING: Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, and Wibaux Counties

**HAVRE:** 210 6TH AVENUE, PO BOX 1828, HAVRE MT 59501-1828  
PHONE: 406-265-5516 FAX: 406-265-2225  
SERVING: Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties

**HELENA:** 1424 9<sup>th</sup> AVENUE, PO BOX 201601, HELENA MT 59620-1601  
PHONE: 406-444-6999 FAX: 406-444-9317  
SERVING: Beaverhead, Broadwater, Deer Lodge, Jefferson, Lewis and Clark, Powell, and Silver Bow Counties

**KALISPELL:** 655 TIMBERWOLF PARKWAY, SUITE 4, KALISPELL MT 59901-1215  
PHONE: 406-752-2288 FAX: 406-752-2843  
SERVING: Flathead, Lake, Lincoln, and Sanders Counties

**LEWISTOWN:** 613 NORTHEAST MAIN ST., SUITE E, LEWISTOWN MT 59457-2020  
PHONE: 406-538-7459 FAX: 406-538-7089  
SERVING: Cascade, Fergus, Golden Valley, Judith Basin, Meagher, Musselshell, Petroleum, and Wheatland Counties

**MISSOULA:** 2705 SPURGIN RD, BLDG C, PO BOX 5004, MISSOULA MT 59806-5004  
PHONE: 406-721-4284 FAX: 406-542-5899