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## **Montana Ranchers Ask for a Judicial Review to Protect Their Water Rights**

(Helena, Mont.) – Today five ranchers from the Yellowstone, Gallatin, and Clark Fork River basins asked the Montana District Court to review a recent decision from the Dept. of Natural Resources and Conservation (DNRC) upholding the Department's "exempt well rule." The ranchers believe that the rule is inconsistent with legislative intent, and the current statute. They also maintain that this rule leaves ranchers and rivers at risk, because it allows large appropriators of water to drill multiple small, unregulated wells without any oversight or permit.

This lawsuit challenges an August 17<sup>th</sup> ruling from the DNRC that was issued in response to a petition filed by the ranchers in December 2009. Landowners who filed the petition are concerned that the cumulative effect of these unregulated wells depletes water in the streams, and threatens the security of their senior water rights. "It goes against our water laws to allow large developments to skirt the water permitting process and drill wells without any regard for their impact on my senior irrigation water rights," said Polly Rex, a cattle rancher near Absarokee and the largest water shareholder of the Mendenhall Ditch Company.

In recent years large water users have exploited the exempt well loophole created by DNRC's interpretation of "combined appropriation" to supply water for large irrigation projects and new subdivisions, in some cases drilling dozens or hundreds of unconnected exempt wells rather than applying for a new water use permit through the DNRC. On average, three of every four new homes built in the last decade in Montana used permit-exempt wells.

At issue is what the Montana legislature meant by the term "combined appropriation." The Montana Water Use Act requires water users to obtain a permit if they have a "combined appropriation" from "the same source from two or more wells or developed springs" that exceeds 35 gallons per minute or 10 acre-feet per year. However, according to the DNRC, two or more wells or developed springs are only considered a "combined appropriation" if they are "physically manifold" or plumbed together. The ranchers who filed the lawsuit disagree. They maintain that the Montana legislature clearly intended the exemption for one well at a time—not for multiple, unconnected wells appropriating water from the same source for the same project.

The Clark Fork Coalition, one of the petitioners, is concerned that DNRC's definition of "combined appropriation" is inconsistent with the statute, and doesn't protect Montana's water resources. The Coalition holds several water rights as owner of Dry Cottonwood Creek Ranch in the Deer Lodge Valley, as well as several instream water rights that protect and restore flows in tributaries critical for fish and wildlife. "In Montana, we rely on wells to water our homes, crops, and industries," said Karen Knudsen, executive director. "We need to make sure we manage our groundwater so that it lasts for generations. The current exempt well rule creates a loophole that basically gives away our precious water for free."

Rex, the Coalition and other ranchers are asking the Montana District Court to review the DNRC decision, which upheld its rule on permit-exempt wells. "This is an issue of statutory interpretation that belongs in front of a judge," said Matthew Bishop, an attorney with the Western Environmental Law Center who is representing the ranchers and Clark Fork Coalition. Please visit [www.horsecreekwater.org](http://www.horsecreekwater.org) or [www.clarkfork.org/ranch](http://www.clarkfork.org/ranch) to download and read a copy of the original petition or the DNRC's August 16<sup>th</sup> Declaratory Ruling.

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