

Pre-Review

General Review Instructions/Guidance

The goal of this review process is to 1) Ensure that all data included on submitted forms is entered into the database, 2) Ensure that forms received qualify under the filing requirements of Ordinance section 2-1-106, 3) review submitted forms and identify deficiencies which will prevent the Engineer's office from issuing Registration Certificates. Forms being reviewed are suspended 602/605 filings, 602F/605F filings, and 222F filings. DNRC will only be reviewing applications. Only staff under the Office of the Engineer have the authority to contact Applicants, send deficiency letters, and issue registration certificates.

If adequate information is not provided on the form but the correct information is contained on the form or can be found on the Cadastral property record, enter the correct information on a "work copy." All corrections made by DNRC will be on a work copy and shall include the date and the initials of the person making the correction.

Reviewers will need to check for duplicate filings. Duplicate filings should be checked by geocode and owner name. Owner name may be less reliable than geocode because oftentimes when a property sells, a new 602 will be submitted if the title company doesn't find a water right. Most filings in the system should already be geocoded.

If a map identifying the POU (parcel) is not already included in the file, the reviewer will make a map and include it in the file. The map should highlight the parcel(s) of the place of use based on the geocodes assigned to the application. The map title should identify the water right number which it pertains to. It should also clearly show Township, Range, Section, and quarter sections.

The map will be used to compare the POD and POU legal land descriptions on the application to the mapped legal land descriptions. If the map shows something different than what was provided on the application, make a "work copy" and correct the application to match the map.

602/602F Review Instructions

Filing Fee

The appropriate filing fee must be paid. The filing fee will be identified on the application form. If the filing fee was not paid in full, mark it as deficient.

Meets Requirements of Ordinance

For 602/602F forms, the development must be for groundwater and the flow rate must not exceed 35 GPM and the volume must not exceed 10 AF per year. Volume will be calculated using DNRC standards

unless otherwise quantified by the Applicant. Filings that do not meet these requirements will be identified as not meeting the requirements of the Ordinance.

It is important to note that DNRC receives many 602 filings that either appear to be over 35 GPM or 10 AF based on how the form was completed. On these filings, the flow rate can be incorrect because people copy the flow rate from the well log and the volume can be incorrect because they identify the total number of acres they own, not what they are actually irrigating. In our current process, we send a “deficiency” letter giving people the opportunity to provide the correct information before we terminate the filing. If the corrected information is under the limits, we process the form.

Water Not Put to Use

Water must have been put to use for the purposes being filed on. At the time of the review, if there is evidence that water has not been put to use for the beneficial use(s) identified, the application will be marked as deficient and further information will need to be provided by the Applicant.

Diversion Used

A diversion type must be checked. If more than one diversion is checked and it is unclear what the Applicant is filing on, mark the application as deficient. Only one diversion can be filed on per form. If no box is checked, but DNRC can determine the type of diversion by other information contained on the form, DNRC will check the appropriate box. Correct and complete will be that a box is checked. For groundwater pits, the application will be correct and complete if pit is checked, and the surface area and depth are identified. The well driller name does not need to be completed.

Flow Rate

Flow rate must be identified unless the diversion used is a pit. If the diversion is a pit, no flow rate will be coded for the water right. For all other diversions, the flow rate must be 35 GPM or less. Forms that had a checkbox stating the flow rate is 35 GPM or less will be treated as deficient.

Combination or Shared Well

For forms that ask about combination or shared well information, correct and complete will be that yes or no has been checked on each question. If yes is checked, an explanation must be entered. If the boxes are not checked but you can answer the questions based on POD/POU information and a search of existing rights in the database, make a work copy and cite your findings.

Associated Rights

If a 602 is associated in any manner to another water right, a copy of the associated right and an associated flag must be included in the file. Also add an AS remark to the remark record on both water rights. If an owner is applying for additional volume on an existing well: The owner can apply for a new 602 for additional volume not to exceed a total of 10 AF between the associated rights.

If multiple owners/water users share the same well, the combined appropriation of their uses cannot exceed a volume of 10 AF per year. The flow rate of the rights should in most cases match each other.

Combined Appropriations

Combined appropriations will be handled the same as it would have at the time the form was filed. For forms filed before November 21, 2014, combined appropriations will apply only to wells manifold together or multiple rights from the same POD (see combined appropriations guidance document).

For filings made after November 21, 2014, the combined appropriations 602 layer on GIS will need to be checked to see if it was part of a DEQ subdivision review. If it was, include a copy of Marc's subdivision review letter in the file.

Purpose/Period of Use

If no box is checked, but DNRC can determine the purpose by other information contained on the form, DNRC will check the appropriate box. Correct and complete will be that at least one box is checked, and the information required to determine the volume is provided. If the period of use is not checked, DNRC will use the standard time period on the form. Volume will be calculated using DNRC standards unless otherwise quantified by the Applicant. DNRC standards for volume can be found on DNRC Form 615.

Some forms did not request adequate purpose information for DNRC to be able to assign a volume. These forms will be identified as deficient, and the Applicant will need to provide use information so that the volume of each use filed on can be determined. Example: 2003-2008 forms used checkboxes for purposes and did not request any use information.

Calculating Total Volume

Add up all the Volume amounts for each purpose and enter the total in the Max Volume field. If the total volume exceeds the volume that can be attained with the flow rate (if pit/pond is the primary POD, a flow rate will not exist), the max volume will need to be reduced. Contact the owner to either reduce the amount they are requesting, or you may enter a VA remark. You may use less than 1 AF for domestic if the owner requests less volume but generally do not issue for less than 250 gpd (.28 AF if year-round).

EXAMPLE: Request is for 1 GPM, 1 household, 1 acre lawn and garden

Assign 1 AF for house; .93 AF for l/g ($1.61 * .5784\%$ of year for period of use) and a total volume of 1.61 AF as that is the max attainable volume at 1 GPM for a full year. Add a VA remark describing the volume situation.

Pits

If pit/pond is checked, the surface area and depth must be identified. If average depth is provided instead of max depth, do not use the 0.5 multiplier for the pit capacity calculation. The Estimation of Evaporation from Shallow Ponds and Impoundments in Montana by Donald Potts should be used for calculating evaporation. If the primary means of diversion is a pit/pond, you must include the evaporation in the Max Volume. You must distribute the evaporation volume evenly amongst the purpose(s).

*While we default to gross evaporation as outlined above, if the owner/representative provides other reasonable calculations for evaporation (such as net evaporation), you may use that instead of the gross number.

Calculating volume when the primary POD is a pit/pond:

- Calculate evaporation and distribute it among the purposes (as stated above)
- If the purpose is fishery or fish and wildlife, enter the capacity + evaporation as the purpose volume
- If water is diverted from the pit/pond, the total purpose volume(s) will be the diversionary requirement plus evaporation (do NOT include the capacity if water is diverted from the pit/pond for use).

****LIMITING FACTOR: (Capacity + evaporation + diversionary requirement) must be less than 10 AF. If the total is more than 10 AF, a permit is required.*

Since the “stored water” in the groundwater pit is not being directly used for any purpose, we should not account for that volume (which could be considered a waste of water). We cannot assign any additional purposes to 602s, only what is requested.

Example: Capacity = 2 AF, Evaporation = 1 AF, Stock = 1.7 AF, Irrigation = 2.5 AF

Water right---Stock: $1.7 + .5 = 2.2$ AF; Irrigation: $2.5 + .5 = 3$ AF----Total Vol = 5.2 AF

**Limiting factor note: If the capacity had been over 4.8 AF, this would require a permit*

If the pond is a secondary point of diversion (i.e., a well pumping water into a pond), the Applicant will have to identify the volume of water they divert into the pond and the Department will not calculate the evaporation from the pond. The applicant may calculate evaporation if they would like to have it included in the total volume.

Other Purpose

If the “other” purpose is selected, and we have no rules defining the beneficial use volumes, the owner must identify their period of use and provide some justification for the volume requested. A correct and complete notice includes substantial credible information for all fields including the volume requested. If wildlife is requested, what proof of use do the owners have? Are they a wildlife agency or have they partnered with such an agency? If the purpose is wetlands, what justification have they provided (this is different than wetland mitigation credits applied for by MT DOT)? If recreation is requested, how will the water be used for recreation? Looking at a pond is not recreation, that is aesthetics and DNRC will NOT issue a water right for aesthetics. If no reasonable beneficial use is applied for, then the owner is likely wasting water and DNRC will not issue a water right without a justified beneficial use.

Domestic Purpose

Domestic use has been addressed differently over the period of record in which these filings were made. Some forms included a lawn & garden irrigation component with the domestic use and others do not.

Each form will have to be examined for what was considered included under the umbrella of domestic use. For the purposes of this review, domestic use will be handled in the following way:

- Forms that include 0.25 acres of lawn and garden under domestic purpose
 - Assign the domestic use based on the DNRC standard of 1AF/household and assign 0.25 acres of lawn and garden irrigation under the “Lawn and Garden” purpose.
- Forms that include up to three acres of lawn & garden under domestic purpose
 - These filings will be treated as deficient, and the Applicant will need to identify how much lawn and garden they irrigate on their property to include it as a purpose.

Justification for this approach is that, to meet well setbacks for septic systems, a minimum parcel size is approximately one acre. Therefore, it is reasonable to assume that an Applicant could water 0.25 acres of lawn and garden. The forms that included up to three acres of lawn and garden irrigation do not allow DNRC to assign an actual volume to the lawn and garden irrigation without additional information. The language on the form was “up to,” and did not request the Applicant to identify how much lawn and garden they irrigated. It is likely that there will be situations where parcels filed on are not even three acres in size or assigning three acres of lawn and garden irrigation will lead to a total use of over 10 AF.

Stock Purpose

The maximum number of stock that can be filed for on a 602/602F without exceeding 10 AF is 588 animal units (AU). Any application over this amount should be marked as deficient. Animal units are different than AUMs which are used to determine carrying capacity of a pasture. An Animal Unit Month (AUM) is the amount of forage required by one animal unit for one month. To convert AUMs to AU, divide the AUMs by 12.

Some items to consider when clarifying that the appropriation is less than 10 AF/Year include but are not limited to:

- What is the period of use? (A shorter period of use means less volume will be used.)
- What is the carrying capacity of the pasture where the well is located? (While someone might have 1200 stock, it is quite possible the pasture capacity will only hold 500 stock).

Lawn & Garden Irrigation

There are 43,560 square feet in an acre. If the irrigated lawn and garden area is provided using dimensions, convert the total square feet of the irrigated footprint to acres.

Irrigation

DNRC assigns standard volumes for irrigation on 602's based on climatic area. The standard volumes applied are:

Climatic area 1: 2.3 AF/Ac

Climatic area 2: 2.0 AF/Ac

Climatic area 3: 1.8 AF/Ac

Climatic area 4: 1.6 AF/Ac

Climatic area 5: 1.3 AF/Ac

Fire Protection

Fire Protection cannot be listed as a purpose unless it is a subdivision requirement that the subdivision store a certain amount in a tank or pond solely for the purpose of fire protection. If the applicant has listed Fire Protection as a purpose under Other on the 602, and it is not a subdivision requirement simply add an FP remark in the remarks tab (step 9). If the fire protection is a subdivision requirement and is the only purpose, add it as a purpose. The pond capacity must not be greater than the amount required in the regulations unless explanation is provided plus evaporation. For example, Gallatin County requires a minimum of 30,000 gallons of storage.

Geothermal

A volume needs to be entered. If the applicant did not provide the volume and enough information is entered to calculate, you may do so and note the calculation on the work copy. A deficiency letter requesting total volume used may be sent.

Fishery / Fish and Wildlife

Fish and Wildlife and Fishery purposes are two separate purposes. If the 602 indicates the pit/pond is only being used for fish the purpose coded should be Fishery. If the 602 indicates that the pit/pond will be used for wildlife in addition to fish the purpose coded should be Fish and Wildlife. If choosing Fish and Wildlife, the owner must provide information regarding the wildlife usage. This information must be substantial credible information, or we cannot deem the application correct and complete. Generally, a wildlife agency should be involved. Simply stating that deer may drink from the pond or ducks may land on the pond is not justification enough to add this purpose. If wildlife incidentally use a fish pond, so be it, but will not include wildlife as a purpose on the Groundwater Certificate.

For Fish or Fish and Wildlife Purposes the volume is determined by the capacity (for the fish), diversionary requirement (for the wildlife), and evaporation (split among the purposes (if more than just Fish and Wildlife which is a singular purpose). If there is more than one purpose, the evaporation is distributed amongst all the purposes. (Only applicable if the pit/pond is the primary point of diversion.)

Wildlife

This purpose should rarely ever be used. Since water right owners do not have any control over wildlife, a water right will generally not be issued for this purpose. If the owner is a wildlife agency or partnered with such an agency and actual numbers of animals, etc. is provided, we may be able to issue a water right. Simply adding this purpose as an incidental use should not occur. Adding this purpose in the absence of any true beneficial use may not occur. If an illegal pond owner simply wishes to get a water

right for the pond, we should not condone that, as the owner is simply wasting water with an illegal pond. If this purpose is used (under the limited circumstances described), the volume should be what is actually diverted for the wildlife use or, if a pit is the primary diversion, diversionary requirement from the pit and the evaporation from the pit as discussed below (similar for stock). (Be sure to include sideboards for pits as discussed below.)

Wetland

See wildlife above...similar information will be required...having a wetland just for having a wetland is not a beneficial use. The owner must tell us why the wetland is beneficial, but the burden is fairly low here, we just need something. The amount of wetland vegetation is also required. See the Pond and Wetland memo available on ROCO for more.

Recreation

This purpose should rarely ever be used. The owner must justify the flow rate (if applicable) and the volume required. If a pit/pond, why does it need to be a certain volume? Do they need a 1-acre pond for swimming? On the other hand, is 1 acre really enough to effectively kayak on the pond? Does the pond really need to be 9.99 AF? Simply adding this purpose as an incidental use should not occur. Adding this purpose in the absence of any true beneficial use may not occur. If an illegal pond owner simply wishes to get a water right for the pond, we should not condone that, as the owner is simply wasting water with an illegal pond. Generally, if recreation is a real use, the capacity plus evaporation should be coded.

Point of Diversion

The minimum acceptable legal land description is as follows:

1. $\frac{1}{4}$ / $\frac{1}{4}$ section, section, township and range (40-acre description);
2. Lot, Block, Subdivision, $\frac{1}{4}$ section, section township and range;
3. Government Lot, $\frac{1}{4}$ section, section, township and range; **or**
4. Certificate of Survey No. with or without a lot number, $\frac{1}{4}$ section, section, township and range.

Street or Road Address is not required and DNRC will not confirm the accuracy of the information.

Use 10-acre land descriptions for the point of diversion whenever possible.

Per Kathy Olsen, if you are given a COS and Tract No, use the CSPD and CSPL remark codes to document. Added by Joel Harris 4/21/2022.

Place of Use

Some forms asked if the place where water is used is the same as the point of diversion. For these forms, if the "yes" box is checked, no other land description is needed with the exception of a geocode.

The minimum acceptable legal land description is as follows:

1. $\frac{1}{4}$ / $\frac{1}{4}$ section, section, township and range (40-acre description);
2. Lot, Block, Subdivision, $\frac{1}{4}$ section, section township and range;
3. Government Lot, $\frac{1}{4}$ section, section, township and range; **or**
4. Certificate of Survey No. with or without a lot number, $\frac{1}{4}$ section, section, township and range.

Street or Road Address is not required and DNRC will not confirm the accuracy of the information.

Geocode of the POU also must be provided if requested on the form. If the geocode is not provided but can be determined using the legal land description or address of the POU and Cadastral records, add it via a work copy. For forms that didn't require a geocode, we are still required to geocode the water right if possible.

Per Kathy Olsen, if you are given a COS and Tract No, use the CSPD and CSPL remark codes to document. Added by Joel Harris 4/21/2022.

Affidavit of Ownership or Written Consent

The form needs to be signed by the Applicant or someone with signing authority for the Applicant. The signature needs to be an original signature, a copy is not acceptable. The Department will require written consent of the person owning the ground water development works and/or written notification to the land owner per the affidavit on the form if the well is located on another owner's land. A recorded shared well agreement can also be used to establish legal access to a POD on another individual's property.

Ownership should be reviewed. If the owner listed in the database does not match Cadastral (or Orion- if you have access) ownership records, complete a Pending Ownership Update to correct the ownership on the application. Because these filings are still pending, we do not need a copy of the deed or chain of title to process the Pending Ownership Update; Cadastral records will suffice for showing the ownership has changed.

For situations where multiple owners are listed on Cadastral but only one of the owners signed the form, include all of the owners listed on Cadastral as owners on the application. This is important given the recent changes to the ownership update process by HB 55. If we do not have the ownership matching DOR records when these applications are processed/issued, it will be impossible for new owners to provide an adequate chain of title on future ownership updates.

605/605F Review Instructions

For reviewing 605/605F filings, refer to the 605 Process 08-2020 document.

222F Domestic & Stock Review Instructions

Review of these filings will follow the claim examination manual. No issue remarks will be used, any problems will be identified as deficiencies and the Office of the Engineer may need to contact the Applicant(s) to gather additional information.

It is important to note that these will not go through the adjudication process. Because of this, we need to identify any question on the form that has a deficient answer.

Wrong form filed: for 62-73 filings, need copy of the GW filing recorded at the courthouse in order to qualify. If a copy of the recorded GW filing is not provided, identify the application as deficient so the Engineer's office can request the copy. For the Office of the Engineer: If there is no recorded GW filing, the form is the wrong form filed, and the filing should be a 602F.

Records Unit (Guidance from Nancy Hughes on 4/21/2022 to Joel Harris)

- If you need to make an additional note/change to an application (or existing work copy), make your own new work copy (even if one exists already) and make our note/change -- sign your initials, date, and explanation for source of change.
- These applications (as well as those you've added a map or well log to) should be set aside and scanned by the Record's Unit before the full package of registrations is sent to the Office of the Engineer post pre-review processing.
- The records unit will know (but give them clear instructions anyway) to scan loose-leaf material in the application folders. All of these folders have been scanned and materials stapled together, so loose-leaf material is recognizable as new and needing to be added to the scanned file.