



Domestic Water Well Exemption in the Western United States

Most western states have laws or regulations allowing landowners to install private wells that are exempt from obtaining a paper certificated water right (i.e., “exempt” wells; see summary of state regulations below). They typically withdraw small amounts of groundwater primarily for domestic use, but also allowed are livestock watering and other limited purposes. The amounts allowed for withdrawal are often limited to a specified daily maximum, but also are often ultimately limited by a more restrictive requirement that the water be used beneficially and without waste. These wells generally are not subject to adjudication, monitoring, or water use reporting requirements. Most states require exempt wells meet specific construction standards, including reporting and public access to well construction details and location information.

The Western States Water Council notes the concerns of some water right holders that the cumulative impact of exempt wells, especially in areas with limited water, could impair senior water rights (both surface water and groundwater), cause environmental problems, and threaten water supplies and quality. These concerns have led, in some cases, to calls for restrictions and legal actions to repeal these exemptions.

Common counterarguments are that:

- Exempt wells use comparatively little groundwater.
- The science of groundwater hydrology is mature, and the tools exist for scientists and engineers to make reasonable estimates and projections of water use in potentially impacted areas, essentially protecting established water rights.
- Exempt wells are not cost effective to regulate, and applications for small groundwater uses could overwhelm state permitting agencies.
- Only very few and very limited areas have or might have a problem resulting from such wells.
- Other regulatory tools are available or can be made available for areas where there is actual evidence of a problem.

How much water do exempt wells use in the western states?

Nationally, groundwater withdrawals from privately owned household wells totaled 3.5 billion gallons per day in 2010, or about 1 percent of estimated total water use from all sources, based on the latest water use report by the U.S. Geological Survey.

Exempt wells in 16 western states (Alaska, Arizona, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, Wyoming) use 779 million gallons per day—about 0.7 percent of estimated total water use from all sources in the region.

Looking only at groundwater withdrawals in the 16 western states, withdrawals by exempt wells are dwarfed by:

- Irrigation, 72.2 percent
- Public water supply, 10.8 percent

Other uses and their percentage of total groundwater withdrawals are mining, 9.1 percent; self supplied (exempt wells), 2.2 percent; aquaculture, 2.2 percent; livestock, 1.6 percent; industrial, 1.1 percent; and thermoelectric, 0.6 percent.

What happens to groundwater that is used from exempt wells?

Much of the water withdrawn from exempt wells is returned locally to the aquifer. For instance, most water used inside the home goes to the septic system, where it is treated and then returned to the ground by percolating through the septic leach field. Most water used outside the home is for watering lawns, gardens, and other plants. The water that is not evaporated or absorbed by plants returns to the ground.

Total water use in 16 western states (by billion gallons per day)

All surface water use / 68 bgd

Irrigation / 24.9 bgd

Public supply / 3.7 bgd

Self supplied / .8 bgd

Aquaculture / .8 bgd

Livestock / .6 bgd

Industrial / .4 bgd

Mining / 3.1 bgd

Thermoelectric power / .2 bgd

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Regulation of exempt wells in the western United States

In Utah, small groundwater users must go through the water withdrawal permitting process and California does not have a comprehensive, statewide groundwater permitting process.¹

The following provides an overview and link to state exempt well statutes or regulations.

¹Bracken, Nathan. "Exempt Well Issues in the West." Western States Water Council, 2010.

Alaska

Alaska Administrative Code, Title 11, Chapter 93, Article 2, Appropriation and Use of Water [http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://www.jnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=\[JUMP:'11+aac+93!2E035'\]/doc/@1/hits_only?firsthit](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://www.jnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=[JUMP:'11+aac+93!2E035']/doc/@1/hits_only?firsthit)

Alaska requires that a person file for a water right if a significant amount of water will be used. Alaska defines a significant amount of water as (1) the consumptive use of more than 5,000 gallons of water from a single source in a single day; (2) the regular daily or recurring consumptive use of more than 500 gallons per day (gpd) from a single source for more than 10 days per calendar year; (3) the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or (4) any water use that may adversely affect the water rights of other appropriators or the public interest. Small users, who do not file for a water rights permit, may have their water appropriated by others or have their water use curtailed in order to supply water to those with a water right or “to protect the public interest.” Regulation is based on whether the user reaches the threshold of a significant amount of water use and not by the purpose to which the water is put.

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Arizona

Arizona Revised Statutes Section 45-454 <http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/45/00454.htm&Title=45&DocType=ARS>

Exempt wells are regulated in Arizona based on (1) when they were drilled, (2) where they are located, and (3) the water’s use. Wells used for non-irrigation purposes are generally exempt from the state’s Ground Water Management Act regulatory provisions as long as the pump capacity does not exceed 35 gallons per minute (gpm). After April 28, 1983, water from wells drilled within designated Active Management Areas and used for non-irrigation purposes other than domestic or stock watering are limited to 10 acre-feet per year in addition to the maximum 35 gpm pump capacity. Within Active Management Areas a second exempt well is allowable when the first exempt well cannot produce more than 3 gpm provided that: the second well is located and the water is used on the same parcel of more than one acre, the combined withdrawal from both wells does not exceed 5 acre-feet per year, and the county sanitation authority approves the well location. Further, after January 1, 2006, with certain exceptions, an exempt well cannot be drilled within 100 feet of an operating water distribution system owned by a municipal provider that has an assured water supply designation and is within an Active Management Area. Replacement wells and remediation wells are allowed.

Colorado

Colorado Revised Statutes Sections 37-92-602 and 37-90-105 <http://www.lexisnexis.com/hottopics/Colorado/>
In Colorado, exempt wells, except in designated groundwater basins, include:

- Wells not exceeding 15 gpm of production and used for ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches and for the irrigation of one acre or less of home gardens and lawns, but not used for more than three single-family dwellings
- Wells not exceeding 15 gpm of production and used for drinking and sanitary facilities in individual commercial businesses
- Wells used exclusively for fire-fighting purposes, if the wells have caps, locks and are available only in fighting fires
- Wells not exceeding 50 gpm that are in production as of May 22, 1971 and were or are used for ordinary household purposes for no more than three single-family dwellings, fire protection, the watering of poultry,

domestic animals and livestock on farms and ranches, and the irrigation of no more than one acre of gardens and lawns

- Wells to be used exclusively for monitoring and observation purposes if the wells are capped and locked and used only to monitor water levels or water quality
- Any system or method of collecting precipitation from the roof of a building that is used primarily as a residence and is not served by, whether or not connected to, a domestic water system that serves more than three single-family dwellings, but only if use of the water thus collected is limited to one or more of the following: (A) ordinary household purposes, (B) fire protection, (C) water of poultry, domestic animals, and livestock on farms and ranches, or (D) the irrigation of not more than one acre of gardens and lawns. A building used primarily as a residence includes any structure used for habitation whether commercially or intermittently.



Effective May 15, 2013, persons withdrawing groundwater from an exempt well may use graywater through use of treatment works as defined by statute.

Effective July 1, 2006, a permit is required for certain exempt wells, accompanied by a fee of \$60 for a replacement well or \$100 for a new well. The State Engineer is required to determine before issuance of the exempt well permit whether it will materially injure a vested water right or another existing well. There is a presumption that an exempt well on a residential site used solely for ordinary household purposes of a single-family dwelling that is not used for irrigation, a well on a tract of land of 35 acres, or a well in a cluster development that does not exceed one acre-foot of annual withdrawals for each 35 acres within the cluster development and will be used solely for household purposes, fire protection, watering of poultry, domestic animals, and livestock on farms and ranches, and irrigation of less than one acre and for no more than three single-family dwellings with the return flow going to the same stream system is presumed not to cause material injury to a vested water right or other existing well. The presumption may be rebutted by sufficient evidence of material injury. For subdivisions approved after June 1, 1972 that do not have a water supply plan, the State Engineer will consider the cumulative effect of all wells in the subdivision when determining material injury. Exempt well users may be required to develop augmentation plans or other replacement plans acceptable to the State Engineer. In designated groundwater basins, the State Engineer has the authority to approve permits for the following types of wells:

- Wells not exceeding 50 gpm and used for no more than three single-family dwellings, including the irrigation of no more than one acre
- Wells not exceeding 50 gpm and used for watering of livestock on range and pasture
- One well not exceeding 50 gpm and used in one commercial business
- Wells to be used exclusively for monitoring and observation purposes if said wells are capped and locked and used only to monitor water levels or water quality
- Wells to be used exclusively for fire-fighting purposes if the wells are capped and locked and available for use only in fighting fires.

Effective July 1, 2006, a permit and fee of \$100 (\$60 for replacement well) is required for the above exempt wells in designated groundwater basins. Beginning August 5, 1998, the State Engineer can no longer approve a permit for a small capacity well exceeding 5 acre-feet of annual water use, unless the well is located in a groundwater management district that has rules that allow an annual volume in excess of 5 acre-feet. This limitation

does not apply to certain replacement wells. For exempt wells in certain subdivisions without an approved water supply plan, the cumulative effect of all exempt wells in the subdivision is considered. The State Engineer must deny an exempt well permit if the proposed well will cause material injury to existing water rights. The board of any groundwater management district has the authority to adopt rules that further restrict the issuance of small capacity well permits, graywater treatment systems, and use of rooftop precipitation collection systems. In addition, the board of any groundwater management district has the authority to adopt rules that expand the acre-foot limitations for small capacity wells. However, in no event shall an annual volume of more than 80 acre-feet be allowed for any small capacity well. Rules adopted by the board may be instituted only after a public hearing.

Idaho

Idaho Code Sections 42-111; 42-227; 42-238, 42-914

<http://law.justia.com/codes/idaho/2011/title42/chapter1/42-111/>

<http://www.legislature.idaho.gov/idstat/Title42/T42CH2SECT42-227.htm>

<http://www.legislature.idaho.gov/idstat/Title42/T42CH2SECT42-238.htm>

<http://www.legislature.idaho.gov/idstat/Title42/T42CH9SECT42-914.htm>

Wells for domestic use in Idaho are exempt from water right appropriation permits and fees. Rights to groundwater for domestic purposes may be acquired by withdrawal and use. Idaho defines domestic use as:

(a) The use of water for homes, organization camps, public campgrounds, livestock, and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of 13,000 gallons per day, or

(b) Any other uses, if the total use does not exceed a diversion rate of 0.04 cubic feet per second and a diversion volume of 2,500 gallons per day.

Domestic use does not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the diversion rate does not exceed 0.04 cubic feet per second and the volume does not exceed 2,500 gallons per day. Multiple water rights for domestic uses cannot be established or exercised as a single combined water use if it would not meet the domestic use definition above. Exempt wells remain subject to inspection by the Department of Water Resources or the Department of Environmental Quality, and the wells fall under the well driller licensing and construction laws.

Kansas

Kansas Statutes Sections 82a-701 et seq.

http://www.kslegislature.org/li_2014/b2013_14/statute/082a_000_0000_chapter/082a_007_0000_article/

Domestic wells are exempt from water right permit requirements in Kansas. After June 28, 1945, the use of water for domestic purposes, to the extent it is for beneficial use, shall constitute an appropriation right; prior to that date, domestic well use is a vested right. After June 28, 1945, the State Engineer may require any users, including domestic well users, to submit information regarding their water use.

Domestic use means the use of water by any person or by a family unit or household for household purposes, or for the watering of livestock, poultry, farm and domestic animals used in operating a farm, and for the irrigation of lands not exceeding a total of two acres in area for the growing of gardens, orchards, and lawns.

The chief engineer may delegate to any city, which has conservation plans meeting state guidelines, the authority to require domestic water users within such city to adopt and implement conservation plans and practices so that the city can require compliance from private domestic well owners within the city limits.

Montana

Montana Code Annotated Section 85-2-306

<http://leg.mt.gov/bills/mca/85/2/85-2-306.htm>

Outside of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of 35 gpm or less and not to exceed 10 acre-feet a year, with the exception that a combined appropriation from the same source from two or more wells or

developed springs exceeding this limitation requires a permit. A permit is also not required if the appropriation is made by a local governmental fire agency and the water is used only for emergency fire protection, which may include enclosed storage.

Outside a controlled groundwater area, a permit is also not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of 350 gpm or less for use in non-consumptive geothermal heating or cooling exchange applications if all of the water extracted is returned to the same aquifer and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well. A completion notice must be filed within 60 days for exempt wells or developed springs.

Nebraska

Nebraska Revised Statutes Sections 46-714, 46-735, 46-740

<http://www.legislature.ne.gov/laws/statutes.php?statute=46-714&print=true>

<http://www.legislature.ne.gov/laws/statutes.php?statute=46-735&print=true>

<http://www.legislature.ne.gov/laws/statutes.php?statute=46-740&print=true>

In Nebraska, no water allocation permit generally is required for a single water well designed and constructed to pump 50 gpm or less. A water management district may require a permit for a water well designed and constructed to pump 50 gpm or less if such water well is commingled, combined, clustered, or joined with any other water well or wells or other water source, other than a water source used to water range livestock. Such combined wells shall be considered one water well and the combined capacity is used as the rated capacity. A district may by rule and regulation also require that a permit be obtained for a water well designed and constructed to pump 50 gpm or less, other than a water source required for human needs related to health, fire control,

and sanitation, or used to water range livestock, in groundwater management areas where regulations have been imposed to control declining groundwater levels.

The Nebraska Department of Natural Resources can determine that a river basin, sub-basin, or reach is over-appropriated or fully appropriated and put a stay on the issuance of water well construction permits in the area. The moratorium on well construction permits does not affect water wells designed and constructed to pump 50 gpm or less, except that no two or more water wells that each pump 50 gpm or

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less may be connected or otherwise combined to serve a single project with a collective pumping that exceeds 50 gpm, and a limited set of other water wells that are determined in statute.

Nevada

Nevada Revised Statutes Section 533.024, 534.013 and 534.180

<http://www.leg.state.nv.us/nrs/NRS-533.html#NRS533Sec024>

<http://www.leg.state.nv.us/nrs/NRS-534.html#NRS534Sec013>

<http://www.leg.state.nv.us/nrs/NRS-534.html#NRS534Sec180>

The Nevada legislature has recognized the importance of domestic wells as appurtenances to private homes and has protected their water supply from unreasonable adverse effects from municipal, quasi-municipal, or industrial uses.

Additionally, wells used for domestic purposes that do not exceed 2 acre-feet per year are exempt from the state's appropriation permitting process. Nevada defines domestic use or domestic purposes as culinary and household purposes directly related to (1) a single-family dwelling, and (2) an accessory dwelling unit for a single-family dwelling if provided for in an applicable local ordinance, including, without limitation, the watering of a family garden and lawn and the watering of livestock and any other domestic animals or household pets, if

the amount of water drawn does not exceed 2 acre-feet per year.

Domestic wells to be used for accessory dwelling units require prior approval by the local governing body or planning commission, the installation of a water meter, and assurance by the well owner that the withdrawal will not exceed 2 acre-feet per year. The local governing body or planning commission must report the approval of the accessory dwelling unit to the State Engineer, and the State Engineer must monitor the annual water withdrawal.

The State Engineer may require a domestic well in a designated basin to be registered within 10 days of well completion. Additionally, the State Engineer may require domestic wells drilled after July 1, 1982 to be plugged and connection made to a municipal or water district if such a system becomes available.

New Mexico

New Mexico Statutes Sections 72-12-1.1, 72-12-1.2, 72-12-1.3, 72-12-2, and 72-12-3

<http://public.nmcompcomm.us/NMPublic/gateway.dll?f=templates&fn=default.htm>

In New Mexico, the State Engineer is required to issue a permit for groundwater withdrawals for irrigation not exceeding one acre of noncommercial trees, lawn, or garden or for household or other domestic use. Domestic well permit applications within municipalities are conditioned on the permit applicants complying with all applicable municipal ordinances. The water must be put to beneficial use. Domestic wells meeting this definition are not subject to public notice requirements.

Livestock wells fall under a different section of the statute but generally require that the State Engineer issue a permit for these wells, provided that if the livestock water is on state or federal land the applicant submit proof that the applicant is legally entitled to place livestock on the state or federal land and they have permission to access the property to drill and operate the well.

If a person, firm, corporation, or the state desires to use underground public water in an amount not to exceed 3 acre-feet for a definite period of not to exceed one year in prospecting, mining, or construction of public works, highways, and roads or drilling operations designed to discover or develop the natural mineral resources of the state, only an application shall be required. Separate applications must be made for each proposed use, whether in the same or in different basins. Upon the filing of an application, the State Engineer shall make an examination of the facts and, if the proposed use will not permanently impair any existing rights of others, the State Engineer shall grant the application. If the State Engineer finds that the proposed use sought will permanently impair such rights, there shall be advertisement and hearing as set out in New Mexico statutes.

North Dakota

North Dakota Centennial Code Sections 61-04-01, 61-04-02

<http://www.legis.nd.gov/cencode/t61c04.pdf>

In North Dakota, a person must first obtain a water right permit unless the constructed work is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed work for domestic or livestock purposes or for fish, wildlife, and other recreational uses, the water user must notify the State Engineer of the location and acre-foot capacity of such constructed work, dams, or dugouts. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than 12½ acre-feet of water or the construction of a well from which more than 12½ acre-feet of water per year will be appropriated. If a permit is not required, the appropriators may still apply for water permits in order to clearly establish a priority date and the State Engineer may waive any fee or hearing for such applications.

North Dakota defines domestic use to mean the use of water by at least one family unit, or household, for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres in area for gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are “domestic rural uses” which must be defined by the State Engineer by rule.

Oklahoma

Oklahoma Statutes Title 82 Sections 1020.1, 1020.3

<http://www.oklegislature.gov/osstatuestitle.html>

Any landowner in Oklahoma has a right to take groundwater from land owned by him or her for domestic use without a permit. Wells for domestic use shall not be subject to well spacing orders, but are subject to sanctions against waste.

“Domestic use” means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land, and for the irrigation of land not exceeding a total of three acres in area for the growing of gardens, orchards, and lawns, and for such other purposes, specified by Board rules, for which de minimis amounts are used.

Oregon

Oregon Revised Statutes Section 537.545

https://www.oregonlegislature.gov/bills_laws/ors/ors537.html

No registration, certificate of registration, application for a permit, permit, certificate of completion, or groundwater right certificate is required for the use of groundwater for:

1. Stock watering purposes
2. Watering any lawn or noncommercial garden not exceeding one-half acre in area
3. Watering the lawns, grounds, and fields not exceeding 10 acres in area of schools located within a critical groundwater area
4. Single or group domestic purposes in an amount not exceeding 15,000 gpd
5. Downhole heat exchange purposes
6. Any single industrial or commercial purpose in an amount not exceeding 5,000 gpd
7. Land application, so long as the groundwater:
 - a. Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes
 - b. Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state
 - c. Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.

An exempt use, so long as the water is for beneficial purposes, constitutes a right equal to that established by a groundwater right certificate. The state can require information about the use of the water. Priority date for exempt uses is the well log date or other documentation provided by the well owner showing when water use began.

South Dakota

South Dakota Codified Laws Sections 46-1-5, 46-1-6, 46-5-8, 46-5-50 to 46-5-52

<http://legis.sd.gov/Statutes/DisplayStatute.aspx?Type=Statute&Statute=46>

In South Dakota, the use of water for domestic purposes is the highest use of water and takes precedence over all appropriative rights, if it is exercised in a manner consistent with public interest.

Any person desiring to make reasonable domestic use of water from any source may do so without obtaining a permit from the South Dakota Water Management Board, except that no person may construct a dam across any dry-draw for any purpose, including domestic use, if the dam will impound more than 25 acre-feet of water, without first obtaining a permit from the board. Permits for dams on streams or dry-draws for domestic or other uses are subject to the doctrine of prior appropriation. Domestic users other than water distribution systems may register a domestic well with the board to document the location and output of their water supply and

the quality of its water. The registration of a domestic well is not subject to water appropriations procedures. The fee for registration is \$25. If water is to be conveyed to users by a water distribution system diverting more than 18 gpm, the system shall apply for a water appropriation permit.

The state defines “domestic use” as the use of water not exceeding 18 gpm on an average daily basis, except for larger domestic wells in operation before July 1, 1983 by an individual, or by a family unit or household, for drinking, washing, sanitary, and culinary purposes and other ordinary household purposes; irrigation of a noncommercial family garden, trees, shrubbery, or orchard not greater in area than one acre; 18 gpm or less for use in schools, parks, and other public recreation areas; geothermal heat for a single household; or noncommercial on-farm alcohol production. The use of water supplied by a water distribution system for the preceding purposes, for the occupants of schools, hospitals, and other custodial care facilities, and for fire protection is a domestic use as against appropriative rights having a priority after June 30, 1978. Stock watering is a domestic use. Use of groundwater by water distribution systems, except for irrigation purposes, is a domestic use except where groundwater and water in flowing streams constitute the same water supply source, but only to the extent the water was actually used before July 1, 1978. An appropriations permit is also not required for drip irrigation if the irrigation is for noncommercial purposes and the water use does not exceed 18 gpm.

Texas

Texas Water Code Sections 11.121, 36.117

<http://www.statutes.legis.state.tx.us/Docs/WA/htm/WA.36.htm#36.117>

<http://www.statutes.legis.state.tx.us/Docs/WA/htm/WA.11.htm#11.201>

A groundwater management district in Texas may not require “any permit issued” for wells used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gpd of groundwater. The district may also not restrict the production of the exempt well. Districts are also prohibited from requiring permits for certain other water wells related to oil and gas production or mining. Groundwater withdrawn from an exempt well transported outside the boundaries of the district is subject to applicable production and export fees.

Permits may be required for domestic wells in the Hill Country Priority Groundwater Management Area if they are no longer used solely for domestic use or to provide water for livestock or poultry. Additionally, the permit exemption for water wells related to oil and gas production or mining does not apply in the Hill Country Priority Groundwater Management Area to water wells whose use is no longer necessary or no longer solely used to supply water for oil and gas drilling.

Texas law also specifically provides that a person is entitled, within certain situations, to drill an artesian well for domestic purposes or for stock raising without complying with the general provisions of Texas law regulating the use of water. The artesian well must be on that person’s own land and must be properly and securely cased. When water is reached containing mineral or other substances injurious to vegetation or agriculture, the artesian well must be securely capped or its flow controlled so as not to injure another person’s land or prop-



erly plugged so as to prevent the water from rising above the first impervious stratum below the surface of the ground.

Utah

Utah Code Sections 73-3-1, 73-3-2, 73-3-3, 73-3-5.6, and 73-3-8

http://le.utah.gov/xcode/Title73/Chapter3/73-3.html?v=C73-3_1800010118000101

Utah has no domestic well exemption. A person must follow the procedures set out in Utah state law for applying for and acquiring a water right or purchase the existing right and seek approval for a change in application on that right.

The State Engineer may approve an application to appropriate or permanently change small amounts of water after a thorough investigation, discretionary public notice, compliance with the State Engineer's applicable regional policies and restrictions, and a determination that the request does not conflict with local planning, zoning, or subdivision regulations. Small amount of water means the amount of water necessary to meet the requirements of (1) one residence, (2) 1/4 acre of irrigable land, and (3) livestock watering of 10 cattle or an equivalent for other animals.

Texas law also specifically provides that a person is entitled, within certain situations, to drill an artesian well for domestic purposes.

The State Engineer must approve any application if (1) there is unappropriated water in the proposed source; (2) the proposed use will not impair existing rights or interfere with the more beneficial use of the water; (3) the proposed plan is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation, and would not prove detrimental to the public welfare; (4) the applicant has the financial ability to complete the proposed works; and (5) the application was filed in good faith and not for purposes of speculation or monopoly.

In 2015 the statute for changing water rights, 73-3-3(1)(c), was amended to define "quantity impairment" as a reduction in the amount of water, or a change in the timing of availability of water for existing rights. However, with respect to groundwater, the term does not mean a decrease in the static level of an aquifer where the volume of water needed to satisfy existing rights remains reasonably available.

Washington

Revised Code of Washington Sections 90.44.030, 90.44.040; 90.44.050, 90.44.052

<http://apps.leg.wa.gov/rcw/default.aspx?cite=90.44>

All natural groundwater and all artificial groundwater that has been abandoned or forfeited belong to the public and are subject to appropriation for beneficial use, according to the terms of Washington State Revised Code Chapter 90. Washington, however, exempts from permit requirements withdrawals for stock-watering purposes; lawn water or noncommercial gardening not exceeding one-half acre in area; or for single or group domestic uses in an amount not exceeding 5,000 gpd, or for industrial purposes not exceeding 5,000 gpd. A specific exemption is also provided for a pilot project in Whitman County using clustered homes meeting the requirements of RCW 90.44.052. The water must be put to beneficial use; and if so, exempt well users acquire a right equal to a permitted right. Exempt well users, similar to permitted groundwater users, cannot impair senior surface water rights. The Department of Ecology also may require that exempt well users provide information on the means and quantity of water withdrawn.

Minimum water flows or "instream rights" are established by rule under RCW 90.22. Administrative rules allow for the establishment of groundwater reservations including for use by permit exempt wells (WAC 173-528-110). The reservations are a one time, finite resource. When and if water is fully appropriated from the reservation, all remaining waters in closed areas are hereby appropriated for instream flow use.

Wyoming

Wyoming Statutes Sections 41-3-907, 41-3-911, 41-3-915, 41-3-930, 41-3-931, 41-3-932

<http://legisweb.state.wy.us/statutes/titles/Title41/T41CH3AR9.htm>

Wyoming gives preferred right of appropriation for stock or domestic use. Domestic use is defined as household use and the watering of lawns and gardens for noncommercial family use where the area to be irrigated does not exceed one acre, where the yield or flow does not exceed .056 cubic feet per second or 25 gpm. If a nonexempt well unreasonably interferes with a stock or domestic well, the nonexempt appropriators must cease withdrawal; reduce groundwater use; or furnish, at their expense, sufficient water to meet the needs for domestic or stock use. In case of interference between two wells utilizing water for stock or domestic use, the appropriation with the earliest priority has the better right.

Prior to commencing well construction, regardless of use, a person must file for an appropriation permit with the State Engineer. Applications in non-designated critical areas shall be granted if the proposed use is beneficial and if the State Engineer finds that the proposed means of diversion and construction are adequate. If the State Engineer finds that to grant the application would not be in the public's water interest, then he may deny the application subject to review at the next meeting of the state board of control.

The State Engineer, after following specified procedures, may close designated groundwater control areas to further groundwater appropriations if he determines there is insufficient groundwater for all appropriators. The area may later be reopened if the State Engineer determines there is unappropriated water available. Additionally, in control areas, the State Engineer shall provide for public notice of amendments to existing water rights or new appropriation applications, except for domestic, stock watering, or other water uses less than 25 gpm. A hearing is required if valid objections are received.

Reference:

U.S. Geological Survey, 2010. *Estimated Use of Water in the United States*.

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