To: **The Joint Interim Standing Committee on Natural Resources**
From: **Research Division Staff, Legislative Counsel Bureau**
Title: **Geothermal Exemptions from Water Appropriation Procedures in Other States**
Date: **February 20, 2026**

Please note, the Research Division of the Legislative Counsel Bureau cannot provide a legal interpretation of statutes or apply statutes to specific situations, nor does it support or oppose any position on this topic.

At the January 28, 2026, meeting of the Joint Interim Standing Committee on Natural Resources, Committee members inquired whether other states exempt the pumping of geothermal resources[1] from the requirement to obtain a permit to appropriate water, similar to Nevada's statutory exemption set forth in *Nevada Revised Statutes* 534A.040, which exempts:

1. Water removed from an aquifer or geothermal reservoir to develop and obtain geothermal resources if the water is returned to or reinjected into the same aquifer or reservoir; or
2. The reasonable loss of water during a test of a geothermal well or from certain temporary failures.

The National Laboratory of the Rockies,[2] Office of Critical Minerals and Energy Innovation, United States Department of Energy, provides information about federal and state permitting regulations, including for geothermal, through its Regulatory and Permitting Information Desktop (RAPID) Toolkit. Permitting requirements are often complex, vary across states, and the determination of which laws or regulations do or do not apply to a specific project can depend on many factors.

The table below compiles information from state statues, the RAPID Toolkit, and The Foundation for Natural Resources and Energy Law (FNREL) summary of state geothermal regulatory approaches to provide a high-level understanding on the question of whether obtaining a permit to appropriate water may or may not be required for geothermal projects in the selected states. Based on this information, while statutory language varies, most of the states reviewed exempt geothermal resources from water appropriation laws in certain situations, however, it appears Washington is the only state whose statutory language is similar to Nevada's. Among the states reviewed, Utah and Wyoming were the only states to explicitly, statutorily require a permit to appropriate water, without any apparent statutory exception. There is conflicting information on whether state law in California exempts geothermal resources in any instance from water appropriation procedures.

[1] The definition of "geothermal resource" varies in state law, which potentially impacts how it is regulated.
[2] The National Laboratory of the Rockies was indicated as a Geothermal Rising member/partner during their presentation.

State	Statute or Regulation	Summary
AZ	*Arizona Revised Statutes* 27-667	Geothermal resources and their development are exempt from water laws unless: (1) the resources are commingled[3] with surface water or groundwater; or (2) development impairs or damages groundwater supply.
CA	--	It is unclear whether any California statutes directly address whether or not the developer of a geothermal resource must apply for a permit to appropriate water. The RAPID Toolkit appears to conclude that a water right is not required to pump geothermal fluids. Similarly, the FNREL summary of notes that a permit to appropriate water is not necessary for geothermal development. However, according to the California Department of Water Resources, California does not exempt a project from water permitting simply because water is reinjected back into the aquifer or reservoir. The key issue is whether water is diverted from its natural source for a beneficial use. The Department also stated that most projects will need to obtain a water right if water is diverted from a regulated source.[4]
CO	*Colorado Revised Statutes* 37-90.5-107	Paragraph 1(a)-(b) requires the state engineer to issue a water use permit for the use of geothermal resources[5] consistent with the requirements of state water law after receipt of the necessary application. However, Paragraph 3 (a)-(c) provides that a use permit is not required for nondiversionary utilization methods, and authorizes the state engineer to waive a use permit for diversionary utilization methods if valid, prior rights are not impaired. Hence, both the RAPID Toolkit and the FNREL summary conclude that while a permit to appropriate is generally needed, there are exceptions for nonconsumptive uses.
ID	*Idaho Code* 42-233, IC 42-4002, and IC 42-4005(e)	Low temperature geothermal resources (more than 85 degrees Fahrenheit [F] and less than 212 degrees F) require a permit to appropriate water unless the use is for the development and operation of oil and gas wells or the Director of the Department of Water Resources concludes the use meets certain criteria. Groundwater that has a temperature of 212 degrees F or more in the bottom of a well is classified as a geothermal resource and is neither a mineral resource nor a water resource (therefore, according to the FNREL summary, a permit to appropriate is not required). However, if the Director finds that a geothermal well or injection well will decrease groundwater in any aquifer or groundwater source, or will unreasonably decrease groundwater available for certain prior water rights, a permit to appropriate water is required.
MT	*Montana Code Annotated* 85-2-102(28), and MCA 85-2-306	*Montana Code Annotated* 85-2-102(28) includes "geothermal water" in the definition of "water" and is likely subject to state water law. However, MCA 85-2-306 provides exceptions to the requirement to obtain a permit to appropriate groundwater, specifically, Paragraph 3(a)(ii) provides that a permit is not required to appropriate groundwater by means of a well or developed spring outside the boundaries of a controlled groundwater area[6] when: (1) a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications; (2) all of the water extracted is returned without delay to the same aquifer; and (3) the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than the twice the distance between the extraction well and the injection well. The RAPID Toolkit refers to this as a limited exception, and notes that nonconsumptive closed-loop geothermal development not within the boundaries of a controlled groundwater area may fit within this exception.

[3] The developer may need to contact a water engineer or consultant to calculate the amount of water the project will require and identify if the system will be closed loop, so the water does not commingle.

[4] According to the State of California's Water Quality Monitoring Council, water from a private well, stream, pond, lake, or other body of water is most likely unregulated.

[5] Allocated geothermal resources are defined as geothermal resources associated with nontributary groundwater (with certain exceptions) while distributed geothermal resources are any geothermal resources that is not an allocated geothermal resource.

[6] Controlled groundwater areas are designated by the Montana Department of Natural Resources and Conservation (MDNRC) pursuant to MCA 85-2-506. Reasons for such a designation include declining water levels such that right holders cannot reasonably exercise their rights and threats to water quality.

State	Statute or Regulation	Summary
NM	*New Mexico Statutes Annotated* 71-9-4	A permit from the state engineer is not required for the use of groundwater over 250 degrees F as incident to the development of geothermal resources when: (1) the use does not require any diversion of groundwater; or (2) all diverted groundwater is reinjected as soon as practicable into the same groundwater source from which it was diverted, resulting in no new depletions to the source. The latter requires the Energy Conservation and Management Division, Energy, Minerals and Natural Resources Department, to provide the state engineer with all the information available to them regarding the proposed diversion and reinjection and if the state engineer determines that any existing groundwater rights may be impaired, the Division must require the owner or operator to submit a plan replacement regarding the impaired rights.
OR	*Oregon Revised Statutes* 537.090, ORS 537.545, and Oregon Administrative Rules 690-230-0130	Sets forth that the provisions relating to appropriation and water rights do not apply to the production of fluid from a well with a bottom hole temperature of at least 250 degrees F. Specifies that the production of fluids from wells with a bottom hole temperature of at least 250 degrees F are regulated as a geothermal resource (wells with a lower temperature are groundwater resources governed by the Oregon Water Resources Department). Additionally, pursuant to state regulation, the appropriation of low-temperature geothermal fluid is exempt from applying for a water right if the appropriation does not exceed 5,000 to 15,000 gallons per day, depending on the use.
UT	Utah Code 73-22-8	Provides that geothermal fluids are a special kind of underground water resource, related to and potentially affecting other water resources of the state. Geothermal owners must file an application with the Utah Division of Water Resources, Department of Natural Resources, to appropriate geothermal fluids. The application will be approved if the proposed extraction will not impair existing water rights.
WA[7]	*Revised Code of Washington* 78.60.060 and RCW 90.44.050	A consumptive or nonconsumptive use of water associated with a geothermal well, for purposes including but not limited to power production, greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, is subject to appropriation procedures. However, state law exempts: (1) water removed from an aquifer or geothermal reservoir to develop and obtain geothermal resources if the water is returned to or reinjected into the same aquifer or reservoir; or (2) the reasonable loss of water during a test of a geothermal well or from certain temporary failures. State statute also exempts certain amounts from the requirement to obtain a water permit, including industrial uses not exceeding 5,000 gallons a day.
WY[8]	*Wyoming Statutes Annotated* 41-3-901, Wyoming Regulation State Engineer's Office Part II, Chapter 1, Section 20[9]	Wyoming statutes include "hot water and geothermal steam, under the surface of the land or the bed of any stream, lake, reservoir, or other body of surface water, including water that has been exposed to the surface by an excavation such as a pit," in the definition of groundwater. As such, pursuant to Wyoming regulations, geothermal steam and hot water are considered ground water for the purpose of administration. A permit to appropriate ground water must be obtained from the Wyoming State Engineer to explore for or before geothermal steam or hot water can be utilized.

[7] Became law in 2013 with the passage of Senate Bill 5369.

[8] The RAPID Toolkit and the FNREL summary both indicate that Wyoming does not regulate aspects related to geothermal (for example, conservation, utilization, ownership, and well drilling) under state law. Thus, the FNREL summary of state regulatory approaches indicates the only legal framework for geothermal resource development is pursuant to state water law.

[9] These regulations are on the website for the Wyoming State Engineer's Office and appear to have last been updated in 1974.