

EXEMPT WELL FACT SHEET

EXHIBIT

DATE

HB

19
2-22-23
642

What is an "exempt well"?

An exempt well is a groundwater appropriation that is "exempt" from the permitting requirements of the Water Use Act. See MCA 85-2-306. These wells are limited to 35 GPM/10 Acre-Feet per year.

What exemptions apply to an exempt well?

An exempt well appropriator is exempt from all of the permitting requirements of the Water Use Act, meaning there is:

- No analysis of physical or legal water availability or potential adverse impacts to neighboring ground/surface water users;
- No notice to neighboring water users;
- No opportunity for senior water users to object or otherwise defend their water rights;
- No metering/reporting requirements to quantify use.

What about the cumulative impacts of multiple exempt wells?

The Water Use Act was drafted to address the cumulative impacts of multiple wells by including a permitting requirement for a "combined appropriation," i.e. two or more wells drilled from the same aquifer that exceed 10 Acre-Feet. See MCA 85-2-306(3).

How do you determine if a proposed development relying on one or more exempt wells will impact existing water rights?

The Montana DNRC will only analyze the potential impacts of a proposed groundwater development on neighboring water users if it qualifies as a "combined appropriation." If the development falls below the 10 Acre-Feet threshold, no impact analysis is conducted.

Are exempt wells allowed in basins that are statutorily closed to new water rights?

Yes. The WUA allowance for exempt wells makes no distinction between closed and open basins. DNRC statistics indicate that since 1991, at least 50% of all exempt wells have been drilled in closed basins.

How many exempt wells exist in Montana?

Statistics from the Montana DNRC indicate that there are roughly 135,000 exempt wells that have been drilled statewide since 1973.

What if a landowner wants to subdivide/sell their property, can they use an exempt well to provide water?

Yes. Current law and DNRC guidance generally allow one exempt well for every 1/4 mile of spacing. Quarter-mile spacing between wells allows for 160 AF/year to be appropriated without a permit per section of land. 160 AF/year is enough to irrigate 50-80 acres, or enough water for at least 300 households.

Is it getting more difficult to obtain a permit-exempt well in Montana?

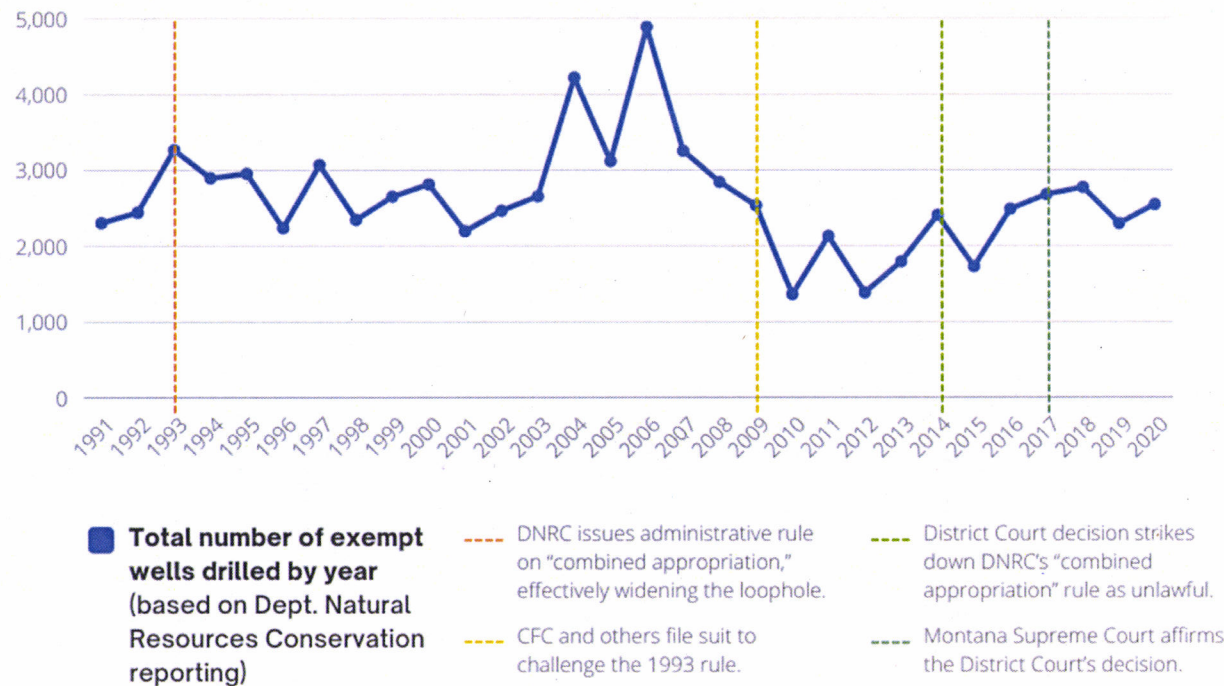
No. Since 1991, the DNRC has steadily permitted anywhere from 1,500-4,500 exempt wells per year, with an average of around 2,500 wells per year.

How would House Bill 642 change the existing law regarding exempt wells?

HB 642 would remove any consideration of the cumulative impacts of multiple exempt wells (i.e. a "combined appropriation") on existing water users. **The bill removes the existing requirement that these "combined appropriations" obtain a water permit from the DNRC, effectively widening a loophole in the prior appropriation doctrine.** HB 642 instead creates a groundwater entitlement for developments, where every 20-acre parcel of land developed in Montana gets between 10-20 Acre-Feet/year of groundwater without having to go through any of the permitting requirements that other water users are subject to. HB 642 also allows these exempt wells to **expand** their water use over time to accommodate new development and growth. Finally, the bill creates new exemptions for family transfer parcels and parcels located in "stream depletion zones."

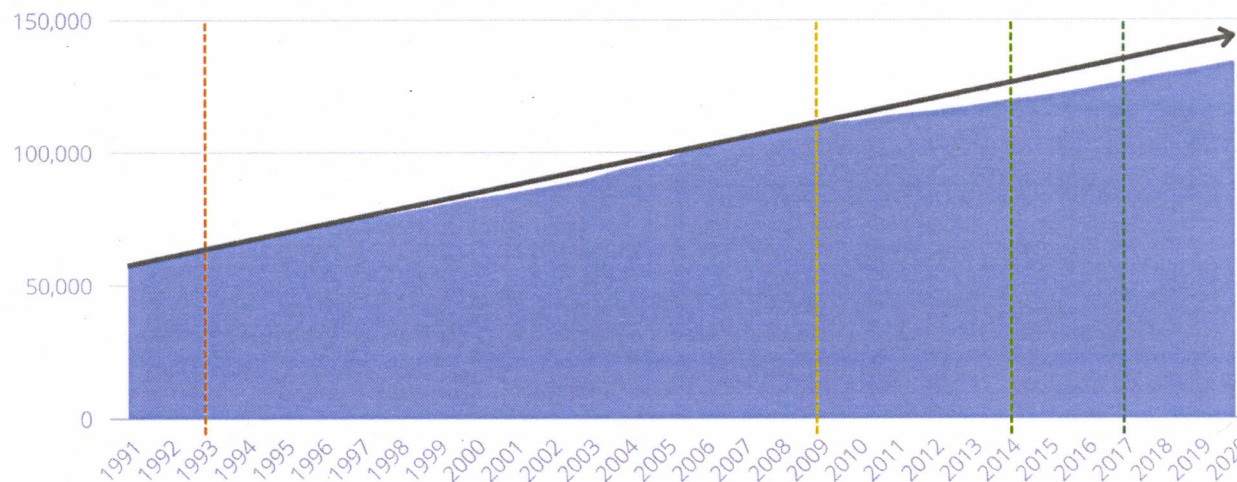
Exempt Wells- By the Numbers

Exempt Wells in Montana



Exempt Wells- By the Numbers

Exempt Wells in Montana



■ **Total number of exempt wells (based on Dept. Natural Resources Conservation reporting)**

--- DNRC issues administrative rule on "combined appropriation," effectively widening the loophole.

--- CFC and others file suit to challenge the 1993 rule.

--- District Court decision strikes down DNRC's "combined appropriation" rule as unlawful.

--- Montana Supreme Court affirms the District Court's decision.

Exempt Well Loophole

