



# Water Policy Interim Committee

69th Montana Legislature

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January 2, 2026

TO: Water Policy Interim Committee  
FROM: Alexis Sandru, Staff Attorney  
RE: Exempt Well Litigation Summary – January 2026 Meeting

On November 12, 2025, a lawsuit was filed against the State of Montana and the Montana Department of Natural Resources and Conservation (DNRC), alleging that Montana's exempt well law violates several provisions of the Montana Constitution. The lawsuit requests that the First Judicial District Court enjoin the law and order the DNRC to administer Montana's water rights system in conformity with the prior appropriation doctrine.

The entities and individuals who filed the lawsuit include the following:

- *the Montana League of Cities and Towns*, which asserts that exempt wells impair the existing and future operation of senior municipal water rights and water supply. The League also asserts that the State and DNRC are harming the League by subsidizing development outside of municipal boundaries.
- *the Association of Gallatin Agricultural Irrigators* (consisting of ag producers in the Gallatin Valley who possess senior surface and groundwater rights), which asserts that exempt wells have reduced surface flows during low-water seasons, resulting in the curtailment of senior rights early in the irrigation season;
- *the Clark Fork Coalition* (a nonprofit dedicated to protecting and restoring the Clark Fork River watershed by working to convert water rights in the Clark Fork Basin to instream flow use), which alleges the proliferation of exempt wells has harmed surface and groundwater rights in the Clark Fork watershed;
- *Kevin and Katrin Chandler* (ranchers in Absarokee who, in response to a nearby subdivision, sought to establish a controlled groundwater area), who assert that the remedies available under the Water Use Act are ineffective at addressing the harms caused by unregulated groundwater development;
- *the Montana Environmental Information Center* (a nonpartisan and nonprofit entity that advocates for clean air and water), which asserts that exempt wells have caused harm by depleting surface and groundwater, incentivizing urban sprawl, and increasing the concentration of pollutants in Montana waters;

- *the Montana Farm Bureau Federation* (a nonpartisan and nonprofit representing agriculture and natural resources industries), which asserts that DNRC’s implementation of the exempt well law injures its members’ interests and fails to protect members’ senior water rights and the prior appropriation doctrine;
- *Mark Runkle* (developer of a subdivision near Helena that relies on municipal water supply from permitted rights, not exempt wells), who asserts that tying into municipal water resulted in higher costs and greater financial risk associated with his subdivision compared to other subdivisions that have obtained water via exempt wells; and
- *Trout Unlimited* (a nonprofit that owns and leases instream flow rights to protect and bolster wild and native trout populations), which asserts its leased and owned water rights are threatened by exempt groundwater withdrawals.

Section 85-2-306(3)(a)(iii), MCA -- the challenged exempt well law -- provides:

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit.

Plaintiffs allege that the DNRC’s implementation of the above exempt well law violates the following provisions on the Montana Constitution:

- *Article II, § 3 (providing, in part, for the right of acquiring, possessing, and protecting property) and Article IX, § 3 (requiring the Legislature to, among other things, “provide for the administration, control, and regulation of water rights”).* Plaintiffs allege that the exempt well law has resulted in DNRC’s issuance of rights for over 200,000 exempt appropriations, resulting in “the appropriation of vast quantities of water with no substantive or procedural safeguards for senior water users” and impairing constitutionally protected senior water rights and the prior appropriation doctrine.
- *Article II, § 4 (providing for equal protection).* Plaintiffs allege the exempt well law deprives senior appropriators of equal protection of the law because senior appropriators are subject to the Water Use Act, while exempt well users are allowed to appropriate and withdraw water without any oversight or regulation.
- *Article II, § 17 (providing for due process of law).* Plaintiffs allege that DNRC’s allowance of unregulated groundwater development while knowing that the development results in harm to prior appropriators is prohibited by substantive due process “because it permits deprivations of property that are unjustified, disproportionate, and inconsistent with Montana’s constitutional guarantees.” (Complaint, ¶ 260.) Plaintiffs also allege the

exempt well law violates procedural due process because senior appropriators are denied “any forum to assert their rights prior to an adverse effect occurring.” (Complaint, ¶ 263.)

- *Article II, §§ 8 and 9 (providing for the rights to know and to participate).* Plaintiffs allege the exempt well law violates the rights to know and participate by failing to provide for any notice or public participation in the process of issuing a water right for an exempt well.

On November 19, 2025, the Clark Fork Coalition, the Chandlers, the Montana Environmental Information Center, and Trout Unlimited (collectively, the “Conservation Plaintiffs”) filed an amended complaint asserting an additional constitutional violation, specific to only the Conservation Plaintiffs:

- *Article II, § 3, and Article IX, § 1 (providing for the right to a clean and healthful environment and providing for adequate remedies to prevent unreasonable depletion and degradation of natural resources).* The Conservation Plaintiffs allege that the exempt well law violates the right to a clean and healthful environment by foreclosing any remedy for advance environmental review of the subject water use and eliminating any protection for the State’s natural aquatic systems. In addition, the Conservation Plaintiffs allege the Defendants have breached their constitutional duty to protect natural resources and the environmental life-support system and infringed on the right to a clean and healthful environment “[by] authorizing unregulated groundwater withdrawals that foreseeably and cumulatively degrade Montana’s water resources.” (Conservation Plaintiff’s Amended Complaint, ¶ 12.) The Conservation Plaintiffs request that the Court order the Defendants to provide for advance environmental review and protection in administering the water rights system.

Next step in the litigation: the Defendants’ answer. In mid-December, the Court extended the deadline for the Defendants to file their answer to January 23, 2026.