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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

MONTANA LEAGUE OF CITIES AND
TOWNS, ASSOCIATION OF GALLATIN
AGRICULTURAL IRRIGATORS, CLARK
FORK COALITION, KEVIN AND
KATRIN CHANDLER,

Cause No. ADV-25-2025-0000710-DK

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Presiding Judge: Hon. Mike Menahan

MONTANA ENVIRONMENTAL
INFORMATION CENTER, MONTANA
FARM BUREAU FEDERATION, MARK
RUNKLE, and TROUT UNLIMITED,

Plaintiffs,

v.

STATE OF MONTANA and MONTANA
DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION,

Defendants.

INTRODUCTION

1. Plaintiffs Montana League of Cities and Towns, Association of Gallatin Agricultural Irrigators, Clark Fork Coalition, Kevin and Katrin Chandler, Montana Environmental Information Center, Montana Farm Bureau Federation, Mark Runkle, and Trout Unlimited (collectively, “Plaintiffs”) bring this civil action against Defendants State of Montana, and Montana Department of Natural Resources and Conservation (together, “Defendants”) challenging the constitutionality of Mont. Code Ann. § 85-2-306(3)(a)(iii), commonly known as the “Exempt Well Law.”

2. Plaintiffs seek declaratory and injunctive relief under the Montana Constitution, Article II, Section 3 (protection of property rights) and Article IX, Section 3 (water rights); Article II, Sections 4 and 17 (equal protection and due process); and Article II, Sections 8 and 9 (rights to participate and know). By authorizing unregulated groundwater development, the Exempt Well Law undermines these constitutional protections afforded to senior water right appropriators and threatens the integrity of Montana’s water resources.

3. The Montana Constitution declares that the waters of the State “are the property of the state for the use of its people and are subject to appropriation for beneficial uses as

provided by law,” and “[a]ll existing rights to the use of any water for any useful or beneficial purpose are hereby confirmed and recognized.” Mont. Const. art. IX, § 3(3). The Constitution further imposes a duty on the legislature to “provide for the administration, control, and regulation of water rights” *Id* § 3(4). Adequate administration and regulation of water rights necessarily require a system where senior water right holders can protect their existing water rights from injurious new water developments.

4. In 1973, the Legislature enacted the Montana Water Use Act, Title 85, Chapter 2 (the “Water Use Act”) as a remedial statute designed to strictly adhere to the prior appropriation doctrine and to provide for the “administration, control, and regulation of water rights . . . and confirm all existing water rights” Mont. Code. Ann. §§ 85-2-101(2), (4). The Legislature specifically confirmed that it was doing so in accordance with its duty under Article IX, Section 3. *See Mont. Power Co. v. Carey*, 211 Mont. 91, 98, 685 P.2d 336, 340 (1984) (The Water Use Act “was designed to protect senior water rights holders from encroachment by junior appropriators adversely affecting those senior rights.”)

5. The Water Use Act established a permitting framework for new appropriations for beneficial use in accordance with its “core purpose” to “protect[] senior water rights and the prior appropriation doctrine” *Clark Fork Coal. v. Tubbs*, 2016 MT 229, ¶ 24, 384 Mont. 503, 380 P.3d 771.

6. While the precise number of water rights issued under the Exempt Well Law is unknown, the Department of Natural Resources and Conservation (“DNRC”) estimates that approximately 141,000 exempt groundwater appropriations were authorized between 1973 and 2023. Of the purposes recorded for those appropriations, roughly 72% are classified as domestic

or lawn-and-garden, demonstrating that the vast majority of exempt groundwater development in Montana serves residential uses.¹

7. Each of these exempt wells has been summarily granted a new water right with a priority date and subject to no analysis to determine whether such new water use is consistent with the Water Use Act, no process to ensure fulfillment of the State’s constitutional duty to protect senior water rights, and no mitigation required to minimize the depletion to Montana’s water resources.

8. The total volume of water appropriated through exempt wells is likewise unknown, as Montana law expressly prohibits the measurement of water use from exempt wells. *See* Mont. Code Ann. § 85-2-113(2)(b). Each exempt well authorizes the withdrawal of up to ten acre-feet of water per year for application to a beneficial purpose, yet there is no systematic method of monitoring or enforcing these statutory limits. As a result, neither the State nor senior water rights holders can determine how much water is actually being consumed under the Exempt Well Law or whether such withdrawals remain within the legal quantities authorized.

9. Montana’s highest volumes of domestic groundwater use occur in its fastest-growing urban and suburban regions, including the Bitterroot Valley (Basin 76H), Flathead Valley (Basin 76LJ), Helena Valley and Broadwater County (Basin 41I), Gallatin Valley (Basin 41H), and the West Billings area (Basin 43Q). These regions represent the state’s most concentrated centers of population growth and development, where rapid expansion of residential subdivisions and commercial areas has been fueled by reliance on individual exempt groundwater wells.

¹ Montana Department of Natural Resources and Conservation, *Exempt Wells, Water Planning, and Growth Data, Comprehensive Water Review Stakeholder Working Group Working Document*, at 14-15 (Oct. 23, 2023), https://dnrc.mt.gov/_docs/water/Comprehensive-Water-Review/meeting-materials/Statewide-Exempt-Well-Data-Working_Doc-Updated-10.26.pdf (“DNRC Oct. 2023 Working Document”).

10. Montana law requires that surface water and groundwater be managed conjunctively as a single, interconnected resource. *See e.g. Mont. Trout Unlimited v. Mont. Dep't of Nat. Res. & Conservation*, 2006 MT 72, ¶¶ 40-42, 331 Mont. 483, 133 P.3d 224. In many basins, the available surface water has long been fully appropriated—some as much as ten times over the legally available supply.² In these fully appropriated basins, any new water use must be mitigated or offset by an equivalent reduction in existing consumptive use to prevent adverse effects on senior appropriators. However, the Exempt Well Law authorizes the development of new groundwater wells without any mitigation or offset requirement, allowing additional depletions in basins where all legally available water is already claimed, to the detriment of senior water rights holders.

11. Exempt wells do not require advance authorization from the DNRC, and the agency has no authority to deny or regulate the issuance of water right certificates for exempt wells so long as they comply with the procedural requirements of the Exempt Well Law. Instead, the well is drilled, the water is put to use, and the DNRC ministerially grants the exempt well owner a certificate of groundwater development not to exceed 35 gallons per minute (“gpm”) and 10 acre-feet per year.

12. The Exempt Well Law provides for no notice or participation process for other water users when new exempt wells have been drilled, operated, or issued a water right with a priority date. Senior appropriators receive no opportunity to object, limit, or prevent the development of such wells, even in fully appropriated basins. When exempt wells impair senior water rights, affected users are left with the nearly impossible task of identifying which well or

² Jake Mohrmann, *Mitigation Update: Update to Water Policy Interim Committee*, DNRC Water Sciences Bureau Chief (Oct. 21, 2025), https://archive.legmt.gov/content/Committees/Interim/2025-2026/WPIC/October_20_21_2025/13.1.DNRC_Mitigation_Update_Oct2025.pdf.

wells may be causing adverse impacts and of pursuing individual civil enforcement actions under the Water Use Act—an ineffective and unrealistic remedy that fails to protect senior rights.

13. This problem is exacerbated by the notoriously incomplete and unreliable exempt well records maintained by the DNRC. For decades, the agency accepted imprecise and inconsistent well descriptions from applicants—often identifying locations by the nearest 40- or 160-acre quarter section, with no street address, subdivision name, or lot-and-block reference. Even the claimed purposes for each well vary wildly between exempt wells, often resulting in some confusion as to how, precisely, the water is being put to beneficial use and where. The information recorded on groundwater certificates frequently conflicts with the corresponding well-drillers’ well logs. As a result, the DNRC itself has publicly acknowledged that its exempt well records are imprecise and frequently inaccurate, particularly with respect to well locations, aquifer identification, and actual flow rates or volumes.³

14. Accessing those records is equally burdensome for the public. DNRC’s online database provides no aggregated or searchable listing of exempt wells within a basin or watershed. Instead, users must conduct advanced, parcel-by-parcel searches by township, range, section, and quarter section, and manually open each individual casefile. There are no ready-made tabulations or mapping tools to identify or analyze exempt well development, leaving senior appropriators without a practical means to determine where such wells exist or how they may affect their water rights.

³ DNRC acknowledges the shortcomings with its data and record-keeping—there is no accounting for non-filed wells and the agency’s water right records only correspond with roughly 30% of all well logs filed in the state. DNRC Oct. 2023 Working Document at 7.

15. A Montana court has found that, cumulatively as of 2020, 1.2 to 1.9 million acre-feet,⁴ or 417 to 622 billion gallons of water could be appropriated by exempt wells annually. Order at 84, *Upper Missouri Waterkeeper, et al. v. Broadwater County and Mont. Dep't of Nat. Res. & Conservation*, Cause No. BDV-2022-38 (Mont. First Jud. Dist. Ct., 2024) (“Each additional year adding 3,000 exempt wells entitles their owners to an additional 9 billion gallons of water each year. At this rate, in less than 50 years exempt wells will be entitled to draw a trillion gallons of water each and every year.”)

16. In 2009, senior water right holders, including Plaintiffs Clark Fork Coalition and Katrin Chandler, petitioned DNRC to declare that its administrative rule implementing the Exempt Well Law violated the Water Use Act’s protection for senior water rights. The Petition was resolved in 2016 when the Montana Supreme Court affirmed a 2014 district court decision invalidating DNRC’s rule because it “expand[ed] the exemption by limiting the number of appropriations which must be excepted, rendering meaningless the underlying limit on volume or quantity of 10 acre-feet per year from the same source.” *Clark Fork Coal.*, ¶ 27.

17. Despite the Supreme Court's ruling in *Clark Fork Coalition*, large-scale groundwater development through exempt wells has continued unabated. Between 2014, when the DNRC’s prior rule was reinstated by the district court's decision, and 2023, DNRC received more notices of exempt wells annually—on average around 2,800—than in any of the five years prior to 2014.⁵ That number continues to rise year after year. While not every exempt well is likely using the full 10 acre-foot per year exemption, adding 2,800 exempt wells per year results

⁴ An acre-foot, equal to approximately 325,851 gallons of water, represents the volume necessary to cover one acre of land to a depth of one foot. This quantity is commonly used as a standard measure of water rights and allocation in Montana and elsewhere. By way of illustration, one acre-foot is sufficient to serve two to three households for a year or to fill an Olympic-sized swimming pool to about half its capacity.

⁵ DNRC Oct. 2023 Working Document at 14.

in up to an additional 28,000 acre-feet of water appropriated per year, for as long as those exempt wells remain in existence.

18. The State knows that exempt wells adversely affect senior water rights. Yet, legislative attempts to address the exempt well loophole have been unsuccessful in multiple sessions, including the 2025 session, demonstrating the legislature's unwillingness or inability to bring the Water Use Act into constitutional compliance.

19. Exempt well development has become a major pressure on groundwater use across Montana's principal aquifers, particularly in basins where surface and groundwater are hydraulically connected and surface water is already fully appropriated. Despite the recognition that basins in high-growth areas are fully appropriated, the State continues to authorize these exempt wells without public notice, mitigation requirements, or evaluation of potential effects on existing water rights or surface flows.

20. Plaintiffs seek the requested judicial remedy as the appropriate recourse to restore constitutional protections afforded to senior water appropriators. A judicial declaration that unregulated groundwater development pursuant to the Exempt Well Law is unconstitutional will provide a remedy to a long-standing loophole in Montana's prior appropriation doctrine that has increasingly become a cause of injury to senior water right holders in Montana. *See Mont. Trout Unlimited*, ¶¶ 40-42 (prohibiting the processing or granting of groundwater permit applications that impact surface water, resulting in the passing of HB 831 (2007) codified at Mont. Code Ann. §§ 85-2-360 – 364, creating statutory authority for mitigation plans).

21. Plaintiffs represent diverse constituencies—including municipalities, farm and ranch families, irrigators, individual homeowners and landowners, and conservation organization members—and they are united by a shared legal and practical interest in the proper

administration of Montana’s water laws and the protection of senior water rights. Each Plaintiff approaches the issue of unregulated groundwater development from a distinct perspective. Municipal members of the Montana League of Cities and Towns seek to safeguard reliable public water supplies and their senior water rights. Housing developer Mark Runkle seeks to create an equal process for residential development on public systems while the Exempt Well Law unfairly and unconstitutionally subsidizes off-system, unmitigated, and unreviewed water use. Agricultural Plaintiffs—the Association of Gallatin Agricultural Irrigators, Kevin and Katrin Chandler, and the Montana Farm Bureau Federation—seek to preserve irrigation and agricultural water rights essential to farm and ranch operations. And conservation groups—Clark Fork Coalition, Trout Unlimited, and the Montana Environmental Information Center—seek to protect instream water rights and aquatic habitat. Their combined participation reflects the broad scope of the Exempt Well Law’s impact across multiple sectors of Montana’s economy, environment, and communities.

22. Plaintiffs seek relief from this Court to vindicate and protect their constitutional rights.

JURISDICTION AND VENUE

23. This Court has original jurisdiction over this action pursuant to Article II, Section 16, and Article VII, Section 4 of the Montana Constitution, and pursuant to Mont. Code Ann. § 3-5-302.

24. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-01, *et seq.* (the “UDJA”).

25. Venue is proper in this Court pursuant to Mont. Code Ann. § 25-2-126(1). This is an action against the State of Montana and an agency of the State of Montana.

PARTIES

Plaintiffs

26. Plaintiff **Montana League of Cities and Towns (the “League”)** is a non-partisan, non-profit association representing 121 incorporated cities and towns across the State of Montana. The League is the clearinghouse through which Montana’s communities work cooperatively to build and maintain a vibrant, healthy, and safe Montana. The League’s member cities and towns are collectively responsible for serving over 600,000 Montana residents, businesses, and public facilities with clean and reliable municipal water supplies.

27. The League’s members own over 1,000 enforceable water rights for municipal, industrial, irrigation, fishery, recreation, commercial, fire protection, pollution abatement, and various other beneficial uses necessary to support and serve the residents of the cities and towns of Montana. Approximately 320 of those rights have an enforceable priority date more than 100 years old. Moreover, the League’s member cities and towns are responsible for land use planning, including long-term planning for reliable and legally available water supplies to support critically needed housing and economic growth in Montana.

28. The League has advocated for the elimination or restriction of exempt wells on behalf of its members for over a decade. The League filed an amicus brief in support of the Clark Fork Coalition and its co-petitioners in *Clark Fork Coalition*. After the district court’s 2014 ruling that the administrative rule at issue in that case violated the Water Use Act, the League began monitoring the number of water rights for exempt well appropriations being issued, expecting to see a reduction because of the invalidation of DNRC’s “physically manifold” rule.

29. Between August 2021 and December 2024, the League's executive director served on the DNRC's Comprehensive Water Review Stakeholder Working Group and its Exempt Wells, Water Planning, and Growth Stakeholder Working Group subcommittee.

30. The unregulated groundwater development authorized by the Exempt Well Law threatens municipal water supplies by depleting aquifers, which are hydrologically connected to surface waters, and by impairing senior municipal water rights without the ability to object to new water rights authorized for exempt appropriations, make a call on a junior exempt well, or even know the extent of the impact of cumulative exempt well depletion of water resources from shared sources. Accordingly, these unregulated exempt wells impair the current and long-term operation of senior municipal water rights and water supply.

31. Defendants' continued implementation of the Exempt Well Law harms the League and its members because it undermines municipalities' ability to protect their water rights for future development from depletion and to fulfill their statutory duties to secure and promote the general public health and welfare.

32. The League's members are also harmed by the Exempt Well Law because the costs of city and town services can only be spread amongst the residents of the city or town, even when non-residents use those services. Defendants, through the Exempt Well Law, essentially subsidize development outside of the League members' municipal boundaries and off the League members' municipal systems. This subsidization in turn increases the costs of water, sewer, transportation, police, fire, and other services within Montana municipalities. The Exempt Well Law unlawfully tips the scales in favor of unregulated urban sprawl, with increased short-term costs for municipal residents and increased long-term costs for all Montanans.

33. A judicial ruling that the Exempt Well Law violates the Montana Constitution will redress the harm to the League and its members from further unregulated groundwater development facilitated by the unconstitutional law.

34. Plaintiff **Association of Gallatin Agricultural Irrigators (“AGAI”)** is a nonprofit membership entity comprised of agricultural producers, ranchers, and water users within the Gallatin Valley who possess senior surface and groundwater rights for agricultural purposes. The mission of AGAI is to serve as the guardian and advocate for the Gallatin River System by ensuring the protection and enforcement of historically decreed water rights. AGAI’s members rely upon the Gallatin River and its tributaries for irrigation, stock watering, and other beneficial uses as recognized under the laws of the State of Montana. Members of AGAI own, manage, and operate multiple large-scale water conveyance systems that provide service to a broad spectrum of users throughout the Gallatin River basin, including ranchers, irrigators, subdivisions, and municipalities. These members hold some of the most senior water rights in the basin, with priority dates extending back more than 150 years, encompassing rights for agricultural irrigation, livestock grazing, and watering.

35. AGAI has, for over a decade, consistently advocated for the restriction on, or opposed the expansion of, exempt wells. From August 2023 through December 2024, a duly appointed representative of AGAI participated as a member of the DNRC’s Comprehensive Water Review Stakeholder Working Group. This subcommittee endeavored to negotiate legislative amendments to the Exempt Well Law designed to protect the interests of existing water right holders while permitting the continued existence of exempt wells; however, such legislation ultimately failed to be enacted.

36. AGAI has continually sought to limit the use of exempt wells within closed basins, to preserve the original legislative intent of *de minimis* use in specific circumstances, and to protect existing rights through an efficient permitting process and the reasonable application of the Exempt Well Law.

37. The unregulated proliferation of exempt wells authorized by the Exempt Well Law has contributed to reduced surface flows and impaired the ability of AGAI members to exercise their senior water rights. In the Meadow and resort areas of Big Sky, which serve as AGAI's storage area for late flows, the potable water supply is primarily dependent upon groundwater sourced from both private and district-operated wells. Current demand is approaching the recharge capacity of the principal aquifer, and declining water levels in the Gallatin River and its tributaries have resulted in the curtailment of surface water users with senior rights as early as June, while exempt wells continue to operate without regulation or oversight. For example, in July of 2025, due to record low flows some of the most senior water rights in the Gallatin River (with priority dates going back to 1883) were curtailed. Meanwhile, subdivisions in the Gallatin Valley relying on junior exempt wells continued their water use unabated.

38. AGAI members voiced concern as they watched natural groundwater springs on their properties in the Gallatin valley dry up after new subdivisions relying on exempt wells were built nearby. AGAI members grew still more concerned as they have had to drill their own wells to replace those springs, or deepen existing wells on their property. These issues are directly linked to the proliferation of exempt wells drilled to serve residential subdivisions located both upgradient and downgradient of their properties.

39. The central issue for AGAI is the lack of meaningful protection for existing water users during low-water seasons. Despite the growing number of small groundwater withdrawals—many of which cumulatively rival volumes that would otherwise require a formal water rights permit—there has been little to no regulatory response. The cumulative impact of these exempt wells on aquifer sustainability and spring flow has been largely ignored.

40. AGAI members' repeated efforts to raise these concerns have fallen on deaf ears. AGAI recognizes that exempt wells are not without consequence, and that their unchecked development threatens the long-term viability of water resources for senior water users and future generations. A judicial ruling that the exempt well statute violates the Montana Constitution will redress the harm to AGAI and its members from further unregulated groundwater development facilitated by the unconstitutional Exempt Well Law.

41. Plaintiff **Clark Fork Coalition ("CFC")** is a nonprofit organization founded in 1985. CFC is dedicated to protecting and restoring the Clark Fork River watershed. CFC represents over 2,000 members who envision a future where the Clark Fork River and its tributaries flow with clean, cold, and abundant water, ensuring people, animals, plants and the environment flourish for generations to come.

42. As part of its mission, CFC has long recognized that the protection of clean, cold and abundant water supplies in Montana requires strong laws and policies that are protective and forward-thinking. With respect to groundwater supplies, CFC has been focused on ensuring that Montana's groundwater appropriation policies are consistent with the prior appropriation doctrine, the Water Use Act, and the Montana Constitution.

43. CFC's mission includes restoring stream flow, aquatic habitat and function to dewatered streams and rivers within the Clark Fork Basin. As such, CFC purchases or leases

surface water rights from willing irrigators on dewatered tributary streams throughout the basin and pursues change authorizations from the DNRC to convert the beneficial use of the water rights to instream flow for the benefit of the fishery resource. CFC owns 27 water rights and leases an additional 10 water rights in the Clark Fork Basin. The water rights vary in priority, dating back as early as 1866 and as late as 1953. All of these water rights have received change authorizations from the DNRC for instream flow use.

44. CFC's members also own water rights for both surface and groundwater throughout the Clark Fork Basin. As a water-focused conservation organization and senior water rights holder in the Clark Fork watershed—much of which has been statutorily closed as fully-appropriated—CFC has long been concerned about how DNRC's issuance of exempt wells may impact its water rights and the Clark Fork Basin's water resources as a whole. To fulfill its mission and protect its water rights, CFC has spent decades working to prevent the unfettered development of Montana's water groundwater resources outside of the state-wide permitting process; i.e. the "exempt well loophole." CFC's members own water rights for both surface and groundwater that are harmed by the proliferation of unpermitted exempt groundwater wells in the Clark Fork watershed.

45. In 2009, CFC joined a group of senior water users who took aim at closing the exempt well loophole by challenging the previous, unlawful administrative rule defining "combined appropriation." The challenged definition, which arbitrarily required wells to be physically connected in order to be considered "combined," impermissibly allowed large quantities of water to be appropriated without a permit. The reviewing district court found that the challenged definition of combined appropriation violated "not only the spirit of the legislative intent behind the Act, it also violated the legislative intent in the enactment of the

exempt well statute.” Ord. on Petition for Jud. Rev. at 4, *Clark Fork Coal. v. Tubbs*, No. BDV-2010-874, (Mont. First Jud. Dist. Ct., 2014) (“*Clark Fork Coalition* District Court Order”). The Montana Supreme Court upheld the district court’s decision, holding that an exemption from the permitting requirements of the Water Use Act only squares with the underlying intent of the Act if it allows a *de minimis* quantity of water to be appropriated without a permit. *Clark Fork Coal.*, ¶ 24.

46. Over the past decade, CFC has also advocated against multiple legislative attempts to widen the exempt well loophole. In 2023 and 2024, a representative of CFC served on the DNRC’s Comprehensive Water Review Stakeholder Working Group, which sought to draft compromise legislation on exempt wells. The efforts of the group led to the introduction of a bill that would have implemented a closure to most exempt wells in several over-appropriated basins in Montana. The bill failed to pass the 2025 Legislature.

47. According to DNRC data, over 52,000 exempt wells were drilled in the Clark Fork Basin between 1973 and 2023. Because no measurement or reporting data is required, it is impossible to know how much groundwater is being appropriated by these exempt wells. However, the drilling of hundreds or thousands of individual exempt wells into the alluvial aquifers that feed the Clark Fork River and its tributaries is certain to deplete streamflows on already dewatered and over-appropriated streams and rivers. Although each exempt well’s individual water withdrawal may not be significant, the collective impact of many small wells on river flows and senior surface water rights is substantial. The cumulative impact of 20, 50, or 100 exempt wells in the same source aquifer may adversely impact senior water right holders like CFC and its members.

48. Rapid suburban growth has created unprecedented demand for groundwater in Montana, specifically in portions of the Upper Missouri and Clark Fork Basins that are fully appropriated and closed to new surface water appropriations. Growth rates in the Clark Fork watershed's ten-county region averaged 20% between 2000 and 2021, with Flathead County experiencing a 49.5% growth in population and Ravalli County 30% growth in the same period. These growth rates indicate that the demand for groundwater and residential development is increasing and will create more strain on water rights holders like CFC and its members.

49. A judicial ruling that the Exempt Well Law violates the Montana Constitution will redress the harm to CFC and its members from further unregulated groundwater development facilitated by the unconstitutional law.

50. Plaintiffs **Kevin and Katrin Chandler (the "Chandlers")** have lived on their ranch in Absarokee, Montana since 1993 on property that has been in Ms. Chandler's family since 1917. Ms. Chandler's distant relative established an extensive irrigation system in the 1920's and supplied the town of Absarokee with ice for their ice boxes out of the historic icehouse pond on Horse Creek. That pond remains as the point of diversion for the Chandler's water right on Horse Creek.

51. While the flows in Horse Creek have declined in recent years to levels insufficient for much irrigation, the Chandlers still rely on water from Horse Creek as their main source of stock-water in the wintertime. They also rely on the springs on their dry land pastures for stock-water year-round. These water sources have been used for agricultural purposes since 1917.

52. In 1997, the Chandlers and other local ranchers in Stillwater County first became concerned about potential impacts to senior surface and groundwater rights from the proposed Crow Chief Meadows subdivision, a 67-lot residential development located on 480 acres near

Absarokee, Montana. After county approval of the development, the Chandlers and neighboring landowners began a decades-long effort to protect their water resources from depletion caused by increased groundwater withdrawals.

53. In 2001, the Chandlers and neighboring ranchers organized as the Horse Creek Water Users, and on September 19, 2001, they filed a petition with DNRC to establish a controlled groundwater area (under Mont. Code Ann. § 85-2-506). The proposed controlled groundwater area encompassed approximately 4,600 acres in the Horse Creek drainage. The petitioners were required to design the boundary, obtain signatures from at least 25% of local water users, and fund hydrologic studies at their own expense. DNRC confirmed that petitioners exceeded the statutory threshold with over 50% of signatures from affected users.

54. Between 1997 and 2008, the Chandlers and other Horse Creek Water Users incurred significant time and financial burdens to complete the technical and procedural steps required to obtain DNRC authorization for implementation of a controlled groundwater area designation. The Chandlers and the Horse Creek Water Users installed monitoring equipment and collected baseline water data with quarterly monitoring and sampling. They performed regular flow and chemistry measurements at more than 20 monitoring sites across approximately 7,000 acres, documented hydrologic changes, and submitted annual reports to DNRC. They hired three different professional hydrologists to guide field studies and to analyze the hydrologic data. The group received partial financial support through small conservation grants but was otherwise responsible for all study costs, including costs incurred for drilling monitoring wells, installing flumes, and conducting quarterly sampling and data analysis.

55. The process to achieve even a temporary controlled groundwater area designation required multiple agency consultations, environmental review, and an evidentiary hearing before

DNRC on October 9, 2003. The temporary controlled groundwater area was approved by DNRC in February 2004, almost three years after the initial petition, for the purpose of “gathering information on aquifer properties, aquifer recharge, and aquifer withdrawals to assist in determining if a permanent controlled groundwater area is warranted.”⁶ Petitioners were responsible for overseeing and funding a multi-year groundwater monitoring program.

56. DNRC granted the Horse Creek petitioners two purported two-year extensions of the temporary Controlled Groundwater Area—first extending the designation through 2008, and again to 2010. In October 2008, however, DNRC notified petitioners that the temporary designation had in fact expired in 2006 because DNRC had failed to execute the initial extension order. The petitioners sought a temporary restraining order in the First Judicial District Court to prevent the expiration of the designation. The court denied the motion and confirmed that the temporary controlled groundwater area had expired as of November 11, 2008.⁷ Despite more than a decade of continuous hydrologic study and data collection, petitioners were denied a hearing on their request for permanent designation.

57. The Chandlers’ efforts continued through 2008, requiring persistent volunteer labor, coordination with DNRC hydrogeologists, and ongoing costs for data collection, technical analysis, and legal compliance. Despite this extensive work, securing permanent controlled groundwater area protection was difficult due to DNRC’s limited administrative capacity and the cost burden placed on local petitioners.

⁶ DNRC, *Groundwater Conditions at the Horse Creek Temporary Controlled Groundwater Area*, at 2 (2009), https://dnrc.mt.gov/_docs/water/controlled-ground-water-areas/horse_creek_report.pdf.

⁷ *In the Matter of the Horse Creek Pet. for Controlled Groundwater Area No. 43C-300006730*, Cause No. BDV-2008-922 (Mont. First Jud. Dist. Ct., 2008).

58. Throughout this process, the Chandlers observed continued well drilling and subdivision activity in the area, including the installation of new exempt wells within the controlled groundwater area boundary.

59. In 2009, Katrin Chandler and other Horse Creek Water Users joined CFC in filing a petition with DNRC to close the exempt well loophole. Katrin Chandler was also a plaintiff in the *Clark Fork Coalition* case challenging DNRC's denial of the Petition.

60. The Horse Creek Controlled Groundwater Area ("Horse Creek CGWA") was finally established by rule on January 13, 2012. *See* Mont. Admin. R. 36.12.905.

61. In the summer of 2012, Horse Creek went dry for the first time ever recorded after a 13-month dry period, resulting in a significant fish kill. The DNRC was contacted but did not follow any of the actions outlined in the new Horse Creek CGWA rules.

62. To this day, there are no access points to monitor exempt well use in the Crow Chief Meadows subdivision, irrigation systems do not have flow meters for recording water use, and water use has not been recorded and reported as required by the DNRC rules establishing the Horse Creek CGWA.

63. Based on their experience securing the Horse Creek CGWA and the continued drilling of exempt wells in their area, the Chandlers believe existing remedies available to senior water right holders to protect their rights from unregulated groundwater development under current law are inadequate. Establishing even a temporary controlled groundwater required more than eight years of sustained effort, multiple rounds of data collection, and considerable private expense.

64. The Chandlers believe their efforts underscore that while the Water Use Act theoretically offers administrative mechanisms to address groundwater-surface water conflicts, in

practice these remedies are prohibitively burdensome and ineffective at preventing unregulated groundwater development under the Exempt Well Law.

65. A judicial ruling that the Exempt Well Law violates the Montana Constitution will redress the harm to the Chandlers from further unregulated groundwater development facilitated by the unconstitutional law.

66. Plaintiff **Montana Environmental Information Center (“MEIC”)** is a non-partisan, nonprofit environmental advocacy group dedicated to ensuring clean air and water for Montana’s future generations. MEIC was founded in 1973 by Montanans concerned with protecting and restoring Montana’s natural environment. To protect and restore the land, air, water, and life-sustaining climate of Montana, MEIC advocates, educates, and empowers people in service of a clean and healthful environment for present and future generations.

67. MEIC is dedicated to assuring that state and local governments comply with and fully uphold the laws and constitutional provisions that further the organization’s goals and mission in protecting the clean air, clean water and a healthy climate for Montanans and their environmental life-support system. MEIC has approximately 10,000 members and supporters.

68. MEIC and members have long advocated for sound water resource management, sustainable land use planning, and preventing unregulated groundwater development. The proliferation of exempt wells harms these interests by depleting ground and surface water resources, incentivizing urban sprawl, and increasing the concentration of pollutants in ground and surface waters.

69. MEIC has worked in the legislature and in administrative processes to try to close the exempt well loophole. MEIC members rely on the State to protect water resources from unreasonable depletion and degradation.

70. A judicial ruling that the Exempt Well Law violates the Montana Constitution will redress the harm to MEIC and its members from further unregulated groundwater development facilitated by the unconstitutional law.

71. Plaintiff **Montana Farm Bureau Federation (“MFBF”)** is a grassroots membership, nongovernmental, nonpartisan, nonprofit organization representing nearly 20,000 members from across the state. MFBF is dedicated to preserving and improving the agriculture and natural resource industries through member involvement in education, political activities, programs and services. MFBF’s farmer and rancher members advocate for policy on issues such as property rights, water rights, water quality, governmental relations, use of public lands and the environment. MFBF represents thousands of farm and ranch families throughout Montana who depend on secure and predictable access to water for irrigation, livestock, and domestic agricultural operations. MFBF’s members have been deeply reliant on their water rights and water use for generations, and their members include some of the oldest water right holders in the state.

72. MFBF works to protect the rights of landowners and agricultural producers to surface water and groundwater, and opposes legislation that attempts to take any constitutionally protected rights to water. Thus, MFBF has advocated for the responsible use and reasonable restrictions on exempt wells for nearly two decades while also advocating for a functional permit and change process to allow for the responsible use of water without hurting senior water rights. MFBF delegates recognized in 2008 that exempt wells posed a risk to water availability and passed policy to advocate for the DNRC to record, regulate and mediate problems that would arise from exempt wells. MFBF has diligently worked to bring this to fruition since that time by

taking strong stances on legislation and actively participating in finding solutions to the growing problem.

73. MFBF has had representatives on both of the DNRC's Comprehensive Water Review Stakeholder Working Groups. Starting in 2021, a representative of MFBF served on the subgroup that crafted what became House Bill 114 to streamline the permitting and change process. The underlying policy discussed by the Comprehensive Water Review Group was that a more streamlined permitting process would reduce reliance on exempt wells. MFBF continued to work to help pass and implement the legislation by actively lobbying on the bill and hosting educational workshops for its members on the changes that the bill would bring.

74. Between August 2023 and December 2024, a representative of MFBF again served on the DNRC's Comprehensive Water Review Stakeholder Working Group. During this interim, the group attempted to negotiate legislative amendments to the Exempt Well Law that would protect existing water right holders, while still allowing the existence of exempt wells. MFBF was unable to support the legislation due to the expansion of the exemption that it created in the development pathway and the continued lack of safeguards for senior water right holders in most of the state. That legislation ultimately failed.

75. In addition to state-level efforts, many MFBF members have acted locally to protect their water rights. This includes participating in research and data collection to demonstrate the connection between groundwater and surface water, showing how their irrigation practices impact water availability, attending public meetings to raise concerns about proposed developments and water sources, and following legal processes to assert their senior water rights when necessary. MFBF members have participated in legal challenges to subdivisions that intend to rely on multiple exempt wells. Similar to the efforts at the state level,

many of the efforts MFBF members have taken to try and protect their senior water rights from adverse effects have been unfruitful due to the lack of accountability around exempt wells. These members have experienced firsthand the effects of exempt well development on the landscape and the frustration with a lack of process to protect their private property rights.

76. MFBF remains committed to protecting senior water rights and the prior appropriation doctrine while working to find solutions.

77. Defendants' implementation of the Exempt Well Law injures the economic, property, and natural resource interests of MFBF's members. A judicial ruling that the Exempt Well Law violates the Montana Constitution will redress the harm to MFBF and its members from further unregulated groundwater development facilitated by the unconstitutional law.

78. Plaintiff **Mark Runkle** is a private property owner in the Helena, Montana area who has also developed new housing in Helena. Mr. Runkle does not take the concept of "developing" lightly. Growing up in a farming family and with substantial farm holdings of his own, Mark knows the value of agricultural lands and realizes the responsibility that comes with thoughtful, intelligent land management and development. He is committed to creating safe, sustainable and livable neighborhoods that families can happily live in for generations through responsible growth, following municipal growth policies.

79. Recognizing a significant issue with urban sprawl in the Helena Valley and the toll it takes on air quality, water consumption, and energy consumption, the high risks for water contamination and the irreversible depletion of irrigated agricultural lands, Mr. Runkle initiated the Mountain View Meadows subdivision. This subdivision was planned and developed by assiduously following local municipal growth planning and embracing sustainable growth

principles. As a result, it was approved and annexed into the City of Helena and relies on municipal water supply sourced from permitted water rights, not exempt wells.

80. The homeowners within Mountain View Meadows are all served by and pay for the City of Helena's municipal water system. Mr. Runkle incurred higher infrastructure costs, increased land carrying costs, and greater financial risk associated with connecting to the municipal system, while developers subsidized by the Exempt Well Law have been able to obtain water for new subdivisions with minimal cost and time outlays.

81. As the Mountain View Meadows subdivision continues its build-out, Mr. Runkle faces ongoing economic harm from the State's continued implementation of the Exempt Well Law. Competing developers who are able to rely on unregulated exempt wells avoid the costs of obtaining water rights and constructing centralized water-supply systems. As a result, they can offer lots and homes at significantly lower prices, drawing away prospective buyers from developments like Mr. Runkle's that comply with lawful permitting and water-system requirements.

82. A judicial ruling that the Exempt Well Law violates the Montana Constitution will help to redress the ongoing and future harm to Mr. Runkle from further unregulated groundwater development and subsidization of other developments relying on exempt wells facilitated by the unconstitutional law.

83. Plaintiff **Trout Unlimited** is a nonprofit organization of members and supporters dedicated to the conservation, protection, and restoration of wild and native trout and their habitats in Montana since 1962.

84. Trout Unlimited comprises 350,000 members and supporters nationwide and over 4,000 in Montana organized in 13 chapters. Trout Unlimited's members and supporters have a

long history of participation and a heightened interest in the uses of Montana's surface waters and groundwater resources, the adjudication and administration of water rights in the state, and the statutory and constitutional recognition of non-appropriative uses of Montana's waters.

85. Trout Unlimited's Montana Water Program owns and leases instream flow water rights for the purpose of protecting and bolstering wild and native trout populations. Trout Unlimited has 42 active water right leases in Montana. These senior water rights in which it has legal interest are spread through many of the state's most highly-appropriated basins, including the Blackfoot, Clark Fork, Gallatin, Madison, Shields, and Yellowstone watersheds. Trout Unlimited also owns two water rights in the West Gallatin River. Trout Unlimited's interests in its leased and owned water rights are threatened by the unfettered proliferation of permit-exempt groundwater withdrawals.

86. Trout Unlimited also routinely defends Montana Department of Fish, Wildlife and Parks' instream flow reservations and Murphy Rights across the state. The State owns instream flow water rights with a 1970 priority date in the Madison, Gallatin, West Gallatin, Missouri, Smith, Blackfoot, Flathead, Middle Fork Flathead, and South Fork Flathead rivers, as well as in Big Spring Creek and Rock Creek. The State also has state water reservations established under Mont. Code. Ann. § 85-2-316. Trout Unlimited's members depend on the lawful administration of the State's water rights and reservations for the protection of Montana's wild trout populations, Montana's aquatic ecosystems, and the ability of the public to enjoy Montana's coldwater rivers. These rights and reservations are threatened by the individual and cumulative effects of exempt wells throughout Trout Unlimited's priority watersheds.

87. Trout Unlimited actively participates in water allocation issues and policy discussions in the legislature, in local drought committees and watershed groups, and with state

agencies and municipalities. For example, a Trout Unlimited representative served on the DNRC's Comprehensive Water Review Stakeholder Working Group in 2021-22 contributing to reforms of the permit and change process and toward regulating exempt wells. More recently, Trout Unlimited partnered with a local foundation to create the Gallatin Water Trust, Inc. to provide an exchange where willing water right owners can market their rights to willing buyers as an alternative to using unmitigated exempt wells for water supplies.

88. Trout Unlimited's staff and members have worked continuously to ensure that groundwater and surface waters are managed in tandem by DNRC, including securing a ruling from the Montana Supreme Court in 2006 that the agency cannot process groundwater applications without first determining whether a groundwater source is immediately or directly connected to neighboring surface water consistent with the agency's own hydrologic data. *Mont. Trout Unlimited*, ¶ 43.

89. The proliferation of exempt wells across the watersheds in which Trout Unlimited's members live, fish, and work negatively impacts their particularized interest in wild and native trout populations and healthy streams and rivers. That is, exempt wells tap already heavily appropriated streams without regard for prior appropriations, drain source aquifers that supply the state's instream flow reservations for fisheries especially during winter, and jeopardize the efficacy of Trout Unlimited's owned and leased instream flow rights when it comes to ensuring clean, cold, and connected habitat for Montana's wild salmonid species.

90. Closing the exempt well loophole will protect constitutionally protected existing water rights, instream flow rights and reservations for fisheries from unauthorized depletions outside of the prior appropriation system, thereby redressing the harm to Trout Unlimited's members.

91. Plaintiffs represent a diverse cross-section of Montana’s water users—ranging from municipalities and agricultural producers to conservation and environmental organizations—and they are united by a shared interest in protecting senior water rights and ensuring that groundwater and surface water are managed as a single, interconnected resource consistent with Montana law. Each Plaintiff has been directly and adversely affected by Defendants’ continued implementation of the Exempt Well Law. The agricultural Plaintiffs rely on secure and predictable water supplies for irrigation and livestock; the municipal Plaintiffs depend on sustainable aquifers and source waters for public health and dense development on water systems to lower costs for providing drinking water and operating water supply infrastructure; and the conservation Plaintiffs work to preserve instream flows and aquatic ecosystems. Despite these differing missions, Plaintiffs’ claims arise from the same statutory framework, involve common questions of law and fact, and seek declaratory and injunctive relief to ensure that Montana’s water laws are administered in a constitutional, equitable, and sustainable manner.

92. All Plaintiffs share a common and substantial interest in ensuring that Montana’s water resources are administered in accordance with the Montana Constitution and the prior appropriation doctrine. Individually and collectively, they are injured by the State’s continued implementation of the Exempt Well Law, which authorizes unregulated groundwater development that impairs senior appropriators, depletes hydrologically connected surface waters, and degrades the State’s water resources.

93. A judicial declaration that the Exempt Well Law is unconstitutional will redress ongoing and future injuries to Plaintiffs and their members by restoring the legal and hydrologic

integrity of Montana’s water rights system and by ensuring that future groundwater development occurs within a constitutionally compliant framework.

Defendants

94. Defendant **State of Montana** is the sovereign trustee over water resources of the State. As sovereign trustee, the State of Montana, acting through the DNRC, “shall coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources.” Mont. Code Ann. § 85-1-101(3). Defendant State of Montana has a constitutional duty to protect senior water rights from infringement and to provide adequate remedies to prevent unreasonable depletion and degradation of Montana’s water resources. The State of Montana, through its legislature and governor, enacted the Exempt Well Law.

95. Defendant **Montana Department of Natural Resources and Conservation** (“DNRC”) is charged with “help[ing] ensure Montana’s land and water resources provide benefits for present and future generations.” Admin. R. Mont. 36.1.101(1). Defendant DNRC, through its Water Resources Division, is responsible for “enforc[ing] and administer[ing]” the Water Use Act, a purpose of which is to implement Article IX, section 3(4) of the Montana Constitution. Mont. Code Ann. §§ 85-1-112(3), -101(2). In accordance with the Water Use Act, the DNRC regulates, permits, and authorizes the appropriation of water for beneficial use.

96. Pursuant to the Exempt Well Law, Defendant DNRC receives notices of exempt groundwater development and—in fulfillment of its ministerial responsibility—issues water right certificates to memorialize the new appropriations. In issuing such new water rights, pursuant to the Exempt Well Law, the DNRC does not provide public notice, undertake a water availability analysis, or investigate the potential adverse effects to senior water rights.

LEGAL AND POLICY BACKGROUND

Montana Water Rights Framework

97. Montana’s system of water rights is founded on the doctrine of prior appropriation, which provides that “first in time is first in right.” In 1921, the Montana Supreme Court recognized that the prior appropriation doctrine had been followed in Montana “since the enactment of the Bannack Statutes of 1865” and was “borne of the necessities of this state and its people; and that it was intended to be permanent in its character, exclusive in its operation, and to fix the status of water rights in this commonwealth.” *Mettler v. Ames Realty Co.*, 61 Mont. 152, 201 P. 702, 707 (1921).

98. Under the prior appropriation doctrine, when a new water right is established, it obtains a priority date. Senior priorities are legally entitled to water from a source before junior priorities. In times of shortage, a senior priority may “call” a junior to curtail that usage to the benefit of the senior right holder.

99. Once lawfully established, a water right is a property right. It is defined as “the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.” Mont. Code Ann. § 85-2-102(32). A water right does not convey ownership in the water itself, rather it is a usufructuary right: a right to appropriate and use water for a beneficial purpose. *See Osnes Livestock Co. v. Warren*, 103 Mont. 284, 62 P.2d 206, 210 (1936) (“... when there was a diversion of the water and its application to a beneficial use, it thereupon became a property right of which the owner could only be d[i]vested in some legal manner.”)

100. Montana’s 1972 Constitution “recognized and confirmed” “[a]ll existing rights to the use of any waters for any useful or beneficial purpose.” Mont. Const. art. IX, § 3(1). These

“existing rights” were always based upon the prior appropriation doctrine, and specifically provided the holders of these water rights to be fully satisfied in their water needs, in priority of their right. Accordingly, the Montana Constitution has confirmed and recognized the prior appropriation doctrine in Montana.

101. Montana’s 1972 Constitution also mandates that “[t]he legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records” Mont. Const. art. IX, § 3(4).

102. In the first legislative session following the 1972 Constitutional Convention, the Montana legislature passed the Water Use Act. 1973 Mont. Laws Ch. 452. A legislative purpose in adopting the Water Use Act “is to implement Article IX, section 3(4), of the Montana Constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights.” Mont. Code Ann. § 85-2-101(2).

103. With the passage of the Water Use Act, the legislature also declared a state policy and purpose to “provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems.” *Id.* § 85-2-101(3).

104. The Water Use Act’s “core purpose” is “the protection of senior water rights and the prior appropriation doctrine.” *Clark Fork Coal.*, ¶ 24.

105. The Water Use Act established an adjudication process for water rights established prior to July 1, 1973, referred to as “existing water rights.” *See* Mont. Code Ann. §§ 85-2-212 – 283. Claimants were required to file statements of claim with the DNRC by April 30, 1982, which was extended until July 1, 1996. *Id.* § 85-2-221.

106. The 1973 Water Use Act included a framework for state, federal and local governments to apply for water reservations “for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.” 1973 Mont. Laws Ch. 452, § 26 (codified at Mont. Code Ann. § 85-2-316).

107. The water reservation framework established by Mont. Code Ann. § 85-2-316 was designed to let public entities reserve water ahead of demand—(1) to accommodate future municipal and industrial growth, (2) to support agricultural development through conservation-district reservations, and (3) to maintain minimum instream flows for fisheries and related public values—thereby securing Montana’s present and future uses and enabling orderly, cost-effective planning.

108. The Water Use Act also established a statutory framework for permitting new, post-1973, appropriations. An applicant for a new permit to appropriate surface water or groundwater must prove by a preponderance of the evidence that several criteria are met, including that water is physically available, legally available, and that prior appropriators will not be adversely affected by the proposed new appropriation. *See* Mont. Code Ann. § 85-2-311. These criteria are sometimes referred to as the “-311 Criteria.”

109. The DNRC has promulgated regulations setting forth the technical information required to be submitted with permit applications to enable the DNRC to analyze an application for compliance with the -311 Criteria. *See* Mont. Admin. R. 36.12.1702 – 1707, 36.12.1801 – 1802.

110. The DNRC must also prepare an environmental assessment to analyze potential environmental impacts of the proposed new appropriation pursuant to the Montana

Environmental Policy Act (“MEPA”), Mont. Code Ann. § 75-2-201, and its MEPA implementation regulations, Mont. Admin. R. 36.2.521 – 543.

111. Under the permitting process, the Water Use Act requires DNRC to provide several opportunities for the public to review new permit applications, provide information to the DNRC, and if necessary, object to the proposed appropriation in order to protect existing water rights or water uses:

- a. When DNRC first receives a permit application, it is required to post a notice of receipt on its website. Mont. Code Ann. § 85-2-307(1).⁸
- b. Once an application is deemed correct and complete pursuant to Mont. Code Ann. § 85-2-302, DNRC updates the application status on its website. During this time, water users identified by DNRC who may be adversely affected by the proposed new appropriation and anyone whose “property, water rights, or interests . . . would be adversely affected by the proposed appropriation” may request a meeting with the DNRC to discuss the application. *Id.* §§ 85-2-307(2)(a); 85-2-308(4).
- c. DNRC then prepares a draft preliminary determination on the application, and if the preliminary determination is to grant the application, pursuant to Mont. Code Ann. § 85-2-307(4), DNRC:
 - i. Mails a notice to potentially affected water users, and
 - ii. Publishes a notice of opportunity for public comment on its website and in a newspaper of general circulation.
- d. After the close of the public comment period, DNRC reviews and responds to comments, and issues a preliminary determination. If the preliminary determination is

⁸ Water right application information can be found on DNRC’s website at this link: <https://dnrc.mt.gov/Water-Resources/Water-Rights/application-status-environmental-assessments/>.

- to grant the application, DNRC publishes a notice and opportunity to object to the preliminary determination. *Id.* § 85-2-307(5).
- e. Any person whose “property, water rights, or interests . . . would be adversely affected by the proposed appropriation” may file an objection. *Id.* § 85-2-308.
 - f. DNRC must hold a contested case hearing on valid objections pursuant to the Montana Administrative Procedure Act, Mont. Code Ann. title 2, chapter 4, part 6. *Id.* § 85-2-309.
 - g. DNRC’s final decision issued after a contested case hearing is subject to judicial review. *Id.* § 2-4-702.

112. The Montana Supreme Court has consistently recognized that the Water Use Act “imposes both substantive and procedural protections for water right users.” *Clark Fork Coal.*,

¶ 6. As the Court has succinctly summarized:

Substantively, before the issuance of a new water appropriation, the Act requires that a prospective junior appropriator show that water is legally and physically available, the proposed use of water is for a beneficial use, and the new appropriation will not adversely affect existing water rights of senior prior appropriators. Section 85–2–311(1)–(2), MCA. Procedurally, a prospective junior appropriator must provide notice, through the DNRC, to senior users who may be affected by the proposed appropriation and must permit senior users an opportunity to object to the prospective water right. Section 85–2–307, MCA. If objections do arise from senior users, the DNRC must hold a contested hearing on the objections. Section 85–2–309, MCA.

Id.

113. As described below, none of the extensive substantive or procedural safeguards for senior water rights built into the permit process outlined in the Water Use Act are applied to new appropriations relying on the exempt well loophole.

Basin Closures and Controlled Groundwater Areas

114. The State has authority by statute or administrative rule to control or close river basins and groundwater aquifers to certain types of water appropriations because of water availability problems, water contamination problems, and to prevent adverse effects to existing water rights. *See* Mont. Code Ann. §§ 85-2-319, -506.

115. Following the passage of the Water Use Act, U.S. Census Data indicate that the state experienced a population boom. From 1970 to 1980, the population grew by 12.9%. While this slowed during the economic stagnation of the 1980s, the population growth again picked up in the late 1980s.

116. Pursuant to Mont. Code Ann. § 85-2-319, the legislature may enact basin-wide closures to protect existing water rights in highly appropriated systems. Legislative closures were adopted between 1991 and 1999 in response to the state's chronic water shortages.⁹ In closing the following basins, the legislature made findings that basins are over-appropriated, meaning that legally available surface water is fully allocated to existing rights for part or all the year.

117. The legislature has closed six basins by statute, including the following:

<u>Basin</u>	<u>Location</u>	<u>Statute</u>	<u>Year</u>
Upper Clark Fork River	Clark Fork River and the Blackfoot River and their tributaries above the confluence of the Clark Fork River and the Blackfoot River	§§ 85-2-335 – 336	1991
Upper Missouri River ¹⁰	Missouri River and its tributaries above Morony dam	§ 85-2-343	1993
Teton River	Teton River and its tributaries above the confluence of the Teton and Marias Rivers.	§ 85-2-330	1993

⁹ *See* Mont. Environmental Quality Council, *Final Status of Natural Resource Legislation in the 53rd Montana Legislature* (1993), <https://archive.legmt.gov/content/publications/environmental/1993status.pdf>.

¹⁰ The Upper Missouri River basin closure is temporary until final decrees have been issued by the Water Court for all subbasins. Mont. Code Ann. § 85-2-343(1).

Jefferson River	Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers	§ 85-2-341	1993
Madison River	Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.	§ 85-2-341	1993
Bitterroot River ¹¹	Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River (delineated by subbasins)	§ 85-2-344	1999

118. DNRC may also close drainage basins to new appropriations by administrative rule under Mont. Code Ann. § 85-2-319. Such closures require findings that:

- (a) there are no unappropriated waters in the source of supply;
- (b) the rights of prior appropriators will be adversely affected;
- (c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; or
- (d) in the case of a petition filed by the department of environmental quality:
 - (i) the water quality of an appropriator will be adversely affected by the issuance of permits;
 - (ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or
 - (iii) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

Id. § 85-2-319(2).

119. Between 1990 and 1996 DNRC closed ten basins by administrative rule. No basins have been closed administratively since 1996. The administrative closures include:

<u>Administrative Closure Name</u>	<u>Basin and County</u>	<u>Rule</u>	<u>Year</u>
Grant Creek	76M, Missoula County	36.12.1011	1990
Rock Creek	43D, Carbon County	36.12.1013	1990
Walker Creek	76LJ, Flathead County	36.12.1014	1990
Towhead Gulch	41I, Lewis and Clark County	36.12.1015	1992

¹¹ The Bitterroot River basin closure is temporary and terminates as to specific subbasins two years after all water rights in subbasin are subject to a final and enforceable decree issued by the Water Court. *Id.* § 85-2-344(5).

Musselshell River	40A/40C, Petroleum County	36.12.1016	1992
Sharrott Creek Basin	76H, Ravalli County	36.12.1017	1993
Willow Creek Basin	76H, Ravalli County	36.12.1018	1994
Truman Creek Basin	76LJ, Flathead County	36.12.1019	1995
Sixmile Creek Basin	76M, Missoula County	36.12.1020	1995
Houle Creek Basin	76M, Missoula County	36.12.1021	1996

120. Pursuant to Mont. Code Ann. § 85-2-506, since 1961 DNRC has had the authority to designate controlled groundwater areas (“CGWA”) by rule when groundwater withdrawals threaten water quantity, quality, or the rights of existing users. A CGWA may be requested by DNRC or by petition from qualified entities such as counties, conservation districts, municipalities, or a third of local water right holders.

121. To demonstrate that a CGWA is needed due to water availability concerns, petitioners must demonstrate by a preponderance of the evidence through information provided by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause or have caused ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights. Mont. Code Ann. § 85-2-506.

122. Between 1967 and 2012, DNRC designated five CGWAs due to water availability concerns. The Horse Creek CGWA was the last CGWA established by DNRC. Existing permanent CGWAs include:

<u>CGWA Name</u>	<u>County</u>	<u>Authority</u>	<u>Year</u>
South Pine	Prairie, Fallon, and Wibaux Counties	Order of the Montana Water Resources Board	1967
Larson Creek	Ravalli County	Final Order of the Board of Natural Resources and Conservation	1988
Hayes Creek	Missoula County	DNRC Final Order	1998
Powder River Basin	Powder River County	DNRC Final Order (applies to coal bed methane wells)	1999
Horse Creek	Stillwater County	Mont. Admin. R. 36.12.905	2012

123. In 2006, the Montana Supreme Court held that the DNRC could not grant groundwater permit applications in closed basins when the groundwater was “immediately or directly connected to surface water.” *Mont. Trout Unlimited*, ¶ 43. The Court emphasized DNRC was prohibited from even processing applications for groundwater that would deplete surface flows in closed basins. *Id.* ¶ 29. The Court rejected DNRC’s interpretation that allowed groundwater permits without first determining the degree of hydrologic connection to surface water, stating that such an approach “would ignore the plain language of the Basin Closure Law” and would allow the DNRC to take actions that the legislature had expressly forbidden. *Id.* ¶ 24.

124. The legislature responded to the *Trout Unlimited* decision with the passage of HB 831 (2007), which created a specific permitting process for new groundwater appropriations in basin closure areas, codified at Mont. Code Ann. §§ 85-2-360 through 85-2-364. These statutes apply to applicants seeking new appropriations of groundwater in areas where surface water is not legally available, such as basins closed to new rights under either legislative or administrative authority.

125. In enacting HB 831, the legislature determined that “ground water development in closed basins should be able to proceed as long as the applicant collects the necessary scientific information to determine if there will be an adverse effect on a prior appropriator and takes the necessary actions to mitigate or prevent any adverse effects on a prior appropriator.” 2007 Mont. Laws Ch. 391 (HB 831).

126. To apply for a new groundwater permit in a closed basin, an applicant must submit a hydrogeologic assessment predicting whether the proposed groundwater use will cause net depletion to surface water, and if a net depletion will occur the applicant must also submit a

mitigation or aquifer recharge plan which will ensure that there are no adverse effects to other water rights on the surface water source. Mont. Code Ann. §§ 85-2-361 – 362.

127. In 2013, the Montana Legislature enacted Senate Bill 346, authorizing the DNRC to designate stream depletion zones in areas where hydrogeologic modeling demonstrates that groundwater wells measurably deplete connected surface water. 2013 Mont. Laws Ch. 421 § 3. Under Mont. Code Ann. § 85-2-380, a stream depletion zone may be established in a closed basin by DNRC, a municipality, county, conservation district, local water quality district, or by the owners of at least fifteen percent of the surface water flow rate in the affected area.

128. A hydrogeologic assessment must be completed by the MBMG or a qualified professional to delineate the zone. *Id.* Within stream depletion zone, new exempt groundwater wells are allowed and are subject to reduced limits—no more than 20 gallons per minute and two acre-feet per year—compared to the standard 35 gpm and 10 acre-feet allowance outside a stream depletion zone. Mont. Code Ann. § 85-2-306(3)(a)(iv).

129. Despite this statutory authority, only one stream depletion zone—the Rye Creek Stream Depletion Zone in the Bitterroot River Basin—has been established since 2013. Mont. Admin. R. 36.12.2205.

130. In closed basins, the Montana Supreme Court has observed:

Senior users are afforded even more protection in highly appropriated basins in Montana that have been closed from further surface water appropriations. In these “closed basins,” where water claims often exceed water availability, the DNRC may not issue new surface water permits. Section 85-2-360(1)-(3), MCA. The DNRC may consider groundwater permits, but the process for obtaining a groundwater permit in a closed basin is demanding. In addition to the general requirements for obtaining a permit, the appropriator must commission a hydrogeological report to determine if the proposed appropriation could result in a net depletion of surface water. Section 85-2-360(2), MCA. If the report indicates a hydrogeological connection, then the appropriator must show that there will be no net depletion of water. Section 85-2-360(3)(b), MCA.

Clark Fork Coal., ¶ 7.

131. In recognition that—under Montana’s water rights legal framework—groundwater and surface water must be managed as a connected resource, DNRC acknowledges that “every drop of water matters and [] surface water depletions related to groundwater use must be analyzed for impacts to senior water right holders.”¹²

Legal and Policy Background of the Exempt Well Law

132. The 1961 Groundwater Code marked Montana’s first comprehensive attempt to regulate groundwater use. In 1966, the Montana Supreme Court recognized that surface and groundwater are hydrologically connected and that “traditional legal distinctions between them should not be rigidly maintained when the reason for the distinction no longer exists.” *Perkins v. Kramer*, 148 Mont. 355, 363, 423 P.2d 587, 591 (1966).

133. The 1973 Water Use Act exempted “groundwater for domestic, agricultural, or livestock purposes by means of a well with a maximum yield of less than one hundred (100) gallons a minute” from the permitting requirements for new appropriations. 1973 Mont. Laws Ch. 452, § 16.

134. In 1979, the legislature amended the Water Use Act to prohibit the DNRC from requiring the owner or operator of an exempt well drilled outside of a controlled groundwater area to install a meter to measure the amount of water used. 1979 Mont. Laws Ch. 292, § 1 (HB 431). That prohibition remains. Mont. Code Ann. § 85-2-113(2)(b).

¹² The Comprehensive Water Review Exempt Well Bill: Recommendation of The Department of Natural Resources and Conservation, for Designation of Closure Areas and Monitoring Areas for Water Quantity, DNRC, at 3 (undated, document properties indicate document creation on Feb. 12, 2025), available at: https://dnrc.mt.gov/_docs/water/Comprehensive-Water-Review/MAIN.PAGE.CONTENT/Exempt-Well-Bill-DNRC-Recomendations-Closure-Criteria.pdf (“2025 DNRC Closure Recommendations”).

135. In April 1982, the legislative Environmental Quality Council (“EQC”), the Water Resources Oversight Committee of the Legislative Council, and the Montana Water Resources Research Center, Montana State University jointly held the Montana Ground Water Conference in recognition of the:

urgent need to develop an improved ground water information base, to develop policies that meet the future needs of ALL WATER USERS, and to develop comprehensive strategies that provide for optimum sustained yields of all small water resources. These efforts are necessary to protect existing water sources and to aid in the logical development of new ground water sources.¹³

136. The summary report from the 1982 conference recognized “problems” resulting from groundwater developments, including the impact of multiple wells causing “ground water flows to the stream [to be] diminished and the stream flow reduced or lost” and “excessive numbers of wells” that withdraw more water than is replenished, causing a decline in water levels.¹⁴

137. In August 1982, at EQC’s request, then Governor Ted Schwinden appointed a groundwater advisory council, which facilitated the production of a report—the Montana Ground-Water Status Report.¹⁵ The report observed that exempt “ground-water appropriations less than 100 gpm are in most cases approved without determining if the well has any hydraulic connection to a surface water source” and suggested options to amend the Water Use Act to eliminate the exemption, reduce the exemption, or “require through legislation or procedure that

¹³ *Summary Proceedings, Montana Groundwater Conference: “Planning a Ground Water Strategy” April 22-23, 1982*, at iii-iv (June 1983) (emphasis in original), <https://archive.legmt.gov/content/Publications/Environmental/1982gwconference.pdf>.

¹⁴ *Id.* at 3.

¹⁵ Department of Natural Resources and Conservation, et al., *Montana Ground-Water Status Report to Ground-Water Advisory Council* (April 1983), <https://archive.legmt.gov/content/publications/environmental/1983groundwater.pdf>.

the DNRC Water Rights Bureau screen all ground-water applications under 100 gpm to determine if wells are hydraulically connected to a surface water source.”¹⁶

138. The 1987 legislature clarified that multiple exempt wells could not be drilled to evade permitting and amended the Exempt Well Law to require that “a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.” 1987 Mont. Laws Ch. 535 (HB 642). DNRC’s initial rule, promulgated in 1987, interpreted this language broadly to include wells that were not physically connected but served a common purpose. *Clark Fork Coal.*, ¶ 9.

139. In 1991, the legislature amended the Exempt Well Law to reduce the amount of water available under the exemption to 35 gpm and an annual volume of 10 acre-feet. 1991 Mont. Laws Ch. 805 (SB 266).

140. Since 1991, the Exempt Well Law has provided:

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;

Mont. Code Ann. § 85-2-306(3)(a)(iii).

141. The Montana Supreme Court has determined that the legislative intent in enacting the Exempt Well Law is unequivocal:

Based upon the plain language of the statute, it is evident that the intent of the Legislature in enacting subsection (3)(a)(iii) was to ensure that, when appropriating from the same source, only a *de minimis* quantity of water, determined by the Legislature to be 10 acre-feet per year, could be lawfully appropriated without going through the rigors of the permitting process. An exception to the exemption for quantities exceeding 10 acre feet per year, regardless of flow rate and number of wells or developed springs utilized for the appropriation, protects other water rights utilizing the same water source.

¹⁶ *Id.* at 60.

Clark Fork Coal., ¶ 24 (emphasis added).

142. In 1993, DNRC revised the definition of “combined appropriation” to require that wells be “physically manifold into the same system” to be considered a combined appropriation. This narrower interpretation allowed developers to subdivide property without any water supply infrastructure, and instead required each new homebuyer to drill a new exempt well, each receiving a water right authorizing up to 10 acre-feet annually without a permit. *Clark Fork Coal.*, ¶ 11 (“[T]he [1993] rule allows an appropriator to avoid the permitting process for an infinite number of appropriations from the same source—with each appropriation consuming up to 10 acre-feet per year—so long as the appropriator does not physically connect the groundwater developments.”)

143. The 2007 legislature created the Water Policy Interim Committee (“WPIC”)¹⁷ to “conduct a detailed analysis and study of issues related to water quantity, water quality, and water use in Montana.” 2007 Mont. Laws 433 (HB 304). The study was required to include an analysis of “wells that are exempt from the permitting process pursuant to 85-2-306,” including:

- (i) a detailed reporting of the number of exempt wells currently in Montana and an estimate of the number of exempt wells expected to be developed by 2020;
- (ii) a determination and summary of the types of beneficial uses to which water from exempt wells is applied;
- (iii) a determination of the hydrogeologic analysis necessary to determine consumptive use on a per-acre or fraction of an acre basis and on a per-use basis;
- (iv) an analysis of the amount of water reasonably necessary for the various beneficial uses and a comparison of this reasonable use standard with current statutory limits, including volume, flow rate, and other criteria that the committee determines are necessary to provide for accurate and adequate measurement of water use through exempt wells;
- (v) options and alternatives for enforcing statutory limitations regarding exempt well usage; and

¹⁷ A water policy committee had previously been created by the 1985 legislature. 1985 Mont. Laws Ch. 573, § 20 (HB 680). That committee was in place until 1995, when its duties were assigned to the EQC. 1995 Mont. Laws Ch. 545, § 72 (SB 398).

(vi) a determination of the necessity and reasons for providing a process that is exempt from the permitting process.

Id. § 1(d).

144. A 2008 report by DNRC — Effects of Exempt Wells on Existing Water Rights (the “2008 DNRC Report”)— prepared at the request of WPIC during its first interim (2007-2008) examined the hydrologic and administrative effects of exempt wells on existing water rights and surface water resources across the state.¹⁸ The 2008 DNRC Report found that exempt wells had become a major source of unregulated groundwater use in closed basins, areas with high population growth and increasing subdivision development.¹⁹

145. As DNRC observed:

This concern is elevated as exempt wells are being used for large, relatively dense subdivision development in closed basins. Exempt wells are not reviewed by DNRC and are not subject to public notice. In contrast, permitted wells are reviewed by DNRC, and water users and the public are noticed and given an opportunity to object. Impacts caused by permitted wells are required to be identified and, if these impacts cause adverse [e]ffect to water users, must be offset through mitigation plans or aquifer recharge plans. Impacts caused by exempt wells are often offset during times of water shortages by curtailment of junior surface water right users. Even if administration or enforcement of exempt wells in priority existed, curtailment of exempt wells could be ineffective because of the delayed effect on stream flows and, therefore a call may not benefit senior water users.²⁰

146. As an example, DNRC explained that surface water users with priority rights dating back to the 1890s in the Gallatin Valley are curtailed in most years, while “[d]epletion of surface water by exempt well use continues during these periods of shortages and ultimately increases the need to curtail more junior surface water rights”²¹

¹⁸ Water Management Bureau, Montana Department of Natural Resources and Conservation, Helena, Montana, *Effects of Exempt Wells on Existing Water Rights* (Feb. 2008), https://archive.legmt.gov/content/Committees/Interim/2007_2008/water_policy/staffmemos/exemptwelleffects.pdf.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 1; *see also Clark Fork Coalition* District Court Order at 8.

²¹ *Id.* at 3.

147. In 2009, a coalition of senior water right holders, including Plaintiffs Clark Fork Coalition and Katrin Chandler, petitioned the DNRC under the Montana Administrative Procedure Act for a declaratory ruling that DNRC's 1993 rule violated the Water Use Act's protections for senior water rights and to conduct a rulemaking to bring the rule into conformance with the Act.

148. DNRC denied the Petition in August 2010, and the petitioners filed suit in the First Judicial District Court. Thereafter, DNRC agreed to engage in rulemaking to amend the challenged rule, and the case was stayed while DNRC worked to promulgate a new rule.

149. The 2011 Montana legislature passed HB 602, which required WPIC to conduct an interim study of exempt wells. 2011 Mont. Laws Ch. 256. HB 602, effective on April 21, 2011, also prohibited DNRC from adopting a rule to address the "combined appropriation" challenge until October 1, 2012. *Id.* § 3.

150. The legislature included the following findings in HB 602:

- (1) the state of Montana has managed the allocation of water under the prior appropriation doctrine for more than 100 years;
- (2) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;
- (3) the right to the use of water through a water right is a recognized property right;
- (4) the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights;
- (5) the Water Use Act requires the department of natural resources and conservation to coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources; and
- (6) the Water Use Act does not provide the department of natural resources and conservation with clear direction on the administration of ground water wells exempt from permitting.

151. The 2011 legislature also considered HB 433, which would have codified DNRC's challenged 1993 rule defining "combined appropriation," and would have thus

statutorily authorized multiple lot subdivisions to rely on multiple exempt wells as their water supply. HB 433 did not become law.

152. Because the 2011 legislature temporarily prohibited rulemaking for exempt wells, preventing DNRC from promulgating a new rule as agreed to in *Clark Fork Coalition*, the stay was lifted and the parties returned to district court.

153. In the meantime, during the 2011-12 interim, WPIC undertook a comprehensive review of the Exempt Well Law pursuant to HB 602 (2011). The 2011-12 interim was the fourth consecutive interim that exempt wells were included in a legislative study. WPIC issued a report—titled “The Exemption, to change or not to change? A study of water wells allowed without a permit” (the “2012 WPIC Report”).²²

154. The 2012 WPIC Report found that exempt wells were being used primarily for domestic and subdivision development in closed basins which overlapped with Montana’s fastest-growing areas.²³ The Report noted that an estimated two-thirds of the new lots created by land subdivision in those high growth areas between July 2004 and June 2011 were to be served by exempt wells.²⁴

155. The 2013 legislature considered six different bills and one resolution related to exempt wells. SB 346 was the only bill that became law. SB 346 established stream depletion

²² The 2012 WPIC Report is available at: <https://archive.legmt.gov/content/Publications/Environmental/2013-exempt-wells.pdf>. The Report observed, “[t]he amount of water allowed under the [Exempt Well Law] is sufficient for a variety of uses. Ten acre-feet could quench the thirst of 500 cows for a year, keep 5 acres of grass green in Bozeman, sprinkle up to 7 acres of pasture, serve a 150-room hotel, run a gravel operation, or supply a 10-lot subdivision in Billings.” 2012 WPIC Report at 12.

²³ 2012 WPIC Report at 11 (“Between 1990 and 2010, the populations of Gallatin County and Broadwater County, both located in the closed Upper Missouri Basin, increased by about 70% each. In Gallatin County, that was an increase of almost 40,000 people. Ravalli County, located in the closed Bitterroot Basin, increased in population by about 15,000 people during those 2 decades for a 61% increase.”)

²⁴ *Id.*

zones, Mont. Code Ann. § 85-2-380, and enacted Mont. Code Ann. § 85-2-381, which codified the following legislative findings:

- (1)(a) the state of Montana has managed the allocation of water under the prior appropriation doctrine for more than 100 years;
 - (b) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;
 - (c) the right to the use of water through a water right is a recognized property right;
 - (d) the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights;
 - (e) the Water Use Act requires the department to coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources; and
 - (f) the ability to develop ground water wells that are exempt from permitting contributes to the full utilization of the water resources of the state.
- (2) The establishment of a stream depletion zone pursuant to [85-2-380] provides a conclusive, scientific basis for determining where ground water rights that are exempt from permitting are affecting senior surface water rights.
- (3) The purpose of this section is to continue allocating water under the exemptions provided for in 85-2-306 while providing a process by which senior water right holders may protect their rights under the prior appropriation doctrine. Nothing in this section is intended to limit the ability of a senior water right holder to enforce a water right or limit that enforcement to a specific area. Creation of a stream depletion zone is not a prerequisite to an enforcement action.
- (4) Any use of water granted by a certificate of water right pursuant to 85-2-306(3)(a) is subject to enforcement according to priority by: (a) any remedy legally available; (b) the department, upon receiving a complaint, through the provisions of 85-2-114 and 85-2-122; or (c) a water commissioner appointed pursuant to 85-5-101.

156. The 2013 legislature also passed SB 19, which was another attempt to codify DNRC's challenged 1993 definition of combined appropriation. However, SB 19 was vetoed by then Governor Bullock because:

SB 19 would limit the ability of senior water right holders to protect their property rights. "First in time, first in right" is a bedrock principle of water law, but any right is only as good as one's ability to protect it. SB 19 would perpetuate a system where many water wells could be developed in close proximity to one another, collectively pump substantial amounts of water, and the holder of an adjacent senior water right would be powerless to protect that right.²⁵

²⁵ Ltr. Gov. Bullock, Office of the Governor to L. McCulloch, Secretary of State at 1 (May 3, 2013), <https://docs.legmt.gov/download-ticket?ticketId=36d1b436-b8f2-4160-8b27-ac64593491dd>.

157. On October 17, 2014, the district court in *Clark Fork Coalition* held that DNRC's 1993 rule conflicted with the purpose of the Water Use Act and the prior appropriation doctrine. *Clark Fork Coalition* District Court Order at 13. The court determined "under the exempt well regulation currently in effect, all of the[] salutatory purposes of the Water Use Act are avoided. For example, an exempt well could even be drilled in a closed basin without any need for a permit." *Id.* at 6.

158. In December 2014, DNRC published its first "Guidance on Combined Appropriations" to provide general guidance applying the First Judicial District Court's decision in *Clark Fork Coalition*. DNRC's Guidance included an "important point" that "[o]ne can still seek a water right for one or more 'exempt' wells pursuant to § 85-2-306(3), MCA."

159. The 2015 legislature considered three bills relating to exempt wells. HB 168 was the only bill that became law, the purpose of which was to "ensure that the [DNRC's] 1993 definition of combined appropriation applies to all projects, developments, or subdivisions in existence or for which an application for review was pending on or before the District Court's October 17, 2014, ruling." 2015 Mont. Laws Ch. 222.

160. DNRC amended its Guidance on Combined Appropriations in December 2016 to reflect the passage of HB 168.

161. On September 13, 2016, the Montana Supreme Court affirmed the district court's decision in *Clark Fork Coalition*, concluding that DNRC's 1993 rule was "inconsistent with the purpose of the Act to protect senior appropriators" and unlawfully narrowed the statute. *Clark Fork Coal.*, ¶ 28.

162. The Court underscored that the "DNRC has recently acknowledged the concerns of senior users that the cumulative effects of these exempt appropriations are having a significant

impact in terms of reducing groundwater levels and surface water flows and that the cumulative impact of the appropriations may be harming senior water users' existing rights.” *Id.* ¶ 13.

163. The Court determined that:

none of the permitting procedures under the Act constrain the proposed [exempt] appropriation . . . A prospective appropriator need not show that water is legally and physically available; that the new appropriation will not deplete surface flow; or that the water will not be used inconsistently with senior rights . . . Nor does the appropriator need to provide notice to senior users or allow senior users an opportunity to object . . . Similarly, the more onerous requirements for obtaining an appropriation in a closed basin are inapplicable.

Id. ¶ 8.

164. The 2017 legislature considered four bills related to exempt wells. None of these bills became law. Two bills, SB 248 and HB 339, were vetoed by Governor Bullock. SB 248 would have expanded the exemption to allow an exemption for each lot to be authorized if a lot was created through subdivision pursuant to a family transfer. Governor Bullock vetoed SB 248 because the “cumulative effects of this exemption could seriously undermine the primary principle of western water law of ‘first in time is first in right.’”²⁶

165. HB 339 (2017) would have codified DNRC’s 1993 definition of combined appropriation. Governor Bullock vetoed HB 339 because it “would reinstate a loophole recently closed by a recent Montana Supreme Court ruling [in *Clark Fork Coalition*] and fails to protect senior water right holders from the impacts of groundwater development.”²⁷

166. DNRC reinstated the 1987 definition of “combined appropriation” by administrative rule in 2018. 2018 Mont. Admin. Reg. No. 4 at 451, 454 (Feb. 23, 2018).

²⁶ Ltr. Gov. Bullock, Office of the Governor to Corey Stapleton, Secretary of State at 1 (May 25, 2017), <https://docs.legmt.gov/download-ticket?ticketId=b977e5ec-3d9f-4298-ab9b-acbc882e3041>.

²⁷ Ltr. Gov. Bullock, Office of the Governor to Corey Stapleton, Secretary of State at 1 (May 11, 2017), <https://docs.legmt.gov/download-ticket?ticketId=daedbbde-468f-45e1-a88b-81e0f8ad4bcc>.

167. During the 2017-18 interim, WPIC again studied the Exempt Well Law. The resulting report, “The Exemption at 45: A Study of Groundwater Wells Exempt from Permitting,” provided a detailed account of the history, legal evolution, and scientific understanding of groundwater use exempt from DNRC permitting (the “2018 WPIC Report”).²⁸

168. The 2018 WPIC Report included the following findings and conclusions:

- a. Well drillers dig thousands of wells using the permit exemption each year.
- b. Development in and near some Montana cities and towns continues to use the permit exemption.
- c. Use of the permit exemption may have negative long-term effects on water availability in certain areas of Montana.
- d. The prior appropriation doctrine allows for calls against junior groundwater rights holders. However, there may be technical and legal challenges to implementing and enforcing such a call.²⁹

169. The 2018 WPIC Report noted that the Montana Bureau of Mines and Geology’s (“MBMG”) Groundwater Investigation Program found that while local impacts varied by aquifer and geography, the “amount of stream depletion ultimately equals the amount of water removed from the aquifer.”³⁰

170. The 2019 legislature considered HB 708, which would have reduced the exemption authorized by the Exempt Well Law from 10 acre-feet per year to 5 acre-feet. HB 708 did not become law.

171. The 2021 legislature considered the following three bills related to exempt wells, all of which failed to become law:

- a. SB 406: Would have reduced the exemption from 10 acre-feet per year to 5 acre-feet;

²⁸ The 2018 WPIC Report is available at the following link:
<https://archive.legmt.gov/content/Committees/Interim/2017-2018/Water-Policy/Meetings/ExemptWellReport-FINAL.pdf>.

²⁹ 2018 WPIC Report at 2.

³⁰ *Id.* at 10.

- b. SB 405: Would have prohibited the sale or marketing of water appropriated pursuant to an exempt well; and
- c. SB 404: Would have amended Mont. Code Ann. § 85-2-113(2)(b) to allow DNRC to require by rule water meters for exempt wells to measure the amount of water appropriated.

172. In 2022, the DNRC formed its Comprehensive Water Review Working Group to develop policy on water-related issues, including the issue of exempt wells. Representatives of several Plaintiff organizations served on the working groups in 2022. The working group did not make any legislative recommendations for exempt wells for the 2023 legislature.

173. The 2023 legislature, however, considered two bills related to exempt wells. HB 435, which became law, requires the DNRC to grant a certificate of water right and allocate 10 acre-feet of water for construction of a water supply system (as described in Mont. Code Ann. Title 75, chapter 6, part 1). HB 435 widened the exempt well loophole by allowing subdivisions of any size and number of lots to obtain and preserve a right to use 10 acre-feet of water for future uses on the property, before and without putting that water to a beneficial use. Mont Code Ann. § 85-2-306(3)(d). HB 642 would have removed the requirement that a “combined appropriation” of exempt wells exceeding the maximum volume of 10 acre-feet obtain a permit from the DNRC. HB 642 did not become law.

174. In 2022, Upper Missouri Waterkeeper and individual water users filed a challenge in the First Judicial District Court, Broadwater County, to a county subdivision approval involving reliance on multiple exempt wells within the Upper Missouri River Basin closure. The proposed subdivision included plans to subdivide 442 acres over four phases of development into 39 residential lots, two commercial lots, and one open space lot with each lot to be served by its

own exempt well, septic, and stormwater system. Order at 4, *Upper Missouri Waterkeeper et al. v. Broadwater County and Mont. Dep't of Nat. Res. & Conservation*, Cause No. BDV-2022-38 (Mont. First Jud. Dist. Ct., 2024). Though water to serve the four phases together would exceed the Exempt Well Law limitation of 35 gpm and 10 acre-feet per year, the DNRC determined that the appropriation “fit the current rules and laws pertaining the filing of an exempt water right” for each of the four phases. *Id.*

175. The district court in *Upper Missouri Waterkeeper* determined that “DNRC blatantly ignore[d] the Supreme Court’s holding” in *Clark Fork Coalition* when it “conclude[d] that each of the four phases of one larger project [is] entitled to exempt wells.” *Id.* at 70. The Court held that “the blackletter law is clear that multiphase developments are one combined appropriation with no qualifiers” and determined that DNRC’s “interpretation here would allow developers to circumvent exempt well limitations easily and unilaterally by simply slicing any project into phases each small enough to fall under the exempt well ceiling for the aggregate acre-feet.” *Id.* at 77, 78.

176. In concluding that DNRC erroneously applied the Exempt Well Law to allow for “an infinite number of wells [to be] drilled regardless of water resource impact or the senior water rights holders who are entitled to protection,” the district court expressed concern that the issue will not be resolved with its Order:

This Court is fearful that in another ten years a district court will be reviewing the propriety of DNRC approving multiple applications for ‘completely distinct’ projects below the combined appropriation limit which are ‘coincidentally’ sited next to each other and being built by the same developer through shell subsidiaries.

The economic impetus to develop land is overwhelming and relentless. If there is going to be any check on uncontrolled development of Montana's limited water resources it will have to come from DNRC which is statutorily charged with fulfilling Montanans’ constitutional right to “control, and regulation of water rights,” Mont. Const., Art. IX§ 3, a duty DNRC has manifestly avoided or

undermined for over a decade to the detriment of our waters, environment, and senior water rights holders whose protection is the “core purpose” of the Water Rights Act. *Clark Fork*, ¶ 24. It is DNRC’s duty to enforce the Water Use Act, not undermine it. Mont. Code Ann. § 85-2-112 (2021). And yet in replacing the 1987 rule, without notice to the public, DNRC vitiated broad swaths of the Water Use Act it is charged with administering and in doing so allowed the (ongoing) appropriation of millions if not billions of gallons of water that under our laws should have been left in aquifers for the benefit of senior water rights holders. This should have stopped once *Clark Fork* was handed down, but it appears that DNRC has simply ignored that opinion though faulty agency guidance that has no force of law

With DNRC going out of its way for decades to conclude that such wells are virtually never combined appropriations, each well is entitled to appropriate 10-acre feet per year, totaling 1.2-to-1.9-million-acre feet, or 417-622 *billion* gallons of water each and every year. Each additional year adding 3,000 exempt wells entitles their owners to an additional 9 billion gallons of water each year. At this rate, in less than 50 years exempt wells will be entitled to draw a *trillion* gallons of water each and every year. While each exempt well might appropriate “only a *de minimis* quantity of water,” *Clark Fork*, ¶ 24, they are starting to add up.

Id. at 83-85.

177. In response to the district court’s decision in *Upper Missouri Waterkeeper*, DNRC updated its Guidance on Combined Appropriations acknowledging that *Clark Fork Coalition* and *Upper Missouri Waterkeeper* “establish the exempt groundwater development permit exception is a narrow exception and any interpretation or application of the combined appropriation definition that allows for expanded use under the permit exception is likely to be found inconsistent with statute.”³¹

178. DNRC’s 2023-24 Comprehensive Water Review Working Group again took up the issue of exempt wells. The Working Group consisted of representatives from several key stakeholders interested in exempt well reform, including three from the Plaintiff organizations (Clark Fork Coalition, Montana Farm Bureau Federation, and Montana League of Cities and

³¹ DNRC, *Guidance on Combined Appropriations*, at 1 (June 26, 2024), <https://dnrc.mt.gov/Water-Resources/Water-Rights/Apply-for-Water-Rights/DNRC-Guidance-on-Combined-Appropriations.pdf>.

Towns). The Working Group spent 15 months and hundreds of hours collaborating on policy recommendations for water resource administration in Montana. Much of these efforts were aimed at exempt well reform and specifically negotiating legislation that might improve the Exempt Well Law.

179. While no final and complete consensus was reached among the working group members on exempt well legislation, DNRC advanced a bill during the 2025 session—SB 358—that reflected much of the Comprehensive Water Review Working Group’s discussions and negotiations. SB 358 would have created exempt well groundwater closure areas in four high-growth areas of the state, where, based on DNRC data and analysis, exempt wells were likely adversely affecting senior water users.³² SB 358 failed to pass the legislature.

180. As originally drafted, SB 358 would have significantly restricted the use of exempt wells in four aquifers: the Helena Valley, the Bitterroot Valley, the Missoula Valley, and the Gallatin Valley aquifers. Under the DNRC’s own analysis, the aquifers proposed for closure met certain criteria established by the DNRC’s Water Sciences Bureau, including:

- a. a high concentration of exempt groundwater use; and
- b. 100% of the legally available hydraulically connected surface water has been appropriated for any month; or
- c. 80% or more of the legally available groundwater has been appropriated; or
- d. The groundwater level is declining or is projected to decline due to pumping.³³

181. SB 358 further outlined a process for future designation of closure or monitoring areas. SB 358 would also have established temporary controlled groundwater areas in two aquifers for the purpose of monitoring: the Billings Terrace aquifer and the Flathead Valley

³² SB 358, Mont. 69th Legislature § 3 (2025), https://bills.legmt.gov/#/laws/bill/2/LC1455?open_tab=bill.

³³ 2025 DNRC Closure Recommendations at 2.

aquifer, where existing data indicate these aquifers are approaching the need for closure based on the closure criteria listed above.³⁴

182. Outside of the new closure and monitoring areas, SB 358 was drafted to expressly allow exempt wells for subdivisions, but restricted the use of exempt wells to a limit of no more than 1 acre-feet per lot and no more than 24 lots total, effectively allowing a maximum total volume of 24 acre-feet of exempt groundwater per new subdivision.³⁵

183. SB 358 received an enormous amount of opposition testimony in its sole committee hearing on February 28, 2025.³⁶

184. SB 358 was subsequently amended in committee to, among other things, tighten exempt well restrictions in established “monitoring” areas and entirely remove the Bitterroot Valley aquifer from the list of proposed closure areas. Additional legislative restrictions on exempt wells that were negotiated by certain members of the Working Group were also stripped from the bill.

185. During the bill’s debate on the Senate floor on April 2, 2025, SB 358’s sponsor argued in favor of the legislation: “we are starting to hurt agriculture downstream . . . we are hurting people with just the Wild West of punching holes in the ground . . . this is a statewide issue . . . The state is growing. We need to deal with this. Status quo will not work.”³⁷

186. SB 358 failed to advance out of the first house, with 36 senators voting against the bill.

³⁴ *Id.*

³⁵ SB 358, § 2 (2025).

³⁶ *See*, Minutes, Montana Senate, 69th Legislature – Regular Session, Committee on (S) Natural Resources (Feb. 28, 2025) (video recording of hearing available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250228/-1/56177>).

³⁷ Montana Senate, 69th Legislature, Senate Floor Session, Sen. Wylie Galt, R-Martinsdale (April 2, 2025) (video recording of floor session available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250402/-1/56287#agenda_starting_at_13:58:50).

187. In addition to SB 358, the 2025 legislature considered two substantive bills—SB 436 and HB 704—and one procedural bill—HB 681—related to exempt wells. SB 436 and HB 704 did not become law. HB 681 became law and updated some procedural elements of the Exempt Well Law to require an appropriator to file advance notice of intent with DNRC before drilling one or more exempt wells. Mont. Code Ann. § 85-2-306(3)(b) (effective Jan. 1, 2026). Pursuant to HB 681, the DNRC’s review remains limited to a determination of whether the exempt well appropriation will remain under the maximum allowable flow rate (35 gpm) and volume (10 acre-feet). *Id.*

188. On the heels of the 2025 session, exempt well reform is again a topic of interest for WPIC during the 2025-26 interim. WPIC’s interim work plan³⁸ includes recommendations to:

- a. Review past work on the topic of exempt groundwater wells, including the identification of areas or topics of concern;
- b. Analyze legislation introduced in the 2025 legislative session that did not pass and analyze the reasons for failure; and
- c. Examine additional methods to address issues and concerns.

189. After nearly two decades of legislative studies identifying the adverse hydrologic and legal consequences of exempt well development, and repeated efforts by Plaintiffs to work with the agency and the legislature to craft solutions, no meaningful policy changes have been implemented. The State has long-possessed detailed knowledge of the cumulative impacts of unregulated groundwater withdrawals authorized by the Exempt Well Law, particularly in closed

³⁸ Montana Legislative Environmental Policy Office, *Exempt Groundwater Wells Study Strategy* (Oct. 2025), https://archive.legmt.gov/content/Committees/Interim/2025-2026/WPIC/October_20_21_2025/10.1.ExemptWells_StudyStrategy.pdf.

and over-appropriated basins. Despite this knowledge, Defendants have continued to implement the Exempt Well Law.

190. The DNRC, for its part, has acknowledged that the Exempt Well Law is challenging for the agency to administer, particularly so regarding the requirement that the agency exercise its discretion to determine what constitutes a “combined appropriation from the same source.”³⁹

191. The legislative intent in enacting the Exempt Well Law was to provide for a *de minimis* use of water while maintaining protection for senior water rights holders. *Clark Fork Coal.*, ¶ 24. The legislature has determined that “the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights” *and* “the ability to develop ground water wells that are exempt from permitting contributes to the full utilization of the water resources of the state.” Mont. Code Ann. § 85-2-381(1)(d), (f).

192. The Montana legislature has taken up the issue of exempt wells in nearly every legislative session and interim since 2007 and has been unable to resolve the tension between those two policy statements through the enactment of constitutionally compliant legislation.

FACTUAL BACKGROUND

193. In the arid West, water is a scarce and valuable resource. Montana’s water resources support all aspects of every Montanans’ way of life. An abundant and properly regulated water supply is essential to sustain Montana’s thriving communities, food production, hydroelectric power generation, unparalleled recreational opportunities, fish and wildlife, natural ecosystems, industry, and the economy.

³⁹ Joint Financial Modernization and Risk Analysis Study and Water Policy Committee, testimony of Anna Pakenham Stevenson, DNRC Water Resources Division Administrator (Oct. 17, 2025).

194. Most groundwater used in Montana comes from shallow sand or gravel aquifers in river floodplains. Groundwater also plays a significant role in supporting surface water flow in Montana's rivers, streams, and springs, with a typical stream relying on groundwater to supply a large portion of its annual flow and sustaining streamflow through the winter.

195. Most of Montana's ground and surface water resources are dependent on an adequate snowpack, as melting snow feeds streams and rivers and recharges groundwater aquifers. Groundwater is the primary source supplying streams during wintertime.

196. Montana is experiencing persistent drought and shifting hydrographs. Demand for water is also increasing as Montana's population grows. Rivers and streams in many parts of the state are over-appropriated as demand exceeds the available supply of water.

197. According to the U.S. Drought Monitor, as of October 2025, 46.8% of Montana was in drought, with an additional 31.4% of the state experiencing abnormally dry conditions.⁴⁰ Approximately 668,000 Montana residents are located in areas of drought.⁴¹

198. Increased groundwater pumping reduces surface flows, depletes shallow aquifers, and exacerbates water demand. The resulting depletions extend into winter months when streamflows are already low. This continued loss of groundwater discharge diminishes winter baseflows that are critical to the survival of economically and ecologically important aquatic species, further compounding the adverse effects of seasonal drought and water scarcity.

199. Increased yearlong groundwater pumping has a direct effect on drought stress to Montana's storied fisheries. For example, "hoot owl" restrictions are one mechanism Montana Department of Fish, Wildlife, and Parks employs to lessen drought impacts on drought-stressed fisheries. Admin. R. Mont. 12.5.501- 509. Hoot owl closures prohibit fishing from 2:00 pm until

⁴⁰ U.S. Drought Monitor, Montana (October 16, 2025), <https://www.drought.gov/states/montana>.

⁴¹ *Id.*, <https://www.drought.gov/states/montana#drought-overview>.

midnight in drought-stressed reaches to lessen angling mortality when low streamflows and high water temperatures create lethal conditions for fish caught and released by anglers.

200. Over the past five years, on average, 32 stream reaches have been subject to hoot owl or full drought closures.⁴² The increased frequency of fishing closures and the associated economic and ecological impact is another symptom of increased groundwater pumping in water stressed basins which is exacerbated by the proliferation of exempt wells.

201. In some basins, this also increases the demand for irrigation water. When groundwater levels are depleted and irrigation water is applied to beneficial use, a portion of that water is absorbed by stream reaches that need recharging. This increases canal or ditch leakage and reduces the amount of water available to farmers and ranchers. MBMG sites a specific example: “[i]n the Boulder Valley, recharge to the aquifer system comes from canal leakage (46%), infiltration in the uplands (35%), and water that infiltrates from irrigated fields (19%).”⁴³ This highlights the burden that is placed on irrigation to recharge depleted aquifers.

202. At the same time, Montana is experiencing increased demand for groundwater to serve a growing population. Census data show Montana’s population increased by 202,749 residents between 2000 and 2021. Over 87 percent of that growth occurred in six counties—Gallatin, Yellowstone, Flathead, Missoula, Lewis and Clark, and Ravalli—which together

⁴² See Mont. Fish, Wildlife and Parks, *Montana Waterbody Closures and Restrictions*, https://gis-mtfwp.hub.arcgis.com/datasets/438688174b4747b9b19743cf37330771_0/explore?location=46.725378%2C-109.855013%2C6.69&showTable=true.

⁴³ Andrew Bobbsi and Ginette Abdo, *Groundwater/Surface-Water Study in the Boulder Valley: Effects of Groundwater Withdrawal*, Groundwater Investigation Program, Montana Bureau of Mines and Geology at 3 (2017), <https://mbmg.mtech.edu/pdf-publications/IP12.pdf>.

represent the state’s primary population and economic centers.⁴⁴ These counties also count for more than half of all home construction since 2000.⁴⁵

203. Analysis by Headwaters Economics of Montana tax assessment data from 2000 through 2021 shows that 31% of single-family homes in Montana were constructed between 2000 and 2021, with 56% of residential development occurring outside of incorporated municipalities.⁴⁶

204. In Gallatin County, the population grew by nearly 55,000, but the cities of Bozeman, Belgrade, Manhattan, Three Forks, and West Yellowstone accounted for only about 34,000 of that increase, meaning roughly 21,000 additional residents moved into the unincorporated portions of the county.⁴⁷ Fifty-four percent of the 19,279 new homes in Gallatin County between 2000 and 2021 were built outside the municipalities in the county.⁴⁸ MBMG data indicate there are currently 22,387 wells in Gallatin County, only 596 of which are for municipal and other public water supply systems.⁴⁹

205. A similar pattern exists in other rapidly growing counties. Lewis and Clark County added over 16,000 residents between 2000 and 2021, yet the cities of Helena and East Helena accounted for only about 7,000 of that growth during that time period.⁵⁰ Most new residents – 56 % – that moved to Lewis and Clark County between 2000 and 2021 settled in the

⁴⁴ *State of Montana Population Summary Dashboard*, Census and Economic Development Center, Montana Department of Commerce, <https://commerce.mt.gov/Data-Research/People-Housing/Population> (“CEIC data”).

⁴⁵ Patricia Hernandez, *Montana Losing Open Space, Headwater Economics* (January 10, 2024), <https://headwaterseconomics.org/economic-development/montana-home-construction/> (“Headwaters Economics Report”).

⁴⁶ *Id.*

⁴⁷ CEIC data.

⁴⁸ Headwaters Economics Report.

⁴⁹ Montana Bureau of Mines and Geology, *County-Wide Statistics*, Ground Water Information Center (data accessed November 6, 2025), <https://mbmggwic.mtech.edu/> (“MBMG data”).

⁵⁰ CEIC data.

unincorporated Helena Valley.⁵¹ Seventy-two percent of the 6,837 new homes in Lewis and Clark County between 2000 and 2021 were built outside the municipalities of Helena and East Helena.⁵² MBMG data indicate there are currently 18,798 wells in all of Lewis and Clark County, only 367 of which are for municipal and other public water supply systems.⁵³

206. Flathead County gained more than 34,000 residents from 2000 to 2021, while the combined growth of Kalispell, Whitefish, and Columbia Falls totaled roughly 16,000, again reflecting substantial expansion in unincorporated areas.⁵⁴ Most new residents – 53% – that moved to Flathead County between 2000 and 2021 settled in the unincorporated Flathead Valley.⁵⁵ Fifty-four percent of the 19,319 new homes in Flathead County between 2000 and 2021 were built in the unincorporated areas of the County.⁵⁶ MBMG data indicate there are currently 25,004 wells in all of Flathead County, only 718 of which are for municipal and other public water supply systems.⁵⁷

207. Ravalli County is the most extreme example of how the Exempt Well Law supports a development pattern that relies on skirting the water permitting process. From 2000 to 2021, the population of Ravalli County grew by almost 10,000, only 1,700 of which settled in the municipalities of Hamilton, Stevensville, Darby, and Pinesdale.⁵⁸ A full 83% of the new population in the Bitterroot Valley between 2000 and 2021 settled in the unincorporated areas of Ravalli County.⁵⁹ Eighty-four percent of the 6,000 new homes in Ravalli County between 2000

⁵¹ Headwaters Economics Report.

⁵² *Id.*

⁵³ MBMG data.

⁵⁴ CEIC data.

⁵⁵ Headwaters Economics Report.

⁵⁶ *Id.*

⁵⁷ MBMG data.

⁵⁸ Headwaters Economics Report.

⁵⁹ *Id.*

and 2021 were built in the unincorporated areas of the County.⁶⁰ Corresponding MBMG data indicate there are currently 24,035 wells in all of Ravalli County, only 288 of which are for municipal and other public water supply systems.⁶¹

208. This pattern of dispersed, low-density, groundwater-dependent development has contributed to the conversion of roughly one million acres of previously undeveloped, irrigated agricultural land to residential use in Montana since 2000.⁶²

209. Removing agricultural lands from irrigation results in loss of return flows, ditch seepage, and aquifer recharge. According to the U.S. Department of Agriculture’s 2022 Census of Agriculture, between 2017 and 2022 Montana lost over 300,000 acres of irrigated farmland, an area more than twice the size of Flathead Lake, removing these acres from their historic role in supporting the region’s hydrology. Consequently, water scarcity on remaining agricultural lands is exacerbated, while development pressures persist further incentivizing urban sprawl.⁶³

210. These demographic shifts indicate that a significant share of Montana’s population growth is occurring in rural subdivisions and unincorporated areas relying on individual exempt groundwater wells rather than permitted and regulated public water systems. This pattern has measurably increased groundwater withdrawals in several closed and fully appropriated basins, compounding the strain on senior surface and groundwater rights.

211. Between 2014, when the DNRC’s prior rule was reinstated following the district court’s decision in *Clark Fork Coalition*, and 2022, DNRC received more notices of exempt wells annually—on average 2,800—than in any of the previous six years.⁶⁴

⁶⁰ *Id.*

⁶¹ MBMG data.

⁶² Headwaters Economics Report.

⁶³ USDA, *2022 Census of Agriculture*, State Data, National Agricultural Statistics Service, Montana, https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_State_Level/Montana/st30_1_009_010.pdf.

⁶⁴ DNRC Oct. 2023 Working Document at 14.

212. Montana’s alluvial valley aquifers provide critical groundwater resources that are hydrologically connected to nearby rivers, streams, and surface water systems. According to the DNRC, six of Montana’s major source aquifers—the Gallatin Valley, Helena Valley, Bitterroot Valley, Missoula Valley, Flathead Valley, and Billings aquifers—exhibit demonstrated hydraulic connection with surface.⁶⁵ All five of these aquifers are located in urban areas with increased population growth and host a high density of exempt wells.⁶⁶

213. Population growth and land-use change have increased reliance on groundwater in these aquifers, particularly through domestic and small-scale developments that utilize exempt wells. DNRC data show that between 74% and 94% of all groundwater uses within these aquifer boundaries are exempt wells, compared to 1% to 5% that are permitted wells.⁶⁷

214. In the Helena Valley Aquifer, located in the Upper Missouri River basin legislative closure, approximately 4,586 exempt wells account for 83% of all groundwater rights.⁶⁸ Any new permitted groundwater use in this basin requires mitigation due to its hydrologic connection to the Missouri River system and existing appropriations for power generation. According to DNRC, “[s]urface water in the Upper Missouri River Basin is over appropriated, and the Upper Missouri River Basin is closed for new appropriations. Any further exempt groundwater use would deplete surface water causing an adverse effect to senior water right holders.”⁶⁹ DNRC has recommended that the legislature close the Helena Valley Aquifer to further exempt well development.⁷⁰

⁶⁵ Jake Mohrmann, *Montana Focus Aquifers*, Comprehensive Water Review Stakeholder Working Group Meeting, at 3 (Nov. 15, 2023), https://dnrc.mt.gov/_docs/water/Comprehensive-Water-Review/meeting-materials/Montana-Focus-Aquifers-PPT.pdf, (“Montana Focus Aquifers”).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 2025 DNRC Closure Recommendations at 16.

⁷⁰ *Id.*

215. In the Gallatin Valley Aquifer, which underlies the Bozeman area, 8,498 exempt wells comprise 82% of groundwater rights.⁷¹ The aquifer is located in the Upper Missouri River Basin legislative closure, and any new groundwater permit must include mitigation for surface water impacts. MBMG studies have found that groundwater levels in the Gallatin Valley are highly responsive to irrigation ditch management and land use changes, demonstrating close interaction between surface and groundwater systems. According to DNRC, “[s]urface water in the Gallatin Basin is over appropriated for every month of the year and any further exempt groundwater use would deplete surface water causing an adverse effect to senior water right holders.”⁷² DNRC has recommended that the legislature close the Gallatin Valley Aquifer to additional exempt well development.⁷³

216. In the Missoula and Bitterroot Valleys, more than 15,000 exempt wells serve rapidly growing residential areas, making up 74% of all groundwater rights in the Missoula Valley and 89% in the Bitterroot Valley.⁷⁴ These aquifers are closely connected to the Bitterroot and Clark Fork Rivers, and DNRC has recognized that any new groundwater use with surface water connection requires mitigation to prevent depletions. Municipalities in the Bitterroot Valley have reported difficulty meeting projected water demands without additional mitigation or water management strategies. According to DNRC, “[s]urface water in the Bitterroot River is over appropriated, and any further exempt groundwater use would deplete surface water causing an adverse effect to senior water right holders.”⁷⁵ DNRC has recommended that the legislature close both the Missoula and Bitterroot Valley Aquifers to additional exempt well development.⁷⁶

⁷¹ Montana Focus Aquifers at 14.

⁷² 2025 DNRC Closure Recommendations at 12.

⁷³ *Id.*

⁷⁴ Montana Focus Aquifers at 22.

⁷⁵ 2025 DNRC Closure Recommendations at 19.

⁷⁶ *Id.*

217. The Billings Aquifer, though relatively small in extent, has 1,767 exempt wells—94% of all groundwater rights in that area.⁷⁷ The aquifer receives most of its recharge from irrigation ditch losses, and studies indicate that increased groundwater withdrawals could exceed recharge capacity, resulting in unsustainable drawdown. An MBMG model “suggested there is a tipping point between lawn/garden irrigation use and aquifer recharge rates, suggesting that additional use of groundwater for irrigation could outpace aquifer recharge leading to unsustainable use of the aquifer.”⁷⁸ Surface water is not legally available in some areas around Billings, and a new groundwater permit would require mitigation.

218. The Flathead Valley Aquifer contains 7,584 exempt wells, representing 83% of all groundwater rights.⁷⁹ The aquifer is hydrologically complex, with both confined and unconfined layers, and relies primarily on natural recharge sources. DNRC has identified potential surface water connectivity in the western and northern portions of the valley where new groundwater use may require mitigation.⁸⁰

219. This information was presented to the 2025 Montana legislature to demonstrate the need for the exempt well policy changes, some of which would have been instituted through SB 358. The legislation failed to pass the Senate, and—again, no meaningful policy changes to the Exempt Well Law were made during the 2025 legislative session.

220. The proliferation of exempt wells throughout Montana’s closed and over-appropriated basins has altered the balance of water use between groundwater and surface water systems. This expansion has occurred largely outside the state’s permitting and mitigation

⁷⁷ Montana Focus Aquifers at 32.

⁷⁸ *Id.* at 37.

⁷⁹ *Id.* at 39.

⁸⁰ *Id.* at 44.

framework, leading to measurable hydrologic impacts in multiple aquifers where surface water resources are already fully allocated and groundwater aquifers are declining.

221. The State has known exempt wells are effectively un-administrable within the priority system since at least the time it prepared the 2008 DNRC Report at the direction of the 2007-08 WPIC. The 2008 DNRC Report explicitly acknowledges: “[e]ven if administration or enforcement of exempt wells in priority existed, curtailment of exempt wells could be ineffective because of the delayed effect on stream flows and, therefore a call may not benefit senior water users.”⁸¹

222. Legal and administrative tools available to address depletion of surface water caused by groundwater development—such as controlled groundwater areas, basin closures, and enforcement—are insufficient to prevent or remedy harm caused by exempt well development, since the Exempt Well Law authorizes continued access to groundwater regardless of whether the area or basin is controlled or closed.

223. There is ample scientific and legal confirmation that in several of Montana’s major basins, groundwater development through exempt wells has reached levels that pose risks to senior water rights users and the sustainability of surface and groundwater systems.

224. Lawful, practical alternatives to unregulated exempt well development exist under current law. Municipal annexation and connection to public water systems provide reliable supply and regulatory oversight. Where centralized systems are infeasible, shared or clustered water systems and mitigated groundwater permits can support development while preventing injury to senior appropriators and reducing depletion of surface flows. These approaches not only safeguard existing rights and water resources but also promote efficient land-use planning,

⁸¹ 2008 DNRC Report at 1.

protect long-term housing affordability by reducing future infrastructure conflicts, and help maintain the environmental integrity that underpins Montana’s communities and economy.

CLAIMS FOR RELIEF

COUNT I

Violation of Protections for Senior Water Rights and the Prior Appropriation Doctrine (Mont. Const. Art. II, § 3 and Art. IX, § 3)

225. Plaintiffs incorporate all forgoing allegations.

226. The Montana Constitution requires the legislature to “provide for the administration, control, and regulation of water rights” Mont. Const. art. IX, § 3(3).

227. It is well-settled that a water right is a legally protected property right. *See Osnes Livestock Co.*, 103 Mont. 284, 62 P.2d at 210.

228. The Water Use Act was “implemented for the primary purpose of regulating water rights in Montana in satisfaction of Article IX, Section 3 of the Montana Constitution.” *Mont. Trout Unlimited v. Mont. Dep’t of Nat. Res. & Conservation*, 2025 MT 1, ¶ 37, 420 Mont. 85, 561 P.3d 995. The Water Use Act is “a remedial statute designed to strictly adhere to the prior appropriation doctrine” *Clark Fork Coal.*, ¶ 24 (citing *Montana Power Co.*, 211 Mont. at 98).

229. The Water Use Act established a “statutory framework under which water rights are obtained, administered, and adjudicated. A critical component of the Act is the permit system administered by the DNRC. The primary function of this permit-based system is the protection of senior water rights from encroachment by prospective junior appropriators adversely affecting those rights.” *Id.* ¶ 5.

230. The Montana Supreme Court has consistently recognized that the Water Use Act “imposes both substantive and procedural protections for water right users.” *Id.* ¶ 6.

231. The Water Use Act includes heightened protection for senior users in highly appropriated and closed basins. The “process for obtaining a groundwater permit in a closed basin is demanding.” *Id.* ¶ 7. If a groundwater permit is proposed in a closed basin, the applicant must include an aquifer test establishing to what extent the proposed well depletes surface water sources connected to the aquifer, and a mitigation plan or aquifer recharge plan mitigating any adverse effect to existing surface water rights. *See* Mont. Code Ann. §§ 85-2-360 – 364.

232. The Exempt Well Law incentivizes new groundwater development to rely on exempt wells to avoid the rigors, time, and expense of the water rights permitting process and the restrictions placed on new water use permits within highly appropriated and closed basins. As a result, tens of thousands of exempt wells have been summarily granted by the DNRC under the Exempt Well Law, even in locations where the DNRC agrees that there is no more water physically or legally available to appropriate.

233. Exempt wells fall outside of the prior appropriation system. Unlike the rigorous permitting requirements for new water uses, which are heightened in basins closed to new surface water appropriations, the Exempt Well Law creates a loophole that swallows the protections of the Water Use Act and the Montana Constitution.

234. The Exempt Well Law provides for no public process or hydrologic analysis. There is likewise no meaningful administration, measurement, or enforcement of water appropriated by exempt wells. In times of water shortage, restriction of exempt water use is infeasible and ineffective to benefit senior appropriators who are legally entitled to the water, and the exempt well pumping continues unabated while all other water users are subject to curtailment of their water uses in order of priority.

235. Pursuant to the Exempt Well Law, the DNRC has authorized and issued water rights for over 200,000 exempt appropriations. These water rights are granted with disregard to the Water Use Act's safeguards intended to protect senior water rights and the prior appropriation system: there is no public notice or opportunity for objections, no requirement that the applicant demonstrate that water is legally or physically available or that surface flow will not be depleted, and no requirement that the rights of senior appropriators will not be adversely affected. The demanding process for obtaining a groundwater permit in a closed basin likewise does not apply to exempt wells.

236. The Exempt Well Law allows for the appropriation of vast quantities of water with no substantive or procedural safeguards for senior water users.

237. Plaintiffs and their members hold senior water rights—vested property rights—that have been “recognized and confirmed” under Article IX, Section 3(1) of the Montana Constitution. Together with Article II, Section 3 (inalienable right to protection of property) and Article IX, Section 3(4) (legislative directive to provide for the administration of water rights), Article IX, Section 3(1) secures a fundamental property right entitled to protection equal in force to other enumerated individual rights. *See City of Bozeman on Behalf of Dep’t of Transp. of State of Mont. v. Vaniman*, 264 Mont. 76, 79, 869 P.2d 790, 792 (1994) (“Private real property ownership is a fundamental right [under] Art. II, § 3, Mont. Const. . . .”); *see also Wadsworth v. State*, 275 Mont. 287, 299, 911 P.2d 1165, 1172 (1996) (“a right may be ‘fundamental’ under Montana's constitution if the right is either found in the Declaration of Rights or is a right “without which other constitutionally guaranteed rights would have little meaning.”)

238. The constitutional protection of existing water rights in Article IX, Section 3 effectuates a fundamental right guaranteed by the Montana Constitution, as it safeguards vested

property interests essential to the livelihood and economic security of Montana citizens and to the integrity of the State's constitutional water regime.

239. Defendants, by and through their implementation of the Exempt Well Law, are unconstitutionally depriving Plaintiffs and their members of the constitutional protections afforded to senior water rights guaranteed by Article IX, Section 3 of the Montana Constitution. Plaintiffs and their members have no recourse against the ongoing proliferation of exempt wells and the exploitation of the exempt well loophole pursuant to the Exempt Well Law. The Exempt Well Law therefore infringes a fundamental right guaranteed by the Montana Constitution.

240. The Exempt Well Law authorizes new groundwater withdrawals without the permitting, notice, or adverse effects analysis required to protect senior appropriators. By doing so, it burdens and impairs the exercise of constitutionally protected senior water rights, subordinating those rights to junior, permit-exempt uses.

241. Because the statute directly infringes a fundamental constitutional right, the Court must apply strict scrutiny. *Wadsworth*, 275 Mont. at 302, 911 P.2d at 1174. Strict scrutiny of a statute “requires the government to show a compelling state interest for its action [which must be] closely tailored to effectuate only that compelling state interest.” *Id.* The State “must also show that the choice of legislative action is the least onerous path that can be taken to achieve the state objective.” *Id.*

242. The purported legislative purpose of the Exempt Well Law is to achieve full utilization of water resources of the State. Mont. Code Ann. § 85-2-381(1)(f). This is not a compelling interest sufficient to justify the infringement of constitutionally protected senior water rights, or the depletion and degradation of the State's water resources. Nor is the Exempt Well Law narrowly tailored, as it provides no mechanism for protecting or mitigating

impairment to existing appropriations nor for ensuring that the exemption is limited to the *de minimis* uses and not subject to deleterious cumulative impacts to senior water right holders.

243. Accordingly, the Exempt Well Law fails strict scrutiny and must be declared unconstitutional and unenforceable.

COUNT II
Violation of Right to Equal Protection
(Mont. Const. Art. II, § 4)

244. Plaintiffs incorporate all forgoing allegations.

245. Article II, Section 4 of the Montana Constitution provides that “[n]o person shall be denied the equal protection of the laws.” “The principal purpose of the Equal Protection Clause is to ensure that citizens are not subject to arbitrary and discriminatory state action.” *Zempel v. Uninsured Employers’ Fund*, 282 Mont. 424, 428, 938 P.2d 658, 661 (1997).

246. The Exempt Well Law subjects senior appropriators—who are subject to the burdens and benefits of the prior appropriation system codified in the Water Use Act—to arbitrary and discriminatory state action. Exempt groundwater users—who, by virtue of the Exempt Well Law, may appropriate and withdraw water without any regulatory oversight or obligation to protect senior rights—are similarly situated to senior appropriators but receive preferential treatment to the detriment of senior water right holders.

247. These two classes of water users are similarly situated with respect to the State’s administration of water—each diverts and uses water from the same interconnected hydrologic system. Yet the Exempt Well Law grants one group preferential treatment while imposing significant burdens on the other.

248. This disparate treatment deprives senior appropriators of equal protection because it subordinates their constitutionally recognized property rights to water—fundamental rights

under Article II, Section 3, and Article IX, Section 3—to the unregulated and unpermitted use of the same water granted to exempt well users. The law effectively allows junior users to impair the water rights of seniors without notice, opportunity to object, or recourse—privileges not afforded to senior water right holders. The State’s differential treatment thus infringes a fundamental constitutional right to equal protection and must be evaluated under strict scrutiny. *See Wadsworth*, 275 Mont. at 302, 911 P.2d at 1174.

249. Because the State cannot demonstrate that the Exempt Well Law serves a compelling state interest, nor is the law closely tailored to effectuate that state interest through the least restrictive means, the Exempt Well Law fails strict scrutiny and must be set aside as violative of Plaintiffs rights to equal protection of the laws.

COUNT III
Violation of Right to Substantive and Procedural Due Process
(Mont. Const. Art. II, § 17)

250. Plaintiffs incorporate all forgoing allegations.

251. The Fourteenth Amendment to the U.S. Constitution and Article II, Section 17 of the Montana Constitution protect persons from being deprived of life, liberty, or property without due process of law. “The guarantee of due process has both a procedural and a substantive component.” *Montanans for Just. v. State ex rel. McGrath*, 2006 MT 277, ¶ 29, 334 Mont. 237, 146 P.3d 759.

252. A substantive due process analysis “applies when state action is alleged to unreasonably restrict an individual's constitutional rights.” *Id.* “Substantive due process bars arbitrary governmental actions regardless of the procedures used to implement them and serves as a check on oppressive governmental action.” *Englin v. Bd. of Cnty. Comm’rs*, 2002 MT 115,

¶ 14, 310 Mont. 1, 48 P.3d 39; *Plumb v. Fourth Jud. Dist. Ct., Missoula Cnty.*, 279 Mont. 363, 372, 927 P.2d 1011, 1016 (1996).

253. The protection for existing water rights found in Article IX, Section 3(1) “prevents the State from affecting rights vested at the time the Constitution was adopted other than through the exercise of Constitutionally provided powers such as eminent domain, Mont. Const. Art. II, sec. 17, or the general police power, and without affording due process of law, Mont. Const. Art. II, sec. 17.” *Dep’t of State Lands v. Pettibone*, 216 Mont. 361, 375, 702 P.2d 948, 957 (1985).

254. The State’s “regulatory power over water rights . . . must be exercised consistent with principles of substantive due process.” *Matter of Yellowstone River*, 253 Mont. 167, 179, 832 P.2d 1210, 1217 (1992)

255. A court must first review an alleged violation to determine “whether the challenged governmental act is reasonably related to a legitimate governmental objective.” *Id.*; *see also Matter of Yellowstone River*, 253 Mont. at 179, 832 P.2d at 1217 (“A statute must be reasonably related to a permissible legislative objective to satisfy substantive due process guarantees.”)

256. The State has legislatively determined that “the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights” and “the ability to develop ground water wells that are exempt from permitting contributes to the full utilization of the water resources of the state.” Mont. Code. Ann. §§ 85-2-381(1)(d), (f).

257. Senior water rights are vested property rights recognized and confirmed under Article IX, Section 3 of the Montana Constitution.

258. Under Montana law, “[s]ubstantive due process bars arbitrary governmental actions regardless of the procedures used to implement them and serves as a check on oppressive governmental action.” *Englin*, ¶ 14.

259. Allowing for unregulated groundwater development through the Exempt Well Law when the State knows and has found that such development results in both individual and cumulative harm to prior appropriators’ fundamental property rights is an arbitrary governmental action that is prohibited by the constitutional protection of substantive due process. Full utilization of Montana’s water resources can be accomplished through the water rights permitting process provided by the Water Use Act, which ensures that senior water rights are protected from arbitrary allocations of water that have not been established to be physically or legally available.

260. The State’s goal in achieving the full utilization of water resources bears no rational relationship to authorizing the impairment of vested property rights. The Exempt Well Law thus violates substantive due process because it permits deprivations of property that are unjustified, disproportionate, and inconsistent with Montana’s constitutional guarantees.

261. Procedural due process requires consideration of three distinct factors: “(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest.” *Goble v. Montana State Fund*, 2014 MT 99, ¶ 46, 374 Mont. 453, 325 P.3d 1211.

262. To determine what process is due in a given situation a court will examine “the factual circumstances of the case, the nature of the interests at stake and the risk of making an erroneous decision.” *Montanans for Just.*, ¶ 30 (citation omitted).

263. When government action threatens to impair a protected property interest, due process requires notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. *Matter of C.H.*, 210 Mont. 184, 188, 683 P.2d 931, 933 (1984). By exempting new groundwater withdrawals from the permitting process with its associated public notice and opportunity to raise objections, the Exempt Well Law denies senior appropriators any forum to assert their rights prior to an adverse effect occurring. This absence of process constitutes a violation of procedural due process.

264. Accordingly, both procedurally and substantively, the Exempt Well Law deprives senior appropriators of property without due process of law, in violation of Article II, Section 17 of the Montana Constitution.

265. Taken together, the Equal Protection and Due Process violations created by the Exempt Well Law reveal a statutory scheme that is both arbitrary and discriminatory in its treatment of Montana water users. By creating an unregulated class of groundwater appropriators exempt from the safeguards that protect existing rights, the Exempt Well Law denies senior appropriators both the procedural protections and the equal treatment guaranteed under Article II, Sections 4 and 17 of the Montana Constitution. These deficiencies compound one another: the absence of notice and opportunity to be heard and the continued allowance of unregulated groundwater development through the Exempt Well Law that that the State knows results in harm to prior appropriators (due process violation) exacerbate the unequal and preferential treatment of exempt users (an equal protection violation). The resulting system subverts the rule of law, erodes confidence in the State's constitutional water rights framework, and operates in direct conflict with Montana's fundamental guarantees of fairness, equality, and justice.

COUNT IV
Violation of Rights to Know and Participate
(Mont. Const. Art. II, §§ 8 and 9)

266. Plaintiffs incorporate all forgoing allegations.

267. Article II, Section 8 of the Montana Constitution provides that “[t]he public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.”

268. Article II, Section 9 further guarantees that “[n]o person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.”

269. Article II, Sections 8 and 9 are analyzed by courts as “coextensive provisions.” *Citizens for a Better Flathead v. Bd. of Cnty. Commissioners of Flathead Cnty.*, 2016 MT 256, ¶ 39, 385 Mont. 156, 381 P.3d 555.

270. To meet its constitutional obligations to effectuate the public’s right to know and participate, the DNRC is “statutorily required to develop procedures for ‘permitting and encouraging the public to participate in agency decisions that are of significant interest to the public.’ [] Such procedures must ensure ‘adequate notice’ and include ‘a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision.’” *Schoof v. Nesbit*, 2014 MT 6, ¶ 17, 373 Mont. 226, 316 P.3d 831 (citing Mont. Code Ann. §§ 2-3-103(1)(a), -111(1)).

271. DNRC has adopted administrative rules that require each program to provide information and notice to interested or affected persons and organizations so that they can make

informed and constructive contributions to department decision making. Admin. R. Mont. 36.2.702.

272. The Water Rights Division of DNRC uses the Water Rights Notification Tool “to deliver timely, targeted information to users who may be impacted by new water right permit and change applications.”⁸² The notification tool does not notify interested parties of the issuance of exempt well certificates.

273. The Exempt Well Law violates Plaintiffs’ fundamental rights to know and participate by authorizing the non-discretionary issuance and use of tens of thousands of new groundwater rights without any process for public notice, disclosure, or participation. The impact of exempt wells authorized by DNRC is of significant interest to the public. The law allows individuals to drill, utilize, and obtain a certificate of water right for an exempt well with no opportunity for affected water right holders, local governments, or the public to review applications, comment on proposed developments, or examine agency decision-making records related to these decisions of significant interest to the public.

274. This statutory scheme circumvents public transparency and excludes meaningful citizen participation in decisions that directly affect Montana’s water resources, undermining the Constitution’s guarantees that government must remain open and accountable to the people.

275. Because the Exempt Well Law forecloses any process for notice or engagement and prevents the public from understanding or influencing the state’s management of groundwater resources, it violates the right to know and the right to participate guaranteed by Article II, Sections 8 and 9 of the Montana Constitution.

⁸² DNRC, *Water Rights Notification Tool*, <https://dnrc.mt.gov/Water-Resources/Water-Rights/application-status-environmental-assessments/Water-Rights-Notification-Tool>.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectively request that this Court grant the following relief:

1. Declare that the Exempt Well Law, Mont. Code Ann. § 85-2-306(3)(a)(iii), is unconstitutional on its face and as applied because it:
 - a. Violates Article II, Section 3 and Article IX, Section 3 of the Montana Constitution by impairing senior water rights;
 - b. Violates Article II, Section 4 of the Montana Constitution by denying equal protection of the laws;
 - c. Violates Article II, Section 17 of the Montana Constitution by depriving Plaintiffs of property without due process; and
 - d. Violates Article II, Sections 8 and 9 of the Montana Constitution by depriving Plaintiffs and the public of the right to know and participate in significant governmental decision-making regarding water resources that affect the fundamental property rights of Plaintiffs.
2. Permanently enjoin Defendants, their agents, employees, and all persons acting in concert with them, from continuing to implement the Exempt Well Law, Mont. Code Ann. § 85-2-306(3)(a)(iii).
3. Order Defendants to administer Montana's water rights system in conformity with the constitutional doctrine of prior appropriation.
4. Award Plaintiffs their reasonable attorneys' fees and costs.
5. Grant any further or alternative relief as the Court deems just and equitable.

DATED this 12th day of November, 2025.

/s/ Barbara Chillcott

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