



Constitutional Challenge of Exempt Well Law

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

vs.

State of Montana and Montana Department of Natural Resources and Conservation
Case No. DV-25-2025-0000710-DK

Background

On November 12, 2025, a coalition of city, agricultural, and conservation groups along with individuals filed a lawsuit before Lewis and Clark District Court challenging the constitutionality of the exempt groundwater development statute, commonly known as exempt wells.

In short, the group is suing the state on the constitutionality of one provision in law that allows someone to receive a groundwater certificate without obtaining a permit from the DNRC (MCA 85-2-306(3)(a)(iii)) (i.e., exempt wells).

The plaintiffs are asking the Court for two substantive things:

1. Declare Sec. 85-2-306(3)(a)(iii), MCA unconstitutional; and
2. Enjoin DNRC from continuing to approve exempt groundwater developments filed under Sec. 85-2-306(3)(a)(iii), MCA.

The complaint is singularly focused on a certain type of exempt development (MCA [85-2-306\(3\)\(a\)\(iii\)](#)) that is:

- Outside a controlled groundwater area
- Outside a stream depletion zone
- Flow rate is 35 gpm or less
- Volume is 10AF or less (and subject to the combined appropriation analysis).

The complaint asks the Court to enjoin or stop DNRC from approving these kinds of exemptions moving forward (and not retroactively).

What is the definition of an exempt well?

In Montana, an exempt well ([MCA 85-2-306](#)) is a groundwater well, spring, pit, or pond that is exempt from the permitting requirements of the Montana Water Use Act because it draws 35 gallons per minute or less and a total volume not exceeding 10 acre-feet per year. While exempt from individual permits, these groundwater developments are still subject to the "combined appropriation" rule, meaning that multiple groundwater developments (whether well, spring, pit, or pond) on the same source aquifer will be reviewed together and if, in combination, those developments exceed the 10 acre-feet per year limit, a permit will be required.

What happens if the case is successful?

If the case is successful, exempt wells would be deemed unconstitutional. For livestock producers, this means any wells drilled would need to go through the permit process, even for stock water.

MSGA is working to protect senior water right holders

The Montana Stockgrowers Association continues working with the legislature, state agencies, and stakeholders to ensure more protections for senior water rights holders and continues to work towards a legislative remedy that addresses access to water while protecting senior water right holders' property rights.