

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

May 25, 2017

The Honorable Corey Stapleton
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary Stapleton:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 248 (SB 248), "AN ACT PROVIDING THAT AN EXEMPT WELL PERMIT IS NOT REQUIRED FOR USE ON A LOT OR PARCEL CREATED BY A FAMILY TRANSFER DIVISION OF LAND; ESTABLISHING LIMITS ON SALES OF LAND DIVIDED BY FAMILY TRANSFER; PROVIDING A PENALTY FOR EVADING SUBDIVISION REGULATIONS; AMENDING SECTIONS 76-3-207 AND 85-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

SB 248 would create a new exemption to the general rule in Montana that a permit is required to appropriate and use ground water. The bill would allow the appropriation of ground water without a permit when the proposed appropriation is for 2 to 10 acre-feet per year, for use on a new lot of land created by the division of a family plot of land for transfer to a family member. Although I understand the purpose of the bill in making such family transfers less bureaucratic, the widespread use of the exception could have serious negative impacts on senior water users.

The purpose of the permitting system is to ensure that proposed new uses of water do not harm existing users of water. Unfortunately, the cumulative effects of this exception could seriously undermine the primary principle of western water law of "first in time, first in right." Further, unlike some other states, Montana water law does not include a hierarchy of preferential beneficial uses or users; Montana water law provides for the appropriation of water for all beneficial uses and users alike. SB 248 violates that principle by creating an exception to the permit process based upon the manner in which property was subdivided.

My concerns with SB 248 are illustrated by the following example. SB 248 authorizes 10 wells appropriating 10 acre feet each from the same source aquifer to be drilled on 10 individual lots created through family transfers. The total diverted volume for these wells would be 100 acre/foot per year. However, if 10 wells were drilled into the same source aquifer on 10 individual lots subdivided by other means, the total volume of the wells would be limited to 10 acre/foot per year as a "combined appropriation."

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I am cognizant that it is appropriate and necessary to provide Montanans with the ability to develop small ground water uses without the rigors of permitting. Ultimately, this requires striking a balance between the threshold for exempt well development and protection of senior water users. Unfortunately, SB 248 fails to strike that balance.

For these reasons, I veto SB 248.

Sincerely,



STEVE BULLOCK
Governor

cc: Legislative Services Division
Scott Sales, President of the Senate
Austin Knudsen, Speaker of the House