



THE INTERIM

March 2010

A monthly newsletter of the Montana Legislative Branch

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch Website at leg.mt.gov.

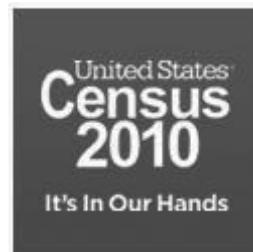
Learn more about the June 14-16 **Teachers Institute on Representative Democracy and the Legislative Process** at www.leg.mt.gov/teachers-institute.

Countdown to 2010 Census: April 1 Is Just Around the Corner

Census forms will be mailed to people in Montana in March for the population count on April 1. Please return the form promptly to the U.S. Census Bureau and save taxpayer dollars by not requiring a follow-up. Legislators are asked to encourage their constituents to send in their form.

What Legislators Can Do

Legislators can send a sample constituent letter, speak at community meetings, write an opinion piece, or record a public service announcement. Resources for promoting participation in the census, including a Census Toolkit, are on the legislative branch website (leg.mt.gov) under "For Legislators: 2010 Census." Additional information is available from the Census and Economic Information Center by filling out a Census Event Planning Form.



What about the Long Form?

The new census form is similar to the former "short form." It asks only 10 questions about the number of people living at a residence and their sex, age, race, and whether they are of Hispanic origin. It takes about 10 minutes to fill out. The census form and other information is available at 2010.census.mt.gov.

The information that used to be gathered by the long form is now obtained through the American Community Survey, which is conducted on a sample basis every year so that the social and economic data is up-to-date for use by communities to locate services and allocate resources. All census information is confidential and used only in aggregate form so that personal details cannot be determined.

For more information about the 2010 census, contact Susan Byorth Fox, executive director of the Legislative Services Division, at 406-444-3066 or the Census and Economic Information Center at 406-841-2740.

CFHHS Committee Asks for Congressional Support for Training of Medical Students

The Children, Families, Health, and Human Services Interim Committee agreed at its January meeting to ask Congress to support increased training opportunities for medical school graduates. Committee members said an increase in so-called “residency slots” may be one way to bolster the physician workforce in Montana.

The committee has been looking at the primary care workforce as part of its SJR 35 study of health care. Many areas of Montana don’t have enough primary care providers, a situation that may be further strained if federal health care reform passes and more people begin to seek medical care.

In January, the committee decided to ask the Montana congressional delegation to support a couple of options for increasing residency slots in the state: lifting the current freeze on Medicare funding for residency slots or redistributing unused slots to hospitals in other states. The positions are largely funded by Medicare, and the federal government regulates how existing slots are distributed.

Montana has one residency program that enrolls six residents each year. The Family Medicine Residency Program is headquartered in Billings, but residents also train in rural areas around the region. Dr. Roxanne Fahrenwald, director of the program, said 70 percent of the residents have remained in Montana to practice medicine.

The presentations at the January meeting focused on the residency program and other medical education and incentive programs. Speakers discussed:

- two programs that allow Montana students to pay reduced tuition at out-of-state medical schools. The Washington, Wyoming, Alaska, Montana, and Idaho (WWAMI) Program allows students to take their first-year medical courses at an in-state school and then attend the University of Washington School of Medicine program. The Western Interstate Commission on Higher Education (WICHE) program gives Montana students a preference in admission and reduced tuition at participating medical schools. In both programs, the state picks up the difference between the tuition that the student pays

and the actual costs of tuition. Sylvia Moore, deputy commissioner of academic affairs, said that precise figures on the number of students who return to Montana to practice are difficult to come by. But she estimated that 40-50 percent of the students end up back in state.

- the Montana Rural Physician Incentive Program, which makes up to \$100,000 in loan repayments to doctors who practice in a town that has had trouble recruiting a physician. A doctor must practice in the community for five years in order to get the full repayment amount. The program has made payments to 92 doctors since 1993.
- a new loan repayment program created this fiscal year with \$75,000 in state funds and matched by federal funds. Mid-level providers – such as advanced practice registered nurses and physician assistants – who work in health professional shortage areas could receive a maximum of \$30,000 in loan repayments over two years. Jo Ann Dotson, of the state Department of Public Health and Human Services (DPHHS), said the agency plans to distribute the first round of payments by May.

Speakers also discussed state and local programs designed to prevent and manage chronic diseases in adults and to promote healthy activities. The committee will schedule future presentations on similar efforts aimed at children. It will also look at tort reform efforts in other states and at the national level, as well as at costs related to “defensive” medicine.

DPHHS Oversight Topics

The committee discussed the governor’s request that state agencies submit plans to cut their budgets by 5 percent because of an expected state budget deficit. The cuts would amount to about \$19 million for DPHHS.

DPHHS Director Anna Whiting Sorrell described the request for budget reductions as an “opportunity to re-engineer and restructure” how the department operates its programs and facilities. She said she would look for ways to reduce operating costs before suggesting cuts that affect services. She also said she would look at eliminating or delaying new services that hadn’t yet started up before she would propose cuts to existing services.

Also as part of its agency oversight duties, the committee:

- received a report from Shirley Brown of the Child and Family Services Division on efforts to place foster children with relatives. Lawmakers in 2009 approved creation of a registry where relatives of children at risk of being removed from their homes could sign up to be contacted if a child is removed. By mid-January, 65 people had signed up. The committee plans to seek more information about foster care and family placements in the future.
- heard about the Family Economic Security Program, which is operated with federal funds from the Temporary Assistance for Needy Families program. The FESP program provides training on topics such as how to manage money, develop good credit, or buy a home. Economic Security Services Branch Manager Hank Hudson said 185 people are enrolled in the program.
- requested the drafting of a bill to clarify due process rights in commitment proceedings for people with developmental disabilities. In September, the committee authorized staff to work on the issue after a Montana Supreme Court opinion suggested that the Legislature revise the laws. The committee reviewed a report summarizing recommendations that were developed during two meetings with stakeholders, and members agreed to move forward with a bill to make the recommended changes.

March Meeting Rescheduled for April

The committee has rescheduled its March meeting to April 26-27. More information about the meeting will be posted on the committee web page (leg.mt.gov/cfhhs) as it becomes available.

Districting & Apportionment Commission Plans Public Hearings across State in April

In April, the Montana Districting and Apportionment Commission will hold a series of public hearings across the state to find out how it should rework congressional and state legislative district boundaries to adjust for population changes during the past ten years.

The commission plans to map new districts in 2011 and 2012, after 2010 census data are released. Although Montana is not expected to regain a second U.S. House

seat after the census, the commission must still establish an at-large seat for the state within 90 days of receiving census data.

The commission will consider mandatory and discretionary criteria to establish the congressional and state legislative district lines. Mandatory criteria are generally set by the U.S. and Montana constitutions, as well as court rulings. Population equality, compact and contiguous districts, and compliance with the Voting Rights Act are examples of mandatory criteria.

The commission will establish discretionary criteria in addition to the mandatory criteria. These criteria help guide the commission in making the inevitable choices that come with redrawing political boundaries. Past commissions have adopted discretionary criteria such as creating districts that: follow the lines of established political units (cities, counties, voting districts); follow geographic boundaries; keep communities of interest intact; are politically fair (do not favor a party or defeat an incumbent); consider existing legislative districts; and maintain rural/urban interests.

The public hearings in April will not involve any maps. Instead, the hearings allow Montanans to express their views on how the commission should approach the redistricting task.

Tentative Public Hearing Schedule

- Thursday, April 8, 6:30 pm.: Public hearing in Helena with videoconferencing locations in Great Falls and Havre
- Monday, April 12, 6:30 p.m.: Public hearing in Missoula with a videoconferencing location in Kalispell
- Monday, April 19, 6:30 p.m.: Public hearing in Billings with a videoconferencing location in Miles City
- Tuesday, April 27, 10:30 a.m.: Executive action by commission in Helena to adopt districting criteria

For details on meeting locations and to sign up for email updates about the commission, please visit leg.mt.gov/districting.

Written Public Comments Encouraged

Written testimony about districting criteria or the commission's work in general is welcome. Comments will

be accepted by mail, email, or fax. Written correspondence will be distributed to all commissioners and will become part of the commission's permanent public record.

Send written testimony to Districting and Apportionment Commission, Legislative Services Division, P.O. Box 201706, Helena, MT 59620-1706; or to rweiss@mt.gov; or by fax to 406-444-3036.

Commission Encourages Census Participation

The Districting and Apportionment Commission urges all Montanans to participate in the 2010 census. A proclamation signed by all five members of the commission and released in mid-February encourages Montanans to help ensure the population count is complete. The proclamation is available on the commission's web page at leg.mt.gov/districting.

More information about the commission is available on its web page at leg.mt.gov/districting. Or contact Rachel Weiss at 406-444-5367 or rweiss@mt.gov.

Economic Affairs Committee Examines Brucellosis, Workers' Comp Benefits

The Economic Affairs Interim Committee will continue its study of workers' compensation and a state Department of Livestock order regarding brucellosis at a meeting March 30-31 in Room 137 of the Capitol. The meeting also will include a report from a subcommittee established to determine whether changes are needed in how health information is shared under the state's workers' compensation laws. The subcommittee will meet from 8-10 a.m. March 30, with the full committee convening at 10:15 a.m. March 30 and 8 a.m. March 31.

Work Group Reviews Dept. of Livestock Order

In January, the committee looked into concerns among some southwestern Montana ranchers about a new order from the Department of Livestock (DOL) creating a designated surveillance area for brucellosis. The concerns, which included whether DOL followed proper procedures for the order, resulted in a request for staff legal opinions on whether DOL should have complied with the Montana Environmental Policy Act and whether the order met constitutional equal protection standards.

Staff Attorney Bart Campbell noted that the process for establishing the DOL order has different requirements

than does rulemaking under the Montana Administrative Procedure Act. However, public comment at the January meeting questioned whether the state was taking the correct approach by trying to manage rather than eradicate brucellosis threats from wildlife in the Greater Yellowstone Area. Management of the disease, which causes cattle to miscarry and results in costly requirements for selling cattle outside the state (or moving them within the state), consists of requiring ranchers in specified areas near Yellowstone National Park to meet certain cattle testing and vaccinating requirements.

Sen. Jim Keane, committee chair, asked stakeholders to get together before the committee's March meeting to see if they can reach agreement on policy options to recommend to the committee. Various stakeholders met Feb. 11 to begin work on options. More information on the work group is available at leg.mt.gov/eaic. The group is scheduled to meet March 8 at 12:30 p.m. in the Montana Farm Bureau Federation offices, 502 S. 19th St. in Bozeman.

Shared Laboratory Space

Also on the March 30 agenda is a draft report for the SJR 14 study of the possibility of shared space for certain state laboratories. Concern that the Department of Livestock's Veterinary Diagnostic Laboratory in Bozeman might lose its national accreditation is partly behind the study into shared space. The state Departments of Agriculture and Fish, Wildlife, and Parks also have laboratories in Bozeman. The Department of Public Health and Human Services operates two laboratories in Helena. DOL laboratory needs and the costs of construction are among items covered in the draft report.

Workers' Comp Study

The SJR 30 study of workers' compensation will continue at the March meeting with reports on workers' compensation benefits and recommendations from the Labor Management Advisory Council (LMAC) for changes to workers' compensation statutes. Among expected LMAC recommendations is one that specifies when a workers' compensation injury is considered to be within the "course and scope" of employment.

Last January, the committee heard about the various components involved in determining workers' compensation premiums, as well as differences in how

the three types of workers' compensation insurers (Plan 1 self-insurers, Plan 2 private insurers, and Plan 3 the Montana State Fund) operate in Montana. The committee requested more information on the regulation of state funds in other states and an analysis by the state Department of Administration to determine cost implications if the state were to self-insure or insure with a private insurer. Currently, state agencies must get workers' compensation insurance through the Montana State Fund.

Subcommittee on HIPAA, Workers' Comp

The committee appointed a subcommittee to study changes in how health information is shared in workers' compensation cases following a presentation Jan. 21 by attorney Erin MacLean. She noted that the federal Health Insurance Portability and Accountability Act (HIPAA) exempts workers' compensation from its privacy requirements for protected health information but allows states to regulate that area. Montana has various statutes overseeing health information, including one that provides automatic sharing with insurers of relevant health information once an injured employee seeks workers' compensation benefits.

Proponents of the importance of getting injured workers back on the job as quickly as possible (both to speed recovery and to lower workers' compensation costs for the employer) say that medical providers are reluctant to share health information with employers because of HIPAA. Rep. Chuck Hunter will head the subcommittee looking into clarifying the interaction of HIPAA with



Rep. Chuck Hunter

workers' compensation. Other members are Rep. Don Roberts, MacLean, Nancy Butler of the Montana State Fund, and Judy Bovington of the state Department of Labor and Industry.

Details of the Jan. 20-21 meeting and links to handouts and background information are available at leg.mt.gov/eaic. For more information on the March 30-31 meeting, contact committee staff Pat Murdo at 406-444-3064 or pmurdo@mt.gov. Meeting materials will be posted as they become available.

Education, Local Government Committee to Review Historic Preservation Programs

The Education and Local Government Interim Committee will meet March 12 in Room 137 of the Capitol, beginning at 7:30 a.m. Barb Pahl, director of the Mountain/Plains Regional Office of the National Trust for Historic Preservation, will lead a discussion on historic preservation, the various programs that states offer, and perspectives on Montana programs. The information is in conjunction with ELG's assigned HJR 32 study of historic preservation.

The Montana Main Street Program – its funding mechanisms and what the program can achieve – is of particular interest to legislators working on the HJR 32 study. Main Street programs are formed in conjunction with and upon receiving guidance from the National Trust.

Other agenda items will include a discussion of the evolution of SB 51, enacted during the 2007 session, which, among other things, required the Department of Natural Resources and Conservation and the Department of Labor and Industry to adopt rules associated with wildland fire and the wildland-urban interface.

The draft agenda for education topics includes: a report from the subcommittee working on K-12 and higher education shared policy goals and accountability measures; a report about the Board of Regents work group to discuss topics related to reinventing and reforming the Montana University System; and an update on the Office of the Commissioner of Higher Education's Making Opportunity Affordable initiative.

The agenda will be posted on the committee web page (leg.mt.gov/elgic) when it is finalized. For more information, contact Leanne Heisel, committee staff, at 406-444-3593 or lheisel@mt.gov.

Law & Justice Committee Requests Variety of Bill Drafts Related to DUI Laws, DNA

After a two-day meeting that included presentations on the economic costs of alcohol abuse in Montana, findings from a survey of felony drunk-driving offenders in the Department of Corrections' Warm Springs Additional Treatment and Change program (WATCH), and special courts and treatment alternatives for misdemeanor drunk-

driving offenders, the Law and Justice Interim Committee voted on Feb. 9 to request preliminary bill drafts to revise Montana laws regarding driving under the influence of drugs and alcohol. The committee took action on a variety of ideas proposed by individual committee members. Each idea that received a majority vote will be put in draft bill form for more discussion at the committee's April 5-6 meeting in Helena.

Eleven of 18 committee bill draft ideas to revise DUI laws received majority votes. Proxy votes were cast for five absent committee members (Sen. Greg Hinkle, Sen. Lynda Moss, Rep. David Howard, Rep. Bob Ebinger, and Rep. Ron Stoker). The concept of the bill draft, the name of the committee member who proposed the idea, and the vote tally on each proposal are listed below in the order that the committee took action.

- Provide that a driver's refusal to submit to a blood alcohol test is a crime punishable either by making test refusal equivalent to a drunk driving offense or by making the refusal a separate crime. (Rep. Ken Peterson) FAILED 5-7.
- Provide that if a young person does not yet have a driver's license and is found guilty of any type of drug or alcohol offense, the young person may not get a driver's license until 18 years of age; and that if the young person is under 18 years of age and already has a driver's license, then that license must be suspended at least until the person reaches 18 years of age. (Sen. Greg Hinkle) PASSED 11-1.
- Provide that all persons who sell or serve alcohol must complete the Responsible Alcohol Sales and Service Training Program provided for by the Liquor Control Division of the Department of Revenue. (Sen. Carol Juneau) PASSED 8-4.
- Provide that driver's license suspension penalties increase with the number of a person's prior drunk-driving offenses. (Rep. Mike Menahan) FAILED 4-8.
- Provide support for DUI courts and a guaranteed funding stream, such as the fines collected for drunk-driving offenses. (Rep. Mike Menahan) PASSED 9-3.
- Provide that a law enforcement official may contact an "on-call" judge to request a search warrant to get a blood alcohol test from a driver who has refused to submit to the test. (Sen. Jim Shockley) PASSED 7-5.
- Instruct staff to work with stakeholders to develop a bill draft for discussion that would strengthen current laws concerning substance abuse assessment, an education course, and treatment (ACT) for drunk-driving offenders. (Sen. Jesse Laslovich) PASSED 10-2.
- Provide that any amount of any dangerous drug in a driver's system is considered drunk driving per se. (Rep. Ken Peterson) PASSED 9-3.
- Provide that when sentencing for a second or third drunk-driving offense, judges may mandate residential treatment. (Rep. Ken Peterson) PASSED 10-2.
- Provide that a person convicted of a second or subsequent drunk-driving offense must be identified as a drunk-driving offender on the person's identification card or driver's license and that alcohol may not be sold or served to that person. (Rep. Ken Peterson) FAILED 3-9.
- Provide that any purveyor of alcohol (server, business owner, employer, etc.) who is responsible for providing alcohol to a person who then commits a second or subsequent drunk-driving offense may be held strictly liable for any injury or property damage caused by that driver; and that there be a presumption that providing the alcohol to the person was a substantial cause of the accident. (Rep. Ken Peterson) FAILED 4-8.
- Provide that anyone hosting a party at which alcohol is consumed is liable for the actions of a person who leaves the party and then commits a drunk-driving offense (i.e., provide for a state social host liability law). (Rep. Ken Peterson) FAILED 4-8.
- Provide that cities may establish courts of record. (Sen. Jim Shockley) PASSED 11-1.
- Allow game wardens to issue citations to youth under 21 years of age for illegal possession of drugs or alcohol. (Sen. Jim Shockley) PASSED 11-1.
- Provide that a person's prior drunk-driving convictions are admissible evidence if the person is charged with a new drunk-driving offense. (Rep. Mike Menahan) FAILED 5-7.
- Extend court jurisdiction for misdemeanor drunk-driving offenses to one year. (Sen. Jesse Laslovich) PASSED 12-0.

- Eliminate the 5-year “look-back” restriction on counting prior misdemeanor drunk-driving convictions so that all prior misdemeanor convictions count for the purposes of sentencing a drunk-driving offender who has fewer than four prior drunk-driving convictions. (Sen. Jesse Laslovich) PASSED 7-5.
- Draft a referendum for a constitutional amendment to eliminate the right to a new trial for drunk-driving offenders. (Sen. Jim Shockley) FAILED 1-11.

Committee Seeks Bill Draft on DNA

The committee also requested a preliminary bill draft revising how long local law enforcement agencies must preserve biological evidence for DNA analysis in felony criminal cases. The bill draft request is part of the SJR 29 study of the preservation of biological evidence. Along with committee guidance, committee staff will work with various stakeholders to develop specific provisions of the bill draft. The draft will be presented at the committee’s April meeting.

Next Meeting Scheduled for April

The committee will meet April 5-6 in Room 137 of the Capitol beginning at 8 a.m. on both days. In addition to consideration of the bill drafts mentioned above, agenda items for the meeting include information about DUI court funding; how DUI task forces are funded; the disposition of court fees; and the costs of ACT. The committee will also re-examine South Dakota’s 24/7 sobriety program. Oversight topics include prerelease placement of sexual offenders and a new family treatment model for youth in the juvenile justice system.

For more information about committee activities, visit leg.mt.gov/ljic or contact Sheri Heffelfinger, committee staff, at sheffelfinger@mt.gov or 406-444-3596.

Legislative Audit Committee to Meet in March to Discuss Audits, Potential Bills

The Legislative Audit Committee will meet March 1-2 in Room 172 of the Capitol. The 12-member committee led by Chairman Sen. Mitch Tropila will hear 24 audits, beginning at 1 p.m. March 1. A complete agenda is available on the Legislative Audit Division website at leg.mt.gov/audit under the “Audit Committee” link.

Other items on the agenda include:

- an update on management of the state vehicle fleet from Department of Transportation Director Jim Lynch;
- the proposed 5 percent reduction to the state general fund budget;
- a follow-up on programs and policies impacting state Superfund operations;
- revision of the Legislative Audit Committee rules;
- reappointment of the legislative auditor;
- an update on Water Protection Bureau audit assessment; and
- potential legislation for introduction during the 2011 session.

The Legislative Audit Division provides independent, objective, fact-based evaluations of the stewardship, performance, and cost of government policies, programs, and operations. It is the division’s responsibility to conduct financial and compliance, performance, and information system audits of state agencies or their programs, including the university system. For more information, call 406-444-3122 or go to leg.mt.gov/audit. To report improper acts committed by state agencies, departments, or employees, call the division’s fraud hotline at 800-222-4446 or 406-444-4446 (in Helena).

LFC to Meet March 4-5 to Review Proposed State Spending Reductions

The Legislative Finance Committee (LFC) will meet March 4 in Room 317 of the Capitol and March 5 in Room 102. An agenda and meeting reports are available on the Legislative Fiscal Division (LFD) website at leg.mt.gov/fiscal. For more information, contact Amy Carlson, director of the fiscal division, at acarlson@mt.gov or 406-444-2986.

The LFC will be primarily engaged in the review of the governor’s proposed spending reductions under the provisions of 17-7-140, MCA. This section of law directs the governor to reduce spending when the projected ending general fund balance for the biennium drops below the critical threshold of 1 percent of all general fund appropriations for the biennium.

LFD staff will present their analysis and the LFC will hold a public hearing on the reductions recommended to

the governor by his budget office. Following agency and public comments, the LFC may make recommendations to the governor concerning the reductions.

Other topics on the agenda will include a report on the budget and caseload of the Office of the Public Defender. There will also be a report on the strategic plan of the Information Technology Services Division of the Department of Administration.

“Big Picture Report”

A report prepared by the LFD for presentation at the Legislative Training Day on March 3 is available on the LFD website. The report gives legislators a preliminary assessment of the state’s fiscal condition, as well as issues facing the next Legislature. It is a work in progress that will be updated several times before the next session. For more information, contact Amy Carlson at acarlson@mt.gov or 406-444-2986.

General Fund Revenue Update

Fiscal Year 2010 general fund revenue collections through January are showing further weakness when compared to the estimates contained in the HJR 2 revenue estimating resolution. As shown in the table below, total general fund revenues are now estimated to be \$349.9 million less than expected by the Legislature during the 2009 session.

When the potential shortfall from individual and corporation income taxes, treasury cash account (TCA) interest earnings, video gaming taxes, vehicle fees and

Estimated Revenue Changes from HJ 2 (Millions)			
Category	FY 2010	FY 2011	Biennium
Individual income tax	(\$118.1)	(\$95.0)	(\$213.1)
Corporation income tax	(\$58.2)	(\$52.7)	(\$110.9)
Oil & gas production tax	\$21.3	\$12.3	\$33.6
TCA interest	(\$4.5)	(\$6.4)	(\$10.9)
Video gaming tax	(\$11.5)	(\$11.1)	(\$22.6)
Vehicle fees/taxes	(\$7.0)	(\$4.8)	(\$11.8)
Remaining sources	(\$4.1)	(\$10.1)	(\$14.2)
Current estimate	(\$182.1)	(\$167.8)	(\$349.9)
January estimate	(\$137.8)	(\$132.7)	(\$270.5)
Change from Jan. estimate	(\$44.3)	(\$35.1)	(\$79.4)

taxes, and the remaining sources is combined with the potential excess from oil and gas production taxes, FY 2010 general fund revenues could be below the HJR 2 revenue estimates by \$182.1 million. Based on these trends and on recent economic and tax return data, FY 2011 general fund revenues could be below the HJR 2 estimates by \$167.8 million. The total general fund 2011 biennium revenue shortfall could be \$349.9 million, or about 9.7 percent below the HJR 2 revenue estimates. For more information, contact Terry Johnson at tjohnson@mt.gov or 406-444-2952.

SAVA Committee Reschedules Meeting

The State Administration and Veterans’ Affairs Interim Committee has rescheduled its March 3 meeting to March 19 in Room 137 of the Capitol.

The committee plans to meet with a consultant to establish design goals for any changes to the state’s retirement plans that might occur as a result of the HB659 study of statewide retirement plans and redesign of the Teachers’ Retirement System.

A tentative agenda for the March 19 meeting will be available in early March. To stay informed of committee activities, sign up for email updates at leg.mt.gov/sava. For more information, contact committee staff Rachel Weiss at 406-444-5367 or rweiss@mt.gov

Water Policy Committee Finds That Some Things Never Change

Nearly four decades ago, a group of Montana’s finest minds gathered in Helena to talk about water law and its relationship to the economic development of the state’s water. Some advocated for a central system to keep track of water rights as they were issued and changed.

One of the symposium participants was Charles Bowman, a professor of agricultural engineering at Montana State University.

“We must remember that we have to have something to meet these changing times,” Bowman said, “because we have had changing uses of water from the time people came into the state until now.”

With the March 2010 meeting of the Water Policy Interim Committee, fine minds will again convene around a table

to discuss the evolving uses of water and the laws that govern those changes.

Appropriately, the WPIC has chosen to discuss changes in water rights, sometimes called transfers, during the same meeting at which it will delve into water marketing. In most cases, any sale or lease of water requires a change authorization from the Department of Natural Resources and Conservation.

Like other western states that operate under the Prior Appropriation Doctrine, Montana will likely deal with an increasing number of requests to transfer water rights from a historic use such as irrigation to other uses, likely residential and commercial development.

“As states turn to alternative means of firming and stretching water supplies to meet future needs, transfers will become an increasingly important way to move water to higher valued or more efficient uses,” according to a

2008 report written by the Western States Water Council, an organization consisting of representatives appointed by the governors of 18 western states. “However, traditional western water law imposes barriers on transfers. In addition, states’ efforts to mitigate the negative effects of transfers on third parties and the environment may impose additional barriers.”

The meeting on March 10-11 will include panel discussions on water right changes and water marketing. The WPIC also will discuss options for mitigating the effects of wells that are exempt from permitting as well as options for the beneficial use of coal bed methane water.

The meeting starts March 10 at 9 a.m. in Room 102 of the Capitol.

For more information, contact committee staff Joe Kolman at 406-444-9280 or jkolman@mt.gov. Or visit the committee web page at leg.mt.gov/water.

Does State Constitution Protect Legislative Speech?

Q. Does the Speech and Debate Clause found in Article V, section 8, of the Montana Constitution protect statements made by legislators during legislative proceedings?



A. Yes, it appears that the state constitution grants speech and debate immunity to legislators during legislative proceedings. (This is an issue

of first impression at the Montana Supreme Court, where a case is currently pending.) Article V, section 8, of the Montana Constitution states that:

[a] member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

The plain language of Article V, section 8, protects, at

minimum, any statements made by legislators on the floor of the Montana House of Representatives or the Senate. It also protects any statements made by legislators during legislative proceedings, such as committee meetings.

Nearly every state has adopted a constitutional provision for speech or debate immunity. However, even in the seven states that have not adopted a specific constitutional provision for speech or debate immunity, courts have provided immunity for various activities related to the legislative process.

In Montana, speech or debate immunity was first included in the 1889 Constitution. The only changes to the language adopted in the current Montana Constitution were to leave out a reference to “treason,” which was already covered as a felony offense, and the omission of “violation of their oath of office,” because a violation of the oath requiring attendance could unwittingly result in a member’s arrest in order to require the member’s attendance at a legislative session.¹

¹ Montana Constitutional Convention, Verbatim Transcript, Feb. 19, 1972, Volume III, pg. 595.

Although there are voluminous records from the 1972 Constitutional Convention, the delegates did not extensively discuss the scope or history of Article V,

“At a minimum, the plain language of Article V, section 8, would appear to protect any statement made on the floor of the House of Representatives or Senate.”

section 8. In addition, there have been no attempts over the years to narrow or otherwise limit the scope of the protection of speech or debate immunity in Montana. The broad language (and absence of any contravening attempt to limit or otherwise narrow its scope) indicates that the Legislature intended the immunity clause to be broadly construed.

To date, the Montana Supreme Court has not addressed the scope of Montana’s Speech or Debate Clause. The Court’s only mention of speech or debate immunity occurred in *Montanans for Equal Application of Initiative Laws v. State*, 2007 MT 75, ¶ 26, 336 Mont. 450, 154 P.3d 1202 (2007). In that case, the Court cited the U.S. Supreme Court’s seminal decision in *Eastland*, 421 U.S. at 501, 95 S. Ct. at 1820, and noted that the phrase “shall not be questioned” has been interpreted to be absolute.

At a minimum, the plain language of Article V, section 8, would appear to protect any statement made on the floor of the House of Representatives or Senate.

“Speech” is defined as the “act of speaking; expression or communication of thoughts and feelings by spoken words.”² “Debate,” on the other hand, is a “discussion or consideration of opposing reasons” or an “argument about or deliberation on a question.”³

The Montana Supreme Court has acknowledged numerous times that it is in the province of courts to construe and apply the law as they find it and to maintain its integrity as it has been written by a coordinate branch of government.⁴ In addition, this Court has explained that:

[t]he words of a constitution may not be ignored as meaningless. If the language used is clear and unambiguous its meaning and intent are to be ascertained from the instrument itself by construing the language as it is written. Unless the content suggests otherwise, words are to be given their natural obvious or ordinary meaning. There is no occasion for construction where the language is plain and definite.⁵

Accordingly, it appears, based upon a plain reading of Article V, section 8, of the Montana Constitution, that a legislator does hold speech and debate immunity during legislative proceedings.

² Merriam-Webster’s Collegiate Dictionary 1377 (4th ed., Merriam-Webster (2001).

³ Merriam-Webster’s at 372.

⁴ See e.g. *Chmielewska v. Butte and Superior Mining Co.*, 81 Mont. 36, 261 P. 616 (1927); *Bay v. Department of Admin., Pub. Employee’s Retirement Div.*, 212 Mont. 258, 265, 688 P.2d 1, 5 (1984).

⁵ *General Agriculture Corp. v. Moore*, 166 Mont. 510, 515, 534 P.2d 859, 863 (1975).

The Back Page

Drilling Down: Exempt Water Wells in Montana, the West

By Joe Kolman
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It may come as a surprise that getting a water right in Montana isn't that difficult. For the most part, if you can find it under your dirt, you can have it – as long as your well does not pump more than 35 gallons a minute and you use less than 3.3 million gallons a year.

Called “exempt wells” because they are not subject to state permitting, these uses of water have staunch defenders and adamant opponents.

Some argue that it makes sense that such a relatively small use of water should be easy to get in a rural state where most of the livestock and a large portion of the people do not live next to a public water system. Others contend that tens of thousands of small, unregulated appropriations, especially in suburban areas of fast-growing valleys, are detrimental to senior water right holders and, coupled with septic tanks, pose a threat to water quality. Still others assert that the regulatory process for permitting a public water system is too arduous and expensive.

For the second consecutive interim, the Water Policy Interim Committee is wrangling with those arguments.

Evolution of the Exemption

In 1973, the Montana Legislature passed a piece of sweeping legislation that would radically alter the way water rights were allocated. As directed by Article IX, section 3, of the Montana Constitution, the Legislature passed the Water Use Act for the administration, control, and regulation of water rights.

At its core, the Water Use Act regulates the development of that most valuable resource in an orderly manner that is based on the “first in time, first in right” idea of the Prior Appropriation Doctrine.

However, the Legislature included an exemption to the new permit system. Section 16 of the act provided that:

Outside the boundaries of a controlled ground water area, a permit is not required before appropriating

ground water for domestic, agricultural, or livestock purposes by means of a well with a maximum yield of less than 100 gallons a minute.”

Montana is like most western states in providing that small wells are not subject to the same requirements as other appropriations of water. The exemption means that a limited use of ground water is not subject to the criteria needed for a permit, including providing evidence that the water rights of a prior appropriator will not be adversely affected. The exemption also means that other water users may not object to a proposed exempt well.

The legislative history from 1973 provides little insight into the reasons for Montana's exemption or the flow rate selected.

In general, reasons for such a provision may include the belief that access to water is a fundamental human right, that evaluating small wells could clog up the permitting process, and that in rural areas a small well may be the only source of potable water.¹

Over the past three decades, there have been two significant changes to Montana's exempt well statute and one change to the rule implementing the law.

In 1987, several amendments were made to permitting laws. Appropriations of less than 100 gallons per minute (gpm) were still exempt, “except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.”

The original language of House Bill 642 did not contain the words “from the same source.” It appears that language was added at the request of Ted Doney, an attorney representing the Water Development Association.²

According to the minutes of a hearing on the bill, “Mr. Doney disliked the word ‘combined’ because he didn't

1 Water Laws and Policies for a Sustainable Future: A Western States' Perspective, Western States Water Council, 2008. <http://www.westgov.org/wswc/publicat.html>

2 Minutes of Senate Natural Resources hearing on HB642. March 23, 1987.

know what the word meant in the bill. He thought it meant that two wells that were irrigating the same tract but not physically connected. Mr. Doney would rather the bill read, ‘wells from the same source.’”³

The rule adopted in 1987 to implement the statute defines a combined appropriation as:

an appropriation of water from the same source aquifer by two or more ground water developments, the purpose of which, in the department’s judgment, could have been accomplished by a single appropriation. Ground water developments need not be physically connected nor have a common distribution system to be considered a ‘combined appropriation.’ They can be separate developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments. The amount of water appropriated for the entire project or development from these ground water developments in the same source aquifer is the ‘combined appropriation.’⁴

In 1993, the DNRC amended the definition to its current form, which states that a combined appropriation is “an appropriation of water from the same source aquifer by two or more ground water developments that are physically manifold into the same system.”⁵

The department said the change was made

to more concisely define what is considered a combined appropriation. The past definition was too ambiguous and therefore difficult to administer . . . fairly and consistently throughout the state. It required the department to make assumptions when determining whether developments were considered combined appropriations. The amended rule clearly defines what is a combined appropriation without any supposition.⁶

The second significant legislative change, enacted in 1991, reduced the flow rate and instituted a limit of 10 acre-feet a year. The changes were part of a bill requested by

the DNRC, the main purpose of which was to clarify the definition of ground water. Apparently, there was concern at the time that the 100 gpm exemption was being abused to irrigate large parcels as well as to provide water to subdivisions and trailer parks.⁷

According to the minutes of the House hearing, the sponsor of the bill said the Senate committee talked about lowering the limit, and 35 gallons per minute was the most common figure cited. But he added that the DNRC considered 100 gpm to be reasonable, and lowering the limit would increase the number of permit applications.

In response to a question about protecting a surface water right if an upstream user drills an irrigation well, a representative of the DNRC said that if the well were less than 100 gpm, “any adverse impact would have to be addressed in the courts.”⁸

The statute now says, in part:

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 with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.⁹

To appropriate water under the statute, a person drills a well, submits a “notice of completion” form to the DNRC, and pays \$125. The form asks for the flow rate, the type of use, and the location of use. If the requirements are met, the user is issued a certificate of water right with a priority date recorded as the day the notice of completion was filed.¹⁰

Since 1991, the exempt well law has changed little, but the exemption has become more controversial.

The Issues

The use of small wells for domestic purposes is a much-discussed policy issue across the West. The Western States Water Council, an organization consisting of

³ Ibid.

⁴ Montana Administrative Register Notice No. 36-12-6, June 25, 1987.

⁵ 36.12.101 ARM.

⁶ Montana Administrative Register, June 24, 1993. Two petitions to the DNRC argue that this interpretation of the law does not reflect legislative intent. One was denied in 2006 while the other is under consideration.

⁷ WPIC presentation. “Wells Exempt from the Permitting Process. Curt Martin, Water Resources Div., DNRC. Sept. 13, 2007.

⁸ Gary Fritz, DNRC Water Resources Administrator, House Natural Resources Committee, March 14, 1991.

⁹ 85-2-306, MCA.

¹⁰ DNRC Form 602. http://www.dnrc.mt.gov/wrd/water_rts/wr_general_info/wrforms/602.pdf

representatives appointed by the governors of 18 western states, declared in a 2008 report that, “while the impact of an individual exempt well on water resources may be negligible, the aggregate impact of many exempt wells can be significant.” Council members said exempt wells have the potential to affect ground water and surface flows and raise water quality concerns.¹¹

The report notes that, compared to irrigation, municipal, and industrial uses, domestic wells have the least effect on supplies. However, an increase in new subdivision residents who rely on such wells, combined with drought, may add stress to water supplies.¹²

“Incorporating domestic wells into existing water regulatory schemes may prove necessary before land and water management can be comprehensively integrated,” the report said.

There are more than 109,000 exempt wells in Montana on file with the DNRC.¹³ It is estimated nearly a quarter of those exempt wells are located in one of the five major river basins closed to further appropriation.¹⁴

According to a report from the U.S. Geological Survey, Montana has the fourth highest percentage of residents in the country who depend on what is called “self-supplied domestic water,” meaning a water supply not provided by a public system.¹⁵

The drinking water of nearly one of every three Montanans comes from a self-supplied source. Most of that comes from ground water wells.

The 2007-08 WPIC discussed domestic wells throughout the interim. The committee agreed on some findings, including:¹⁶

11 Water Laws and Policies for a Sustainable Future: A Western States’ Perspective, Western States Water Council, 2008. <http://www.westgov.org/wswc/publicat.html>

12 Ibid.

13 This includes 109,147 certificates of water rights issued between 1973 and Nov. 30, 2009. However, it is widely acknowledged that not all owners of wells drilled under the exemption filed the required notice of completion.

14 Through Nov. 30, 2009, there were 25,663 exempt wells in the Bitterroot, Jefferson-Madison, Upper Missouri, Teton, and Upper Clark Fork river basins.

15 USGS Estimated Use of Water in the United States, 2005. The report did not count domestic wells in the states. The self-supplied numbers were calculated using an estimate of the population not served by public supply and a coefficient for daily per capita use. <http://pubs.usgs.gov/circ/1344/pdf/c1344.pdf>.

16 Water - Montana’s Treasure, WPIC, 2008. <http://leg.mt.gov/css/Com->

- The use of individual water wells exempt from permitting and individual septic systems is appropriate in many parts of Montana, and the use of public water and sewer systems is not always feasible, practical, or affordable.
- Statewide, the DNRC estimates that exempt wells, including stock and domestic wells, represent less than 5 percent of total consumption.
- In some areas, particularly those in closed basins that are experiencing population growth, there are concerns about the effect of exempt wells on water quantity and the effect of individual septic systems on water quality.
- Not all exempt wells are filed with the DNRC. For those that are filed, the DNRC does not meter whether or not the wells are exceeding the allowed rate or volume.
- DNRC records show that there are thousands of purposes listed for wells. Some of the most common include domestic (75 percent), stock watering (32 percent), lawn and garden (24 percent), irrigation (6.5 percent), commercial (2.6 percent), multiple domestic (1.9 percent), and fish, waterfowl, wildlife, and recreation-related purposes (1.7 percent).¹⁷
- According to the DNRC, the limiting factor to irrigation from an exempt well would probably be the annual volume, not the rate. It may be possible to irrigate four acres with an exempt well – enough to feed three horses.
- The water right permitting process for a public system may take longer and be more expensive for a subdivision than using exempt wells.
- In some areas of Montana, public water systems and public sewer systems are preferable to individual water wells and septic systems. But installing public water and sewer systems at the time of development may represent a significant cost to the developer, which is passed on to the homeowner.
- While individual water wells may cost less per lot initially, over time a public water system may result in less cost to the homeowner.

mittees/interim/2007_2008/water_policy/default.asp

17 Certificates can be issued listing more than one purpose.

- Subject to certain provisions, a county has the power to adopt subdivision regulations that require public water systems, sewer systems, or both.

The committee also discussed how ground water appropriations, including exempt wells, figure into the prior appropriation system.

In a legal memorandum to the WPIC, the committee attorney wrote that, unlike some other states, Montana does not prioritize water rights by the type of use. However, it is much easier to close a headgate on a ditch during a call by a senior appropriator than it is to shut off wells. An additional complicating factor is the legal ability to continue to develop ground water through the use of exempt wells, even in closed basins in which it is recognized that water is overappropriated. During a call for water by a senior appropriator, all junior water right uses are supposed to be curtailed according to their priority, but the public health crisis that may result from curtailing domestic or municipal water use may create a de facto priority for those uses even if they are junior to other uses.¹⁸

Another issue associated with exempt wells is the additional water used when a piece of land is sold for development, but the water rights are severed from the property. Instead of changing the water use associated with the land to domestic, the new development appropriates its water supply with exempt wells and the existing right is used elsewhere.

Montana Legislation

Several attempts failed over the past few years to amend the exempt well statute or otherwise limit the use of exempt wells.

On a split vote, the 2007-08 WPIC endorsed Senate Bill 17. The measure would have required public water and sewer systems in subdivisions of at least 30 lots with an average lot size of three acres or less. A developer could propose an alternative water or sewer system, but the alternative would need county approval.

Other proposed legislation in recent years includes:

- 2009: SB 437 would have prohibited the issuance of a fish pond license for a body of water supplied by an exempt appropriation of ground water.
- 2007: HB 104 would have kept the 35 gpm and 10 acre-feet a year exemption for stock water on parcels of land 40 acres or larger. For domestic or commercial use, the flow rate remained the same but the volume could not exceed 1 acre-foot a year. Lawn and garden uses associated with a domestic or commercial use could not have exceeded one-quarter acre of land.
- 2007: HB 138 would have removed the exemption for domestic use in closed basins.
- 2005: HB 403 would have required a water use permit for subdivisions. It would have retained the exemption for 35 gpm wells or less than 10 acre feet, but it would have required a permit for a combined appropriation, defined as any ground water development consisting of two or more wells or developed springs, regardless of whether their diversion works are physically connected or not, that are developed in connection with a major or minor subdivision.

A bill that passed in the 2009 session may provide more insight into exempt wells and their effects. House Bill 52 established the Ground Water Investigations Program at the Montana Bureau of Mines and Geology. Among other things, ground water studies will examine stream depletion from ground water development by subdivisions or changes in irrigation projects.¹⁹

Rule Challenges

Two challenges have been made to the administrative rule that defines a combined appropriation. In 2006, Gallatin County argued that the current definition of statute does not reflect legislative intent and the rule as written encouraged a proliferation of exempt wells that has a cumulative effect on senior water right holders and water resources.²⁰

Gallatin County requested that the definition of “combined appropriation” be changed so that a permit is required if a second or subsequent well is drilled from the same source on a tract of land after the effective date of

18 Enforcement of Senior Rights in Relation to Ground Water Rights, Greg Petesch. 2007 http://leg.mt.gov/content/Committees/Interim/2007_2008/water_policy/staffmemos/watenforcement.pdf

19 <http://www.mbg.mtech.edu/gwip/gwip.asp>

20 Gallatin County Petition for Rulemaking for Exempt Wells, Oct. 23, 2006.

the rule if the additional well would exceed the 35 gpm or 10 acre-feet limits. A permit also would be required for any well on a tract of land smaller than 20 acres created after the date of the rule.

The DNRC denied the petition, saying it was too complex and could require the hiring of up to 50 new employees to process new permits. The department also said the rule change would halt development in closed basins where the department could not process applications for new ground water permits.²¹

However, in response to comments, the department wrote that “with increasing use of the exemption, and a greater understanding of the impact of exempt water rights on other ground water and surface water resources, the Department acknowledges that ground water use under the exemption statute and the definition of ‘combined appropriation’ must continue to be scrutinized to be consistent with the purposes of the prior appropriation doctrine, its many codifications in the Water Use Act, and the intent of the Legislature.”²²

In December 2009, five water right holders filed a petition with the DNRC asking the agency to declare the current combined appropriation rule invalid. The petition asserts that the rule does not meet legislative intent. The petition also asks for a new rule that would define a combined appropriation as

an appropriation of water from the same source aquifer by two or more wells or developed springs that are part of the same project, development, or subdivision. Two or more wells or developed springs that are part of the same project, development, or subdivision are presumed to appropriate water from the same source aquifer.²³

Other States

Most western states allow some kind of exemption for small wells. Montana requires a notice of completion, and then the well is issued a priority date.

Three states are dealing with domestic wells in different ways.

Utah regulates domestic wells in the same way as other uses of ground water. All wells must be approved by the state engineer. In areas open to appropriation, a person applies to appropriate new water. But in areas closed to new appropriations, a person must acquire at least part of an existing water right and go through the change process to cover the new use of water. Both the application for water right and the change application require public notice.²⁴

In Washington and New Mexico, the proliferation of exempt wells in basins otherwise closed to new appropriations of water has been the subject of administrative and judicial action.

Washington has had an administrative moratorium in effect for years in the headwaters area of the Yakima River Basin. No new ground water permits have been issued since 1993. However, the moratorium did not apply to exempt wells, including those used to irrigate a half acre or those that supply up to 5,000 gallons per day for domestic use. Since 1998, nearly 3,000 exempt wells were drilled in Kittitas County, prompting concerns that ground water pumping threatens senior water users and stream flows in the Yakima Basin.²⁵

In 2008, the Washington Department of Ecology started adopting temporary emergency rules that limited the amount of the exempt appropriation but did not prohibit the exempt use of water. In July 2009, the latest emergency rule prohibited all new ground water appropriations except those that are “water budget neutral projects.” The state established a trust water right program to help proposed new users of water find existing rights to offset the consumptive use of the new project.²⁶

The Washington attorney general said that, while the department lacked authority to limit the amount of the exemption, the agency’s latest rule is within its statutory authority.²⁷

21 The denial followed the Trout Unlimited decision in 2006. The passage of HB 831 in 2007 allowed for the processing and granting of new permits in closed basins, with certain requirements.

22 Order of Denial, Gallatin County Petition for Rulemaking, Dec. 22, 2006.

23 Petition for Declaratory Ruling and Request to Amend Rule 36.12.101(13), December 2009.

24 <http://www.waterrights.utah.gov/wrinfo/faq.asp#q2>

25 Department of Ecology News Release - Aug. 3, 2009. <http://www.ecy.wa.gov/news/2009news/2009-192.html>

26 Attorney General Opinion, AGO 2009 No. 6. http://www.ecy.wa.gov/programs/wr/cro/images/pdfs/2009_no6_ago_ZempleManningOpinion.pdf

27 Ibid.

In New Mexico, the exempt well provision directs the state engineer to issue a permit for irrigation of less than an acre or for domestic use. As with other states, the issuance of a permit is not contingent upon any other factors, such as adversely affecting existing water right holders.

Several attempts have been made to change the law, but in 2006 the state engineer implemented an administrative rule limiting the exemption to one acre-foot annually per household. Further limitations may be imposed in domestic-well management areas, defined as places bounded by an overlying stream-connected aquifer that requires special water resource protection. The state engineer relied upon the statutory authority that allows the adoption of regulations to enforce any provision of law administered by the office.²⁸

The state engineer said the limits were necessary: “The regulations were developed in response to current conditions – rapid growth along our major interstate rivers, continuing drought, the need to conserve water wherever and whenever possible, and the need to protect senior water rights.”²⁹

However, a district court decision last year cast doubt upon the entire exempt well provision in New Mexico. A farmer with senior water rights who lives in a basin closed to new appropriations since 1972 objected to the domestic wells.

The judge declared the exempt-well statute unconstitutional because it created an impermissible exemption to the priority administration system created by the state’s constitution. He added that the exempt-well statute lacked due process safeguards because no notice is provided to senior water right holders of new wells, there is no opportunity for a hearing, and no determination if the new well impairs existing water rights.³⁰

28 Domestic Well Regulations, New Mexico. <http://www.ose.state.nm.us/PDF/RulesRegsGuidelines/DomesticWells/72-12-1-Rules-2006-08-15.pdf>

29 Regulations on Domestic Wells - Response to Common Issues and Concerns. <http://www.ose.state.nm.us/PDF/RulesRegsGuidelines/DomesticWells/DomWells-Issues-2006-0919.pdf>

30 Bounds v. State of New Mexico. No. CV-2006-166.

Domestic Well Provisions in the West

State	Capacity Limit AFY	Irrigation Limit (acres)	Water Right Permit Exemptions
Alaska	0.56		Permit required for water use exceeding 500 gallons-per-day, no annual reporting
Arizona ¹	56	2	Notice of intent to drill and completion report
California			Varies by local control
Colorado ²	5	1	Well construction permit required, other exceptions exclude subdivisions <35 acres/owner
Idaho	14	0.5	No permit required
Kansas		2	No permit required
Montana	10		File notice of completion
Nebraska	80		Registration required
Nevada	2		Permits required in designated basins
New Mexico ³	1	1	No permit, but must have approved well application
North Dakota	12.5	1	File notice of completion
Oklahoma		3	No permit required
Oregon	16.8	0.5	No permit required
South Dakota	29.1	1	No permit required
Texas	28		No permit for >10 acre tracts, excludes subdivisions
Utah			Permit required
Washington	5.6	0.5	No permit required
Wyoming ⁴	40.4	1	Permit required

¹ 10 AFY in AMAs post 1983

² AFY may be expanded to 80 AFY

³ AFY limit in effect post 2006

⁴ Domestic wells may serve up to three dwellings.

SOURCE: Water Laws and Policies for a Sustainable Future: A Western States’ Perspective, Western States Water Council, 2008. <http://www.westgov.org/wswc/publicat.html>

“It is not logical, let alone consistent with constitutional protections, to require (the state engineer) to issue domestic well permits without any consideration of the availability of unappropriated water or the priority of appropriated water,” wrote District Judge J.C. Robinson. He added that the farmer did not need to suffer actual damage to challenge the law.

“When the water is gone, it will be too late,” the judge wrote.³¹

The New Mexico state engineer is appealing the decision.

31 Ibid. Robinson also wrote that the state engineer’s assertion that the state can regulate domestic wells is “questionable.”

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

March 2010						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Legislative Council, 3 pm, Rm 102 Legislative Audit Comm, 1 pm, Rm 172 Legislative Space Subcomm, 1 pm, Rm 102 Legislative Rules Subcomm, 1 pm, Rm 137	2 Legislative Council, 8:30 am, Rm 102 Legislative Audit Comm, 8 am, Rm 172 ARRA Subcomm, 3 pm, Rm 152 Legislative Consumer Comm, 8 am, Rm 422	3 Legislative Training Day, 10 am, House Chamber Performance Measurement Subcomm, 9 am, Rm 422 State Admin & Veterans' Affairs Comm, 8:30 am, Rm 405	4 Legislative Finance Comm, 8 am, Rm 317 Environmental Quality Council, 8 am, Rm 172	5 Legislative Finance Comm, 8 am, Rm 102 Environmental Quality Council, 8 am, Rm 172	6
7	8	9	10 Water Policy Committee, 9 am, Rm 102	11 Water Policy Committee, 8 am, Rm 102	12 Education & Local Govt. Comm, time 7:30 am, Rm 137	13
14	15	16	17	18	19 State Admin. & Veterans' Affairs Committee, time TBA, Rm 137	20
21	22	23	24	25	26	27
28	29	30 EAIC Health Information Subcomm, 8 am, Room 137 Economic Affairs Comm, 10:15 am, Rm 137	31 Economic Affairs Comm, 8 am, Rm 137			

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

April 2010						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5 Law & Justice Comm, 8 am, Rm 137	6 Law & Justice Comm, 8 am, Rm 137 MEPA Training for State Employees, 8am, Rm 317	7 MEPA Training for State Employees, 8am, Rm 317	8 Districting Comm Public Hearing, 6:30 pm, Helena, Great Falls, Havre State-Tribal Relations Comm, time & place TBA	9 State-Tribal Relations Comm, time & place TBA	10
11	12 Districting Comm Public Hearing, 6:30 pm, Missoula, Kalispell	13	14	15	16	17
18	19 Districting Comm Public Hearing, 6:30 pm, Billings, Miles City	20	21	22 State Admin & Veterans' Affairs Comm, time & place TBA	23 State Admin & Veterans' Affairs Comm, time & place TBA	24
25	26 Children & Families Comm, time TBA, Rm 137	27 Children & Families Comm, time TBA, Rm 137 Districting Comm, 10:30 am, Rm 102	28	29 Revenue & Transportation Comm, time & place TBA	30 Revenue & Transportation Comm, time & place TBA	

**You can find the most up-to-date information
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