

EXEMPT GROUND WATER WELLS

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: State law requires a water rights permit for all new beneficial uses of water, except for **appropriations** from a well or developed spring:

- for a local governmental fire agency to be used only for emergency fire protection, emergency fire training, and emergency fire-related operations, including storage;
- of 350 gallons a minute or less for nonconsumptive geothermal heating or cooling exchange applications; or
- of 35 gallons a minute or less and not more than 10 acre-feet a year.

These exempt appropriations must be outside a designated controlled ground water area or a stream depletion zone. A combined appropriation of two or more wells or developed springs from a same source may not exceed a volume of 10 acre-feet a year.

Legislative Services Division Materials:

Water Policy Interim Committee, [The Exemption at 45: A Study of Groundwater Wells Exempt from Permitting](#) (2018).

Water Policy Interim Committee, [Water Rights in Montana](#) (2018).

Water Policy Interim Committee, [Issues of Water Availability and Supply](#) (2016).

Water Policy Interim Committee, [The Exemption: To Change or Not to Change?](#) (2012).

Other Materials:

Montana Supreme Court ruling on definition of “combined appropriation”: [Clark Fork Coalition v. Tubbs](#) (2016).

Introduced Legislation

2017

[House Bill 110](#) – Chapter number assigned. AN ACT PROVIDING FOR FILING OF CERTAIN WATER RIGHTS CLAIMS; CREATING A DEADLINE FOR FILING THESE CLAIMS; PROVIDING FOR A SUPPLEMENTAL PRELIMINARY DECREE; SETTING FILING FEES; AMENDING SECTIONS 3-7-212, 85-2-221, 85-2-222, 85-2-225, 85-2-231, 85-2-232, 85-2-233, AND 85-2-234, MCA.

[HB 339](#) – Vetoed by governor. AN ACT REVISING LAWS RELATED TO CERTAIN EXEMPT APPROPRIATIONS OF WATER; PROVIDING A DEFINITION FOR A "COMBINED APPROPRIATION"; CLARIFYING CONDITIONS FOR EXEMPT APPROPRIATIONS OF WATER; LIMITING THE PHYSICAL LOCATION OF CERTAIN EXEMPT APPROPRIATIONS OF WATER; PROVIDING THAT A COMBINED APPROPRIATION REQUIRES A WATER RIGHT PERMIT; AND AMENDING SECTIONS 85-2-102, 85-2-306, AND 85-2-381, MCA.

[HB 429](#) – Chapter number assigned. AN ACT EXTENDING THE WATER RIGHT PERMIT EXEMPTION FOR CERTAIN OPERATIONS AND TRAINING OF A LOCAL GOVERNMENTAL FIRE AGENCY; AND AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-330, 85-2-341, 85-2-343, AND 85-2-344, MCA.

[HB 546](#) – (H) Died in standing committee. AN ACT REVISING THE VOLUME OF WATER FOR AN EXEMPT GROUND WATER RIGHT; AND AMENDING SECTION 85-2-306, MCA.

[HB 659](#) – (H) Died in standing committee. AN ACT REVISING THE VOLUME OF WATER FOR AN EXEMPT GROUND WATER RIGHT; PROVIDING AN EXEMPT APPROPRIATION FEE; CREATING THE GROUND WATER INVESTIGATION PROGRAM SPECIAL REVENUE ACCOUNT; AND AMENDING SECTIONS 85-2-113, 85-2-123, 85-2-306, AND 85-2-318, MCA.

[Senate Bill 248](#) – Vetoed by governor. 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 A FEE TO BE PAID WITH A NOTICE OF COMPLETION~~ LIMITS ON SALES OF LAND DIVIDED BY FAMILY TRANSFER; PROVIDING A PENALTY FOR EVADING SUBDIVISION REGULATIONS; AMENDING ~~SECTION~~ SECTIONS 76-3-207 AND 85-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

2015

[HB 168](#) – Chapter number assigned. AN ACT CLARIFYING THE APPLICABILITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S DEFINITION OF "COMBINED APPROPRIATION" FOR WATER RIGHT PERMIT EXCEPTIONS IN CERTAIN CIRCUMSTANCES AND PROVIDING RETROACTIVE APPLICABILITY.

[HB 519](#) – (S) Died in standing committee. AN ACT REVISING LAWS RELATED TO EXEMPT APPROPRIATIONS OF WATER; REVISING VOLUME LIMITS FOR EXEMPT APPROPRIATIONS OF WATER; REQUIRING CERTAIN WATER RIGHTS INFORMATION DURING SUBDIVISION REVIEW AND FOR EXEMPT

APPROPRIATIONS OF WATER; PROVIDING ENFORCEMENT MEASURES FOR VIOLATIONS OF LAWS RELATED TO EXEMPT APPROPRIATIONS OF WATER; REQUIRING WATER RIGHTS INFORMATION DURING SANITATION IN SUBDIVISION REVIEW; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES REQUIRING WATER RIGHTS DOCUMENTATION; REQUIRING WATER RIGHTS INFORMATION DURING REVIEW OF SUBDIVISION APPLICATION; ELIMINATING PROHIBITION OF METERING A WATER WELL; REVISING CONTROL PROVISIONS FOR A CONTROLLED GROUNDWATER AREA; AMENDING SECTIONS 76-4-104, 76-4-125, 85-2-113, 85-2-306, AND 85-2-506, MCA.

[SB 37](#) – Vetoed by governor. AN ACT PROVIDING FOR FILING OF CERTAIN WATER RIGHTS CLAIMS; CREATING A DEADLINE FOR FILING THESE CLAIMS; PROVIDING FOR A SUPPLEMENTAL PRELIMINARY DECREE; ELIMINATING CERTAIN PROCESSING FEES; AMENDING SECTIONS 3-7-212, 85-2-221, 85-2-222, 85-2-231, 85-2-232, 85-2-233, AND 85-2-234, MCA; AND REPEALING SECTION 85-2-225, MCA.

[SB 203](#) – (S) Missed deadline for general bill transmittal. AN ACT REVISING THE EXCEPTIONS TO PERMIT REQUIREMENTS FOR GROUND WATER DEVELOPMENTS; ESTABLISHING CRITERIA FOR EXEMPTED USES BY NUMBER OF USERS; DEFINING THE TERM "PROJECT"; AMENDING SECTION 85-2-306, MCA.

2013

[House Joint Resolution 27](#) – (S) Died in standing committee. A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUIRING A STUDY OF WATER POLICY IN MONTANA; AND REQUIRING RECOMMENDATIONS FOR POLICIES TO ACCOMMODATE GROWING POPULATIONS AND CHANGING WATER NEEDS WITHIN THE TENETS OF PRIOR APPROPRIATION AND COMMITMENTS TO ORDERLY ADMINISTRATION OF WATER.

[HB 561](#) – (H) Died in process. AN ACT DEFINING THE TERM "COMBINED APPROPRIATION" FOR WATER WELLS AND DEVELOPED SPRINGS THAT ARE EXEMPT FROM PERMITTING; AND AMENDING SECTIONS 85-2-102 AND 85-2-306, MCA.

[SB 19](#) – Vetoed by governor. AN ACT DEFINING THE TERM "COMBINED APPROPRIATION" FOR WATER WELLS AND DEVELOPED SPRINGS THAT ARE EXEMPT FROM PERMITTING; CLARIFYING THE DEFINITION OF THE TERM "DEVELOPED SPRING"; AND AMENDING SECTIONS 85-2-102 AND 85-2-306, MCA.

[SB 38](#) – (S) Died in standing committee. AN ACT DEFINING "STREAM DEPLETION ZONES"; REDUCING THE EXEMPTION FOR GROUND WATER APPROPRIATIONS WITHIN STREAM DEPLETION ZONES; LIMITING AREAS WHERE STREAM DEPLETION ZONES MAY BE ESTABLISHED; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 85-2-102 AND 85-2-306, MCA; AND PROVIDING AN APPLICABILITY DATE.

[SB 263](#) – (S) Died in standing committee. AN ACT LIMITING THE AMOUNT OF GROUND WATER ALLOWED WITHOUT A PERMIT ACCORDING TO THE TYPE OF USE AND ACREAGE OF THE PARCEL ASSOCIATED WITH THE USE; AND AMENDING SECTION 85-2-306, MCA.

[SB 346](#) – Chapter number assigned. AN ACT GENERALLY REVISING WATER LAWS RELATED TO GROUND WATER APPROPRIATIONS EXEMPT FROM PERMITTING; DEFINING "STREAM DEPLETION ZONE"; REDUCING THE EXEMPTION FOR GROUND WATER APPROPRIATIONS WITHIN STREAM DEPLETION ZONES; LIMITING AREAS WHERE STREAM DEPLETION ZONES MAY BE ESTABLISHED; CLARIFYING ENFORCEMENT BY SENIOR WATER RIGHT HOLDERS AGAINST GROUND WATER APPROPRIATIONS EXEMPT FROM PERMITTING; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 85-2-102 AND 85-2-306, MCA.

[SB 355](#) – Chapter number assigned. AN ACT CREATING A PETITION PROCESS TO JUDICIALLY DETERMINE CLAIMS FOR EXISTING WATER RIGHTS THAT WERE EXEMPT FROM FILING FOR THE ADJUDICATION OF WATER RIGHTS; PROVIDING THAT WITHOUT A DETERMINATION WATER RIGHTS EXEMPT FROM FILING ARE NOT ADMINISTERED BY FIRST IN TIME, FIRST IN RIGHT; AMENDING SECTIONS 85-2-222, 85-2-233, AND 85-2-234, MCA.

[SB 403](#) – Died in standing committee. AN ACT DECREASING THE VOLUME OF WATER ALLOWED TO BE APPROPRIATED BY MEANS OF A WELL OR DEVELOPED SPRING WITHOUT A PERMIT; ESTABLISHING A WATER INVESTIGATION FEE ON EXEMPT WELLS; REQUIRING THAT THE FEE BE SPENT FOR GROUND WATER INVESTIGATIONS AND STREAM GAUGES; AND AMENDING SECTIONS 85-2-306 AND 85-2-318, MCA.

2011

[HB 433](#) – (H) Died in process. AN ACT DEFINING THE TERM "COMBINED APPROPRIATION" FOR WATER WELLS THAT ARE EXEMPT FROM WATER RIGHT PERMITTING; AMENDING SECTIONS 85-2-102 AND 85-2-306, MCA.

[HB 602](#) – Chapter number assigned. AN ACT ESTABLISHING A PROCESS FOR THE LEGISLATURE TO PROVIDE DIRECTION FOR THE IMPLEMENTATION OF EXEMPT WELL LAWS; REQUIRING AN INTERIM STUDY OF ISSUES RELATED TO GROUND WATER WELLS EXEMPT FROM PERMITTING; TEMPORARILY PROHIBITING RULEMAKING FOR WELLS EXEMPT FROM PERMITTING; PROVIDING AN APPROPRIATION.

[SB 103](#) – Chapter number assigned. AN ACT EXEMPTING FROM PERMITTING THE DEVELOPMENT OF GROUND WATER WELLS AND SPRINGS FOR USE IN CERTAIN HEATING OR COOLING APPLICATIONS; AND AMENDING SECTION 85-2-306, MCA.

[SB 128](#) – Chapter number assigned. AN ACT EXEMPTING FROM PERMITTING GROUND WATER APPROPRIATIONS BY LOCAL GOVERNMENTAL FIRE AGENCIES FOR FIRE PROTECTION USE; AND AMENDING SECTION 85-2-306, MCA.

2009

None.

Prepared By:
Jason Mohr, research analyst
Legislative Environmental Policy Office