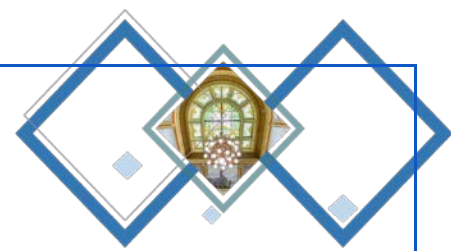


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Water Policy Interim Committee
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DRAFT FINDINGS AND CONCLUSIONS: STUDY OF GROUNDWATER WELLS EXEMPT FROM PERMITTING

FINDINGS

- The Montana Constitution states that all surface, underground, flood, and atmospheric waters in the state are the property of the state for the use of its people.
- Since at least 1921, Montana has recognized the prior appropriation doctrine as the guiding legal principle for the distribution of water.
- The Water Use Act of 1973 created a process to confirm existing water rights and to permit new water rights.
- The Water Use Act of 1973 provided a permit exemption for certain groundwater wells and developed springs.
- Since 1991, a permit exemption is allowed for a groundwater well or developed spring that flows at less than 35 gallons a minute and uses less than 10 acre-feet of water a year. Uses of this water may be domestic, irrigation, stock, or industrial.
- The Legislature has attempted to alter the permit exemption in recent legislative sessions.
- A 2014 District Court ruling and a 2016 Montana Supreme Court ruling limited the use of the permit exemption.
- Well drillers dig thousands of wells using the permit exemption each year.
- The state water rights database includes more than 123,000 water rights certificates for exempt wells.

CONCLUSIONS

- Development in and near some Montana cities and towns continues to use the permit exemption.
- Use of the permit exemption may have negative long-term effects on water availability in certain areas of Montana.
- Use of exempt groundwater wells may be limited by establishing controlled ground water areas or stream depletion zones.
- 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.
- It is difficult to determine the impact of the 2016 Supreme Court ruling on the frequency of use of the exemption.
- The development community appear to be adapting to the 2016 Supreme Court ruling by various strategies.