

HB 642 Revise exempt wells laws Casey Knudsen (R) HD 33

- HB 642 is not necessary
 - The number of subdivisions created under exempt wells has not decreased since the MT Supreme Court Decision in 2014
 - The DNRC Comprehensive Water Review is a more appropriate process for determining the best approach to water uses that are exempt from the permitting process.
 - The Comprehensive Water Review provides adequate time and resources for **all interested parties, not just those who will benefit from bypassing current law**, to participate in developing a solution to water availability to subdivisions in a way that doesn't hurt existing water users.
- HB 642 addresses "Exceptions" or "Exemptions" from the permitting process. This means exempt water users do not have to go through the normal permitting process designed to ensure that new proposed water uses do not steal water from, or injure, existing water rights.
 - Current permitting process allows water users to challenge a new water right if it would hurt their existing water right.
 - Water Rights are valuable property rights in Montana that existing water right owners cannot protect if new uses are obtained through the exemption process.
 - Exemptions were intended to address small volumes of water, and currently cannot be 'stacked' to create a volume of water that would otherwise need to go through the permitting process. HB 642 removes this limitation.
- The issuance of these "exemptions" cannot be challenged or revoked, even if the exemptions propose to steal water from, or injure, other water users.
 - No ability for private parties to challenge the issuance of an exempt right.
 - The DNRC is required to issue these exemptions and cannot revoke them.
 - Exemptions completely evade the permitting process.
 - No ability to put protective terms and conditions on how the exempt water right is used.
- At a minimum, HB 642 allows the development of at least 10 acre-feet per 20 acres, or enough water to cover every 10 acres one-half foot deep, every year.
- Could 'stack' multiple exemptions into a single well, at the same amount of water seen in permitted large agricultural, dense municipal, and large-scale industrial projects.
- Removes the special restrictions that stream depletion zones have under current law. This means existing surface water rights would be hurt by these exempt wells.
- Creates additional loopholes for lots created by "family transfer" allowing even greater 'stacking' of exempt rights on those lots. The creation of new lots through a "family transfer" is not limited on the amount of water they can use without getting a water right.
- HB 642 is retroactive which would allow subdivisions and other water uses that were either previously denied or not even an option, to now rely on only exemptions and not be required to get a permit.

- HB 642 would allow previously permitted water uses, which must comply with the “terms and conditions” of their water permit, to drop their permits and rely on exemptions instead forgoing any protections to any existing water rights that existed as part of the subdivision. This will result in a massive increase of consumption by unpermitted wells.
- The only option for existing water rights – including those that are constitutionally protected – is to litigate against new exempt water uses.
- HB 642 **DOES NOT** codify DNRC’s existing policy.
 - HB 642 completely removes the current statutory limitation that precludes the ‘stacking’ of multiple exemptions (e.g., “combined appropriations”). The clear intent of HB 642 is to circumvent the permitting process, even when the amount of water sought under multiple exemptions is the same or more than a permitted municipal, commercial, or irrigation water right.
 - At a minimum, HB 642 doubles the number of exemptions allowed under current law.
 - Removes any well spacing requirements, meaning wells could dramatically interfere with one another, existing permitted wells, or nearby surface water rights.
 - Allows any subdivision, irrigation use, municipality, or industrial user to wholly rely on only exempt wells.