



SB 358: Exempt Wells

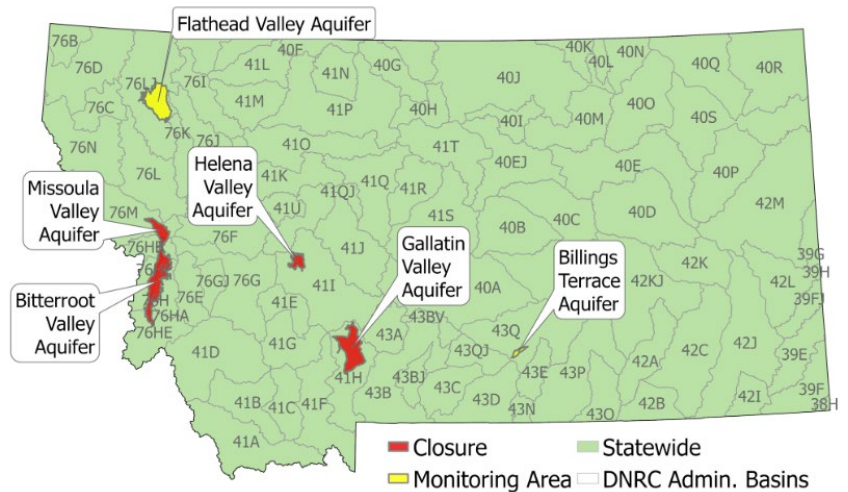
This bill concept is a product of DNRC's **Comprehensive Water Review Stakeholder Working Group**, which spent the past 15 months+ collaborating on policy recommendations for water resource administration in Montana.

One of the main objectives of Department of Natural Resources and Conservation's (DNRC) Comprehensive Water Review Stakeholder Working Group was to understand the current use of exempt wells in Montana and develop recommendations for the future based upon scientific and legal criteria. The working group began by developing criteria for assessing the impacts of exempt wells on an aquifer-specific basis. The working group found that, in much of the state, exempt wells are an appropriate water supply option with minimal impacts to physical or legal water supply. In certain high-growth areas of the state, the working group found that the cumulative impacts of exempt well use could be problematic. Instead of a "one-size-fits-all" solution across the state, the working group recommends exempt well regulations that match exempt well impacts.

WHAT DOES THIS BILL DO?

Based on the existing statutory framework for designating controlled groundwater areas, this bill divides the state into three different categories: **closure areas**, **monitoring areas**, and **the rest of the state**.

Statewide. For most of the state, this bill creates two pathways – one for when no division of land is occurring, and one for landowners dividing property.



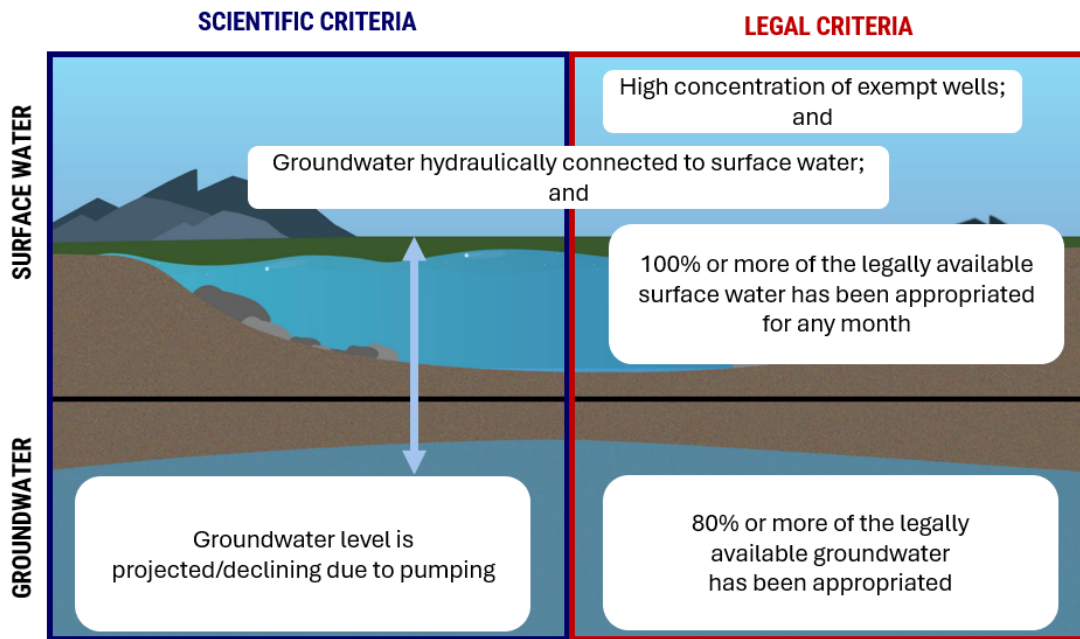
- **Not dividing land:** For water users not dividing land, the status quo will continue, except that this bill codifies criteria DNRC currently uses to evaluate combined appropriation¹, increasing transparency and clarity.
- **Dividing land:** Creation of a lot pursuant to the Subdivision and Platting Act (<160 acres) triggers the second pathway. This pathway assigns each lot in the subdivision a fixed maximum volume of water – increasing certainty and predictability in the amount of water available under the exemption. Divisions of land² will be subject to:
 - **Lot cap of 24 or fewer lots.** The exemption cannot be used to supply water to more than 24 lots; divisions resulting in more than 24 lots require a water permit or connection to a public water supply system.
 - **Volume cap** of up to 0.5 acre-feet per acre based on lot size, and no more than 1 acre-foot per lot.
 - **Metering and reporting** of new exempt well use.

¹ The term "combined appropriation" refers to two or more wells or developed springs that draw from the same source and serve the same project. A combined appropriation is limited to a single permit exception – any use in excess of 10 acre-feet per year or 35 gallons per minute requires a permit.

² Note: this legislation applies to an appropriation of water for use on lots created prior to 10/17/14, with exceptions for certain appropriations that received a COSA or predetermination letter before the effective date of this legislation.

Closure Areas. In areas where the scientific or legal criteria for closure are met, no new use of exempt wells will be allowed except in extremely limited circumstances³. Residents of these areas will need to connect to a public water supply or go through the full permitting or change authorization process to appropriate water. Metering and reporting will be required for all new water uses in these areas. The bill designates four aquifers for closure: Missoula Valley Aquifer, Helena Valley Aquifer, Gallatin Valley Aquifer, and Bitterroot Valley Aquifer. It also provides a process by which future closure areas could be designated if the scientific and legal criteria indicate closure is necessary.

The bill provides that a closure may be designated when an aquifer is experiencing impacts to water quality⁴ and exceedance of the following scientific and legal criteria thresholds:



Monitoring Areas. In areas that are nearing closure thresholds under the scientific or legal criteria, all water use will be subject to metering and reporting requirements. This will support adaptive decision-making to determine if a future closure is needed. The regulations are otherwise identical to the statewide category. The bill designates two aquifers for monitoring: Billings Terrace Aquifer and Flathead Valley Aquifer. It also provides a process by which future monitoring areas could be designated if the scientific and legal criteria indicate this is necessary.

Scientific and legal criteria for monitoring areas are the same as for closures, with lower impact thresholds. Designation of a monitoring area requires a high concentration of exempt wells and:

Criteria 1: Surface Water

- **Scientific & legal:** Groundwater hydraulically connected to surface water; and
- **Legal:** 90% or more of the legally available surface water has been appropriated for any month

Criteria 2: Groundwater

- **Scientific:** A decreasing groundwater level trend or limited storage potential
- **Legal:** 70% or more of the legally available groundwater has been appropriated.

Criteria 3: Water Quality (DEQ)

- **Source Aquifer:** moderate septic system density; AND nitrate concentration, exceedance of any ground water human health standard; exceed health advisory

³ Exigent circumstances that will still qualify for an exempt well withdrawing no more than 0.5 acre-feet annually are (1) stockwater and (2) single dwellings on an existing lot where connection to public water or obtaining a permit are infeasible.

⁴ For example, where the source aquifer has high septic system density and nitrate concentrations or exceeds any ground water human health standard, or where the water quality of connected surface water sources is impaired in part by nonpoint sources.