



Water Policy Interim Committee

69th Montana Legislature

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May 7, 2026

TO: Water Policy Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Exempt Well Litigation Summary – May 2026 Meeting

There are no new updates for *Montana League of Cities and Towns v. State*, No. DV-25-2025-0000710-DK (Mont. 1st Jud. Dist. Ct.) (challenging the constitutionality of Montana's exempt well law).

On April 20, 2026, another lawsuit involving exempt wells was filed against the Montana Department of Natural Resources and Conservation (DNRC). This lawsuit challenges DNRC's refusal to accept or process notices of completion of groundwater development (Form 602) or issue certificates of water right for certain exempt wells following the February 2024 decision in *Upper Missouri Waterkeeper v. Broadwater County (Upper Missouri Waterkeeper)*. The lawsuit requests that the First Judicial District Court, Broadwater County, compel the DNRC to process notices of completion of groundwater development and issue certificates of water right for exempt wells pursuant to laws in effect prior to the decision in *Upper Missouri Waterkeeper*.

The entity and individuals who filed the lawsuit (plaintiffs) include the following:

- *MT602Association*, a domestic nonprofit corporation representing property owners.
- *William and Carol Rash*, residents of a subdivision located in Park City, Montana, who purchased a lot in January 2024 and, following construction of their home, submitted a Form 602 to the DNRC in October 2024, which was denied in October 2025 and terminated in January 2026.
- *Eric and Victoria Taylor*, residents of a subdivision located in East Helena, Montana, who purchased their home and submitted a Form 602 in October 2024, which DNRC refused to process.

In *Upper Missouri Waterkeeper*, the District Court rejected DNRC's determination that the subdivision in that case qualified under 85-2-306, MCA, for 10 acre feet per year of water for each phase of the four phases of the subdivision and concluded that the entire subdivision was entitled to 10 acre feet per year under 85-2-306, MCA. Plaintiffs assert that after the decision in *Upper Missouri Waterkeeper*, the DNRC erroneously retroactively applied the decision and refused to process 602 Forms or issue certificates of water right for other existing platted

subdivisions that had received preliminary and/or final plat approval prior to the *Upper Missouri Waterkeeper* decision. Plaintiffs claim that “[nothing] in the [*Upper Missouri Waterkeeper*] ruling applies retroactively to subdivisions already approved, or directs or authorizes DNRC to unilaterally rescind its final agency actions reflected in determination letters applicable to approved subdivisions” and that DNRC’s refusal to process their notices of completion of groundwater development is unlawful, arbitrary, capricious and contrary to law and equity.

Plaintiffs request that the District Court declare that DNRC’s refusal to process notices of completion of groundwater development associated with properties granted preliminary or final plat approval before the *Upper Missouri Waterkeeper* decision “constitutes an unlawful or arbitrary and capricious deprivation of property owners’ cognizable property interest in the lawful use of groundwater.” Plaintiffs also request that the District Court require the DNRC to process these notices of completion of groundwater development and issue certificates of water right for affected exempt wells.

Next step in the litigation: the DNRC’s answer.