



October 17, 2025

Subject: SUBDIVISION WATER RIGHTS NOTICE TO OWNERS

Dear Landowner:

You are receiving this notice because you own a lot in a subdivision that was built in phases, and because the developer's water use plan relies on an exception to the water right permitting process ("exempt wells") for water supply. This notice is being sent to each lot owner in the subdivision to notify you of a recent court decision that may affect your water use, and encourage cooperation to maximize the number of lots in the subdivision that will be eligible for a water right under the permit exception.

Why This Letter Is Important

A Montana court recently issued a decision that changes how water can be used in subdivisions like yours.

In a case called *Upper Missouri Waterkeeper, et al v. Broadwater County and DNRC*, Cause Number BDV-2022-38, the First Judicial Court of Montana ruled that all phases of subdivisions must be treated as the same project, or a "combined appropriation," when it comes to water use. This means all lots for all phases of your subdivision must now share the same amount of water – 10 acre-feet per year – to qualify for the permit exception. This change affects how many lots can get water rights using the exemption.

Background

When your subdivision was planned, the developer used an exception to Montana water right permitting requirement, known as an exempt well. Montana law requires that all new appropriations of groundwater must either: 1) obtain a permit pursuant to 85-2-311, MCA; or 2) qualify for an exception to the permit requirements pursuant to 85-2-306, MCA. To qualify for the permit exception, an exempt well may not appropriate more than 35 gallons per minute and 10 acre-feet per year (ac/ft/yr). Two or more wells that appropriate water from the same source aquifer and are part of the same project constitute a "combined appropriation" for the purpose of the exempt well permit exception 85-2-306, MCA and 36.12.101(12), ARM. Multiple



individual wells developed in a subdivision constitute a combined appropriation and are limited to a maximum combined volume of 10 ac/ft/yr. In most cases, the property owner is responsible for obtaining a water right through either the permit exception (i.e. exempt wells) or by obtaining a permit.

When DNRC reviewed the water use plan for the subdivision, it explained in a letter to your developer that the water use plan could qualify for a permit exception based on the proposed water allocation for each phase. However, the letter also emphasized that it did not constitute approval of a water right and that each well would be evaluated based on the law in place at the time you seek a water right.

What This Means For You

In your subdivision, nearly all of the water available under the permit exception has already been appropriated by existing water users. This means that:

- *Unless a Certificate of Groundwater Right has been issued for your lot, it is unlikely you will qualify for the permit exception.*
- *If you filed a Notice of Completion of Groundwater Development (Form 602) but a Certificate of Groundwater Right has not been issued, it is unlikely you will qualify for the permit exception.*
- *New wells in your subdivision will likely require a permit.*

What You Can Do

There is still a chance to help people in your subdivision get water rights under the permit exemption, but only if everyone works together. DNRC recommends that you and your neighbors come together to discuss reallocating water use in your subdivision to maximize the number of lots that qualify for water rights under the permit exception. For example, lot owners who use less water might agree to give up part of their share so others can qualify. You and your neighbors could agree on a plan to share the water and stay under the 10 acre-feet per year limit.

Join The Meeting

The DNRC has scheduled a meeting on October 29, 2025 at 4:00 pm for the members of your subdivision to learn more about this issue and potential solutions. The meeting will be held in the Montana Room on the ground floor of the DNRC headquarters building, located at 1539 Eleventh Ave, Helena. At that meeting, DNRC staff will provide an overview of the water rights permitting process, including obtaining mitigation, as well as specific information on your subdivision and recommendations for how all landowners can work together to obtain water rights.

For more information on water rights, including the permit exception, please visit <https://dnrc.mt.gov/Water-Resources/Water-Rights/Understanding-Water-Rights/>. To check if you have a water right, you can use the DNRC Water Rights Query System: <https://gis.dnrc.mt.gov/apps/WRQS/>. If you have questions about this letter or the public meeting, please feel free to contact me at 406-444-0581 or nward@mt.gov.

Sincerely,

Nathaniel T. Ward

Nathaniel T. Ward
Water Rights Bureau Chief
DNRC Water Resources Division