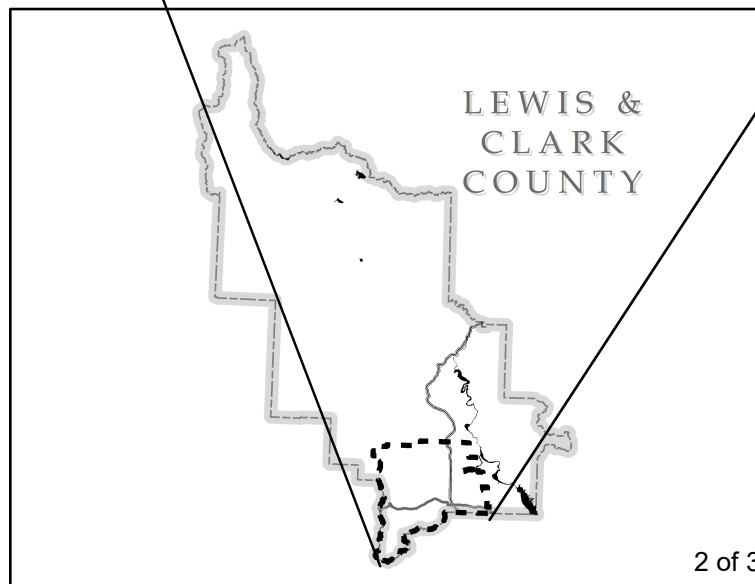
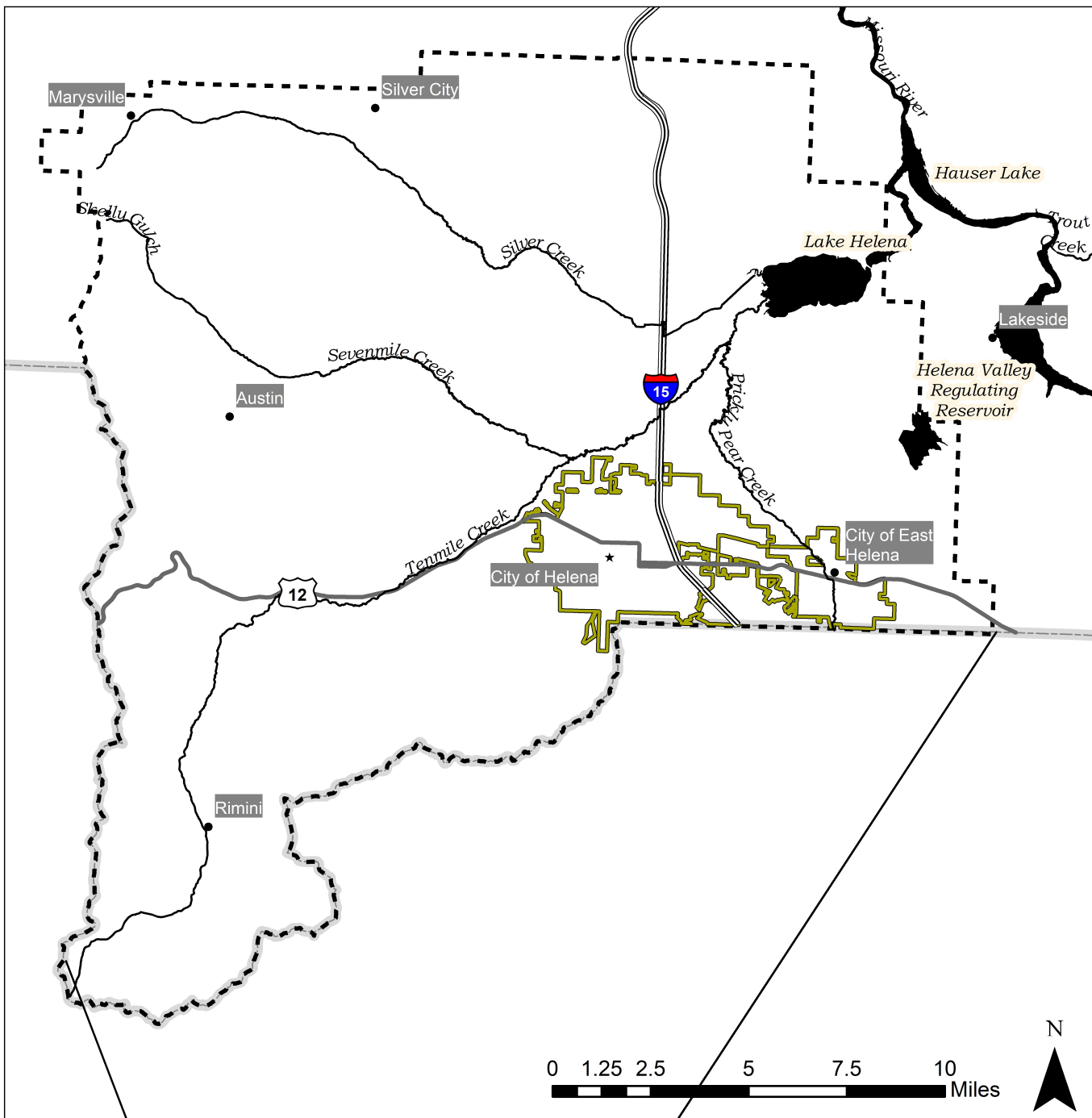




# Lewis and Clark County Water Quality Protection District

## Board Meeting Agenda Tuesday, December 2, 2025 Hybrid - In person and by Zoom

What (Content)	How (Process)	Who	Page	Time (When)
1. Call to Order & Establish Quorum –	Roll Call	Chair, Ed Kerins		4:00 p.m.
2. Review of Agenda	Present	Board	3	4:05 p.m.
3. Previous Minutes Review	Vote	Board	4	4:10 p.m.
4. Welcome– East Helena Council Member Don Dahl	Present	Don Dahl	9	4:15 p.m.
5. Water Watchers Presentation	Present	Gary Burton	10	4:20 p.m.
6. Executive/Finance Committee discussion	Discuss	Chair	11	4:40 p.m.
7. Past Business <ul style="list-style-type: none"> <li>• Water rights</li> <li>• Tenmile Complaint</li> </ul>	Present	Staff	12	4:50 p.m.
8. Board Member Updates	Discuss	Board	27	5:00 p.m.
9. Public Comment	Present	Board	29	5:15 p.m.
10. Adjourn Meeting	Present	Board		5:30 p.m.



### Water Quality Protection District Facts:

**Total Acres: ~240,000**

**Total Square Miles: ~370**

**Miles of Stream: ~100**

**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**2**

☐ Minutes    ☒ Board Member Discussion    ☐ Staff & Other Reports    ☒ Action    ☐ Hearing of Delegation

**AGENDA ITEMS:** Review of Agenda

**PERSONNEL INVOLVED:** Board Members

**BACKGROUND:** Time is allowed for board members to review the agenda and place any items under action or to add any new agenda items.

**RECOMMENDATION:** n/a

☐ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
T. Rolfe						
S. Ohs-Mosley						
A. Johnson						

**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**3**

☒ Minutes   ☒ Board Member Discussion   ☐ Staff & Other Reports   ☒ Action   ☐ Hearing of Delegation

**AGENDA ITEMS:** Minutes of the October 28, 2025 meeting

**PERSONNEL INVOLVED:** Board Members

**BACKGROUND:** Upon agreement, the minutes represent official actions of the Water Quality Protection District. Every effort is made to have these recommended minutes accurately portray the proceedings and procedures of the board.

**RECOMMENDATION:** Approval

☒ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
S. Ohs-Mosley						
T. Rolfe						
A. Johnson						

**LEWIS AND CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
BOARD MEETING**

Hybrid – Zoom  
October 28, 2025

**Members Present:**

Ed Kerins, Chair, Adel Johnson, Vice Chair, Sheri Ohs-Mosely, Patrick Johnson, Diana Hammer, Ryan Leland, Commissioner Tom Rolfe

**Staff & Guests Present:**

Jennifer McBroom, Gary Burton, Fred Sargeson, Kegan McClanahan, Drenda Niemann, Kierstin LaRoche, Sandy Whittington

Mr. Ed Kerins, Chair, called the 286<sup>th</sup> meeting of the Lewis and Clark County Water Quality Protection District (WQPD) Board of Directors (Board) to order at 4:00 p.m. A quorum was established. Introductions of Board members and WQPD staff were made.

**REVIEW OF AGENDA**

The agenda was reviewed and approved with no changes.

**MINUTES**

The Chair, Mr. Kerins, prompted a review of the minutes, and no changes were requested.

**CHAIR ADDRESS**

Mr. Kerins addressed the Board starting with thanking Mr. Johnson and the Board for their time and commitment. Mr. Kerins then gave a brief overview of his professional career as a CPA with 40 years of experience in Helena. He noted the business he started after retiring focuses specifically on sewer system rehabilitation. He emphasized the importance of clean water and requested the board's cooperation for future initiatives, noting that all decisions require consensus. Mr. Kerins noted a standing change to the boards meeting agenda will include a "past business" agenda item.

**QTR 1 FINANCE REPORTS**

Jennifer McBroom led the review of the FY26 first-quarter financial reports, beginning with Fund 203. She noted that the WQPD is 25% through the fiscal year, with personnel expenditures at \$89,000. Of the \$113,000 budgeted for Operations and Maintenance, \$16,000 (14% of budget) has been spent. Revenue currently trails expenditures by \$86,000; however, Ms. McBroom noted that is normal since we do not receive our property bills until November and May. Total cash available is \$233,254 with the statutorily required 90-day reserve of \$121,000. Ms. McBroom noted that the current cash available balance is \$233,254. The WQPD anticipates reducing available cash by

approximately \$70,000 for the year by completing all tasks that were presented with the budget. Expected ending cash balance will be about \$251,000.

The Board discussed the ending cash balance and the rationale behind spending versus saving. The Chair questioned why expenses exceeded income in Q1 and noted that without excess reserves, the WQPD would face financial challenges. Drenda Niemann explained that statutory requirements drive reserve reductions and that revenue typically increases in Q2 and Q3 due to tax collections. Ryan Leland added that the CIP fund is designated for equipment replacement, ensuring financial stability for future needs. Ms. McBroom provided examples of equipment covered under the CIP fund. Sheri Ohs-Mosley inquired about income line item 363, "Penalties & Interest." Ms. McBroom stated she would follow up for clarification, while Ms. Niemann suggested it likely represents taxpayer penalties.

Ms. McBroom also reviewed Fund 140 for rewatering donations, which has a current balance of \$26,626, and Fund 124 for the Grizzly Gulch grant, with \$3,144 remaining after the final payment to RESPEC. She noted an additional small grant from the Conservation District and a \$10,000 DEQ bond for the project. At this stage, efforts focus on protecting vegetation with added fencing.

## **BOARD DISCUSSION**

Ms. McBroom led the agenda discussion on open board positions. She noted that Commissioner Rolfe has identified a potential candidate from East Helena, and the WQPD will wait for an appointment by the East Helena City Council. Ms. Niemann added that the mayor plans to include this item on the next council meeting agenda. The discussion shifted to water rights and infrastructure issues in East Helena, particularly regarding a planned 6,000 housing units' development and concerns about groundwater depletion. The planned development assumed that the water rights would go with the property, but the state requested they stay in-stream due to concerns of drying up Prickly Pear Creek. The discussions continued mentioning several neighborhoods with severe ongoing water rights concerns. Mr. Johnson asked Mr. Leland how this plays into the city's growth plan. Mr. Leland reported that Helena is conducting a joint infrastructure study with the county to assess water and sewer extension needs, while protecting existing municipal water rights on Canyon Ferry.

Ms. McBroom returned to the agenda item regarding board positions, noting that the bylaws do not specifically require members to reside within WQPD boundaries. This clarification arose from consideration of a potential candidate from the Conservation District.

## **OUTREACH/SOCIAL MEDIA**

Ms. McBroom moved to the next agenda item regarding social media. She noted that the WQPD maintains a Facebook page and that the LCPH PIO regularly posts WQPD related items along with WQPD staff. She highlighted that the recent septic seminar was wildly successful and well attended, largely due to social media outreach. The board agreed on the need for improved public outreach and visibility, suggesting additional

communication channels such as social media, utility bill inserts, and direct mailers to educate the public about the WQPD services and responsibilities.

The Board then shifted topics discussing the challenges of identifying and monitoring unpermitted septic systems. Ms. Niemann noted that homeowners are responsible for maintenance, but issues often go unnoticed until problems arise. Mr. Sargeson, LCPH Operations Manager, mentioned an ongoing project with a vendor to develop a comprehensive septic system inventory for the county, which will support future planning related to water sources and annexation.

Ms. McBroom asked to revisit agenda item 6. She suggested adopting a practice used by other boards, where members provide brief updates on committees or boards they participate in. This approach would foster better awareness of community activities and strengthen connections among board members. Mr. Kerins supported the suggestion and asked the board to consider the idea for discussion at a future meeting.

### **UNIONVILLE UPDATE**

The meeting shifted to the next agenda item, where Mr. Kegan McClanahan reviewed the 2019 Unionville Water Quality Study. The study, conducted in collaboration with Carroll College, revealed elevated levels of nitrates, uranium, and radon in private wells. Nitrate contamination was likely linked to septic systems, while uranium and radon levels exceeded safe drinking water limits. Recommendations included for homeowners to inspect and maintain septic systems, consider water treatment options, and take advantage of free manganese testing offered through the WQPD program.

A follow-up study was completed in 2023 by a Big Sky Watershed Corps member. Findings indicated that arsenic was present in all wells but remained below safe limits, and manganese levels were well within acceptable ranges. Mr. McClanahan outlined recommendations for affected homeowners, including testing and inspecting septic systems, exploring in-home treatment options for uranium, and testing crawl spaces for radon. He emphasized the importance of sharing results with constituents and detailed project deliverables: letters to homeowners, a two-page summary, public meetings, a story map on the website, and a technical report. He also noted that one well showed elevated arsenic levels (28–30 ppb), two to three times the drinking water limit. The board discussed potential health clusters related to these findings and acknowledged the lack of data to confirm such clusters.

### **MEMBER DISCUSSION**

Mr. McClanahan provided a brief update on the wastewater issues near North Montana and Lincoln Rd. This is the location where the treatment plant was dumping the sewage on the ground. Mr. Plant, LCPH sanitarian, and Mr. McClanahan did visit the site and found no cause for additional site visits. The property owners are under DEQ enforcement for permit violations. The board discussed the sewage disposal mishap and crossed over to a lengthy discussion on land application of sewage sludge.

The Chair proposed establishing two committees: an executive committee to focus on filling vacant board seats and a finance committee. Mr. Kerins asked board members to consider these committees, noting that the topic will be placed on the December agenda for further discussion. He also reiterated the new agenda item going forward, which will be dedicated to past business.

Mr. Leland noted the city is currently underway with the crosstown connector project. He noted that intermittent outages in the city may happen, and the water will switch to the Missouri River Treatment Plant. He shared that the city has several ARPA projects underway. He invited the board to see the digesters as one of the bioreactors is down and the lid is off. The board further discussed the sludge and uses of it. Ms. Hammer invited Mr. Leland to join the Citizens Council meeting to provide education regarding the Helena water. Mrs. Johnson suggested the board take a look at the Helena Land Use Plan that is scheduled for adoption in the next month or so.

Drenda Niemann announced that Kegan McClanahan was selected as Employee of the Quarter for his exceptional work and willingness to assist with tasks beyond his regular duties. His contributions included work on the LCPH community van, resolving IT issues, and helping move heavy equipment

#### **PUBLIC COMMENT**

There was no public comment.

Next meeting will be December 2, 2025, at 4:00 p.m.

There being no public comment; the meeting was adjourned at 5:37.



**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**4**

☐ Minutes    ☒ Board Member Discussion    ☐ Staff & Other Reports    ☐ Action    ☐ Hearing of Delegation

**AGENDA ITEMS:** Welcome– East Helena Council Member Don Dahl

**PERSONNEL INVOLVED:** Don Dahl

**BACKGROUND:** Board member addition

☐ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
S. Ohs-Mosley						
T. Rolfe						
A. Johnson						

**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**5**

☐ Minutes   ☒ Board Member Discussion   ☒ Staff & Other Reports   ☐ Action   ☐ Hearing of Delegation

**AGENDA ITEMS:** Water Watchers Presentation

**PERSONNEL INVOLVED:** Gary Burton

**BACKGROUND:** Water Watchers

☐ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
S. Ohs-Mosley						
T. Rolfe						
A. Johnson						

**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**6**

☐ Minutes    ☒ Board Member Discussion    ☐ Staff & Other Reports    ☐ Action    ☐ Hearing of Delegation

**AGENDA ITEMS:** Executive/Finance Committee discussion

**PERSONNEL INVOLVED:** Board Chair

**BACKGROUND:** Consideration of committees

☐ **ADDITIONAL INFORMATION ATTACHED**

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
S. OhsMosley						
T. Rolfe						
A. Johnson						

**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**7**

☐ Minutes   ☒ Board Member Discussion   ☒ Staff & Other Reports   ☐ Action   ☐ Hearing of Delegation

**AGENDA ITEMS:** Past business: Water rights and Tenmile complaint

**PERSONNEL INVOLVED:** Jennifer McBroom

**BACKGROUND:** Previous board business to review

X **ADDITIONAL INFORMATION ATTACHED**

[https://www.msuexponent.com/news/state/coalition-sues-montana-dnrc-seeking-to-invalidate-exempt-well-water-law/article\\_07c78154-d42d-5d10-9119-bdfdec16f69a.html?utm\\_medium=social&utm\\_source=email&utm\\_campaign=user-share](https://www.msuexponent.com/news/state/coalition-sues-montana-dnrc-seeking-to-invalidate-exempt-well-water-law/article_07c78154-d42d-5d10-9119-bdfdec16f69a.html?utm_medium=social&utm_source=email&utm_campaign=user-share)

**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
S. Ohs-Mosley						
T. Rolfe						
A. Johnson						

# Groups sue Montana over exempt wells water impacts

By: Jonathon Ambarian

Posted 7:41 PM, Nov 17, 2025



By: Jonathon Ambarian

Posted 7:41 PM, Nov 17, 2025

HELENA — Earlier this month, [MTN reported](#) on changes in how the state of Montana is handling water rights for developments that use “exempt wells.” Now, a new lawsuit is challenging the use of exempt wells altogether.

A wide-ranging group of plaintiffs – including the Montana League of Cities and Towns, agriculture organizations and conservation groups – is suing the state and the Montana Department of Natural Resources and Conservation. They argue that the cumulative effects of exempt wells – relatively small water users that don’t need to go through the full process

of securing a groundwater permit – are harming long-time water rights holders.

“There isn't an opportunity for other water users to get notice and potentially object to any things that might infringe on their water rights,” said Karli Johnson, state affairs coordinator for the Montana Farm Bureau Federation, one of the plaintiffs. “That's really an important piece.”

In places like the Helena Valley, there's been a history of subdivisions built using exempt wells. The state allows developments to use exempt wells if they use less than 10 acre-feet of water per year. DNRC estimates a typical two-bedroom home uses about one-quarter of an acre-foot per year.

In their complaint, the plaintiffs said there have been about 141,000 groundwater appropriations through exempt wells between 1973 and 2023, with almost three-quarters of those being for domestic use or lawns and gardens. They argued there hasn't been serious tracking on how the billions of gallons those wells could be using are affecting other water rights holders.

In Montana, as in other Western states, water law grants priority to the water right that was claimed the earliest. In so-called “closed basins,” which cover much of western Montana, no new water rights can be claimed, so a project wanting a water permit must reach an agreement with an existing rightsholder to offset their use.

When there's a water shortage, holders of “senior water rights” dating back decades or more are allowed to “call” users with more recent “junior water rights” and demand they cut back their water use. Johnson said

one of MFBF's biggest concerns is that exempt wells make it harder to enforce a call when a farmer or rancher tries to make it.

“Water rights are private property rights, and those private property rights are in context of all the other water rights in the system,” she said. “When a portion of the water is being allocated outside the system, it affects everyone – and most of all, it affects the resource. In agriculture, it's very important to us to be good stewards of our resources.”

The League of Cities and Towns' main argument is that exempt wells are depleting aquifers and threatening municipal water supplies – often based on senior water rights. Conservation groups, including the Clark Fork Coalition and Trout Unlimited, are worried about the impact the growing number of exempt wells will have on streamflows.

This is far from the first time the state's exempt well policies have been challenged in court. It was a 2024 ruling in one of those lawsuits that led to DNRC changing its interpretation of when an well is considered a “combined appropriation” of water – leaving several subdivisions around the state in limbo, [as reported by MTN](#).

Johnson said MFBF has been working with lawmakers on possible changes to the exempt well system for years, but that there hasn't been a path to a solution.

“It's become apparent that we need a backstop and we need to know where the road ditches are, so that we can find a viable legislative solution,” she said.

With the demand for housing in Montana still high, MTN asked Johnson if getting rid of the exempt well option might make it harder for construction to keep up.

“The intent is to incentivize responsible development that goes through the proper process,” she said. “If your usage of water really isn't impacting anyone, it shouldn't be difficult to get a permit.”

A DNRC spokesperson told MTN the agency is reviewing the legal challenge, but that they won't comment further on active litigation.

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MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

MONTANA LEAGUE OF CITIES AND  
TOWNS, ASSOCIATION OF GALLATIN  
AGRICULTURAL IRRIGATORS, CLARK  
FORK COALITION, KEVIN AND  
KATRIN CHANDLER,

Cause No. ADV-25-2025-0000710-DK

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Presiding Judge: Hon. Mike Menahan

MONTANA ENVIRONMENTAL  
INFORMATION CENTER, MONTANA  
FARM BUREAU FEDERATION, MARK  
RUNKLE, and TROUT UNLIMITED,

Plaintiffs,

v.

STATE OF MONTANA and MONTANA  
DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION,

Defendants.

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### **INTRODUCTION**

1. Plaintiffs Montana League of Cities and Towns, Association of Gallatin Agricultural Irrigators, Clark Fork Coalition, Kevin and Katrin Chandler, Montana Environmental Information Center, Montana Farm Bureau Federation, Mark Runkle, and Trout Unlimited (collectively, “Plaintiffs”) bring this civil action against Defendants State of Montana, and Montana Department of Natural Resources and Conservation (together, “Defendants”) challenging the constitutionality of Mont. Code Ann. § 85-2-306(3)(a)(iii), commonly known as the “Exempt Well Law.”

2. Plaintiffs seek declaratory and injunctive relief under the Montana Constitution, Article II, Section 3 (protection of property rights) and Article IX, Section 3 (water rights); Article II, Sections 4 and 17 (equal protection and due process); and Article II, Sections 8 and 9 (rights to participate and know). By authorizing unregulated groundwater development, the Exempt Well Law undermines these constitutional protections afforded to senior water right appropriators and threatens the integrity of Montana’s water resources.

3. The Montana Constitution declares that the waters of the State “are the property of the state for the use of its people and are subject to appropriation for beneficial uses as

provided by law,” and “[a]ll existing rights to the use of any water for any useful or beneficial purpose are hereby confirmed and recognized.” Mont. Const. art. IX, § 3(3). The Constitution further imposes a duty on the legislature to “provide for the administration, control, and regulation of water rights . . . .” *Id* § 3(4). Adequate administration and regulation of water rights necessarily require a system where senior water right holders can protect their existing water rights from injurious new water developments.

4. In 1973, the Legislature enacted the Montana Water Use Act, Title 85, Chapter 2 (the “Water Use Act”) as a remedial statute designed to strictly adhere to the prior appropriation doctrine and to provide for the “administration, control, and regulation of water rights . . . and confirm all existing water rights . . . .” Mont. Code. Ann. §§ 85-2-101(2), (4). The Legislature specifically confirmed that it was doing so in accordance with its duty under Article IX, Section 3. *See Mont. Power Co. v. Carey*, 211 Mont. 91, 98, 685 P.2d 336, 340 (1984) (The Water Use Act “was designed to protect senior water rights holders from encroachment by junior appropriators adversely affecting those senior rights.”)

5. The Water Use Act established a permitting framework for new appropriations for beneficial use in accordance with its “core purpose” to “protect[] senior water rights and the prior appropriation doctrine . . . .” *Clark Fork Coal. v. Tubbs*, 2016 MT 229, ¶ 24, 384 Mont. 503, 380 P.3d 771.

6. While the precise number of water rights issued under the Exempt Well Law is unknown, the Department of Natural Resources and Conservation (“DNRC”) estimates that approximately 141,000 exempt groundwater appropriations were authorized between 1973 and 2023. Of the purposes recorded for those appropriations, roughly 72% are classified as domestic

or lawn-and-garden, demonstrating that the vast majority of exempt groundwater development in Montana serves residential uses.<sup>1</sup>

7. Each of these exempt wells has been summarily granted a new water right with a priority date and subject to no analysis to determine whether such new water use is consistent with the Water Use Act, no process to ensure fulfillment of the State’s constitutional duty to protect senior water rights, and no mitigation required to minimize the depletion to Montana’s water resources.

8. The total volume of water appropriated through exempt wells is likewise unknown, as Montana law expressly prohibits the measurement of water use from exempt wells. *See* Mont. Code Ann. § 85-2-113(2)(b). Each exempt well authorizes the withdrawal of up to ten acre-feet of water per year for application to a beneficial purpose, yet there is no systematic method of monitoring or enforcing these statutory limits. As a result, neither the State nor senior water rights holders can determine how much water is actually being consumed under the Exempt Well Law or whether such withdrawals remain within the legal quantities authorized.

9. Montana’s highest volumes of domestic groundwater use occur in its fastest-growing urban and suburban regions, including the Bitterroot Valley (Basin 76H), Flathead Valley (Basin 76LJ), Helena Valley and Broadwater County (Basin 41I), Gallatin Valley (Basin 41H), and the West Billings area (Basin 43Q). These regions represent the state’s most concentrated centers of population growth and development, where rapid expansion of residential subdivisions and commercial areas has been fueled by reliance on individual exempt groundwater wells.

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<sup>1</sup> Montana Department of Natural Resources and Conservation, *Exempt Wells, Water Planning, and Growth Data, Comprehensive Water Review Stakeholder Working Group Working Document*, at 14-15 (Oct. 23, 2023), [https://dnrc.mt.gov/\\_docs/water/Comprehensive-Water-Review/meeting-materials/Statewide-Exempt-Well-Data-Working\\_Doc-Updated-10.26.pdf](https://dnrc.mt.gov/_docs/water/Comprehensive-Water-Review/meeting-materials/Statewide-Exempt-Well-Data-Working_Doc-Updated-10.26.pdf) (“DNRC Oct. 2023 Working Document”).

10. Montana law requires that surface water and groundwater be managed conjunctively as a single, interconnected resource. *See e.g. Mont. Trout Unlimited v. Mont. Dep't of Nat. Res. & Conservation*, 2006 MT 72, ¶¶ 40-42, 331 Mont. 483, 133 P.3d 224. In many basins, the available surface water has long been fully appropriated—some as much as ten times over the legally available supply.<sup>2</sup> In these fully appropriated basins, any new water use must be mitigated or offset by an equivalent reduction in existing consumptive use to prevent adverse effects on senior appropriators. However, the Exempt Well Law authorizes the development of new groundwater wells without any mitigation or offset requirement, allowing additional depletions in basins where all legally available water is already claimed, to the detriment of senior water rights holders.

11. Exempt wells do not require advance authorization from the DNRC, and the agency has no authority to deny or regulate the issuance of water right certificates for exempt wells so long as they comply with the procedural requirements of the Exempt Well Law. Instead, the well is drilled, the water is put to use, and the DNRC ministerially grants the exempt well owner a certificate of groundwater development not to exceed 35 gallons per minute (“gpm”) and 10 acre-feet per year.

12. The Exempt Well Law provides for no notice or participation process for other water users when new exempt wells have been drilled, operated, or issued a water right with a priority date. Senior appropriators receive no opportunity to object, limit, or prevent the development of such wells, even in fully appropriated basins. When exempt wells impair senior water rights, affected users are left with the nearly impossible task of identifying which well or

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<sup>2</sup> Jake Mohrmann, *Mitigation Update: Update to Water Policy Interim Committee*, DNRC Water Sciences Bureau Chief (Oct. 21, 2025), [https://archive.legmt.gov/content/Committees/Interim/2025-2026/WPIC/October\\_20\\_21\\_2025/13.1.DNRC\\_Mitigation\\_Update\\_Oct2025.pdf](https://archive.legmt.gov/content/Committees/Interim/2025-2026/WPIC/October_20_21_2025/13.1.DNRC_Mitigation_Update_Oct2025.pdf).

wells may be causing adverse impacts and of pursuing individual civil enforcement actions under the Water Use Act—an ineffective and unrealistic remedy that fails to protect senior rights.

13. This problem is exacerbated by the notoriously incomplete and unreliable exempt well records maintained by the DNRC. For decades, the agency accepted imprecise and inconsistent well descriptions from applicants—often identifying locations by the nearest 40- or 160-acre quarter section, with no street address, subdivision name, or lot-and-block reference. Even the claimed purposes for each well vary wildly between exempt wells, often resulting in some confusion as to how, precisely, the water is being put to beneficial use and where. The information recorded on groundwater certificates frequently conflicts with the corresponding well-drillers’ well logs. As a result, the DNRC itself has publicly acknowledged that its exempt well records are imprecise and frequently inaccurate, particularly with respect to well locations, aquifer identification, and actual flow rates or volumes.<sup>3</sup>

14. Accessing those records is equally burdensome for the public. DNRC’s online database provides no aggregated or searchable listing of exempt wells within a basin or watershed. Instead, users must conduct advanced, parcel-by-parcel searches by township, range, section, and quarter section, and manually open each individual casefile. There are no ready-made tabulations or mapping tools to identify or analyze exempt well development, leaving senior appropriators without a practical means to determine where such wells exist or how they may affect their water rights.

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<sup>3</sup> DNRC acknowledges the shortcomings with its data and record-keeping—there is no accounting for non-filed wells and the agency’s water right records only correspond with roughly 30% of all well logs filed in the state. DNRC Oct. 2023 Working Document at 7.

15. A Montana court has found that, cumulatively as of 2020, 1.2 to 1.9 million acre-feet,<sup>4</sup> or 417 to 622 billion gallons of water could be appropriated by exempt wells annually. Order at 84, *Upper Missouri Waterkeeper, et al. v. Broadwater County and Mont. Dep’t of Nat. Res. & Conservation*, Cause No. BDV-2022-38 (Mont. First Jud. Dist. Ct., 2024) (“Each additional year adding 3,000 exempt wells entitles their owners to an additional 9 billion gallons of water each year. At this rate, in less than 50 years exempt wells will be entitled to draw a trillion gallons of water each and every year.”)

16. In 2009, senior water right holders, including Plaintiffs Clark Fork Coalition and Katrin Chandler, petitioned DNRC to declare that its administrative rule implementing the Exempt Well Law violated the Water Use Act’s protection for senior water rights. The Petition was resolved in 2016 when the Montana Supreme Court affirmed a 2014 district court decision invalidating DNRC’s rule because it “expand[ed] the exemption by limiting the number of appropriations which must be excepted, rendering meaningless the underlying limit on volume or quantity of 10 acre-feet per year from the same source.” *Clark Fork Coal.*, ¶ 27.

17. Despite the Supreme Court’s ruling in *Clark Fork Coalition*, large-scale groundwater development through exempt wells has continued unabated. Between 2014, when the DNRC’s prior rule was reinstated by the district court’s decision, and 2023, DNRC received more notices of exempt wells annually—on average around 2,800—than in any of the five years prior to 2014.<sup>5</sup> That number continues to rise year after year. While not every exempt well is likely using the full 10 acre-foot per year exemption, adding 2,800 exempt wells per year results

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<sup>4</sup> An acre-foot, equal to approximately 325,851 gallons of water, represents the volume necessary to cover one acre of land to a depth of one foot. This quantity is commonly used as a standard measure of water rights and allocation in Montana and elsewhere. By way of illustration, one acre-foot is sufficient to serve two to three households for a year or to fill an Olympic-sized swimming pool to about half its capacity.

<sup>5</sup> DNRC Oct. 2023 Working Document at 14.

in up to an additional 28,000 acre-feet of water appropriated per year, for as long as those exempt wells remain in existence.

18. The State knows that exempt wells adversely affect senior water rights. Yet, legislative attempts to address the exempt well loophole have been unsuccessful in multiple sessions, including the 2025 session, demonstrating the legislature's unwillingness or inability to bring the Water Use Act into constitutional compliance.

19. Exempt well development has become a major pressure on groundwater use across Montana's principal aquifers, particularly in basins where surface and groundwater are hydraulically connected and surface water is already fully appropriated. Despite the recognition that basins in high-growth areas are fully appropriated, the State continues to authorize these exempt wells without public notice, mitigation requirements, or evaluation of potential effects on existing water rights or surface flows.

20. Plaintiffs seek the requested judicial remedy as the appropriate recourse to restore constitutional protections afforded to senior water appropriators. A judicial declaration that unregulated groundwater development pursuant to the Exempt Well Law is unconstitutional will provide a remedy to a long-standing loophole in Montana's prior appropriation doctrine that has increasingly become a cause of injury to senior water right holders in Montana. *See Mont. Trout Unlimited*, ¶¶ 40-42 (prohibiting the processing or granting of groundwater permit applications that impact surface water, resulting in the passing of HB 831 (2007) codified at Mont. Code Ann. §§ 85-2-360 – 364, creating statutory authority for mitigation plans).

21. Plaintiffs represent diverse constituencies—including municipalities, farm and ranch families, irrigators, individual homeowners and landowners, and conservation organization members—and they are united by a shared legal and practical interest in the proper



administration of Montana’s water laws and the protection of senior water rights. Each Plaintiff approaches the issue of unregulated groundwater development from a distinct perspective. Municipal members of the Montana League of Cities and Towns seek to safeguard reliable public water supplies and their senior water rights. Housing developer Mark Runkle seeks to create an equal process for residential development on public systems while the Exempt Well Law unfairly and unconstitutionally subsidizes off-system, unmitigated, and unreviewed water use. Agricultural Plaintiffs—the Association of Gallatin Agricultural Irrigators, Kevin and Katrin Chandler, and the Montana Farm Bureau Federation—seek to preserve irrigation and agricultural water rights essential to farm and ranch operations. And conservation groups—Clark Fork Coalition, Trout Unlimited, and the Montana Environmental Information Center—seek to protect instream water rights and aquatic habitat. Their combined participation reflects the broad scope of the Exempt Well Law’s impact across multiple sectors of Montana’s economy, environment, and communities.

22. Plaintiffs seek relief from this Court to vindicate and protect their constitutional rights.

### **JURISDICTION AND VENUE**

23. This Court has original jurisdiction over this action pursuant to Article II, Section 16, and Article VII, Section 4 of the Montana Constitution, and pursuant to Mont. Code Ann. § 3-5-302.

24. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-01, *et seq.* (the “UDJA”).

25. Venue is proper in this Court pursuant to Mont. Code Ann. § 25-2-126(1). This is an action against the State of Montana and an agency of the State of Montana.

## **PARTIES**

### **Plaintiffs**

26. Plaintiff **Montana League of Cities and Towns (the “League”)** is a non-partisan, non-profit association representing 121 incorporated cities and towns across the State of Montana. The League is the clearinghouse through which Montana’s communities work cooperatively to build and maintain a vibrant, healthy, and safe Montana. The League’s member cities and towns are collectively responsible for serving over 600,000 Montana residents, businesses, and public facilities with clean and reliable municipal water supplies.

27. The League’s members own over 1,000 enforceable water rights for municipal, industrial, irrigation, fishery, recreation, commercial, fire protection, pollution abatement, and various other beneficial uses necessary to support and serve the residents of the cities and towns of Montana. Approximately 320 of those rights have an enforceable priority date more than 100 years old. Moreover, the League’s member cities and towns are responsible for land use planning, including long-term planning for reliable and legally available water supplies to support critically needed housing and economic growth in Montana.

28. The League has advocated for the elimination or restriction of exempt wells on behalf of its members for over a decade. The League filed an amicus brief in support of the Clark Fork Coalition and its co-petitioners in *Clark Fork Coalition*. After the district court’s 2014 ruling that the administrative rule at issue in that case violated the Water Use Act, the League began monitoring the number of water rights for exempt well appropriations being issued, expecting to see a reduction because of the invalidation of DNRC’s “physically manifold” rule.

**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**8**

☐ Minutes    ☒ Board Member Discussion    ☐ Staff & Other Reports    ☐ Action    ☐ Hearing of Delegation

**AGENDA ITEMS:** Board member updates

**PERSONNEL INVOLVED:** Board members

**BACKGROUND:**

☐ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
S. Ohs-Mosely						
T. Rolfe						
A. Johnson						

**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**9**

☐ Minutes    ☒ Board Member Discussion    ☐ Staff & Other Reports    ☐ Action    ☐ Hearing of Delegation

**AGENDA ITEMS:** Board Member Discussion

**PERSONNEL INVOLVED:** Board Members

**BACKGROUND:** This time has been set aside for the board members to bring up any topics they would like to discuss or add to the agenda for future meetings.

☐ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
S. Ohs-Mosley						
T. Rolfe						
A. Johnson						

**LEWIS & CLARK COUNTY  
WATER QUALITY PROTECTION DISTRICT  
Helena, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

**December 2, 2025**

**Agenda Item No.**

**10**

☐ Minutes    ☒ Board Member Discussion    ☐ Staff & Other Reports    ☐ Action    ☐ Hearing of Delegation

**AGENDA ITEMS:** Public Comment

**PERSONNEL INVOLVED:** Public and Board Members

**BACKGROUND:** Time is allowed for public comment on matters within the Water Quality Protection District's boundaries not mentioned on the agenda.

**RECOMMENDATION:** n/a

☐ ADDITIONAL INFORMATION ATTACHED

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**BOARD ACTION:**

**NOTES:**

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
A. Johnson						
T. Rolfe						
S. Ohs-Mosley						

**Attendance Record for the  
Lewis & Clark County Water Quality Protection District  
FY 2026**

Board Member	Jul	Aug	Sep	Oct	Dec	Jan	Feb	Mar	Apr	May	Jun
P. Johnson	T	X	*	X							
E. Kerins		Xp	*	X							
D. Hammer		O	*	X							
R. Leland	T	O	*	X							
A. Johnson	T	X	*	X							
T. Rolfe	T	X	*	X							
S. Ohs-Mosley	T	X	*	X							

**Legend:**

X = Present  
Xp = By phone/video  
\* = No meeting held  
O = Absent  
OE = Absent/Excused  
T = Tour



# Lewis and Clark County Water Quality Protection District

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Fax: 406.447.8398

**Commissioner Tom Rolfe**  
316 N. Park Helena, MT 59623  
406-347-8303 (W)  
Email: [trolfe@lccountymt.gov](mailto:trolfe@lccountymt.gov)

Representing the Board of County  
Commissioners

**Vacant**

Representing the East Helena City Council

**Vacant**

Representing the L & C Conservation District

**Ryan Leland**  
316 N. Park Helena, MT 59623  
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Representing the Helena City Commission

**Diana Hammer**  
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Representing the Helena Citizen's Council

**Sheri Ohs-Mosley**  
133 Alfalfa Road, Helena, MT 59602  
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Representing the Board of Health

**Edward Kerins, Chair**  
920 Peosta Ave. Helena, MT 59601  
(406)594-1040 (H)  
Email: [kerins@mt.net](mailto:kerins@mt.net)

Term ends 06/30/27 – General Public 2<sup>nd</sup> Term

**Patrick Johnson**  
1271 Sawbuck Place Helena, MT 59602  
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Term ends 06/30/27 – General Public 2<sup>nd</sup> Term

**Adel Johnson**  
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Term ends 06/30/26 – General Public 1<sup>st</sup> Term



# Lewis and Clark County Water Quality Protection District

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1930 Ninth Ave  
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## **MEETING DATES FOR FISCAL YEAR 2026**

July 22, 2025

August 26, 2025

September 23, 2025

October 28, 2025

December 2, 2025

January 27, 2026

February 24, 2026

March 24, 2026

April 28, 2026

May 26, 2026

June 23, 2026

All board meetings are held in room 72 of the Murray Building- Lewis and Clark Public Health, 1930 Ninth Ave, Helena, Montana and via Zoom at 4:00 p.m. The meetings are generally completed by 5:30 p.m. The public is always welcome to join and meeting.