April 17, 2017

The Honorable Steve Bullock
Governor State of Montana
PO Box 200801
Helena, MT 59620-0801

RE: SB 248

Dear Governor Bullock,

On behalf of the groups listed below, I am writing to respectfully ask that you veto SB 248—legislation that guarantees an exempt well for any parcel of land created by family transfer after October 20, 2014.

Like HB 339, which the signatories to this letter are also asking you to veto, SB 248 from Senator Mark Blasdel would revive the highly-controversial exempt well loophole that was declared invalid by the Courts after years of litigation. It deserves to be vetoed for four reasons:

1. **The bill creates a loophole-within-a-loophole to the detriment of land-use planning.** Montana’s Subdivision and Platting Act allows property owners to divide land without undergoing a subdivision review process, as long as the new lots or parcels are being transferred to a family member. However in fast-growing counties, it is common practice for these new lots and parcels to be sold to outside parties once they’re created.

   Since October 20, 2014 (the date when SB 248 would apply), 590 exempt lots have been created in Montana through family transfer. In Gallatin County, 27% of the new tracts were put on the market and sold within one year after the exemption was granted. Yellowstone, Cascade, and Sanders counties reported similar transfer rates. In Cascade, the new lots stayed in family hands for an average of 2.6 months. If SB 248 becomes law, the automatic exempt wells for these parcels would create an added incentive to divide up land through family transfer, making land-use planning and water management challenging in many parts of Montana.

2. **The bill puts senior water rights at risk.** As outlined in our veto request letter for the other “exempt well loophole” bill, HB 339, SB 248 is also a direct threat to senior water rights. It creates a free pass for appropriating large amounts of water for development. And it upends Montana’s “first in time, first in right” doctrine of prior appropriation, which protects existing water right holders. This is the bedrock of the state’s agricultural economy. We’ve seen what happens under the exempt well loophole: unregulated, sprawling development, with existing water rights ignored, aquifers vulnerable to over-pumping, and stream flows in peril. SB 248 is loophole déjà vu all over again.

3. **The bill will increase costs of water treatment in our municipalities.** Each family transfer exempt well will likely be accompanied by an individual
septic system, creating a pathway for nutrient pollution getting into local aquifers. SB 248, like HB 339, would allow continued exempt well-driven development in unincorporated areas, leaving cities and towns to bear the cost of cleaning up non-regulated non-point source pollution through increasingly expensive standards on public wastewater treatment systems.

4. **The bill ignores past Court rulings and is vulnerable to future litigation.**
As outlined in our veto request letter regarding HB 339, this bill’s exempt well language creates the same type of loophole that the Courts recently closed after a decade of administrative and legal proceedings. SB 248—which doesn’t even have the density sideboards that HB 339 has—is also in direct conflict with the purpose of the Montana Water Use Act and the state’s legal framework for how Montanans work together to share and manage our irreplaceable water resources. It is certain to be challenged, if it becomes law.

Again, like HB 339, SB 248 is another attempt to circumvent responsible water management. It has the potential to allow developers to lock up large quantities of water without undergoing any of the review or permitting processes that all other water users must follow. It threatens the security of senior water rights holders. And it puts irreplaceable water resources at risk.

Please exercise your veto authority on SB 248. Thank you for your consideration.

Sincerely,

Karen Knudsen
Executive Director

Derf Johnson, Staff Attorney
MT Environmental Information Center

Tim Burton, Executive Director
MT League of Cities & Towns

Randy Carpenter, Board of Directors
MT Smart Growth Coalition

cc: John Tubbs, Director, Montana Department of Natural Resources and Conservation