



# COMPREHENSIVE WATER REVIEW UPDATE

## WPIC 3.19.2024

Anna Pakenham Stevenson, Water Administrator



# 2023 WORKING GROUP

- Vicki Baker (irrigation)
- Jocelyn Cahill (irrigation)
- Krista Lee Evans (irrigation)\*
- Spencer Woith (domestic, new development)\*
- Mark Taylor (domestic, new development)
- Kelly Lynch (municipal)\*
- Brian Heaston (municipal)\*
- Ryan McLane (attorney multiple)\*
- Nicole Rolf (stock water)
- Raylee Honeycutt (stock water)\*
- Jan Thomson-Rouse (hydropower)
- Alan Olson (industrial)
- Arnold Bighorn (tribal)
- Abby Brown (attorney, multiple)\*
- Andrew Gorder (conservation)\*
- Clayton Elliot (recreation)
- Julie Merritt (consultant multiple) \*
- Kurt Hafferman (federal projects)

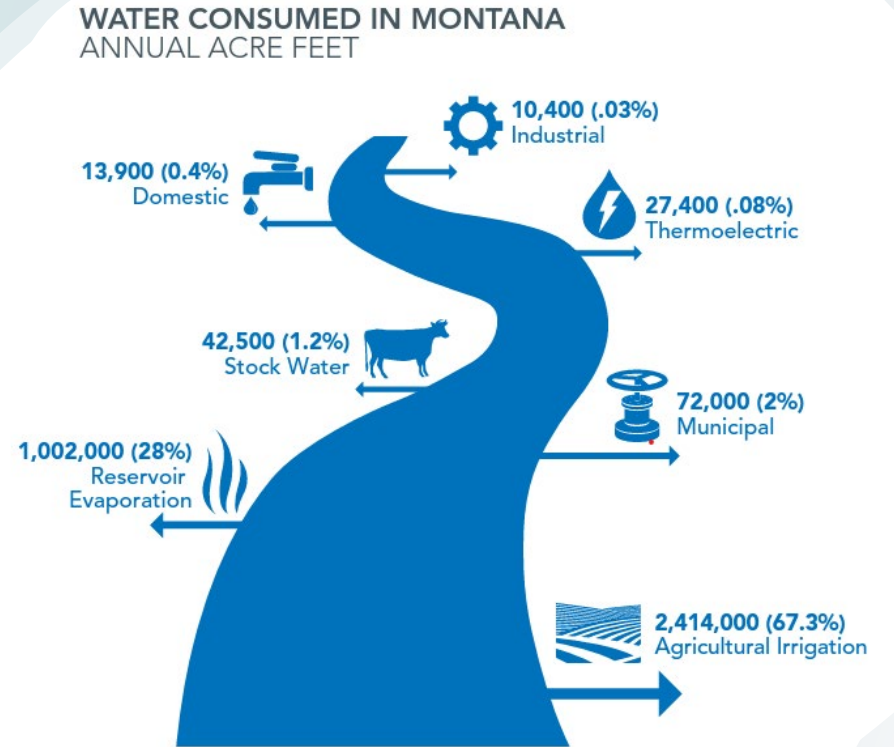


Figure 10: Water Consumption in Montana by Purpose

# WORKING GROUP FOCUS



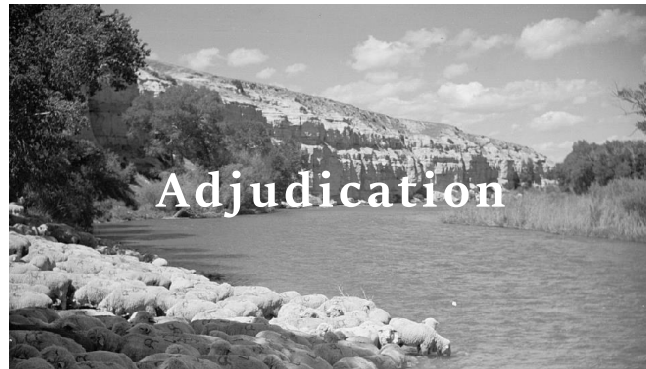
Statewide Adjudication Final Decree Transition- how do we transition from statewide water adjudication to long-term administration of water rights?



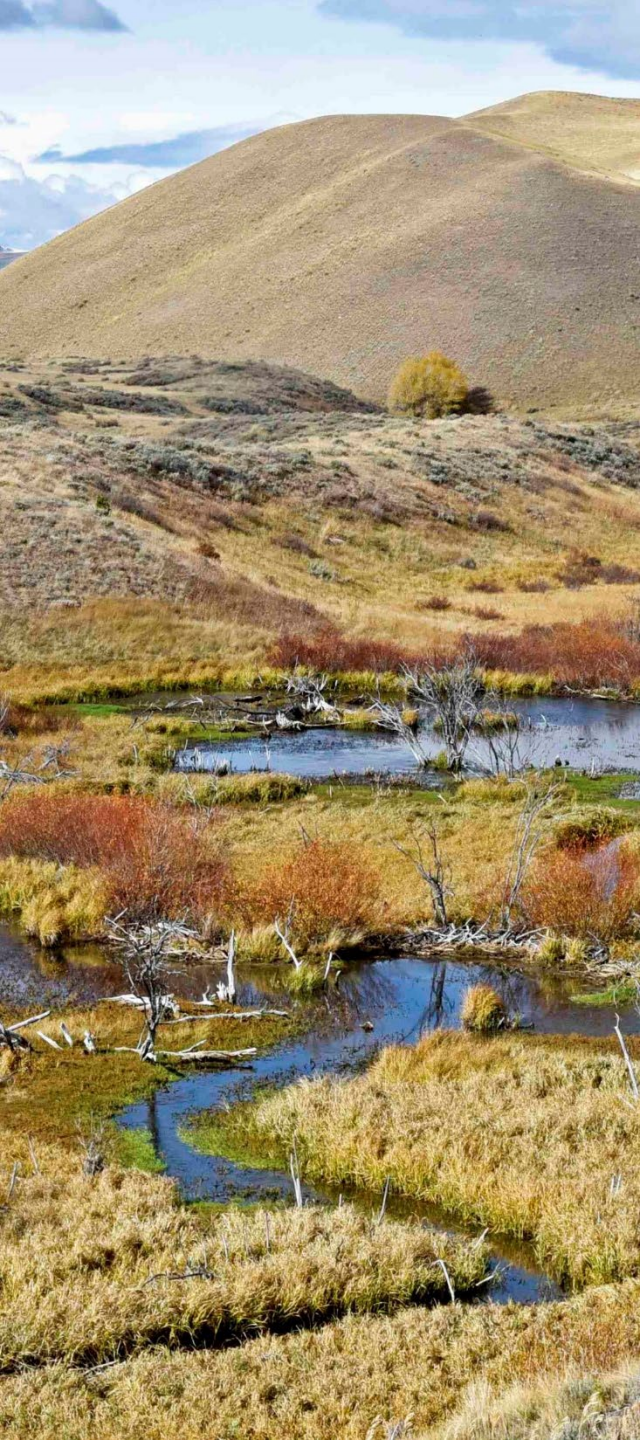
Water Planning, Growth, and Exempt wells- how do we meet our new water demands while protecting existing water rights?

# FINAL DECREE TRANSITION

How do we transition from statewide water adjudication to long-term administration of water rights?



July 1, 1973



# JUDICIAL NEEDS

1. Clear roles and responsibility for water administration post final decree

- Conflicting and uncertainty in statute today
- Difficult for water users to have to navigate legal system



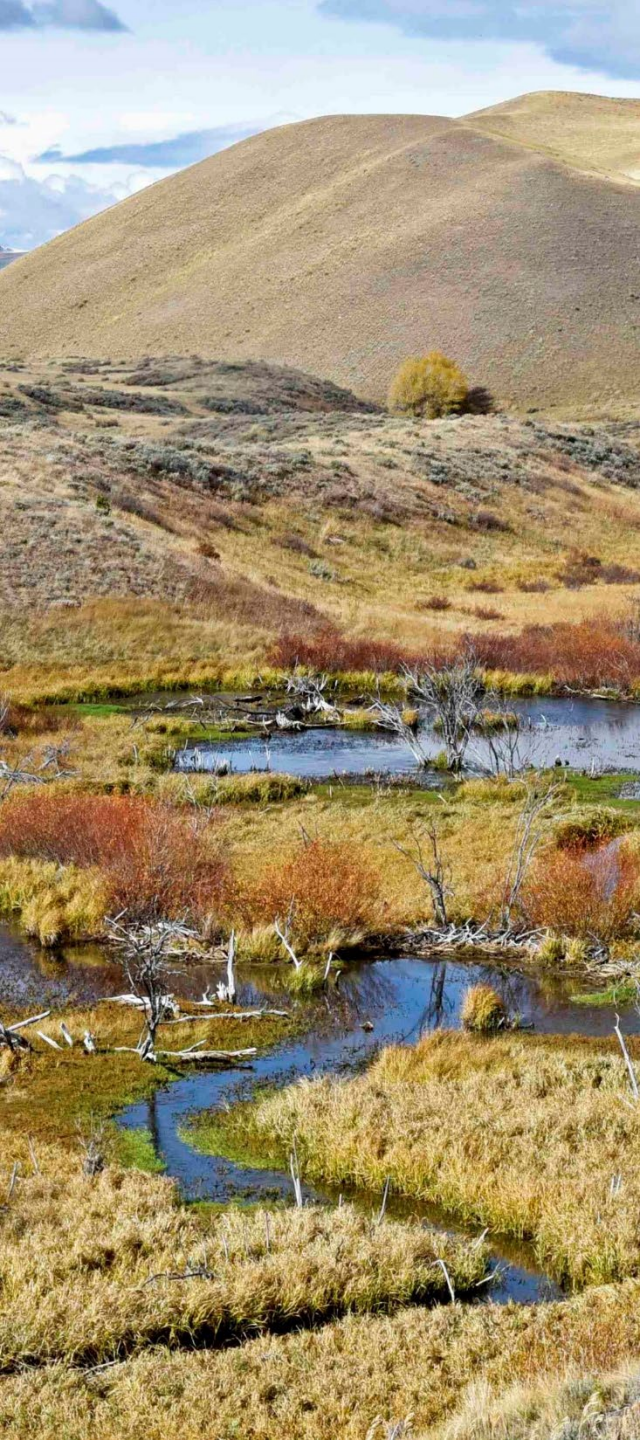
District Court



Division Court

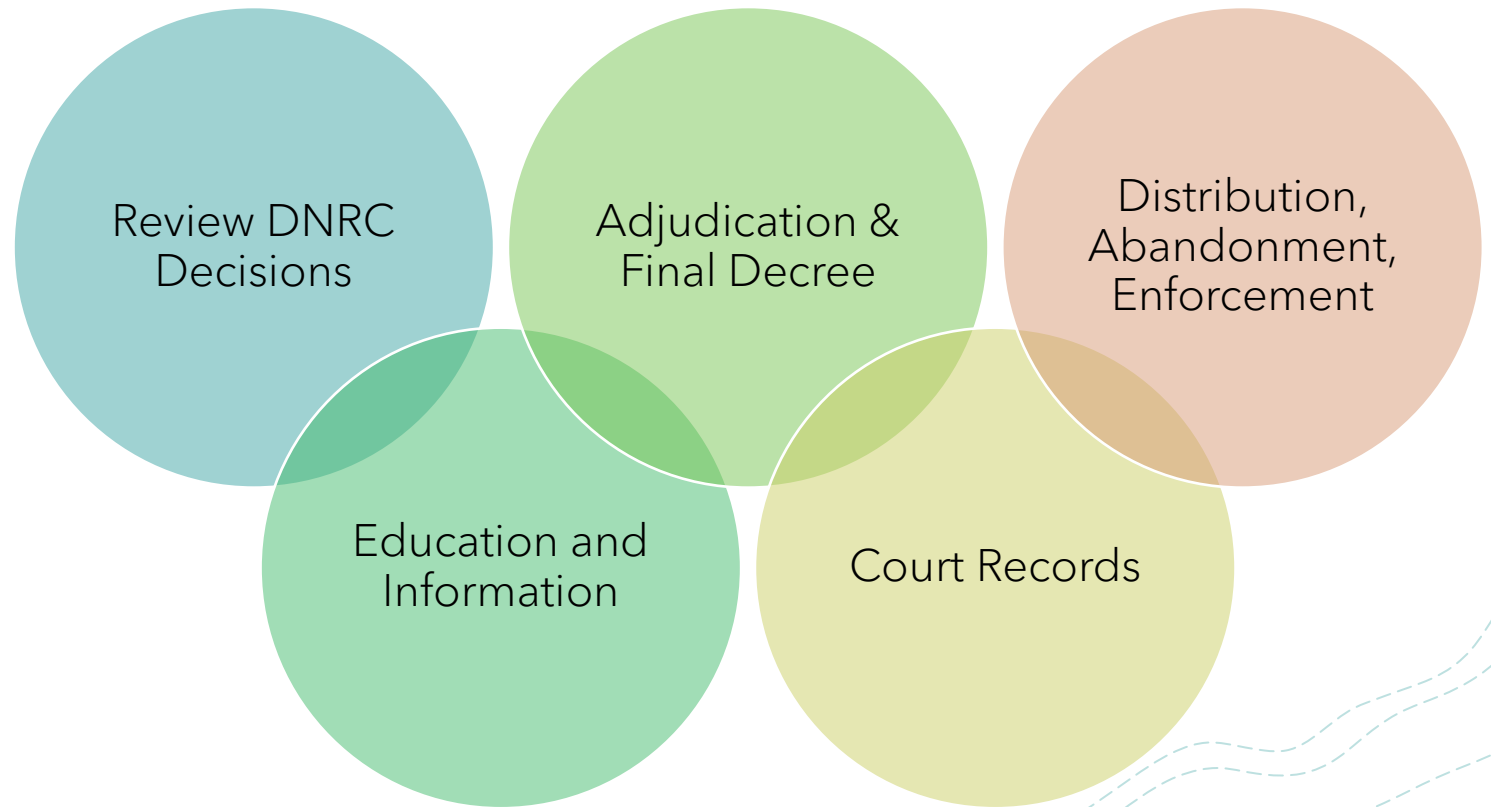


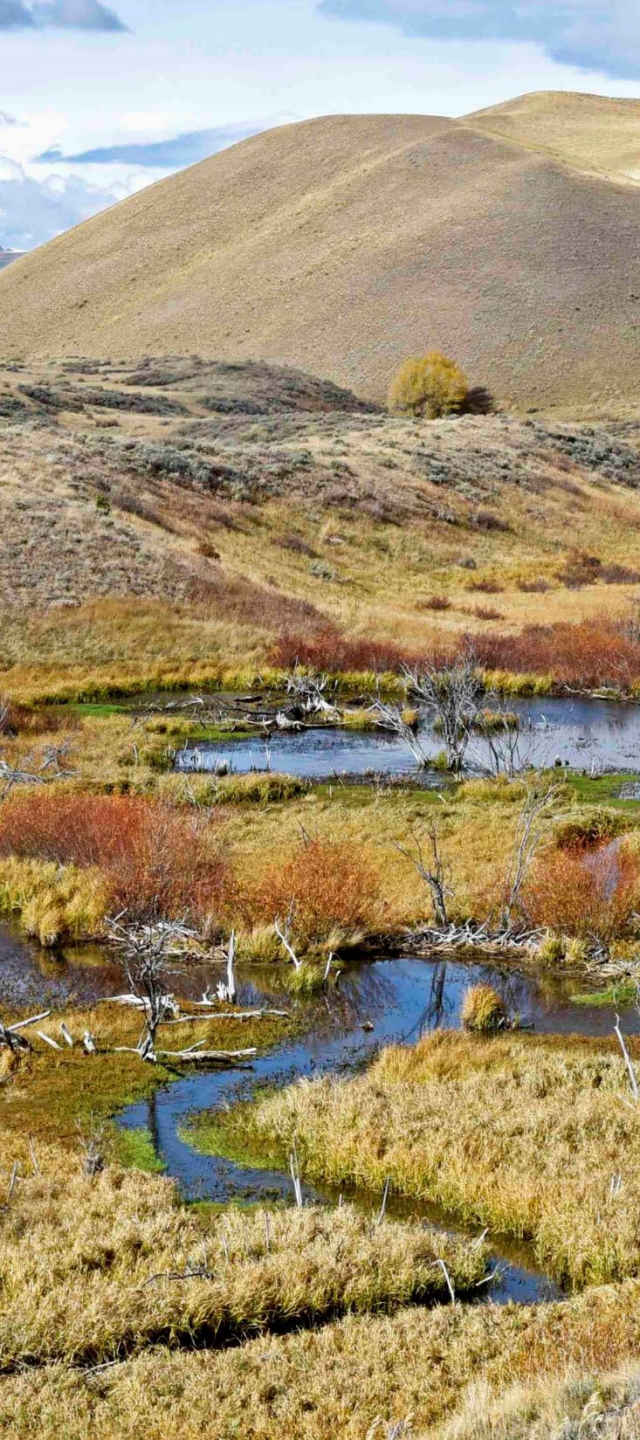
Adjudication Court



# JUDICIAL NEEDS

## 2. One court to address all water issues

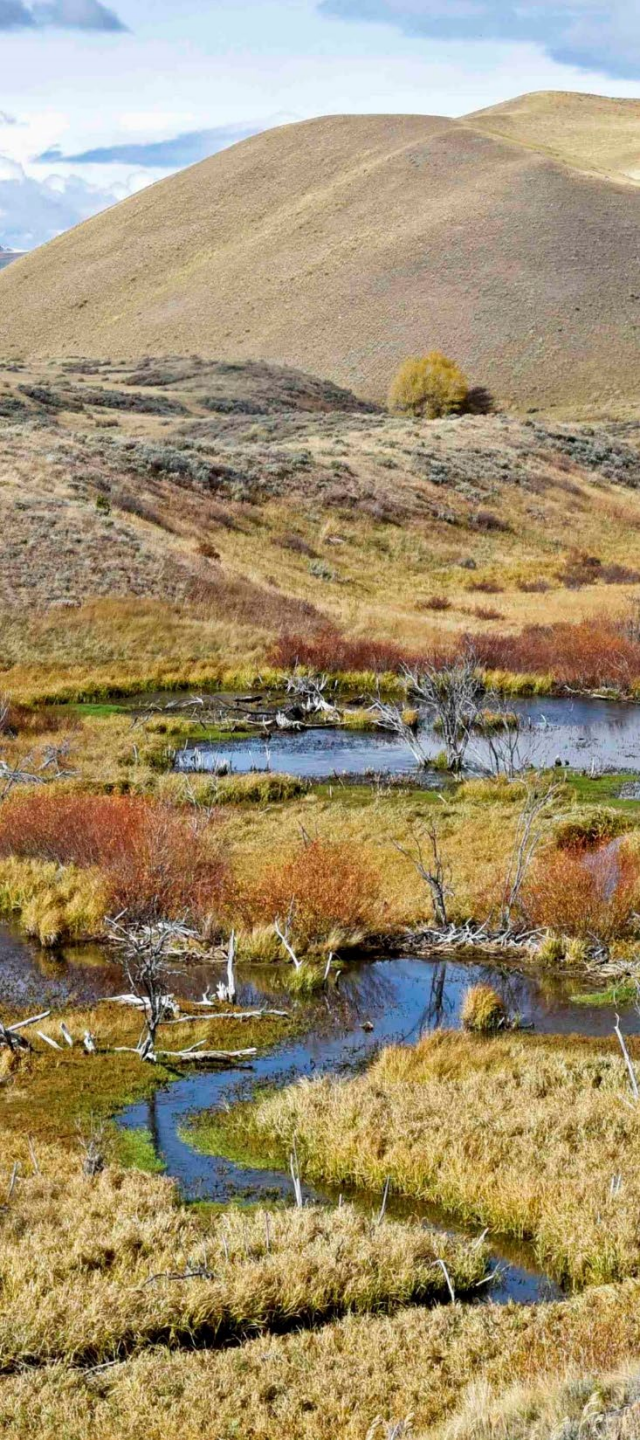




# JUDICIAL NEEDS

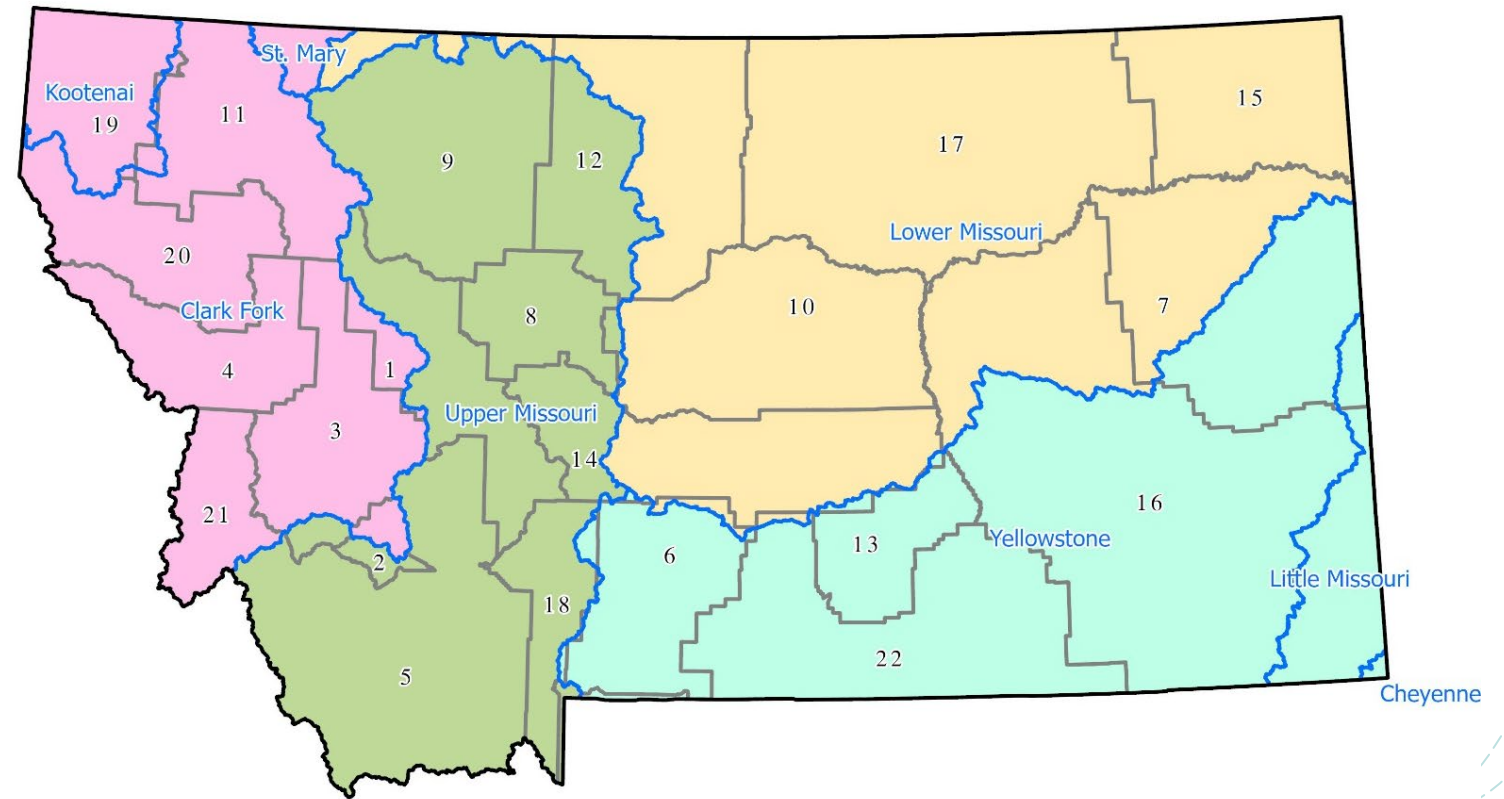
3. Stakeholders want timely, accountable, and efficient judicial water decisions












# JUDICIAL OPTIONS

## District Court or Division Court

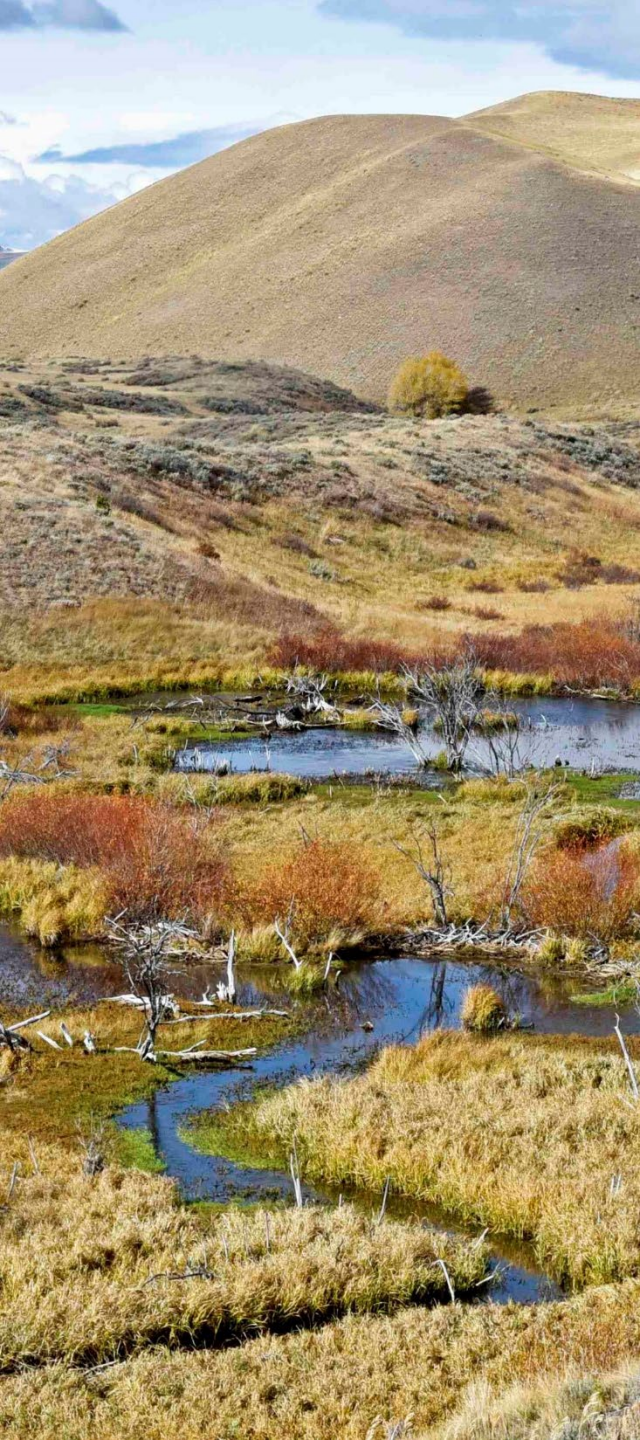


### Water Court Divisions

-  Yellowstone River Basin
-  Lower Missouri River Basin
-  Upper Missouri River Basin
-  Clark Fork River Basin
-  Major Drainage Areas
-  Montana District Courts
-  State of Montana







# CONCEPTS BEING DISCUSSED & REFINED

- Sunset the work of the Adjudication/Water Court
- What court does the conflict start with?
- Who and how someone becomes a judge for water administration?
  - District Court
  - Nomination, appointment, and senate confirmation
- How to substitute judges?
- How to address multi-jurisdictional water conflicts?

# HARMONIZING PROVISIONAL PERMITS AND CHANGES WITH FINAL DECREES

## Harmonizing provisional permits and changes with final decrees

- Need for clear and transparent process to ensure that water right change authorizations and provisional permits are consistent with final decrees
- Need certainty to provisional permit and change holders that there is a clear process to become certificates of water rights



July 1, 1973

### Adjudication

- The Montana Water Court adjudicates existing rights by basin and issues final decrees, recognizing and confirming water rights developed prior to July 1, 1973

### New Appropriations

- New water rights (July 1, 1973, or newer) and changes to all existing water rights are administered by the DNRC through a permitting process



# WATER PLANNING, GROWTH, EXEMPT WELLS

How do we meet our new water demands while protecting existing water rights?



# CHOICE: PROACTIVE OR REACTIVE?

## California

- “Even though California enacted sweeping legislation nearly a decade ago to curb excessive agricultural pumping of groundwater, new research predicts that thousands of drinking water wells could run dry...” (LATimes SEPT. 20, 2023)

## Idaho

- “Department of Water Resources order would force 900 groundwater users to curtail use. Department says senior surface water rights holders would face shortfall without curtailment that could affect eastern Idaho” (Idaho Capital Sun APRIL 28, 2023)

## Oregon

- “The state had continued to approve new wells in areas that were already overdrawn, leaving irreversible damage.” (OPB JAN. 8, 2024)

## Washington

- “Up to **\$40 million in grants** ... to fund water storage projects, fish habitat improvements, water right acquisitions or improvements in water management and infrastructure. The law was in response to the Hirst decision, a 2016 Washington State Supreme Court decision that limited a landowner’s ability to get a building permit for a new home when the proposed source of water was a permit-exempt well.” (KXRO January 4, 2024)

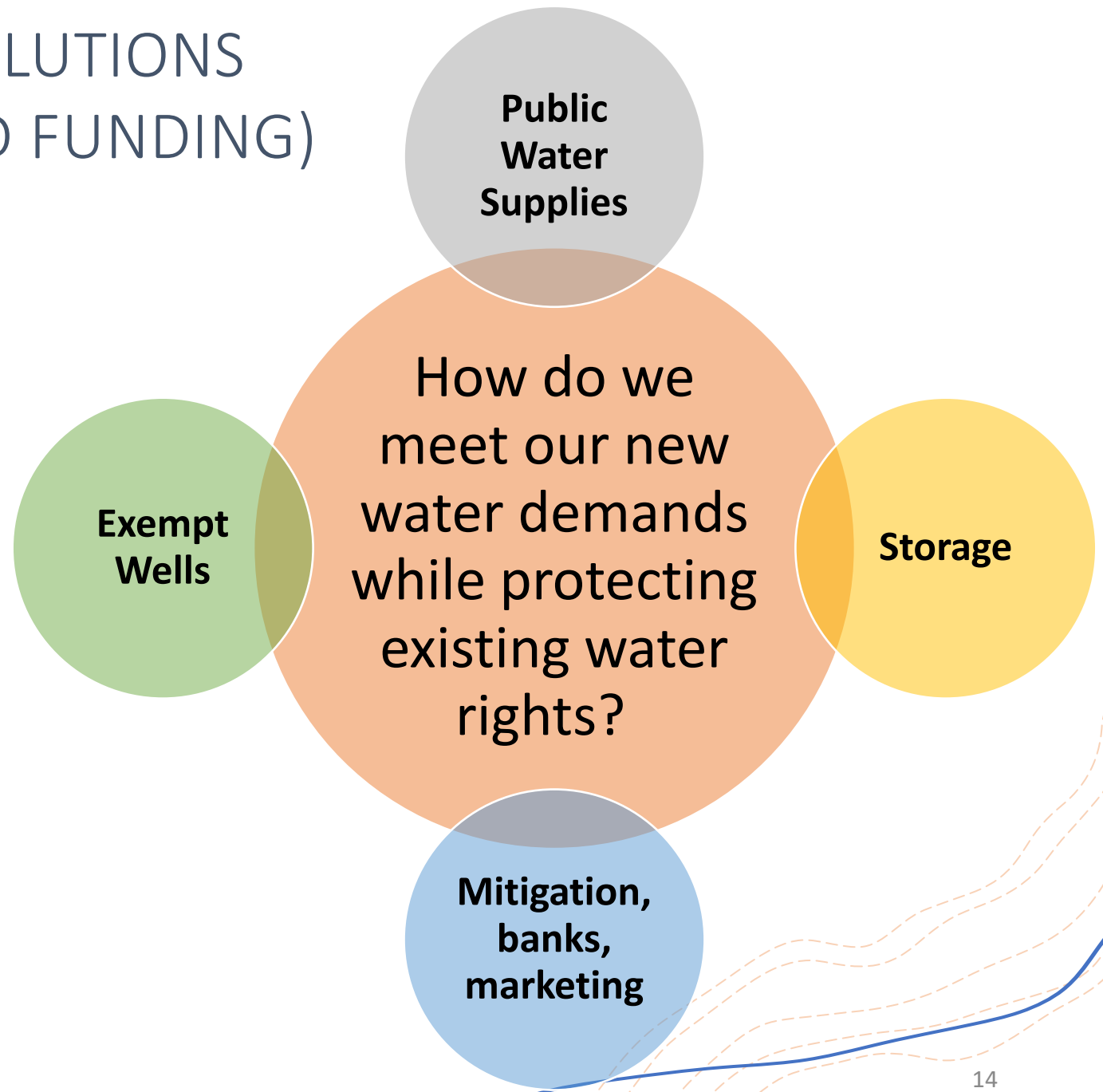


# HOLISTIC POLICY SOLUTIONS TO ADDRESS

- Changing water needs
- Increase demand
- Decrease supply
- Changes in the timing of need and use
- New and existing needs for water

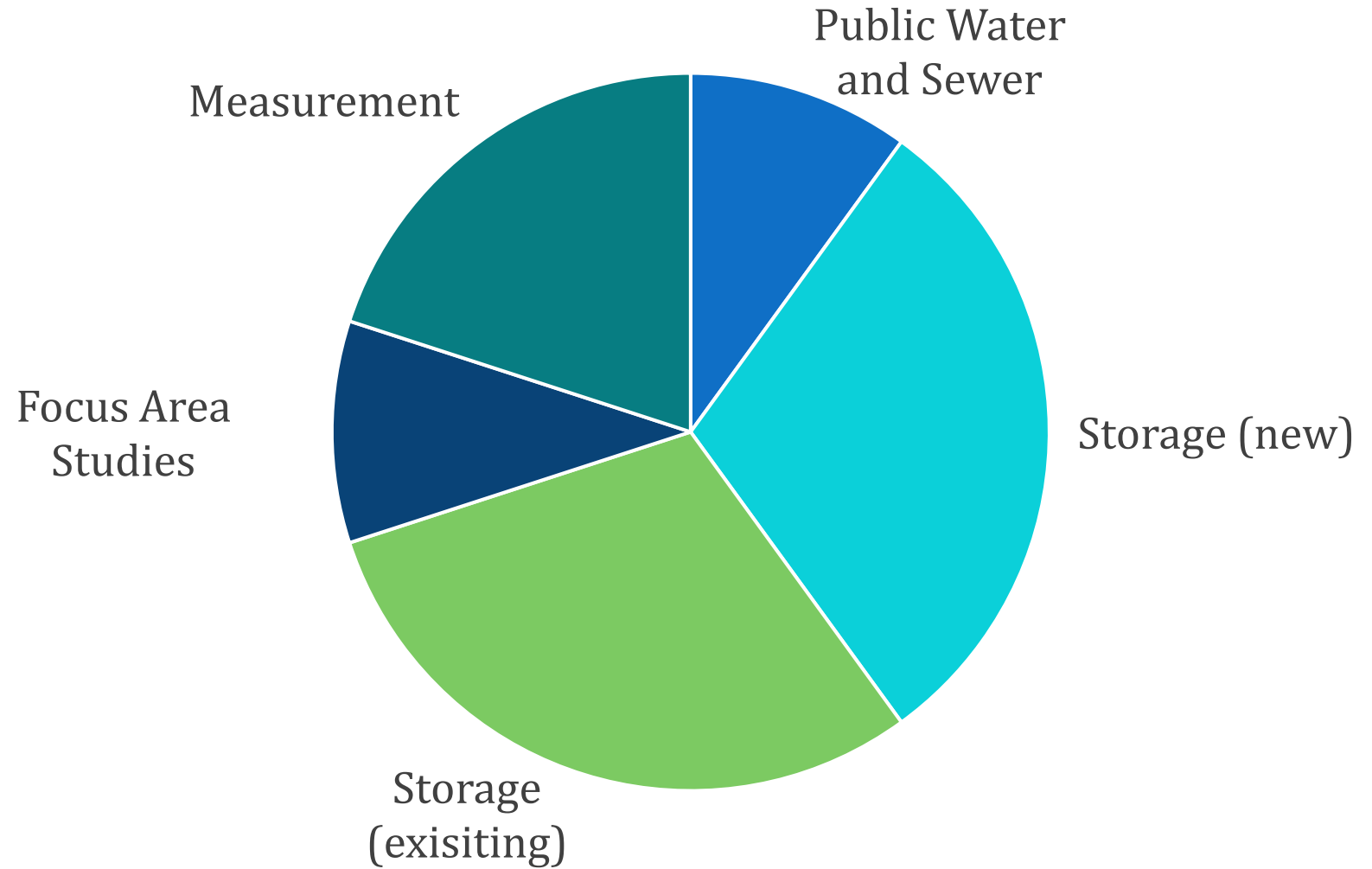


# HOLISTIC SOLUTIONS (POLICY AND FUNDING)

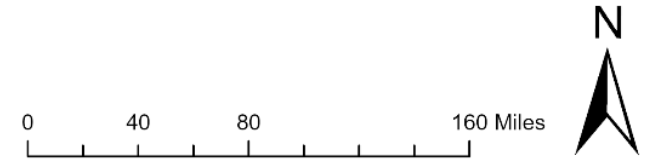
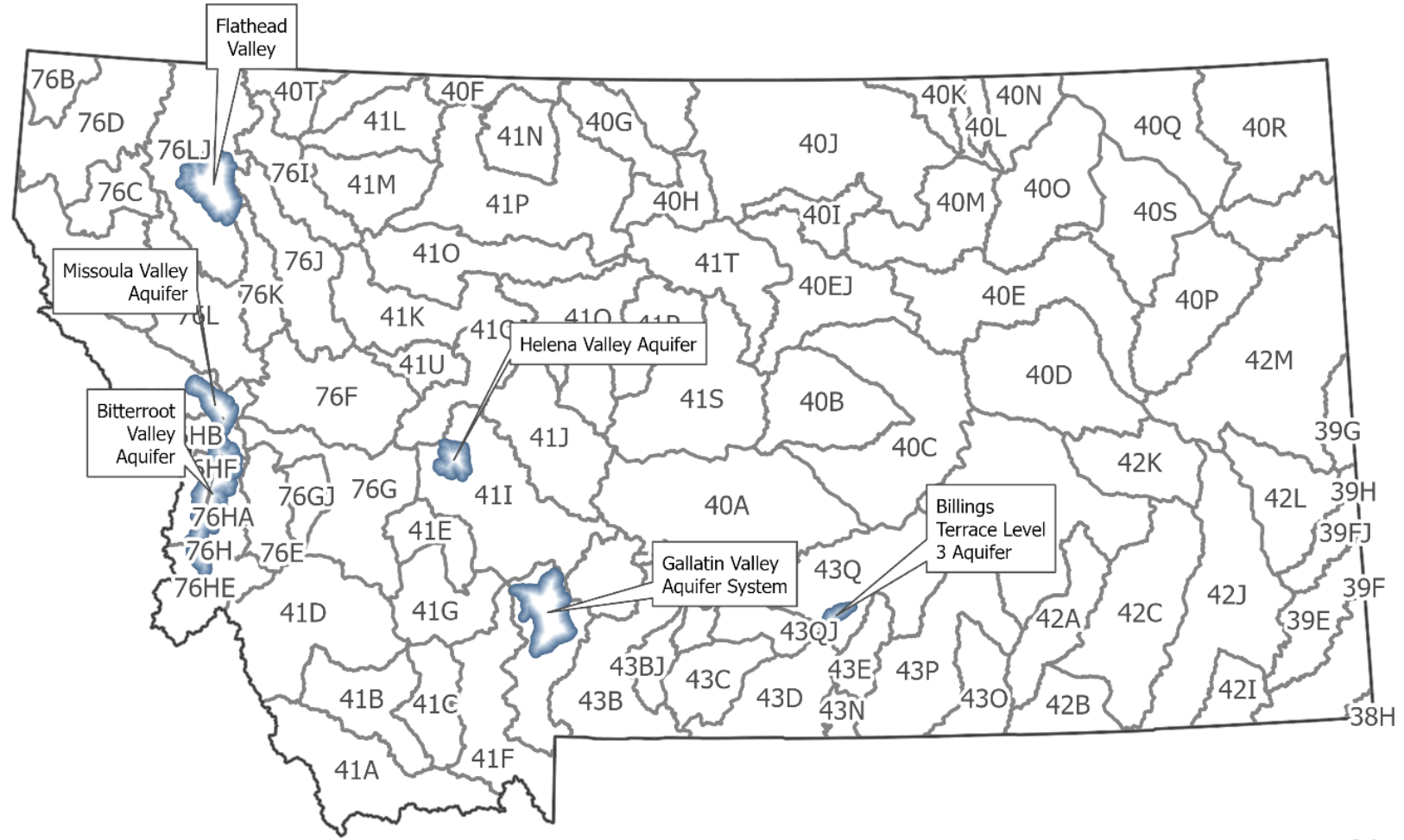




# FUNDING NECESSARY FOR THE HOLISTIC PACKAGE

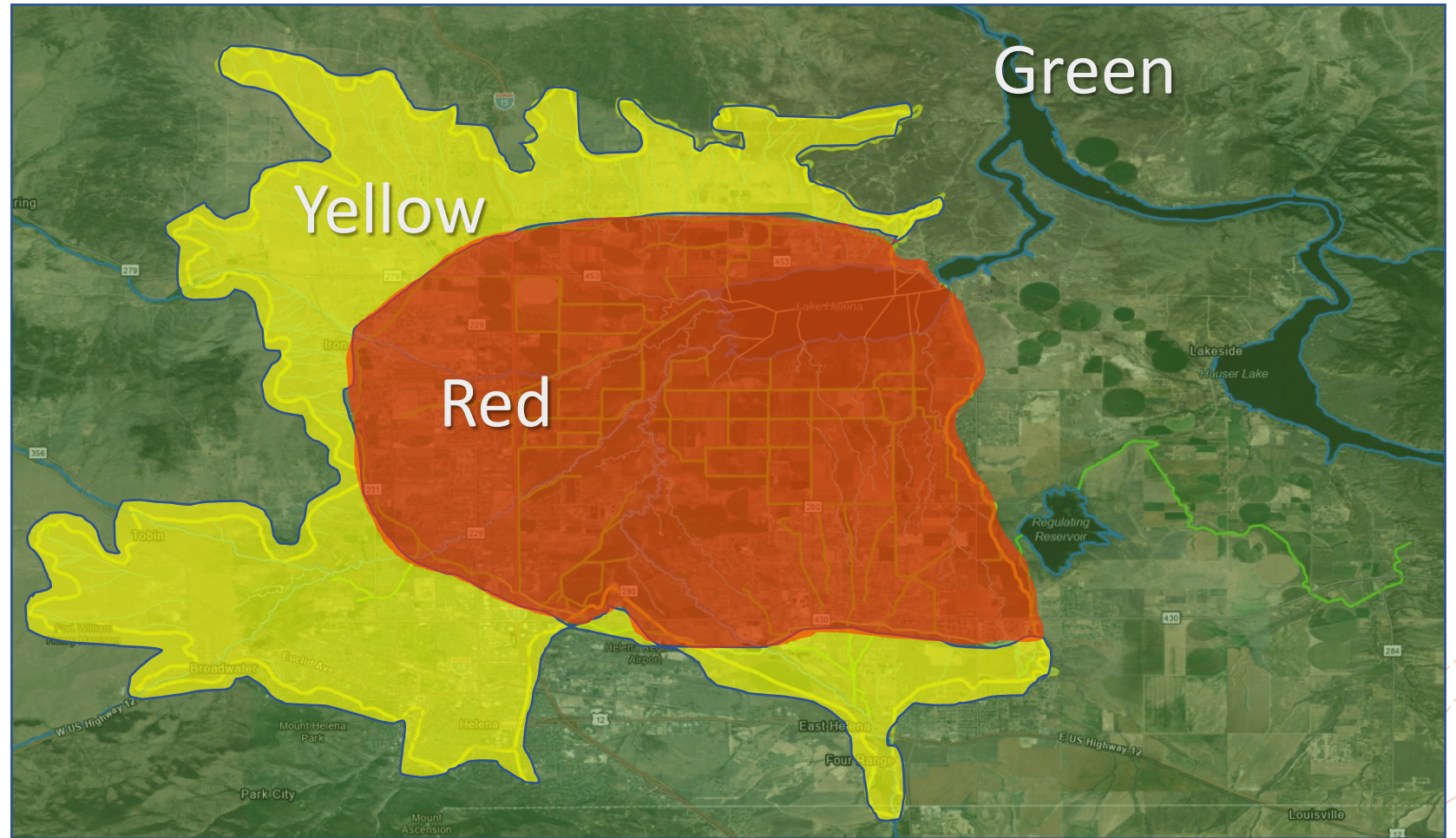


# DIFFERENT EXEMPT WELL POLICIES BY GEOGRAPHY





# DIFFERENT EXEMPT WELL POLICIES BY GEOGRAPHY





# OPTION OF CONTROLLED GROUNDWATER AREAS

- § 85-2-506, MCA
- Controls can be defined for statewide application, i.e., all “Yellow” zones have same controls, all “Red” zones have same controls
- CGWA process is transparent and follows rule-making and public comment process
- CGWA process can be initiated by many different agencies/groups



# DRAFT POLICY IDEAS FOR CGWAS

## **Red (Problem)**

- Metering & measurement requirements
- No exceptions: permitting process or hook up to PWS
- Exigent circumstances
- Enforcement requirements

## **Yellow (Study)**

- Metering & measurement requirements
- Study only
- Could turn into red or green based on study
- Enforcement requirements

## **Green (Statewide)**

- Metering & measurement requirements
  - Status quo for exempt wells
  - Address combined appropriation challenges
  - Consider reducing volumes
  - Evaluate DNRC standards
  - Enforcement requirements
- 

# DRAFT CRITERIA FOR CGWAS DESIGNATION

Category	Metric	Green Areas • No Documented Problem	Yellow Areas • Moderate documented problem	Red Areas • Significant documented problem
GW Quantity Limitation	<b>Groundwater Level Trends</b>	- No decreasing trend	- A trend is observed but is statistically insignificant	- A statistically significant decreasing water level trend has been documented
	<b>Recharge and Regional Groundwater flow</b>	- Recharge is predominately from natural sources, is consistent or increasing, unaffected by extraction	- Natural or artificial recharge is decreasing or, recharge is reliant on induced infiltration	
	<b>Aquifer storage potential</b>	- Geologic formation or structure has large storage capacity or high potential for storage (e.g. alluvial aquifers)	- Formation or structure with limited storage or potential for storage (e.g., bedrock aquifers, perched or shallow aquifers)	
GW/SW Connection with Legal Availability Limitation	<b>Surface Water Legal Availability</b>	Legal demand on connected surface water is at least 10% below the median of the mean monthly flow rate (physical availability) for all months	Legal demand on connected surface water is within 10% above or below the median of the mean monthly flow rate (physical availability) for all months.	Legal demand on connected surface water exceeds 10% of the median of the mean monthly flow rate (physical availability) for any month

# APPROXIMATE TIMELINE AND MILESTONES

Time	SWG and DNRC Activities	Policy Milestones
August 2023	<b>Start SWG meetings</b>	
Sept 2023	Work planning, prioritization, fact-finding, discussion, drafting of recommendations	Formal HB 114 rulemaking process
October 2023		
November 2023		
December 2023		
January 2024		
February 2024		HB 114 rules go into effect
March 2024		
April 2024	Public and legislative outreach and input on legislative concepts and working group recommendations; further refinement	Legislative proposal process
May 2024		
June 2024		
July 2024		
August 2024	<b>Potential last SWG meeting</b>	
September 2024	Additional outreach on SWG recommendations and legislative proposals	
October 2024		
November 2024		
December 2024		
January 2025		<b>2025 Legislative Session</b>

## MEETING DATES

August 8-9	Helena
September 12	Helena
October 10	Helena
November 14	Helena
December 14	Helena
January 9-10	Lewistown
February 13	Helena
March 12-13	Kalispell
April 9-10	Miles City
May 14-15	Glasgow
June 5	Helena
July 9	Helena
August 19	Helena

QUESTIONS?

<https://dnrc.mt.gov/Water-Resources/>

Get Involved: <https://dnrc.mt.gov/Water-Resources/Comprehensive-Water-Review/>

