

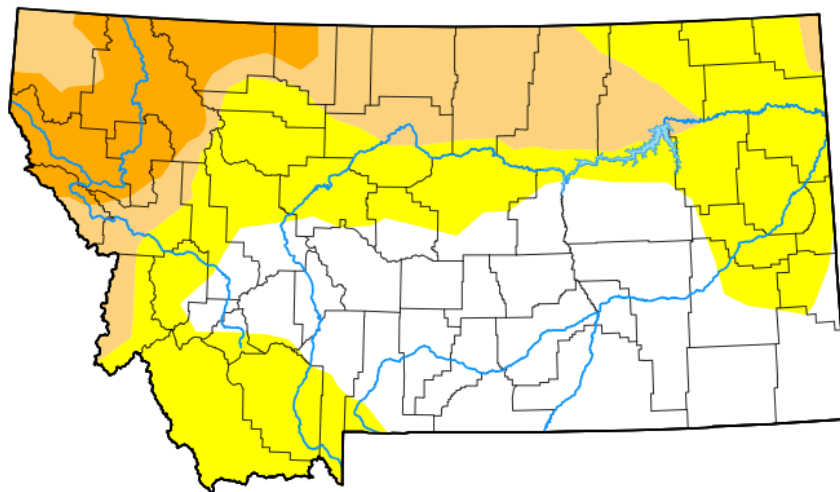
COMPREHENSIVE WATER REVIEW LISTENING SESSION

Miles City 4/9/2024

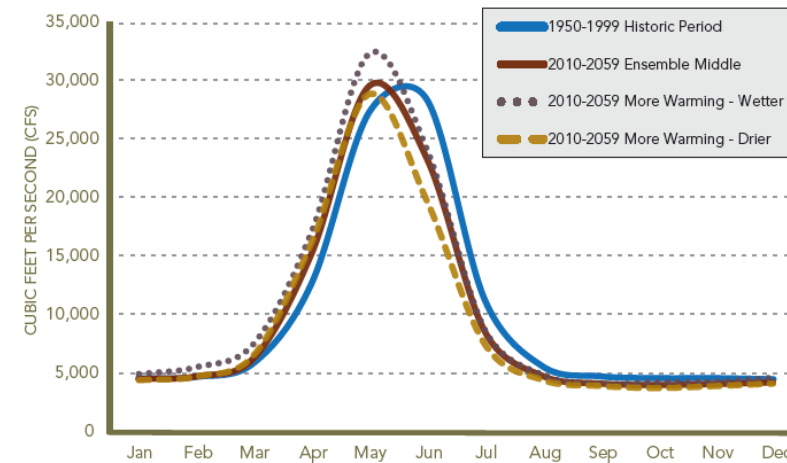




WHY THE COMPREHENSIVE WATER REVIEW

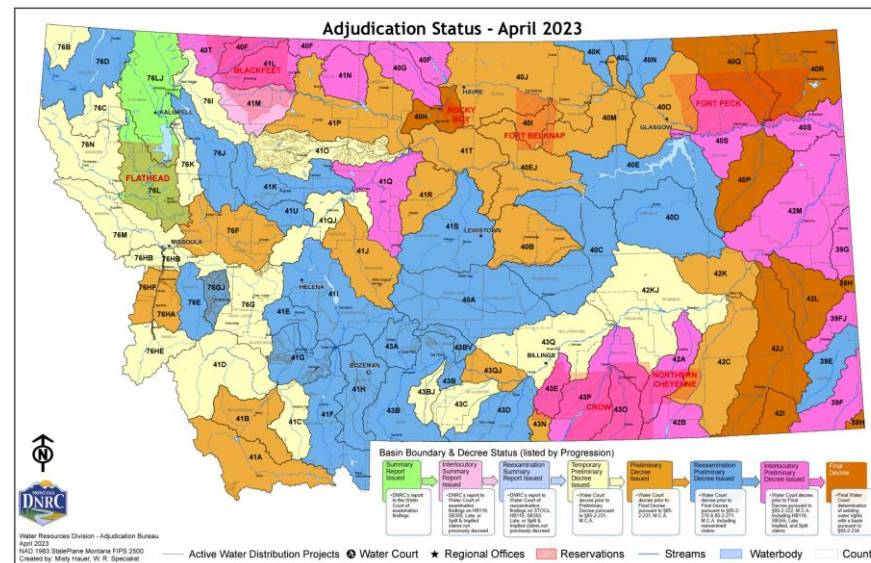


UPPER MISSOURI RIVER BASIN MODELED MEDIAN MONTHLY FLOW



50 years of implementation and piecemeal adjustments to Water Use Act

Water Resources Division - Adjudication Bureau
 April 2023
 5400 1980 State Plaza Montana 59720-2000
 Created by: Misty Heiser, W. R. Specialist





HOW TO MEET THESE CHALLENGES?

- Evaluate and reform state water administration and management
- Meet future water needs while protecting existing users
- Diverse water user collaboration to develop policy recommendations
- Meaningful dialogue creates lasting solutions
- Public participation critical
- Recommendations for the 2025 legislative session

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) *

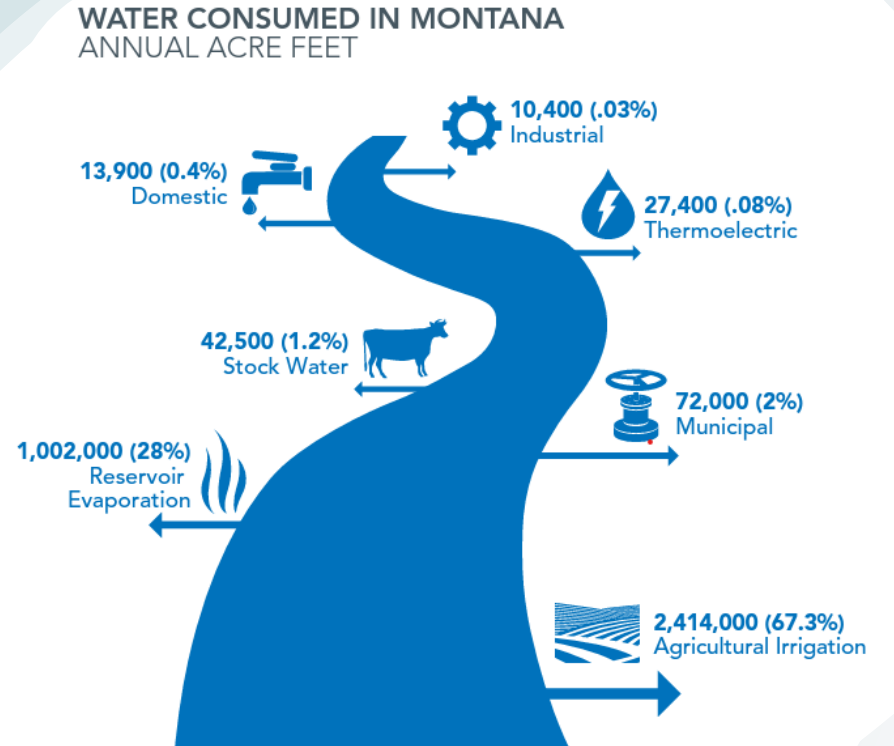


Figure 10: Water Consumption in Montana by Purpose

2023 STAKEHOLDER WORKING GROUP



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?

ADJUDICATION AND NEW APPROPRIATION



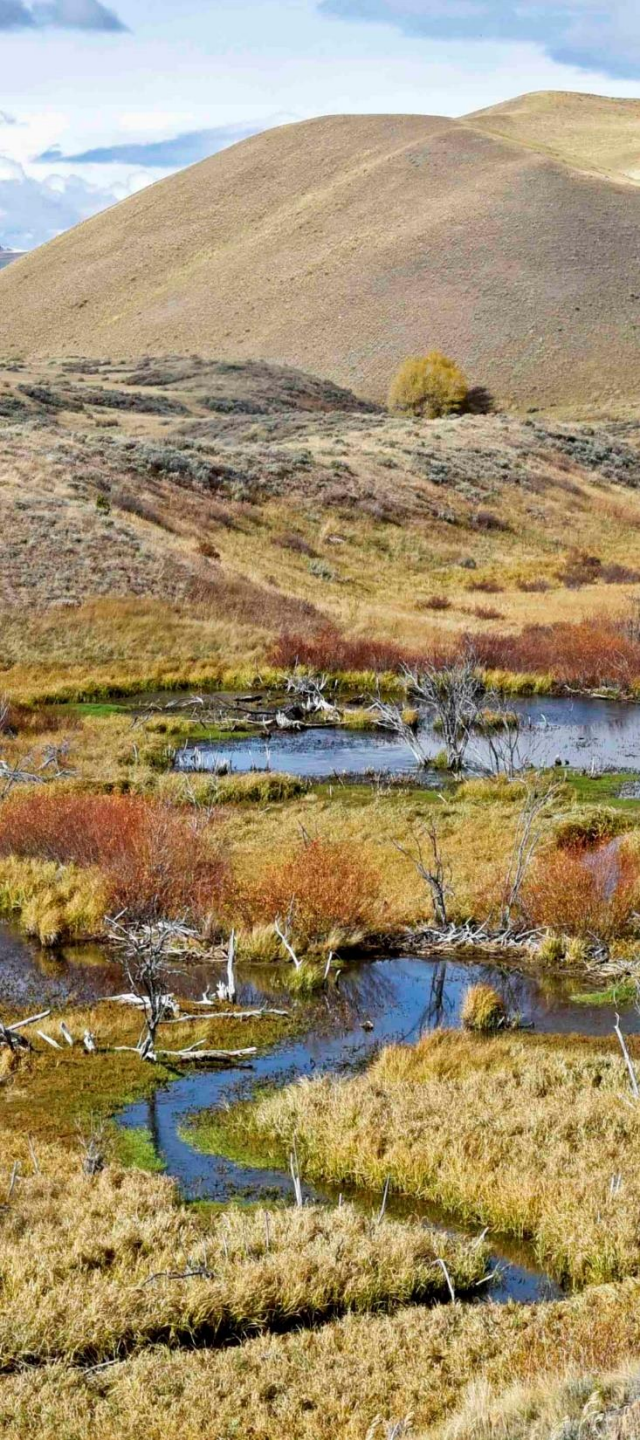
July 1st, 1973

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
- DNRC provides technical assistance to the Water Court
- Process has been far more expensive and time consuming than contemplated but all summary reports scheduled to be delivered to Water Court by June 30, 2025

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



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



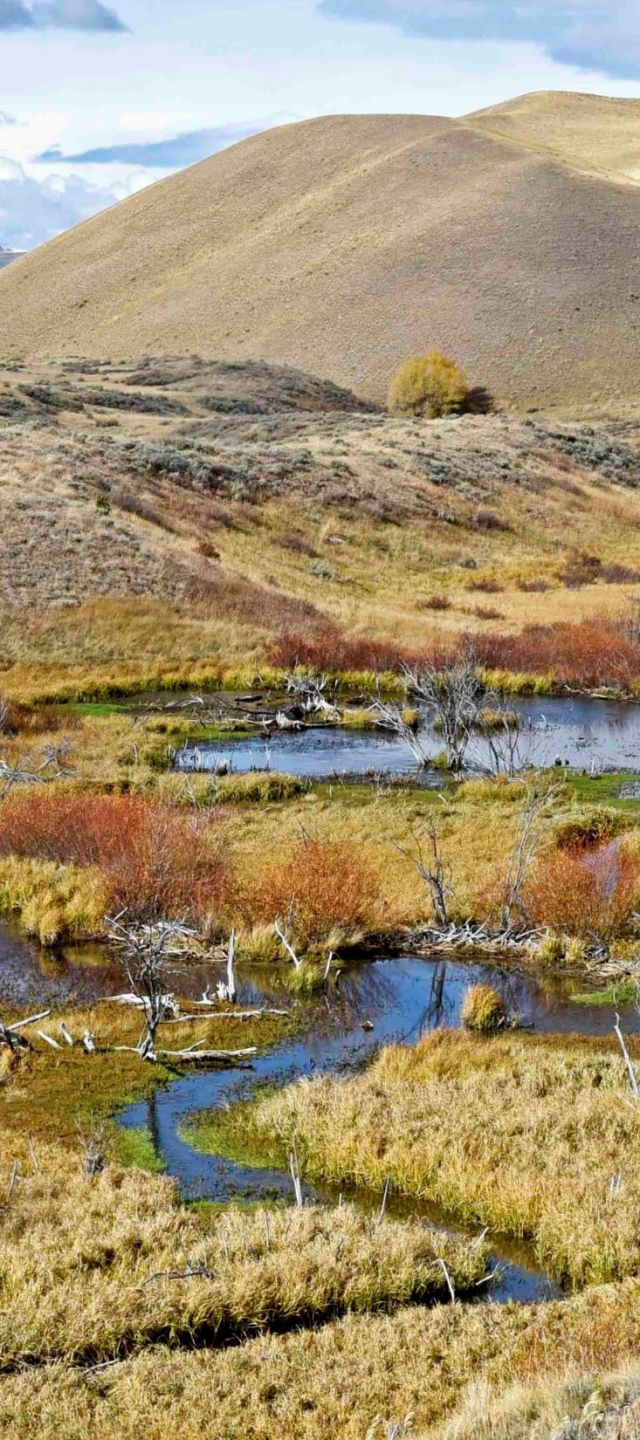
District Court



Division Court

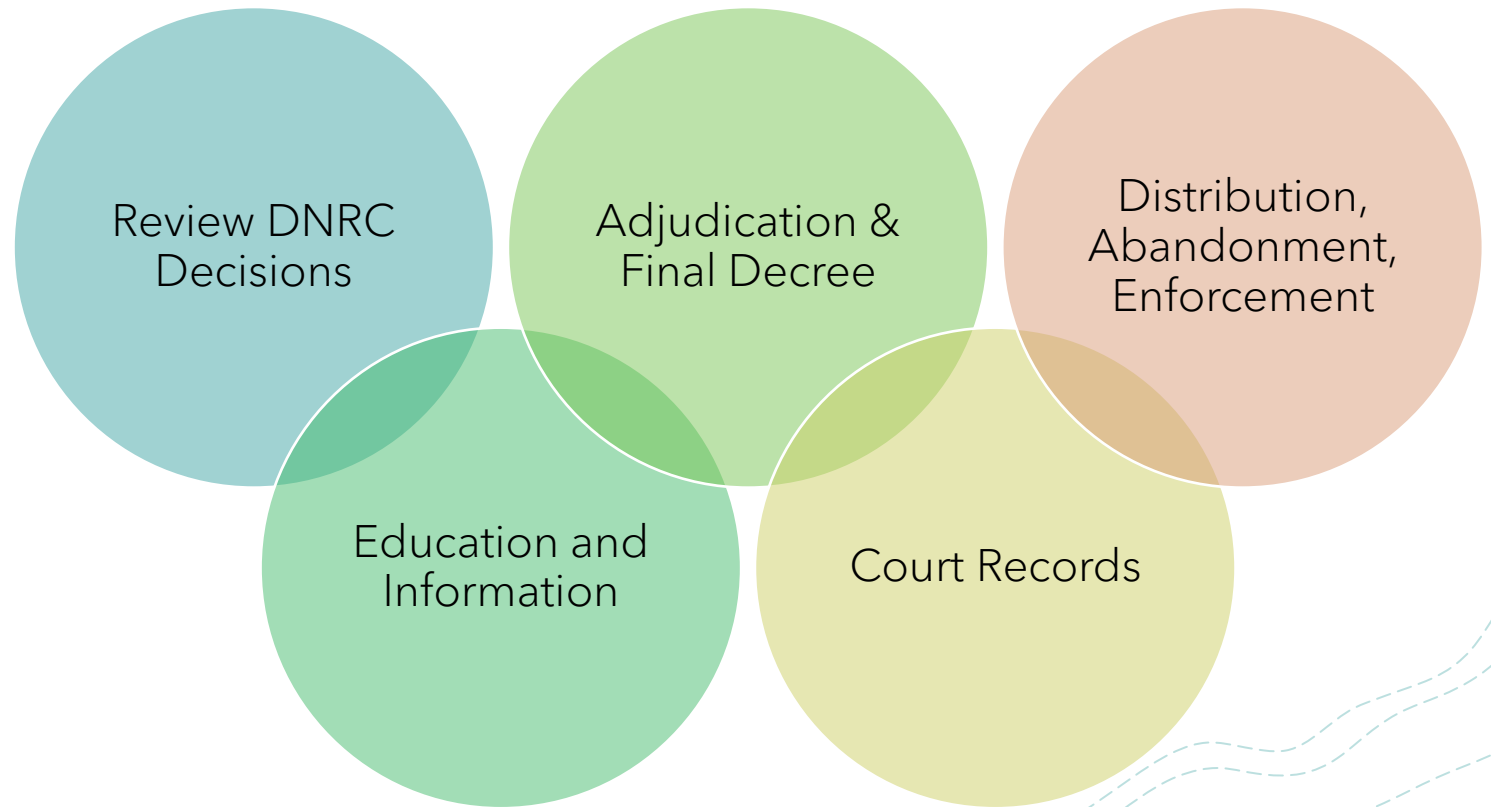


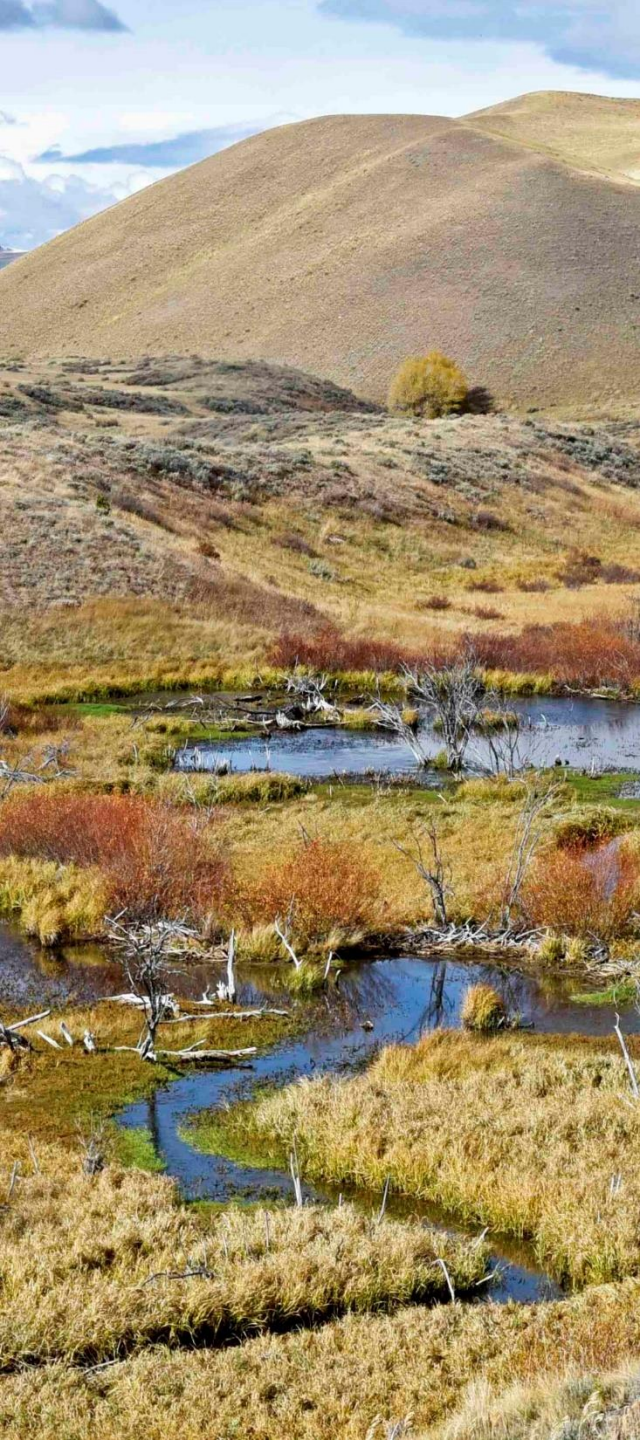
Adjudication Court



JUDICIAL NEEDS

2. One court to address all water issues

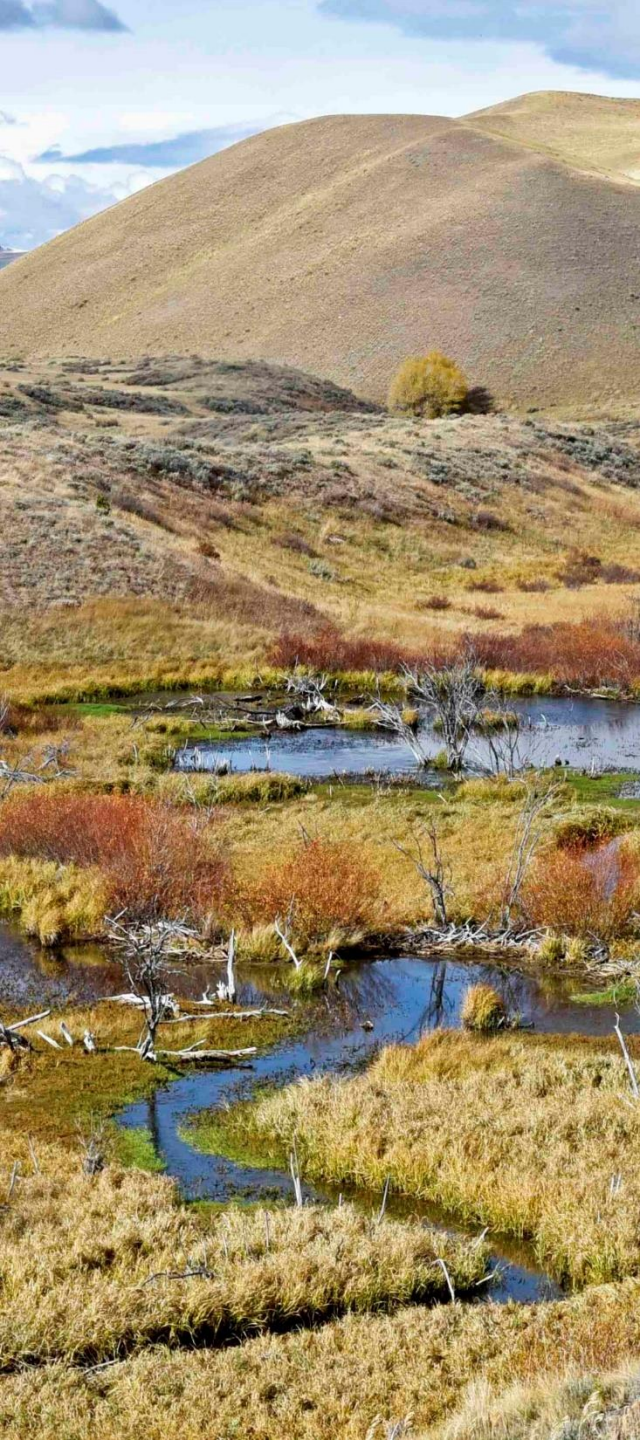




JUDICIAL NEEDS

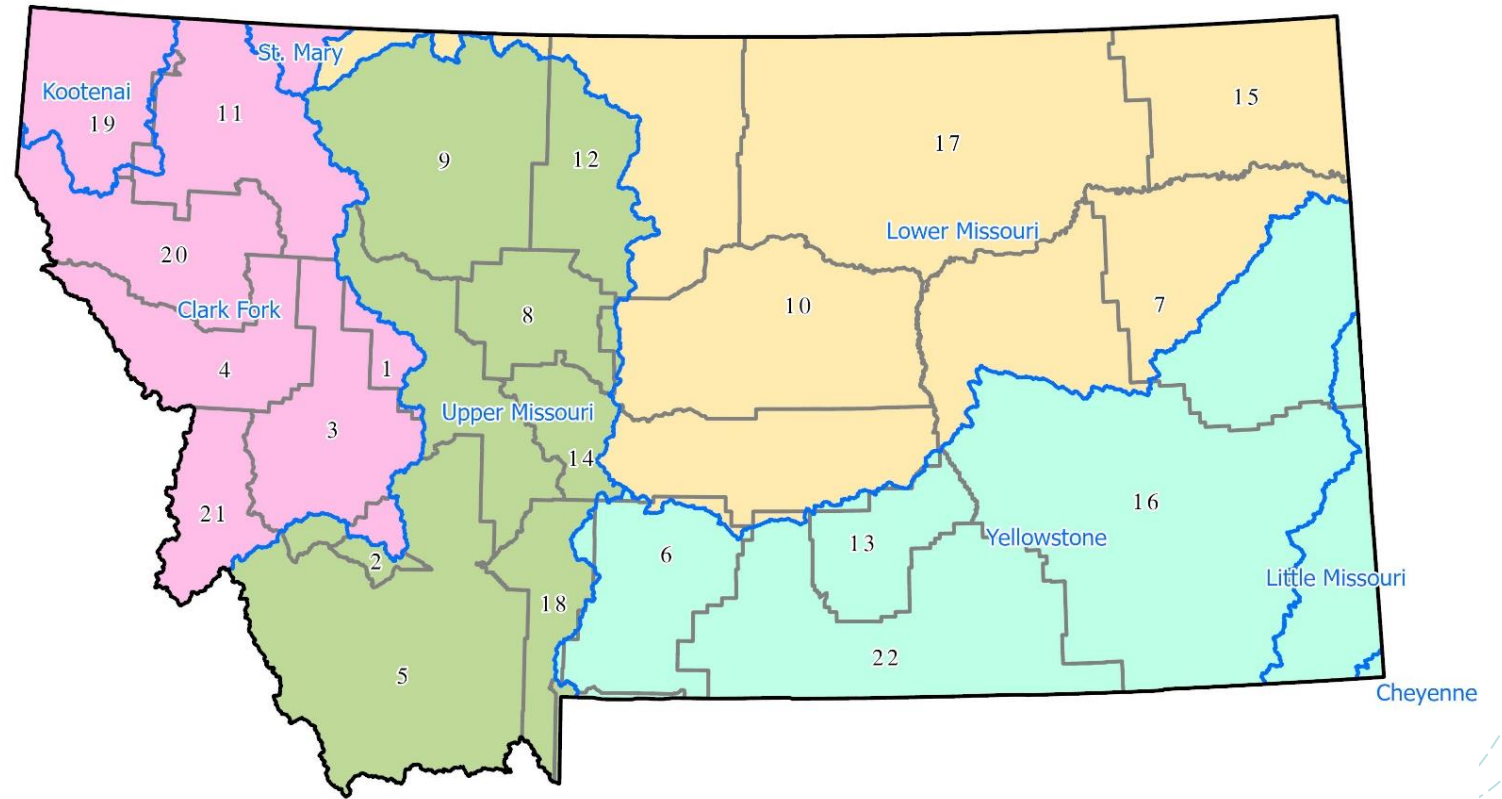
3. Stakeholders want timely, accountable, and efficient judicial water decisions












JUDICIAL OPTIONS

District Court & Division Court



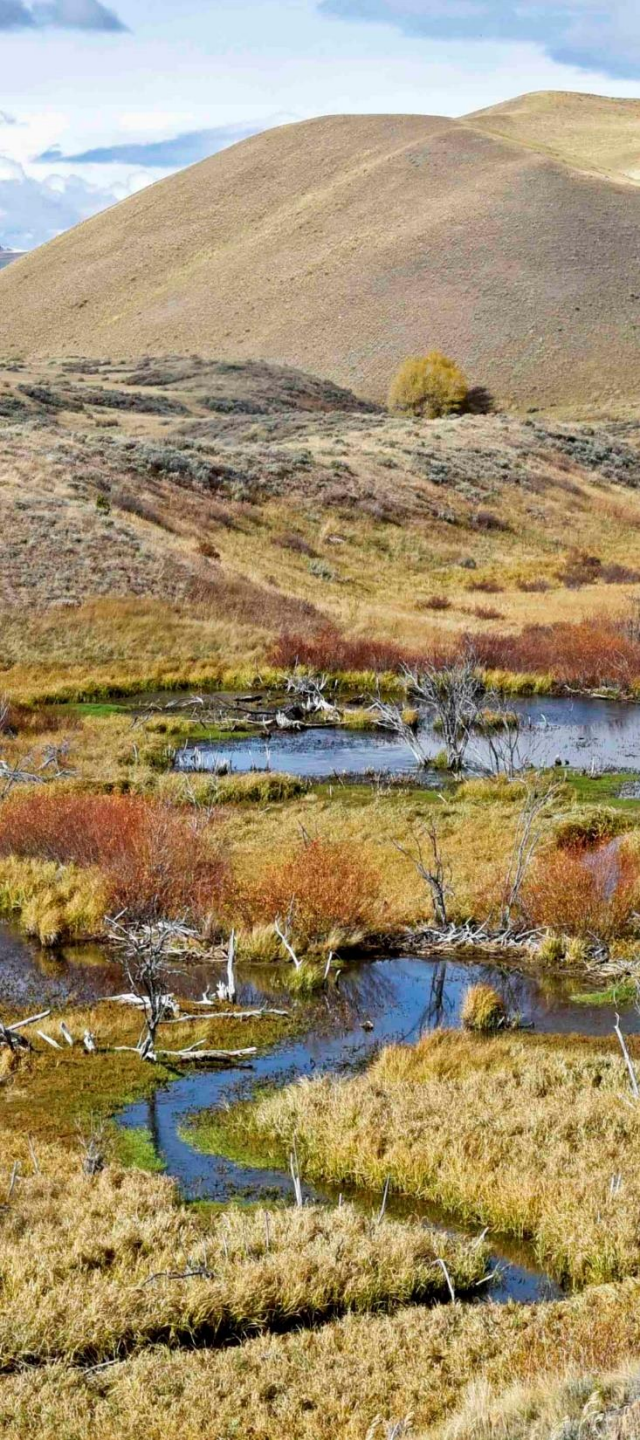
Water Court Divisions

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



0 50 100 Miles





CONCEPTS BEING DISCUSSED & REFINED

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

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 JAN. 4, 2024)

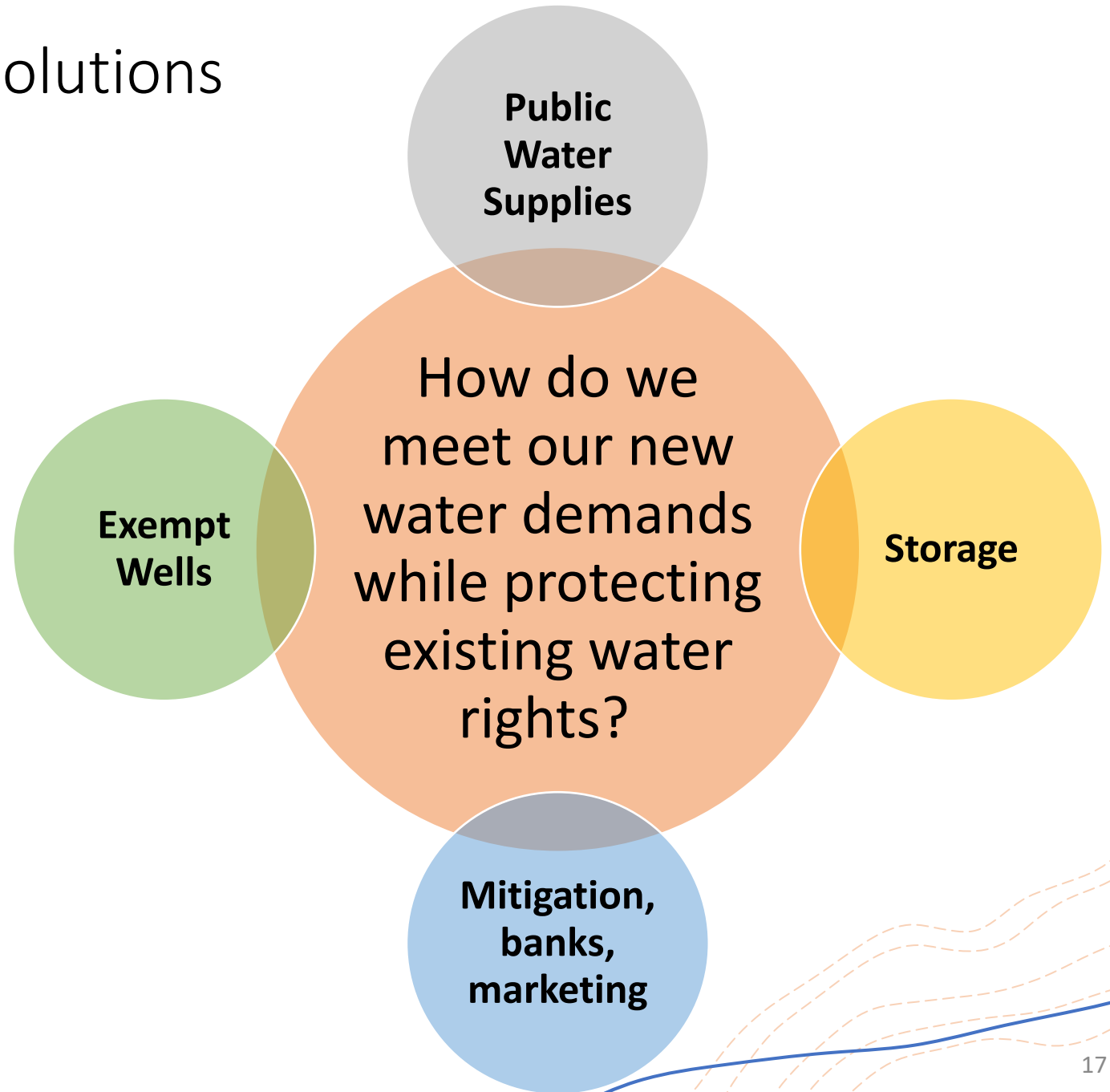


Holistic policy solutions that address

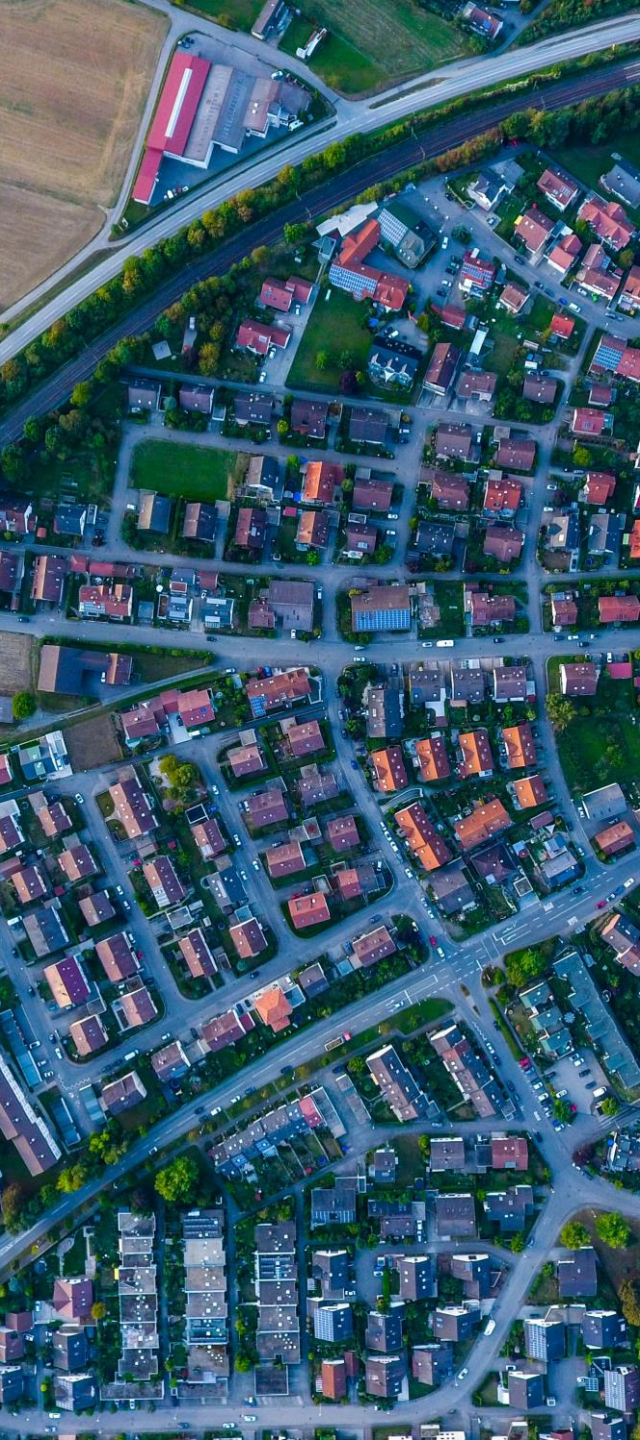
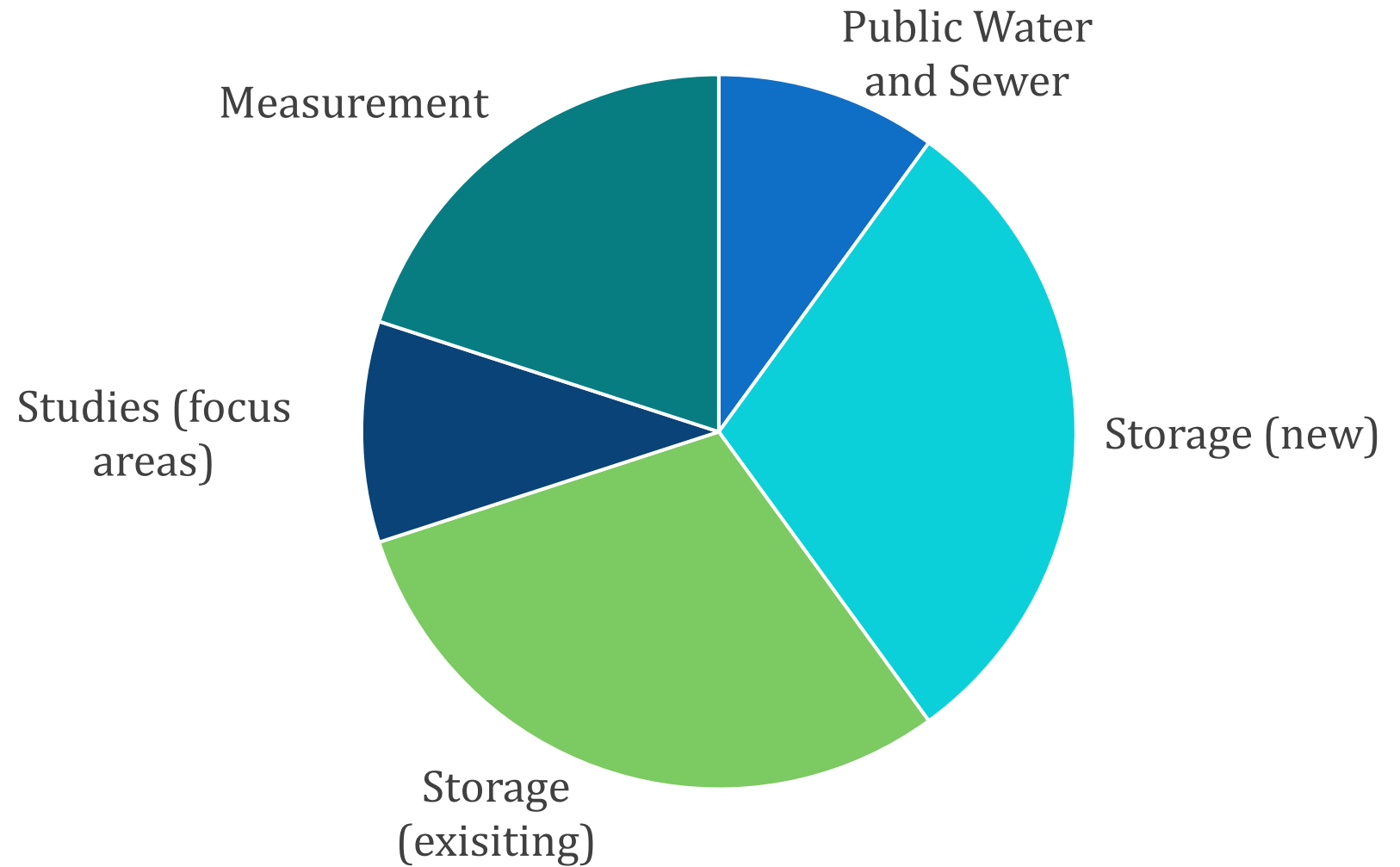
- Changing water needs
- Increase demand
- Decrease supply
- Changes in the timing of need and use
- New and existing needs for water



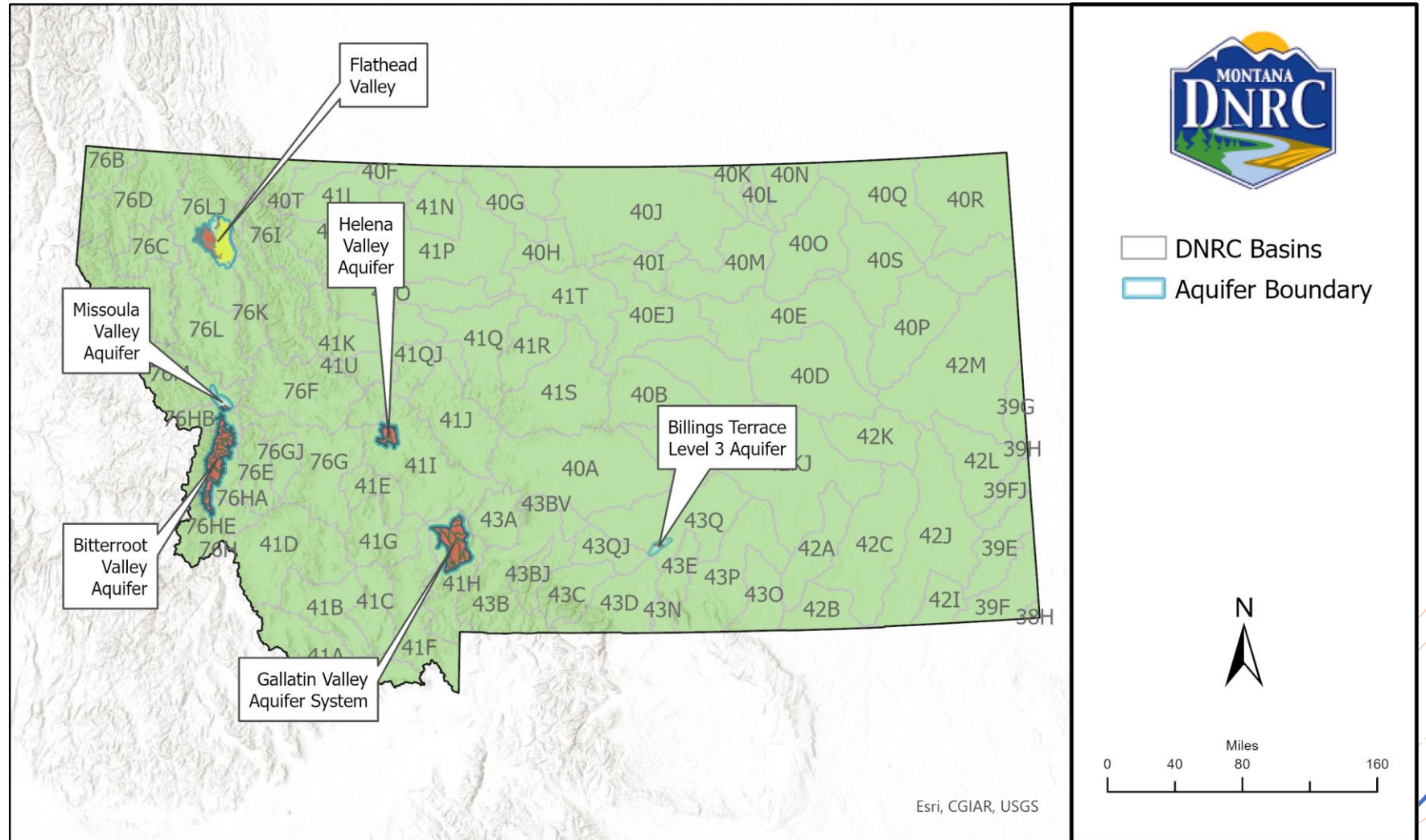
Holistic Solutions



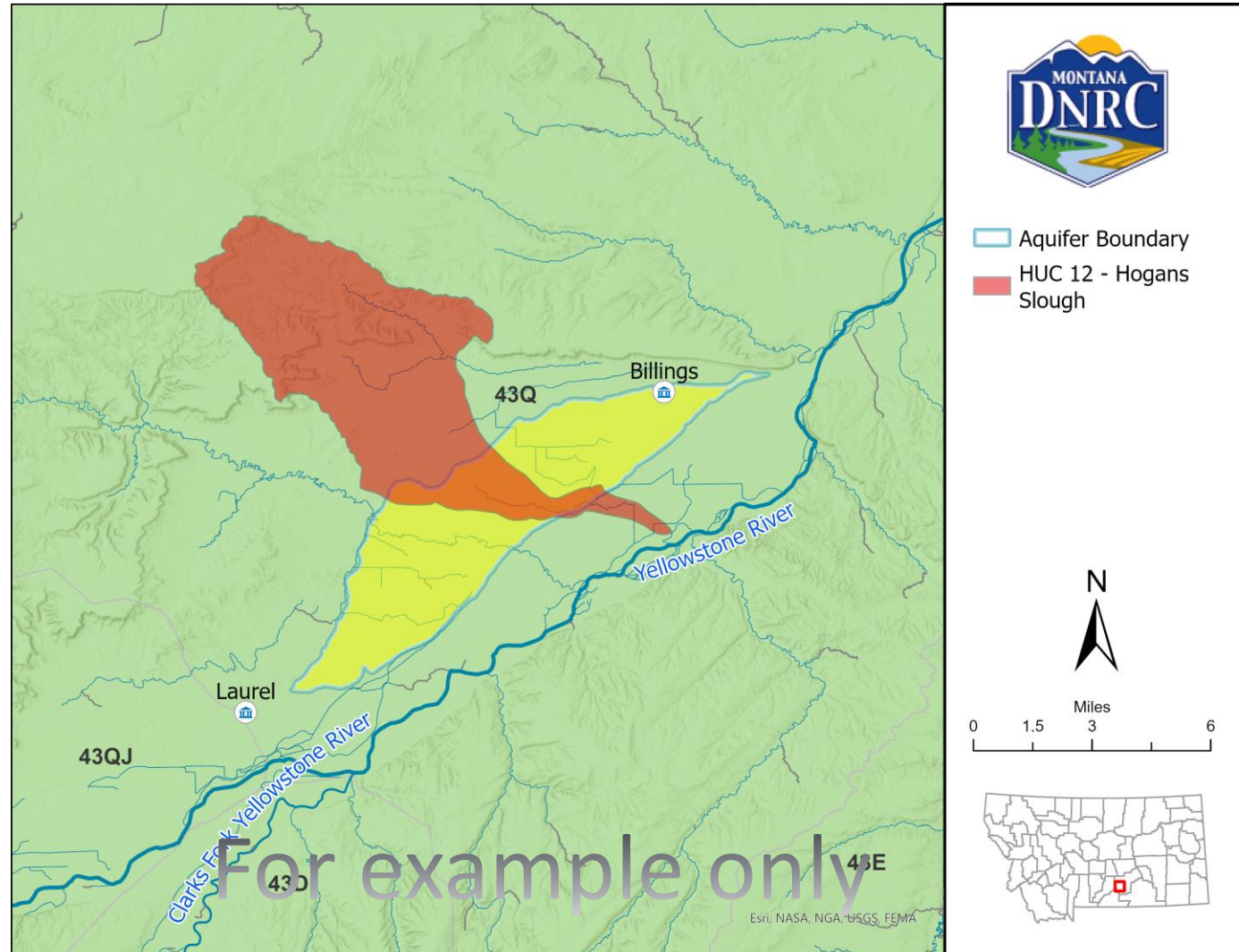
Funding necessary for the holistic package



Different Policies by Geographic Areas



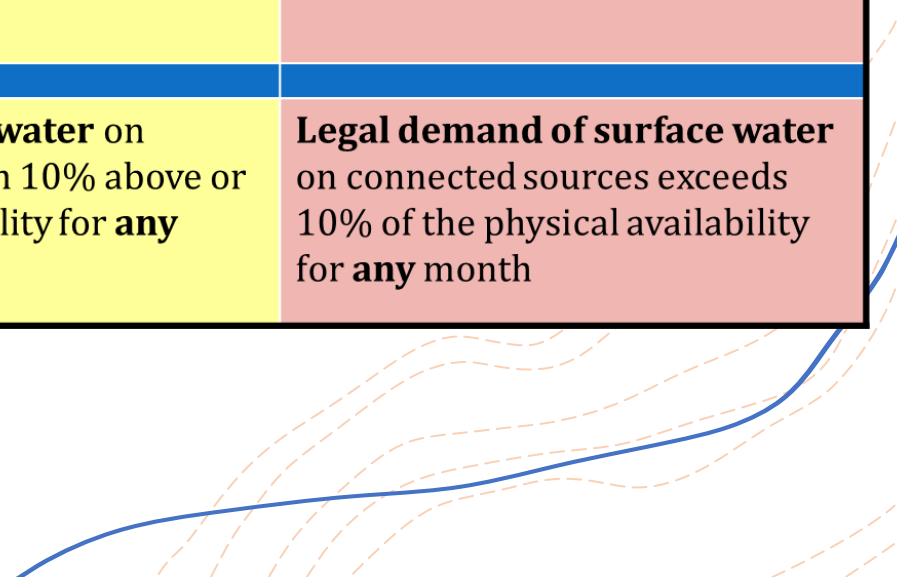
Different Exempt Well Policies by Geographic Areas



Science based criteria for designation

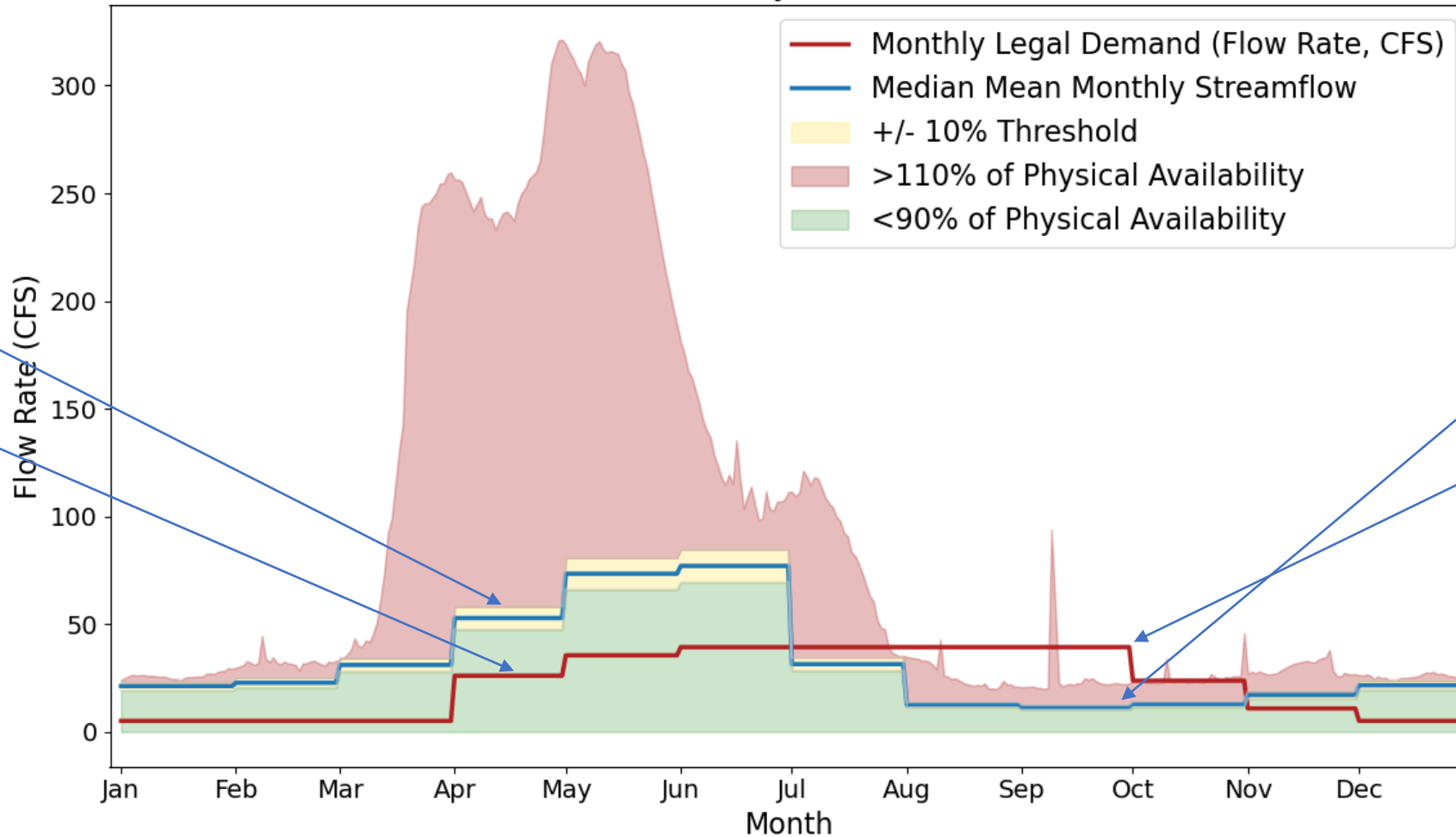


Groundwater Level Trends	A decreasing groundwater level trend is observed but is projected to stabilize with no long-term aquifer impacts.	Groundwater level trend is decreasing and may cause long-term damage to the aquifer.
Groundwater Legal Demand	Legal demand of groundwater is at least 60% of the aquifer physical availability.	Legal demand of groundwater is at least 75% of the aquifer physical availability.
Antecedent Aquifer Conditions	<ul style="list-style-type: none">- Recharge is reliant on induced infiltration- Formation has limited storage or potential for storage	
Groundwater Connected to Surface Water with Limited Legal Availability	Legal demand of surface water on connected sources is within 10% above or below the physical availability for any month	Legal demand of surface water on connected sources exceeds 10% of the physical availability for any month



Category: GW/SW Connection Physical/Legal Availability Limitations

Legal Availability
Ashley Creek



More water
available than
is
appropriated

Less water
available than
is
appropriated

Draft Policy Framework for CGWAs

Red (Problem)

- Metering & measurement
- No exceptions: permitting process or hook up to public water and sewer
- Incentives (PWS, funding, mitigation, storage)
- Exigent circumstances
- Enforcement
- MCA 85-2-506 & 85-2-306

Yellow (Study)

- Metering & measurement
- Study only
- Incentives (PWS, funding, mitigation, storage)
- Enforcement
- MCA 85-2-506

Green (statewide)

- Metering & measurement
- Largely status quo for exempt wells
- Address combined appropriation challenges
- Enforcement
- MCA 85-2-506 & 85-2-306

Approximate Timeline and Milestones

Time	SWG and DNRC Activities	Policy Milestones
August 2023	Start SWG meetings	
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	Potential last SWG meeting	
September 2024	Additional outreach on SWG recommendations and legislative proposals	
October 2024		
November 2024		
December 2024		Legislative pre-introduction deadlines
January 2025	2025 Legislative Session	

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/>

