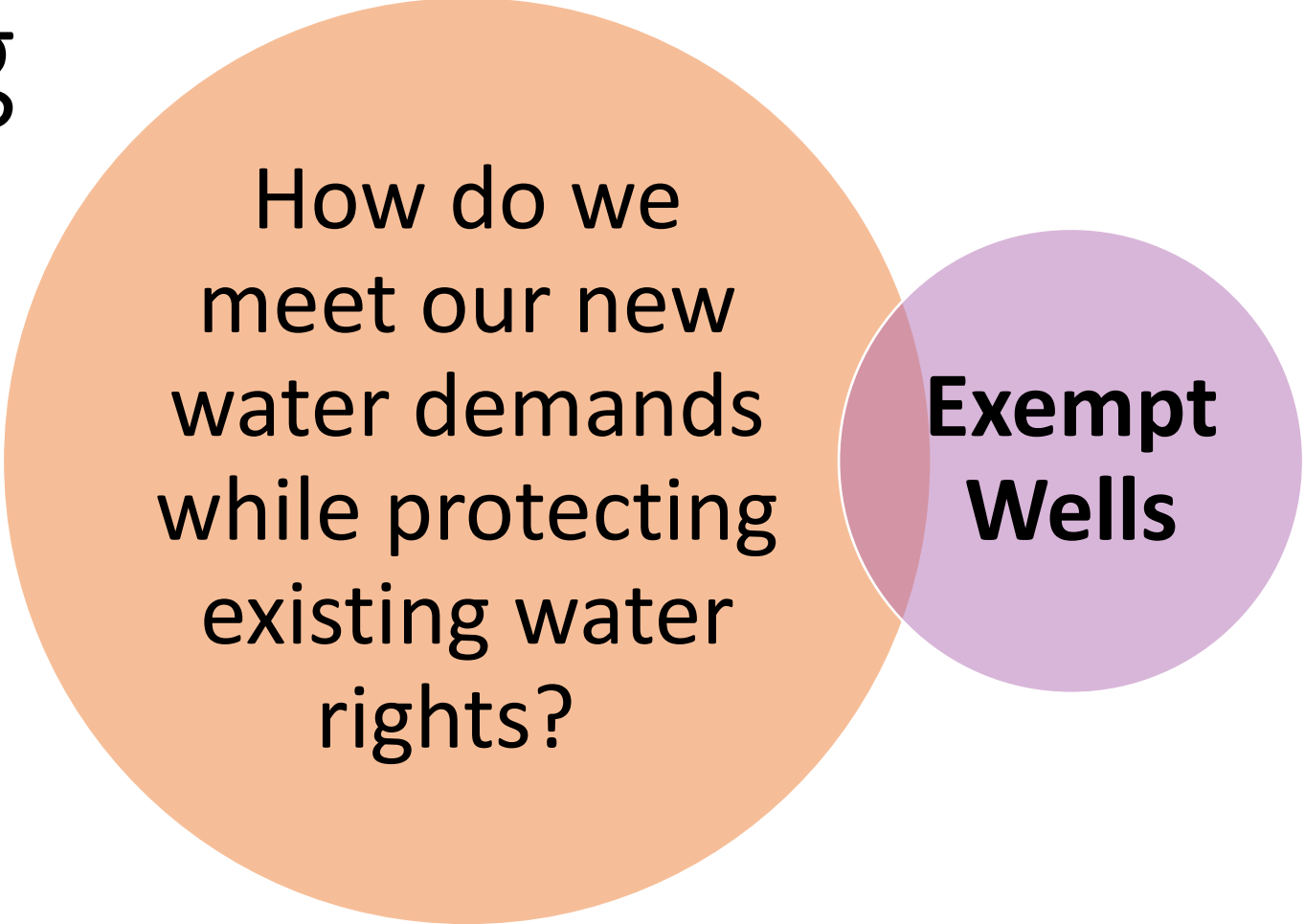


# PGE sub-working Group

4/30/2024

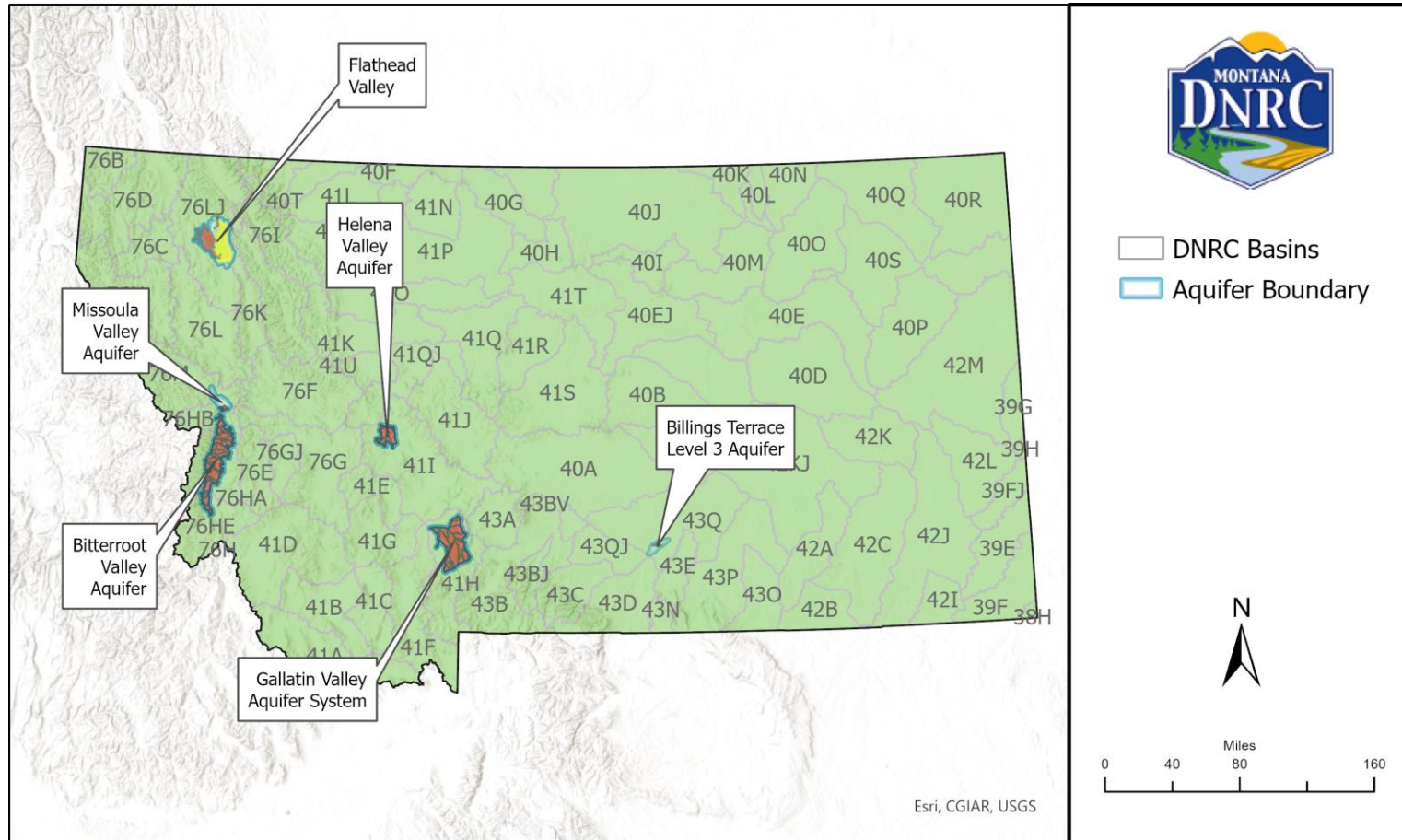


How do we  
meet our new  
water demands  
while protecting  
existing water  
rights?

**Exempt  
Wells**

# Exempt Wells

**Issue:** Not one size fits all policy for MT, science-based criteria and variable policy based on needs and impacts to existing water rights



# Red (problem areas)

## **Draft Science Criteria**

- Groundwater Quantity Limitations where a statistically significant decreasing groundwater level trend has been documented; or
- Surface Water with Legal Availability limitations where there is hydraulic connection between groundwater and surface water and the legal demand on connected surface water exceeds 10% of the appropriation threshold of the stream for any month

## **Draft Policy**

- No exceptions
  - Is there a savings clause?
- Allowance for exigent circumstances
  - Statue or rule
- Metering & measurement
- Vertical limitations
- Funding incentives
- MCA 85-2-506/ new statute

# Yellow (study/monitoring)

## **Draft Science Criteria**

- Groundwater quantity limitations where a decreasing groundwater level trend has been documented but is statistically insignificant;
- Where recharge is dependent on artificial sources and/or aquifer is vulnerable to major land use changes or recharge is variable, and the variability is a result of climate, not extraction or artificial recharge.
- Groundwater connection to Surface Water with Legal Availability limitations where the legal demand on connected surface water is within 10% above or below the appropriation threshold of the stream (physical availability) for any months.

## **Draft Policy**

- Green restrictions apply
- Study/monitoring
- Metering & measurement
- Funding incentives
- MCA 85-2-506/ new statute

# Green (statewide)

## Draft Science Criteria

- None

## Draft Policy

- Exempt wells allowable; spirit:
  - Address combined appropriation
  - Legally defensible
  - De Minimus, not causing adverse effect
  - Executive & Legislative support
  - Making progress
  - Implementable
  - In coordination with red and yellow areas
- All existing rules and statute apply
- Agency coordination bill around water (DEQ, DNRC, Counties, Cities)
  - Clear expectations on water availability for land development
  - Clear jurisdictional
- **85-2-306**
- Bill draft:
  - Green, yellow and red in one bill.
  - Sequencing: Yellow and red happen rule adoption and then green

# Green- what are we trying to address?

## Not a problem:

- 10AF/35 gal per min (one exception)
  - Stock water
  - Isolated homes
  - Limited and defined development

## Problem:

- Using exempt wells for large scale subdivision development
- Stacking exceptions (e.g., phasing or multiple exceptions used in combination) to circumvent the permitting process

# Green- new option

1. One or more groundwater developments within subdivisions of an existing tract of record, 640 acres or less, as of 10/17/2014, including any subsequent minor divisions, that **exceed 24 parcels**, constitutes a **combined appropriation**
  - Not impacting rights before 10/17/2014
2. For subdivisions of land, including family transfers, court ordered partitions, boundary line adjustments, less than 25 parcels, the department will issue up to **.5AF per acre, no more than 1AF per parcel/lot**. Remainder tracts (greater than 20 acres) is eligible for up to 10 AF.
  - Subsequent requests for an exempt well would be denied (via agency subdivision coordination bill on water)

# Green- new option cont.

3. The department will consider these factors when deciding if a project is a combined appropriation that could have been accomplished by a single appropriation.
  - Same aquifer/source, owner, place of use, purpose,
  - Contiguous tracts of land
  - Proximity to other wells- such that it could have been accomplished by one appropriation
4. Subdivision and platting act created parcels require metering and monitoring.
5. Retroactive requirement for parcels 10/17/14 and savings clause.
  - If you received a DNRC predetermination letter, and DEQ approval, it is covered.
  - What about platting act (but not sanitation act) divisions? \* **needs SWG discussion**
6. No more exceptions in stream depletion zones (only one in the bitterroot) (85-2-380); reconcile what is in statue.



# Green- new option scenarios

1. Someone can still drill a well on their property, put in a stock well, and get an exempt well under 85-2-306.
2. Start with a 20-acre parcel, divide into 20 lots, each domestic dwelling and lawn has up to 1AF (**10AF total**)
  - The original parcel is no longer eligible for an exception
3. 640-acre parcel (**up to 34 AF**):
  - Subdivide, not more than 25 lots, without getting a permit under 85-2-311.
  - First 24 lots = 24 AF (up to **.5AF per acre, no more than 1AF per parcel/lot**)
  - remainder would get no more than 10 AF

# Green- new option scenarios

## 4. 160-acre parcel (up to 34 AF):

- Subdivide, not more than 25 lots, without getting a permit under 85-2-311.
- First 24 lots = 24 AF (up to **.5AF per acre, no more than 1AF per parcel/lot**)
- remainder would get no more than 10 AF

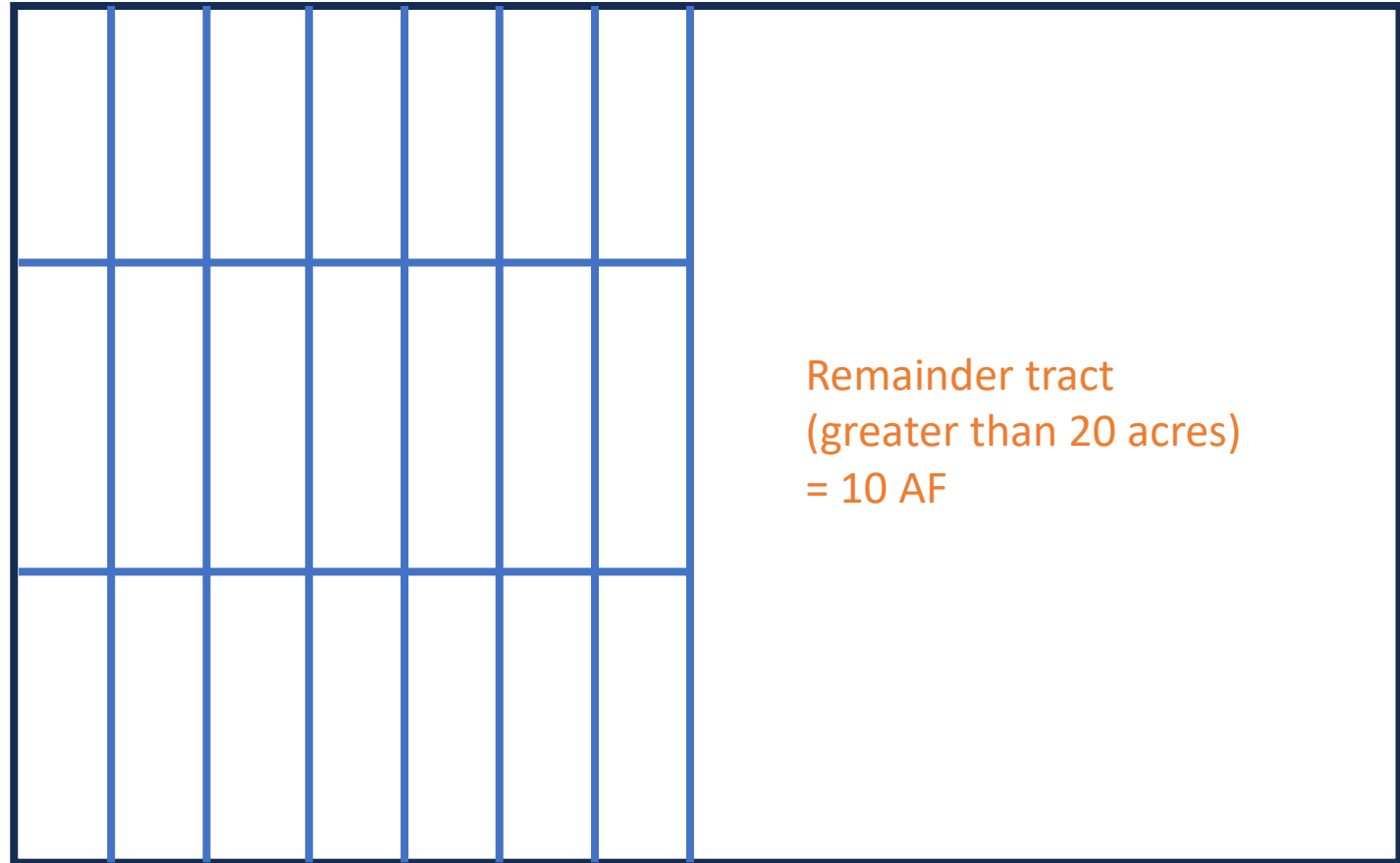
## 5. 40-acre parcel (up to 24 AF):

- Subdivide, not more than 25 lots, without getting a permit under 85-2-311.
- First 24 lots = 24 AF (up to **.5AF per acre, no more than 1AF per parcel/lot**)

# visual

- 160-acre parcel
- Subdivide (<25 lots)
  - .5AF per acre, no more than 1AF per parcel/lot.
  - 24 lots/parcels created = 24AF
- Remainder tract (greater than 20 acres) = 10 AF
- **TOTAL 34 AF**

24 lots/parcels created =  
24AF



# Combined appropriation

- When multiple groundwater developments are counted against one exception (10AF/35 gallons per minute per well)
- An appropriation of water from the same source aquifer by means of two or more groundwater developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Groundwater developments need not be physically connected nor have a common distribution system to be considered a "combined appropriation." They can be separate developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments. The amount of water appropriated from the entire project or development from these groundwater developments in the same source aquifer is the "combined appropriation."

# 10 AF, what does that mean?

- 3.28 to 6.75 acres of irrigation depending on climatic area
- 4 acres of lawn & garden irrigation (2.5AF/acre)
- water for 588 cows for a year (or 7,056 AUM)\*
- water for 35 average families (DEQ Std- 250 gal/day; 0.28AF/yr)
- 14 houses with  $\frac{1}{4}$  acre of lawn & garden (0.28+0.63)
- produce 93,100 yards of concrete in a year (46,550 concrete trucks/year) (average 35 gallons/yard and 8 yards/concrete truck)

\*rule change on how DNRC assigns volumes for stock use