

# Exempt wells

Comprehensive Water Review

Sub working Group

5/29

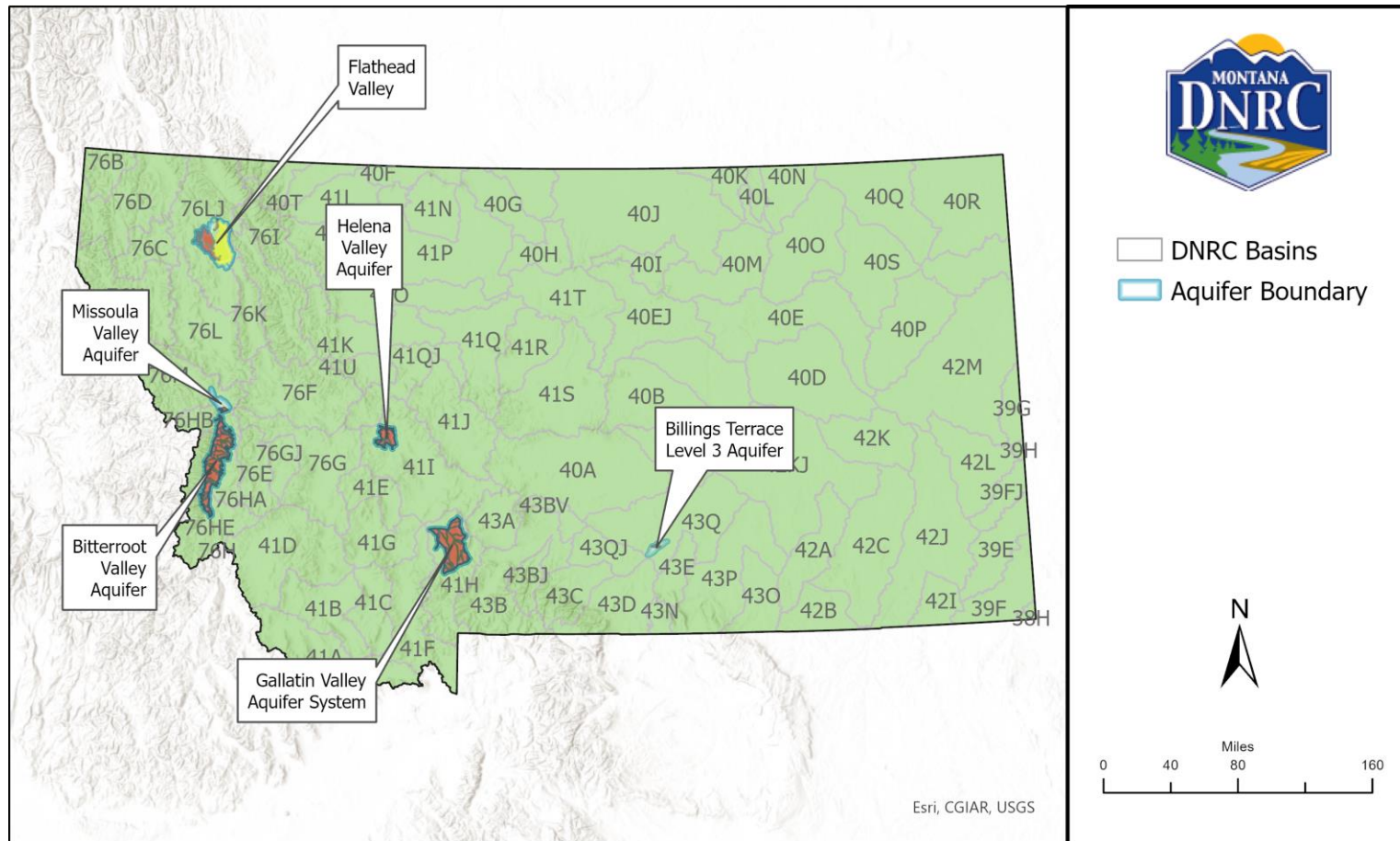


How do we  
meet our new  
water demands  
while protecting  
existing water  
rights?

**Exempt  
Wells  
(policy)**

# 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



# Controlled Groundwater Areas (Red)

## Draft Policy

- No exceptions
- Grandfather
  - All types of uses
  - Authorizations that existed as 10/17/2014?
  - DNRC subdivision predetermination letters & COSA approval?
  - Other?
- Allowance for exception in special situations (rule)
  - Can not tie into PWS
  - Court ordered split without exemption
- Metering & reporting
- MCA 85-2-506/ new statute

# Green- two pathways for an exception

## 1. Not subdividing land

- Status quo
- Combined appropriation applies

## 2. Subdividing land (Platting or Sanitation Act) (24 lots or less)

- Combined appropriation does NOT apply \* **SWG discussion**
- Water is an up to amount by lot with a cap

# Not dividing land (status quo)

1. Not dividing land
  - Stock water
  - Isolated homes; limited and defined development
2. 10AF/35 gal per min, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit
3. The department will consider the following factors when evaluating combined appropriations:
  - Source aquifer
  - Physically manifold and system design
  - Place of use
  - Tract of land
  - Purpose
  - Ownership
  - Proximity
  - Topography

# Subdividing land (Platting or Sanitation Act)

1. Subdivided pursuant to Sanitation Act or Platting Act
  - **Tract of record** in existence on 10/17/2014 (original tract of record)
2. Subdivided to create 24 lots or less
  - Allowed *up to 0.5 acre-feet per acre* and **no more than 1AF** (cap) per parcel (24 AF)
  - 35gal/min per gw development
3. If one of the 24 lots is greater than 20 acres, than **one** is eligible for up to 10 AF (10 AF)
  - 35gal/min per gw development
  - Should this number be more or less
4. Once you subdivide the original tract of record to create 25 lots or more = need a permit
  - This can occur over multiple divisions
  - Should this number be more or less

# Subdividing land (Platting or Sanitation Act)

5. Require metering and monitoring
6. Combined appropriation does NOT apply \* **SWG discussion**
  - Water is an *up to* amount by lot with a cap (.5 AF/Acre and no more than 1AF/lot)
  - 35gal/min per gw development
7. **Grandfathering requirement for parcels 10/17/14**
  - DNRC predetermination letter/DEQ approval? \* **SWG discussion**
  - Platting Act (but not sanitation act) divisions? \* **SWG discussion**

# Green- scenarios

- 1. Not subdividing:** Someone can still drill a well on their property, put in a stock well, and get an exception (up to **10AF total**)
  - Combined appropriation still applies
- 2. 20-acre parcel (20AF total)**
  - subdivide into 20 lots
  - each lot has *up to* 1AF
- 3. 640-acre parcel (24 AF without bonus to 33 AF with bonus):**
  - Subdivide, to create not more than 24 lots
  - First 23 lots = 23 AF (up to **.5AF per acre, no more than 1AF per parcel/lot**)
  - One lot greater than 20 acres, up to 10 AF
  - Create 25 lots, need a permit

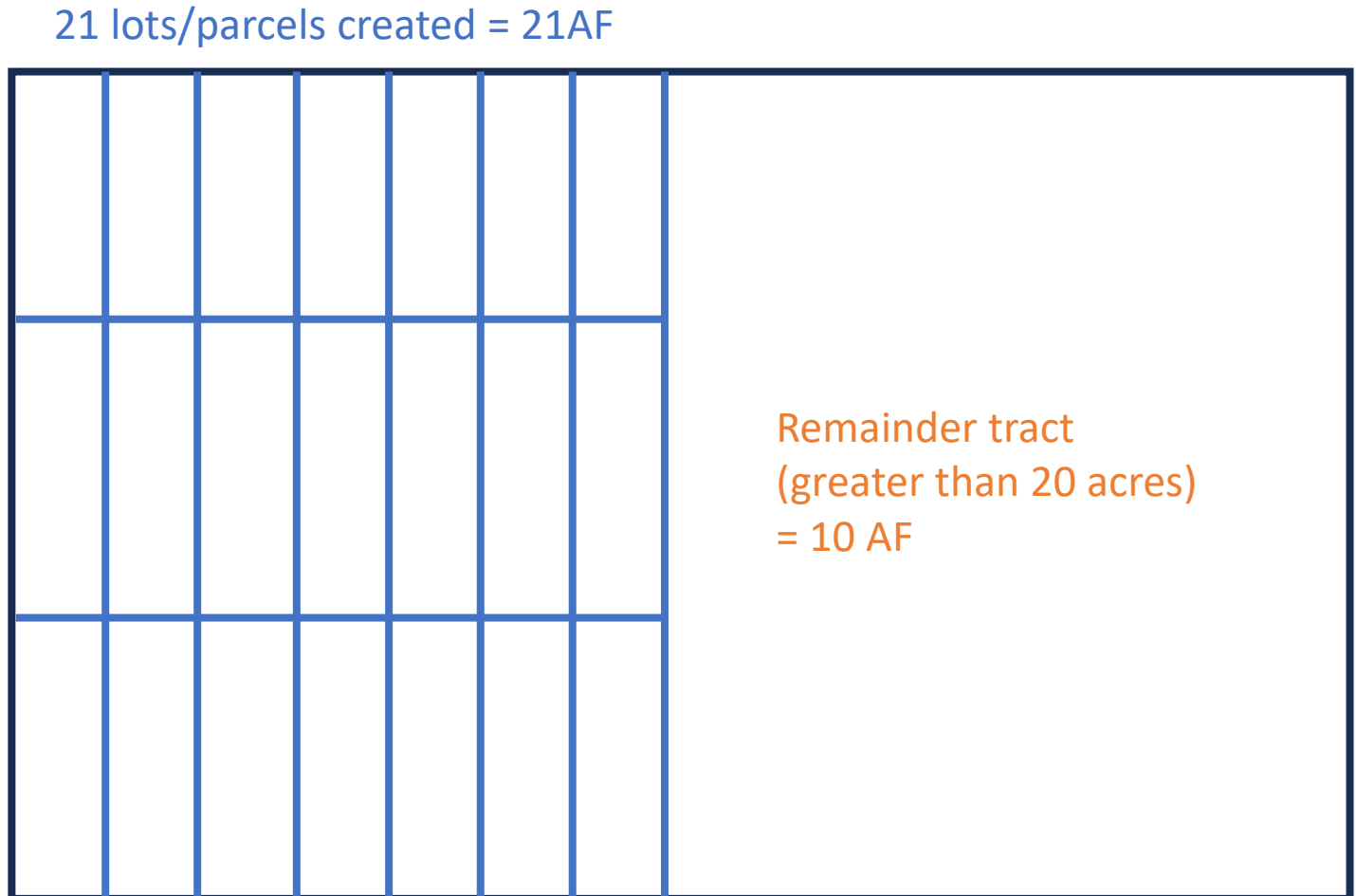


# Green- pathway 2 scenarios

4. 160-acre parcel (24 AF without bonus to 33 AF with bonus):
  - Subdivide, not more than 24 lots
  - First 23 lots = 23 AF (up to **.5AF per acre, no more than 1AF per parcel/lot**)
  - One lot greater than 20 acres, up to 10 AF
  - Create 25 lots, need a permit
  
5. 40-acre parcel (24 AF without bonus to 33 AF with bonus):
  - First 23 lots = 24 AF (up to **.5AF per acre, no more than 1AF per parcel/lot**)
  - One lot greater than 20 acres, up to 10 AF
  - Create 25 lots, need a permit
  - **Note:** a non-rectangular 40-acre lot could have up to 40AF using previous spacing guidance (1320' between gw developments)

# Green- pathway 2 visual

- 640/160/40-acre parcel
- Subdivide (<25 lots)
  - .5AF per acre, no more than 1AF per parcel/lot.
  - 21 lots/parcels created = 21 AF
- Remainder tract (greater than 20 acres) = 10 AF
- **TOTAL 31 AF**



# Comments

- What if there is another type of use that wants 24AF? Without subdividing? Are we creating a preference for types of uses?
  - Could use the land for any purpose.... But you have to subdivide your land.
  - How do you account for other uses, that don't want to subdivide
- Ask: walk through real life scenarios

# Subdivision Water Coordination Bill

## Water Use Act 85-2-xxx

- No requirements for Sanitation Act or Platting Act subdivision review
- DNRC writes predetermination letters for sanitation act approval pursuant to MOU with DEQ. Predetermination letters are not a water/property right.
- Water right filed when put to beneficial use (notice of completion), which could be years after predetermination letter to DEQ.
- Nothing ties a predetermination letter to the exempt well notice of completion. To the extent that the predetermination letter is inconsistent with the law at the time, DNRC must follow the law.

## Sanitation Act 76-4-xxx

- No requirements in statute for DNRC participation
- 76-4-104(7) (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed.
- ARM 17.36.103(1)(n) letter from the Department of Natural Resources and Conservation stating that the water supply... either exempt from water rights permitting requirements or has a water right

## Platting Act 76-3-xxx

- No requirements in statute for DNRC participation

# Flow Chart Platting Act and Sanitation Act (today)

Platting Act (76-3)		Sanitation Act (76-4)
Initial Platting Application	can be concurrent	Initial Subdivision Application
5-day Review of Elements of the Application		15 day Element Review - includes DNRC letter or copy of application to DNRC
15-day Sufficiency review		Complete Technical Review
		Approval Ready, needs:
Public Hearing	→	DNRC letter and Local Health Dept Approval
Preliminary Plat Approval Issued		If Platting Act review required: Public Comments and Preliminary Plat Approval
Review whether PP conditions met		Final Review
Final Plat Approved		Final COSA Issued
Subdivision can be recorded with Final Plat and COSA		



# Agency subdivision water coordination bill- objectives

- Create statute to allow the coordination between Water Use Act, Sanitation Act, Platting Act = efficient process (red tape & customer service)
- Provide clear roles and responsibilities for each agency involved in subdivision review process (customer service)
- Create certainty for developer and home buyer that they will have water when they build a home (consumer protection)

# Subdivision Water Coordination Bill

Platting Act (76-3)	Water Use Act (85-2)	Sanitation Act (76-4)
Initial Platting Application	Allocation of Water Application (new section)	Initial Subdivision Application
5-day Review of Elements of the Application	Evidence of water use: permit, change, existing water right, or allocation of water [new section] (76-3-608) (76-3-622)(76-4-104)	15 day Element Review
15-day Sufficiency review		Complete Technical Review
		Approval Ready, needs:
Public Hearing		Local Health Dept Approval
Preliminary Plat Approval Issued		If Platting Act review required: Public Comments and Preliminary Plat Approval
Review whether PP conditions met		Final Review
Final Plat Approved		Final COSA Issued
Subdivision recorded with Final Plat (with evidence of water use) and COSA and evidence of Water Use (76-4-114)		
Notice of Completion for Allocation of water (85-2-306)		



Criteria Bill (Water Use Act)

Subdivision Water Coordination Bill

**CGWA (red)**

- No exceptions
- Exigent Circumstances
- Metering & reporting
- Funding incentives (PWS & Storage)

**Monitoring**

- Monitoring
- Green Policy
- Metering & reporting
- Funding incentives (PWS & Storage)

**Statewide (green)**

Non-subdivision

- Status Quo
- 10AF/35 gal per min
- Review for combined appropriation

Subdivision (Platting and Sanitation)

- Same tract of record in existence on or before 10/17/2014
- Subdivided to create less than 24 lots of land will be allowed up to 0.5 acre-feet per acre and no more than 1AF per parcel (24 AF)
- One of the lots over 20 acres is eligible for up to 10 AF (10 AF)
- Metering and reporting

**WUA**

- Allocation of water
- Notice of completion

**Platting**

- 76-4- xxx
- Final Platt

**Sanitation**

- 76-4-xxx
- COSA





# Comments

- Don't want to wait for a permit in coordinated bill.
- Counties are not moving forward without water rights (DNRC reach out)
- Catch-22 between DNRC and DEQ: SW permit for PWS: COSA and Water right chicken and egg
- GW discharge: DEQ GW permit issued before DNRC can act. Can we work in parallel?

# 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

# Temporary Monitoring Areas (Yellow)

## **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
- Monitoring as long as needed
- Metering & reporting
- Funding incentives
- MCA 85-2-506/ new statute