

COMPREHENSIVE WATER REVIEW UPDATE

WPIC May 2024



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



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

ADJUDICATION AND NEW APPROPRIATION



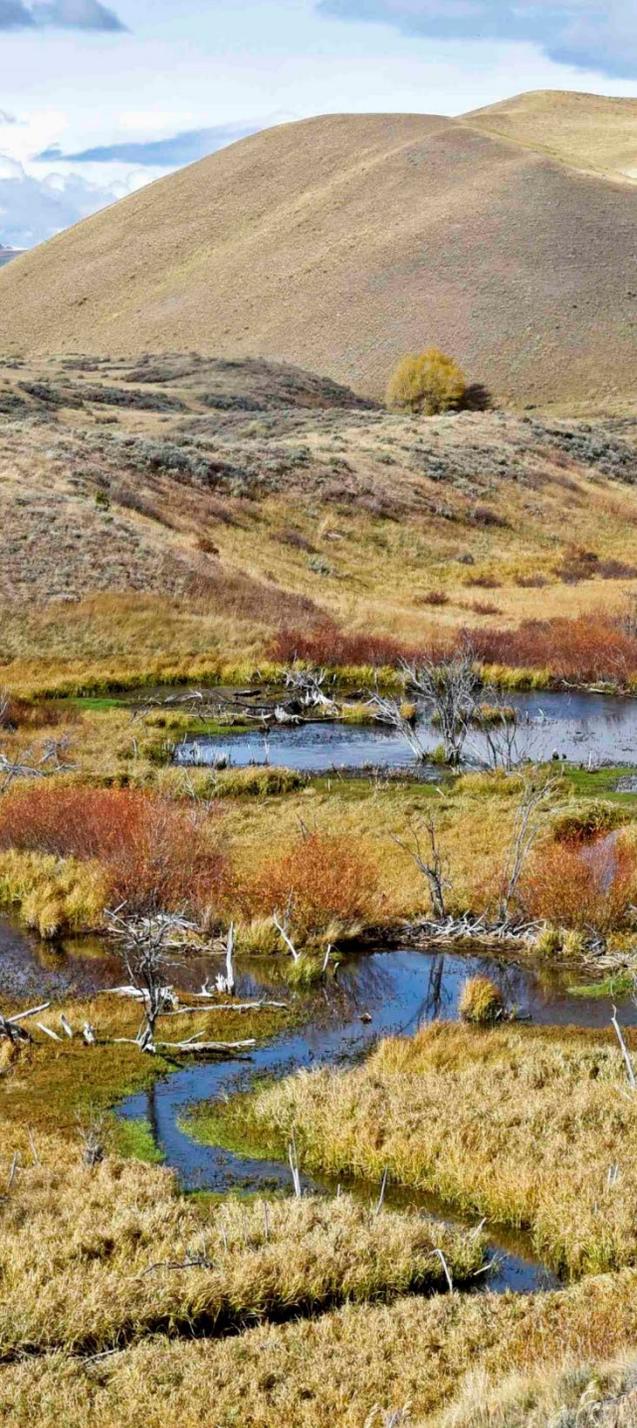
July 1st, 1973

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 navigate legal system



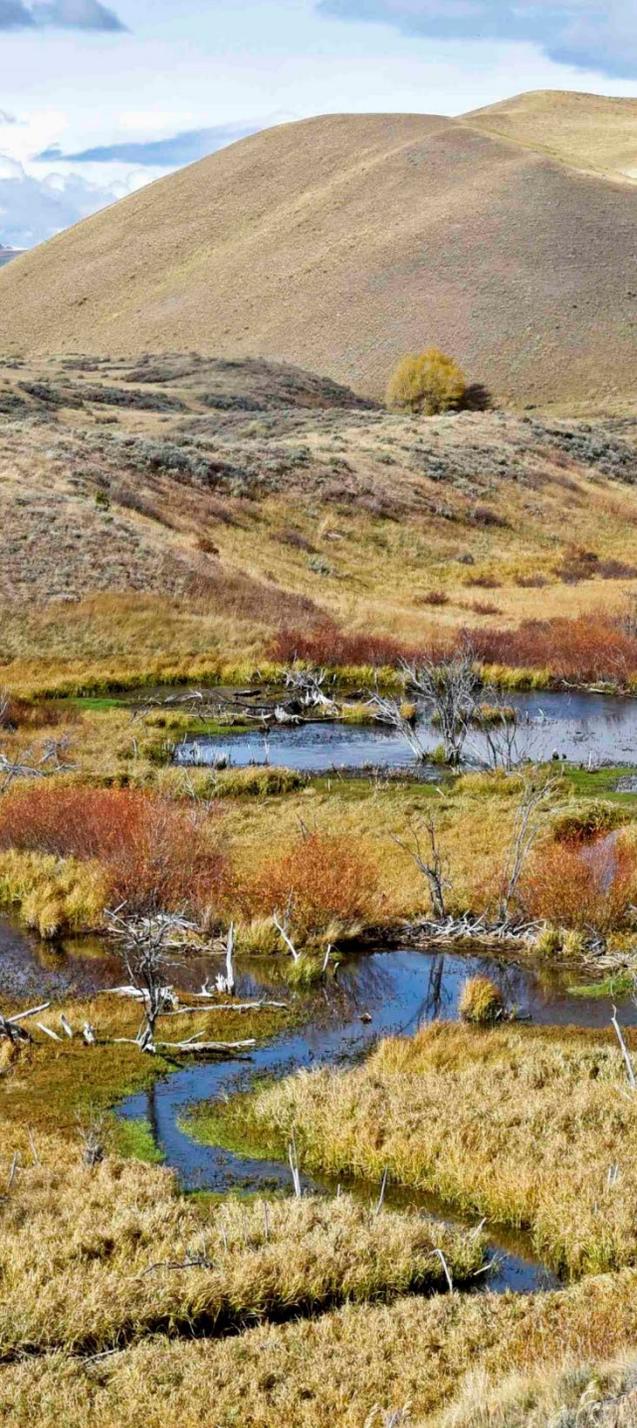
District Court



Division Court

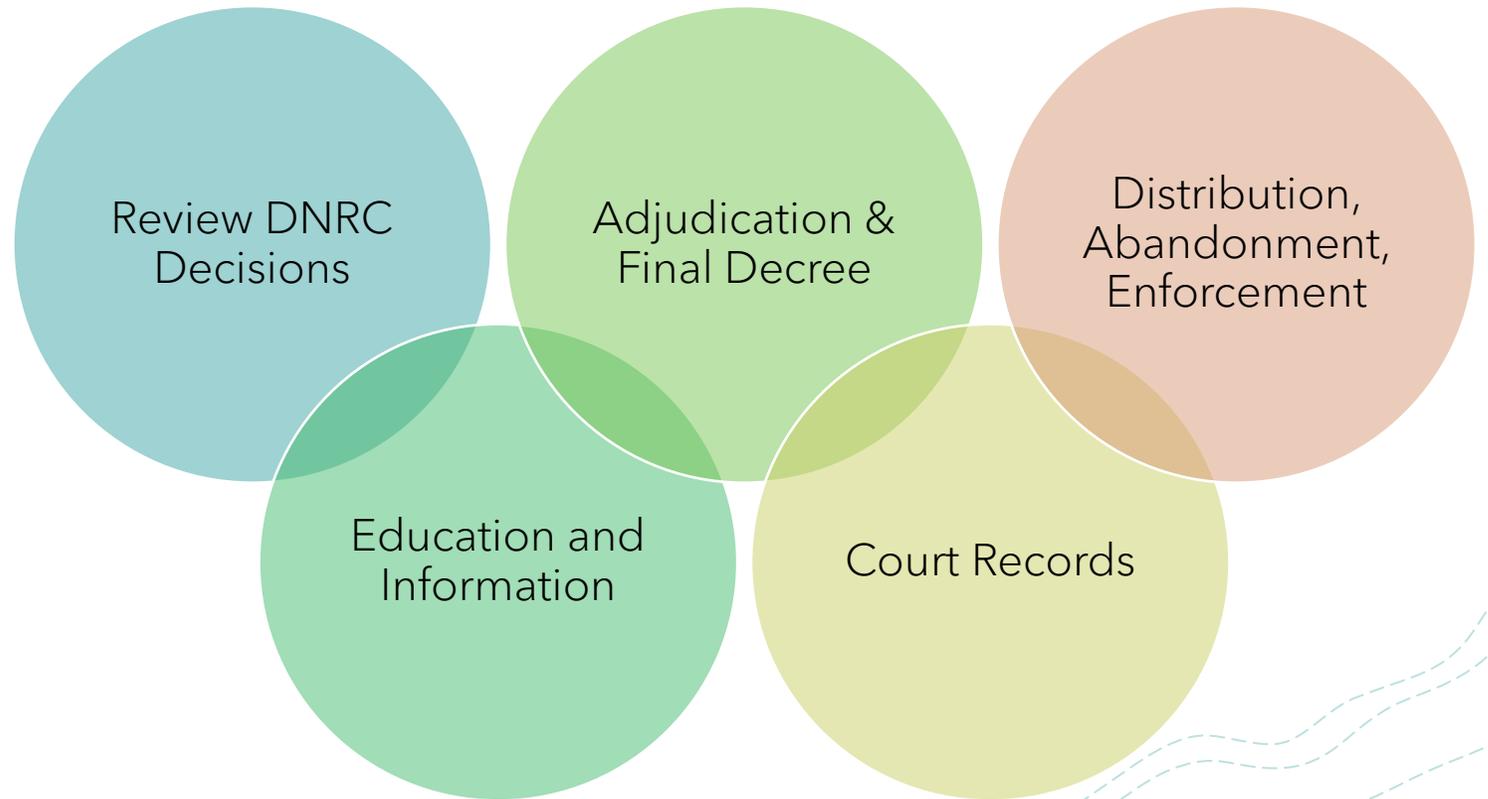


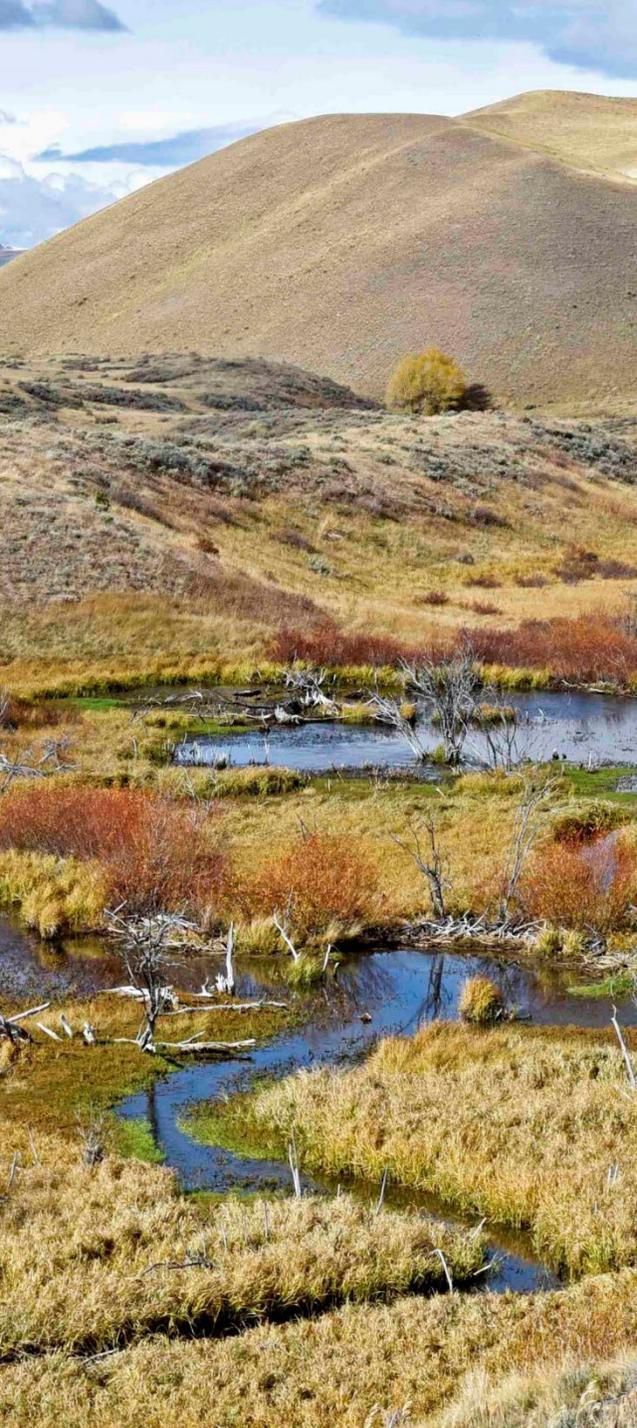
Adjudication Court



JUDICIAL NEEDS

2. One court to address all water issues

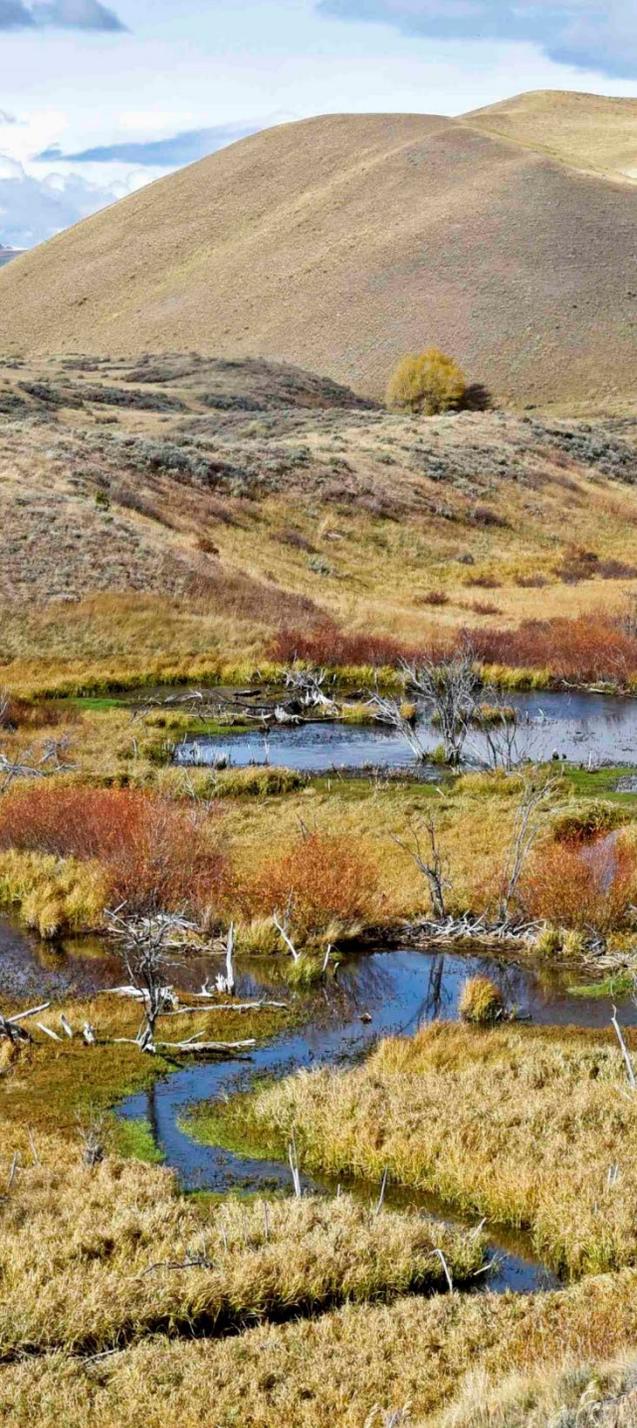




JUDICIAL NEEDS

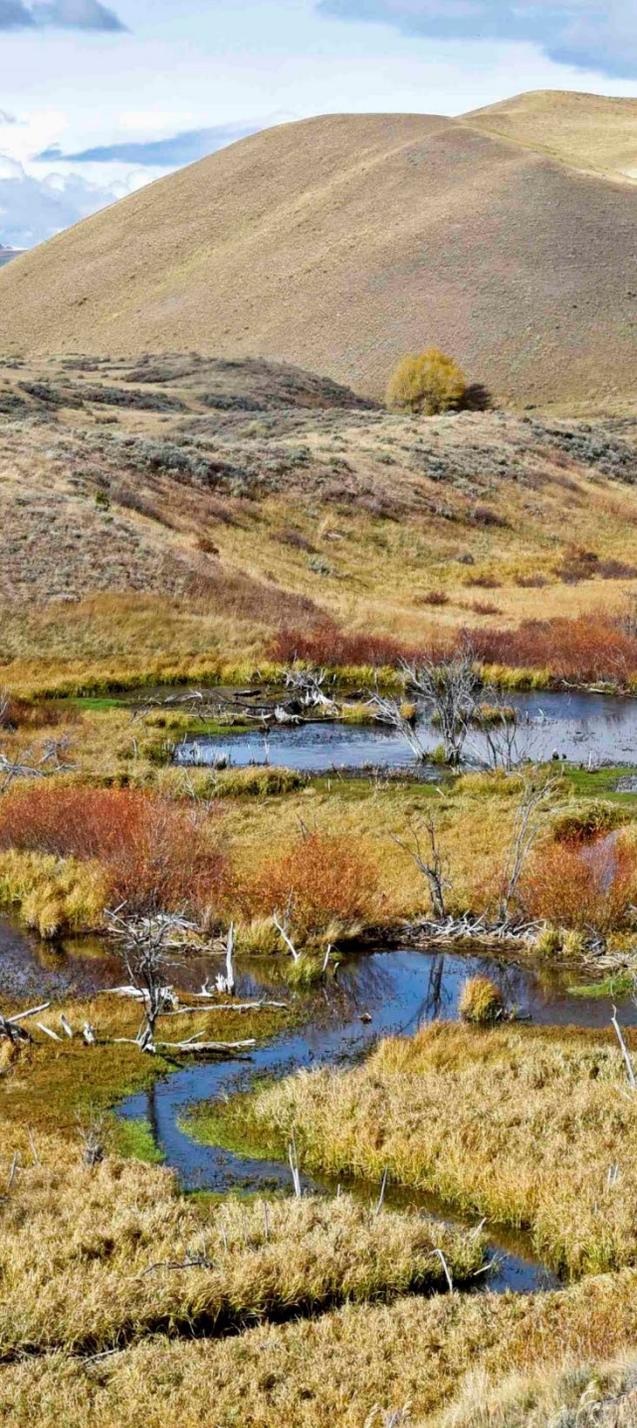
3. Stakeholders want timely, accountable, and efficient judicial water decisions



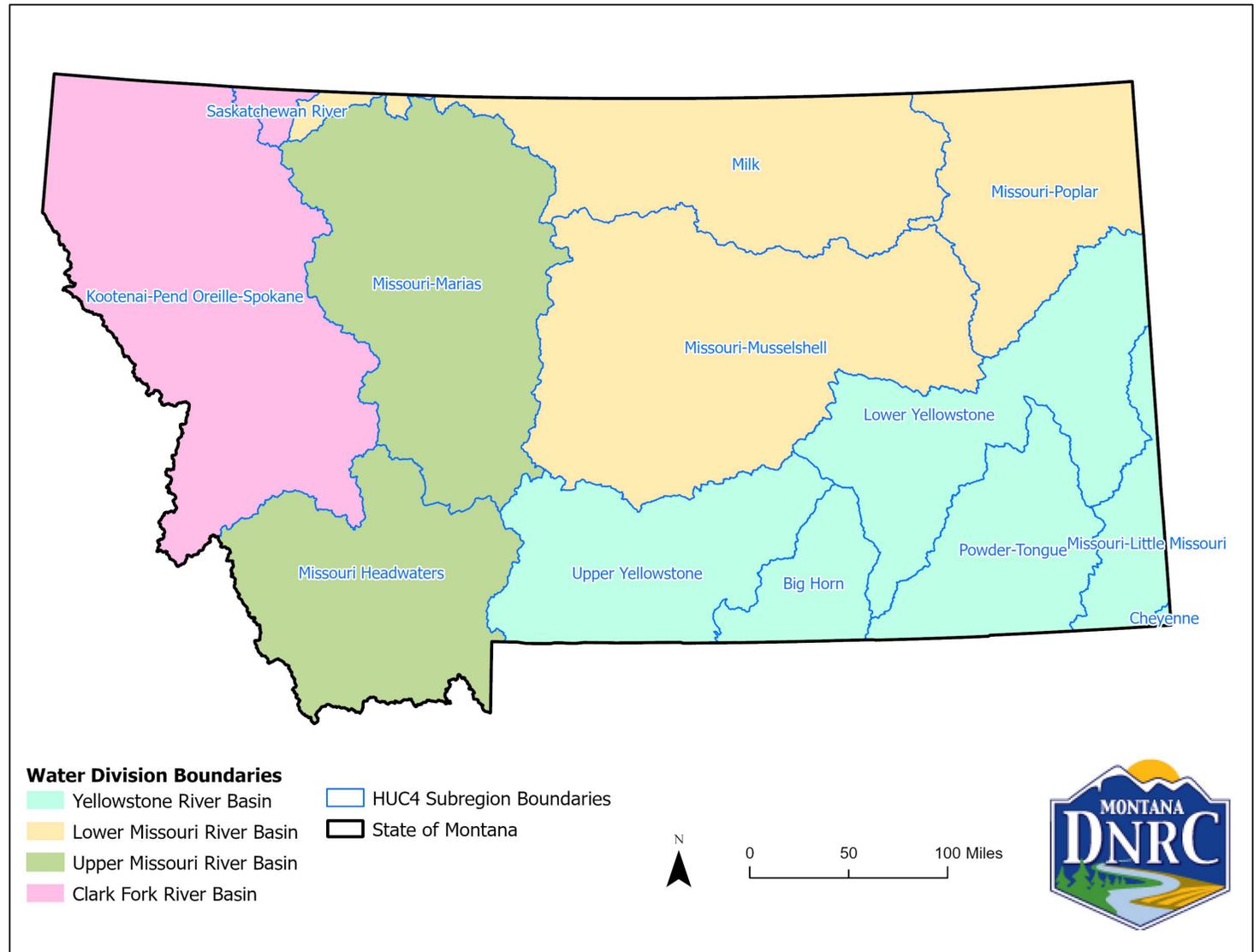


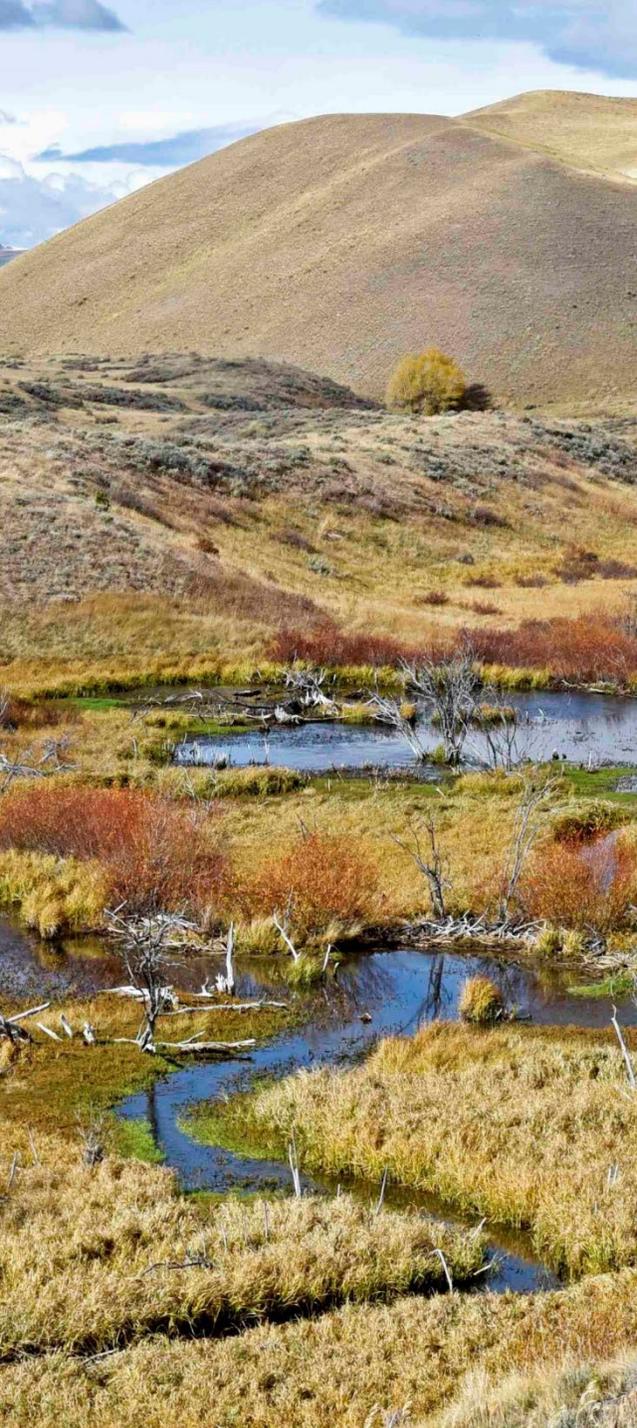
CONCEPTS DISCUSSED

- What court does the conflict start?
- Who and how someone becomes a judge for water administration?
- Can you substitute judges?
- Who supervises water commissioner?
- How to address multi-jurisdictional water conflicts?
- Transition between adjudication and post adjudication work?



DIVISION COURT MODEL MOVING FORWARD





HARMONIZING PROVISIONAL PERMITS AND CHANGES WITH FINAL DECREES

Harmonizing provisional permits & 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 that provisional permit and change will become **certificates of water rights**
- ~4900 changes issued
- ~12,000 permits have been issued since 7/1/1973

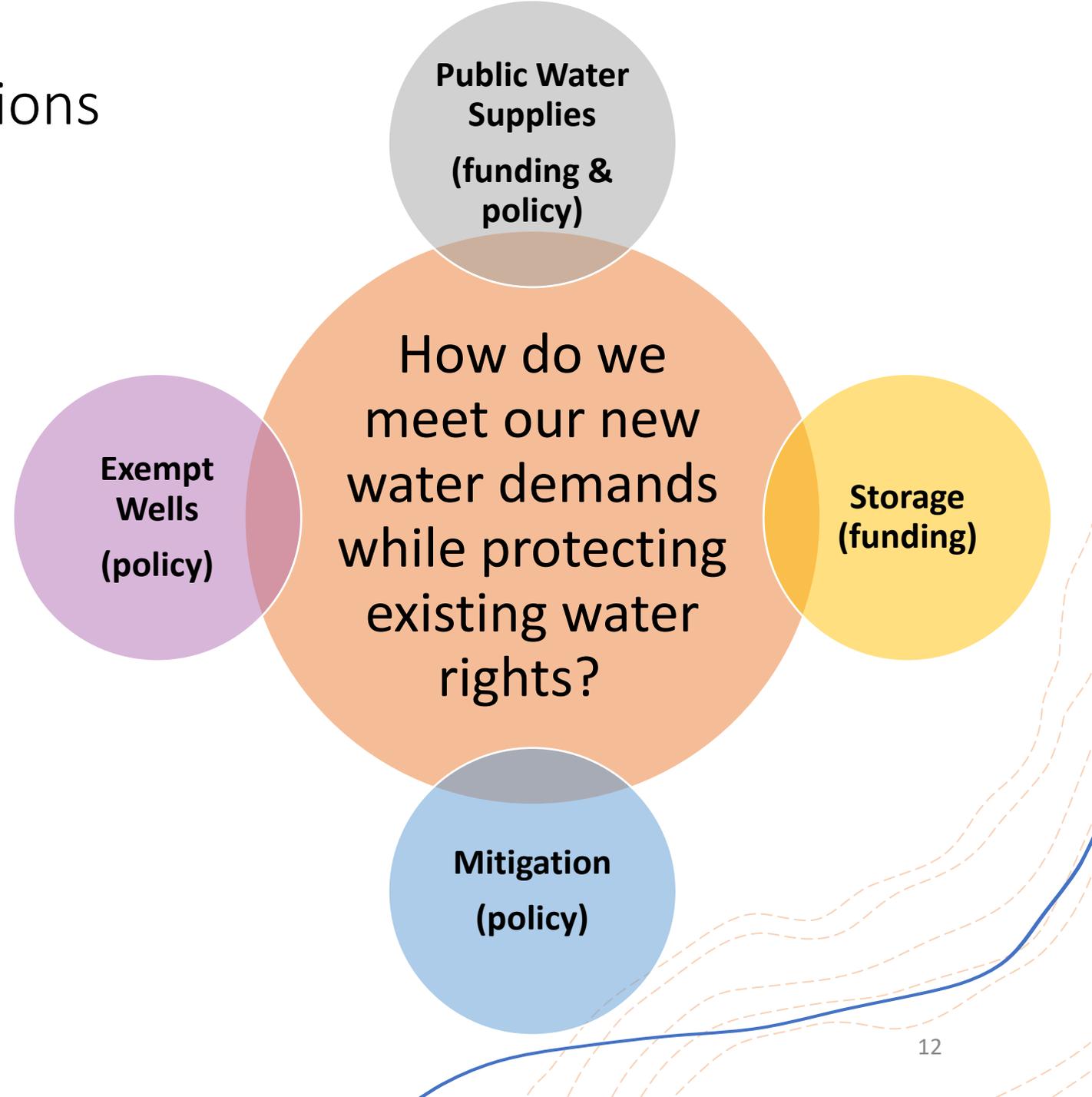
WATER PLANNING, GROWTH, EXEMPT WELLS



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



Holistic Solutions



Public Water and Sewer

Issue: How do we incentivize utilizing existing infrastructure for water supply?

Policy:

- How to make it easier for cities to fully utilize their *existing water rights* and systems?

Funding:

- Funding package to incentivize use of public water and sewer

Storage

Issue: How can we utilize storage to increase availability and timing of supply?

Funding:

- Funding package to support existing and new storage and Montana

Mitigation

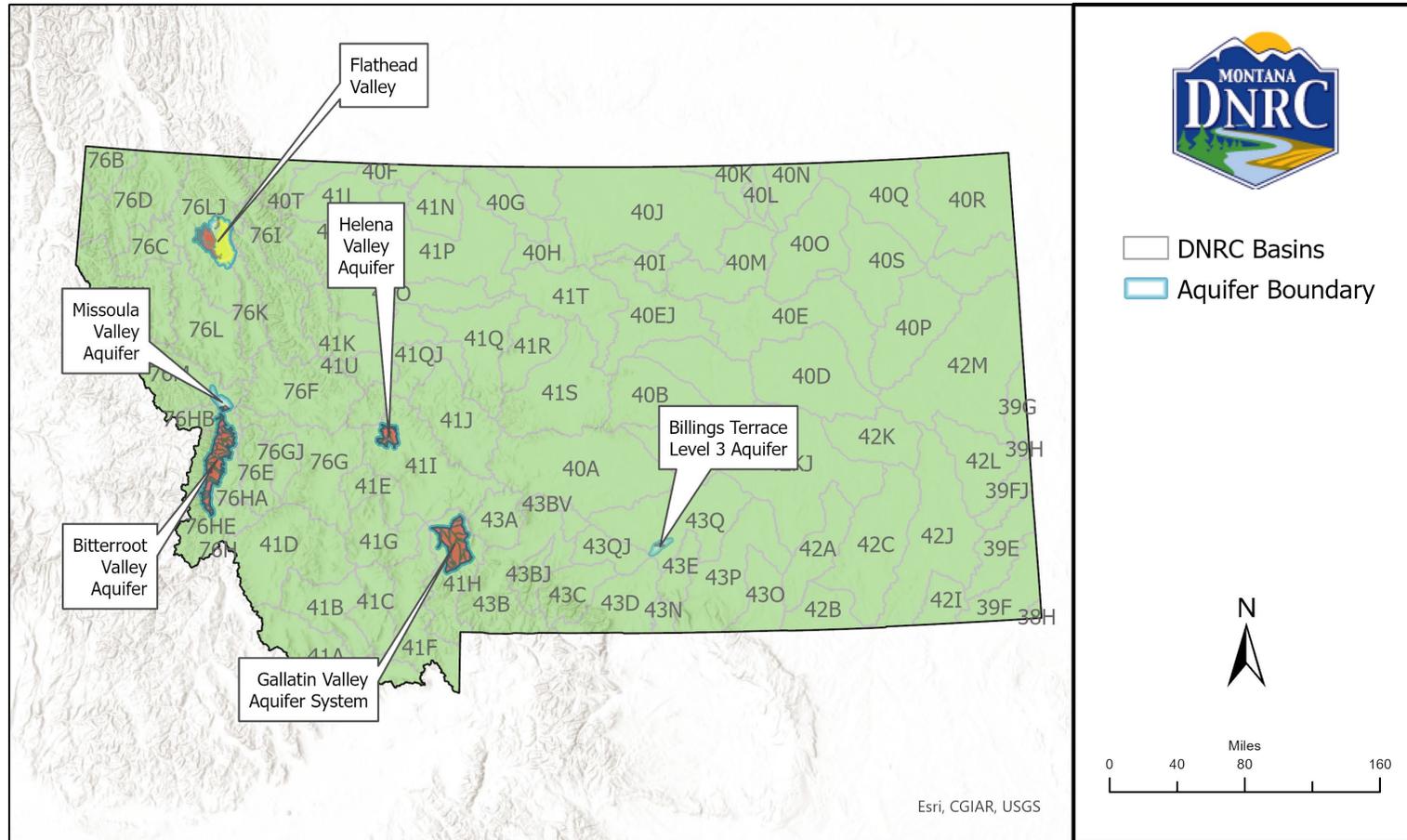
Issue: How can we create more accessible and meaningful mitigation to meet growing water needs?

Policy:

- Policy changes that make mitigation more useable and accessible (e.g., time, place, and rate changes)

Exempt Wells

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





Exempt wells- what are they?

Water Right Permit (85-2-311)

- Criteria Analysis conducted
 - Physical water availability
 - Legal water availability
 - No adverse effect analysis
 - Beneficial use
 - Possessory interest
- Public Comment and Objection
- Water right upon application and approval

Exempt Wells (85-2-306)

- Up to 10AF/year 35 gal/min
- No water availability analysis
- No adverse effect analysis
- No public notice or input
- De Minimis uses
- Water right filed when put to beneficial use

Science based criteria for designation

	Metric	Yellow (temporary groundwater monitoring areas)	Red (Controlled Ground Water areas)	Confidence in data
Groundwater Physical Availability	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.	Low to Moderate
	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.	Low to Moderate
	Antecedent Aquifer Conditions	<ul style="list-style-type: none"> - Recharge is reliant on induced infiltration - Formation has limited storage or potential for storage 		High
GW Connected Surface Water	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	High

Controlled Groundwater Areas (Red)

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
 - Grandfather certain predetermination letters
- Allowance for exception in special situations (rule)
- Metering & reporting
- MCA 85-2-506/new statute

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
- MCA 85-2-506/ new statute

Statewide (green)

Draft Policy

- Exempt wells:
 - Address combined appropriation
 - Legally defensible
 - De Minimus, not causing adverse effect
 - Making progress
 - Implementable
- Agency coordination bill around water (DEQ, DNRC, Counties, Cities)
 - Clear expectations on water availability for land development
 - Clear jurisdictional authorities
 - Coordination between Platting, Sanitation, and Water Use Acts

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)

- Address combined appropriation
- Legally defensible
- De Minimus, not causing adverse effect
- Making progress
- Implementable

WUA

- 85-2-xxx

Platting

- 76-4- xxx
- Final Platt

Sanitation

- 76-4-xxx
- COSA



MEETING DATES

August 8-9	Helena
September 12	Helena
October 10	Helena
November 14-15	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 3	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/>

