



WATER RIGHT ENFORCEMENT AND REGULATION

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Water Resource Division

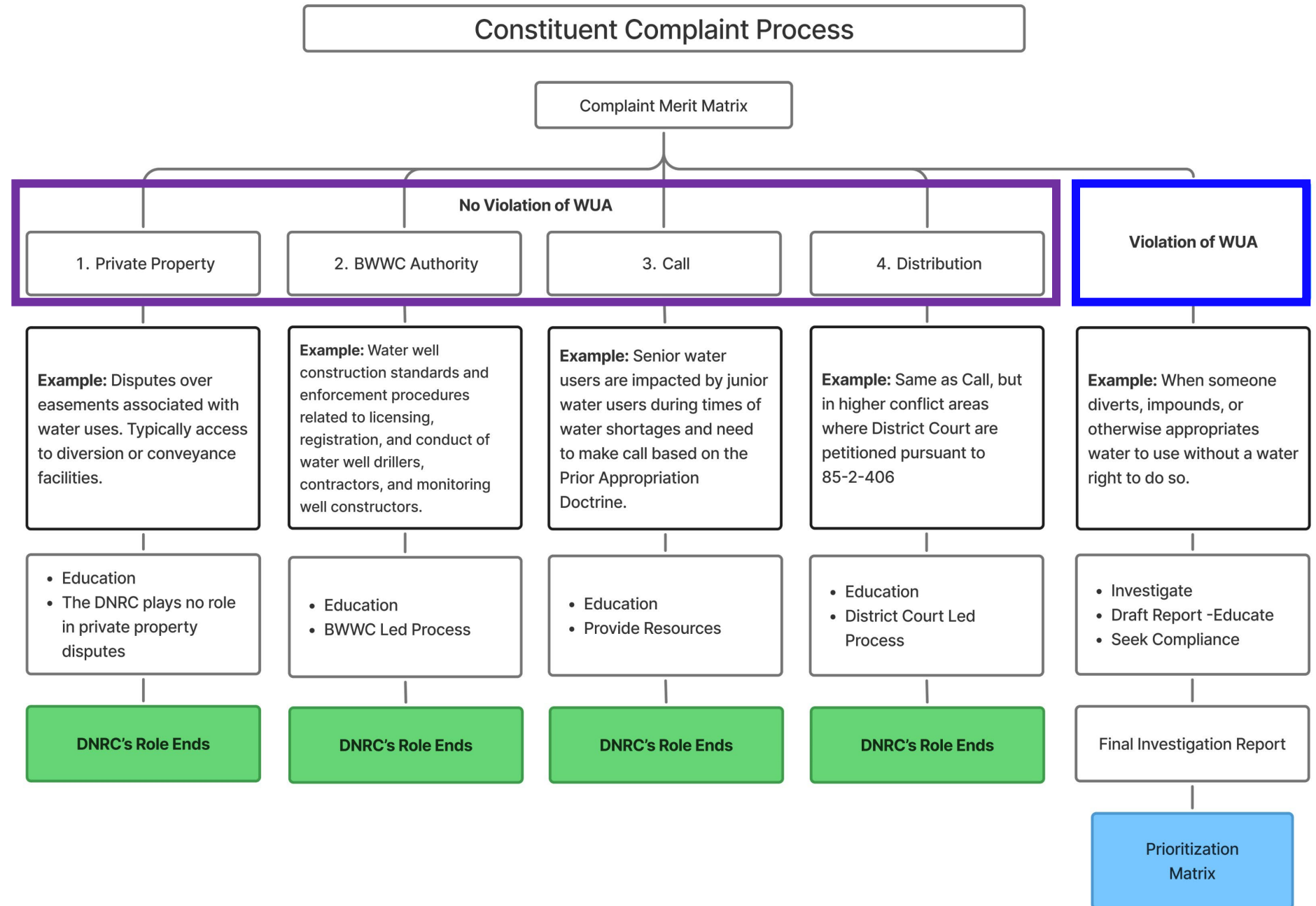
Adjudication, Enforcement, & Distribution Bureau Chief

The DNRC's Role in Enforcement

The DNRC's Constituent Initiated Enforcement Process

- The DNRC accepts written “Complaints”.
- Upon receiving a complaint, the DNRC determines the merit of the Complaint.
 - No violation of the Water Use Act
 - Violation of the Water Use Act

This investigation is important to set clear expectations for complainants on what they can reasonably expect from this process.



1. Private Property Disputes - No Violation of the Water Use Act

- Example: Disputes over easements associated with water uses. Typically access to diversion or conveyance facilities.
- Procedures:
 - Educate
 - The DNRC plays no role in private property disputes.



2. Board of Water Well Contractors (BWWC) – No Violation of the Water Use Act

- Example: Water well construction standards and enforcement procedures related to licensing, registration, and conduct of water well drillers, contractors, and monitoring well constructors.
- Procedures :
 - Educate
 - BWWC Led Process
 - DNRC's Role Ends



3. Call - No Violation of the Water Use Act

- Example: Senior water users are impacted by junior water users during times of water shortages and need to make call based on the Prior Appropriation Doctrine. Informal application of the Prior Appropriation Doctrine (First-in-Use, First-in-Right).
- Procedures:
 - Educate
 - Provide Resources
 - DNRC's Role Ends



4. Distribution -No Violation of the Water Use Act

- Example: Like Call, but in higher conflict areas where District Court are petitioned by water users pursuant to § 85-2-406, MCA. In these cases, a Water Commissioner is granted authority to distribute water within a defined area. Formal application of the Prior Appropriation Doctrine (First-in-Use, First-in-Right).
- Procedures:
 - Educate
 - District Court Led Process
 - DNRC's Role Ends



Violations of the Water Use Act

Complaint Examples:

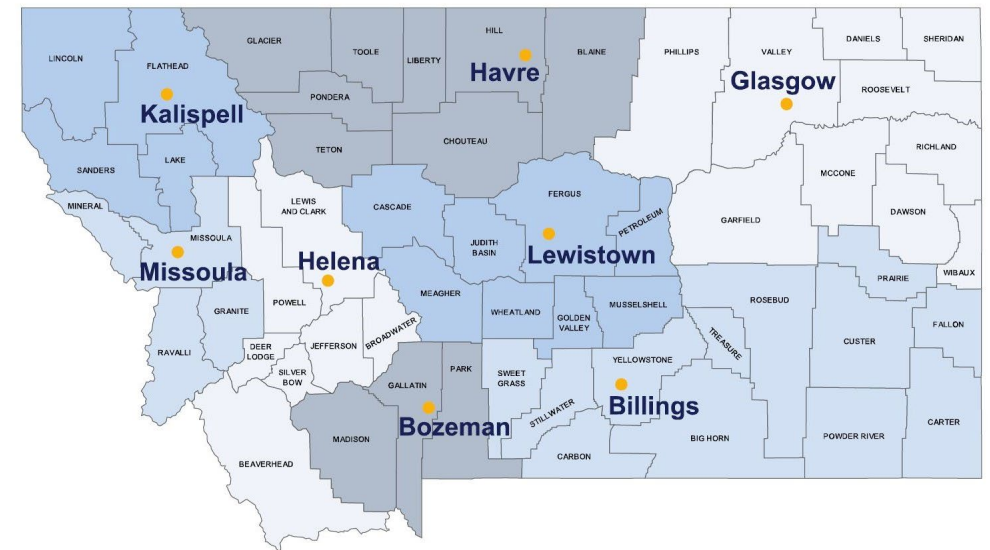
1. **Judicial Path:** When someone diverts, impounds, or otherwise appropriates water to use without a water right to do so.
2. **Administrative Path:** The water is not being applied to the beneficial use contemplated in the permit or change in appropriation right, or the permit or change in appropriation right is otherwise not being followed.

Complaint Procedures

Violations of the Water Use Act

- Procedures:
 1. Investigate
 2. Educate
 3. Seek Compliance
 4. Enforcement
- The first three steps are not always distinct from each other and often work in concert.

WATER RESOURCES REGIONAL OFFICES



1. Investigate

- The DNRC starts each investigation with an open mind.
 - Complaints are often one-sided and rarely forthcoming with the whole story.
 - The Department tries to work with the other party before reaching a conclusion.
- The findings of the Investigation are shared with both parties.



2. Educate

- After the DNRC has gathered all the facts, we work on educating both parties.
- Education can be formal or informal depending on the unique circumstances of the issue.
 - Informal: Phone Call
 - Formal: Written into a Draft Report



3. Seek Compliance

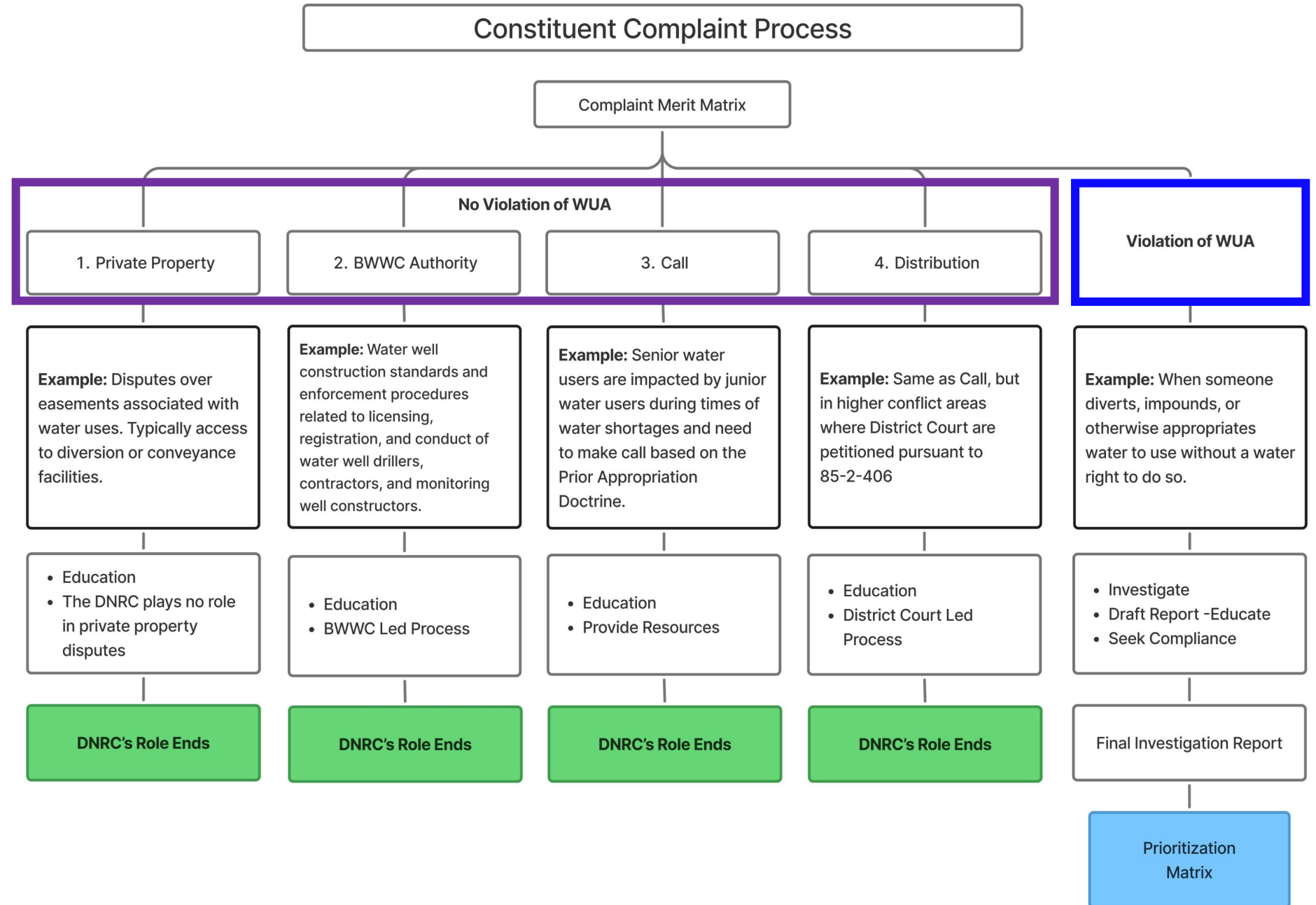
- Voluntary compliance is always the DNRC's preferred path forward.
- Statute gives the DNRC discretion to seek compliance before formal action.
- “Compliance” necessitates ceasing the violation, even while proper authorization is being pursued.



4. Enforcement

- When Voluntary Compliance is not achieved, the DNRC Drafts a “Final Investigation Report”.
- DNRC has limited resources and evaluates the severity and impact of the violation to prioritize whether to proceed with department led enforcement.

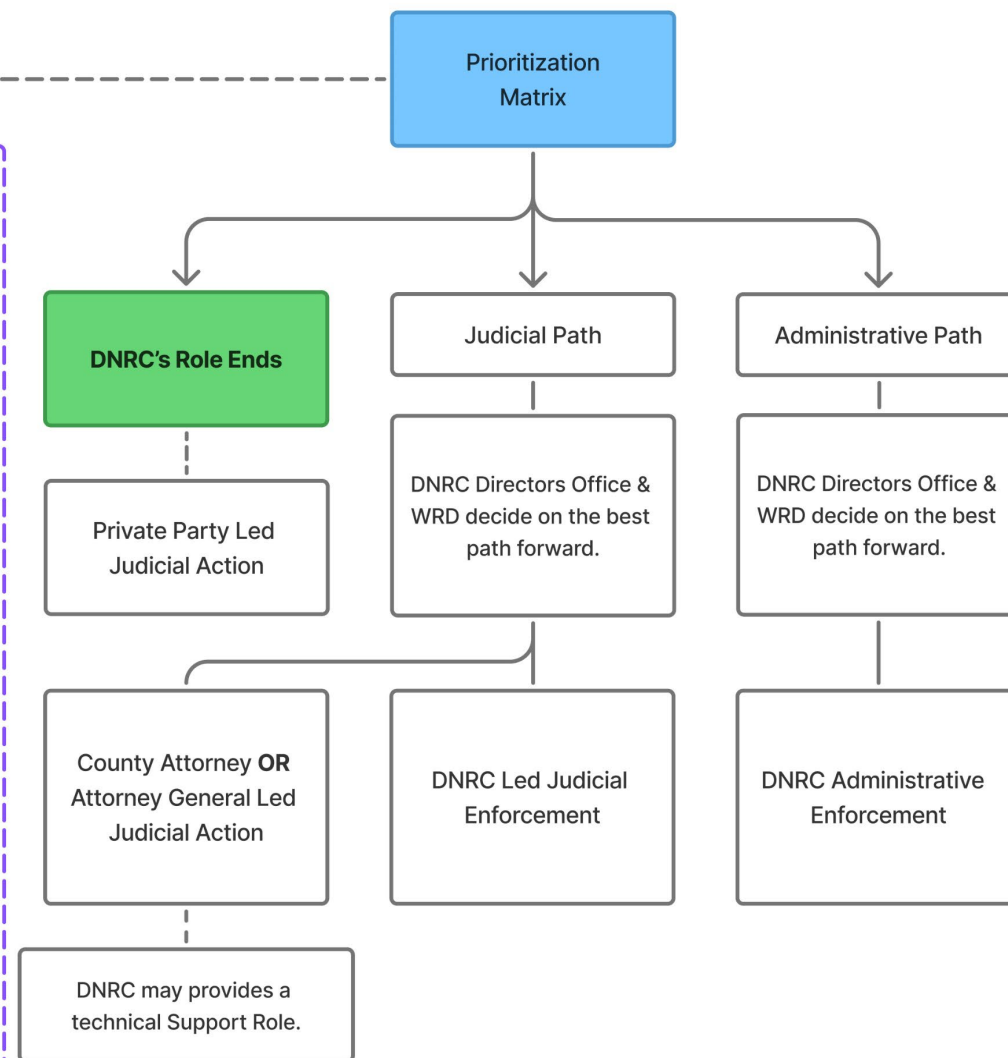






Matrix Considerations (IN DEVELOPMENT)

- Impacts Identified by complainants
- Contentious nature of the source (e.g., History of conflict, Documented previous violations, Ongoing litigation, Closed basins, & Water shortages)
- Water right status
- Duration violation
- Other potential impacts of the violation (e.g., Public health & safety)
- DNRC Resources
- Deliberate and/or willful violations



Statutory Authority and Mechanisms

- § 85-2-113, MCA – Department Powers and Duties
- § 85-2-114, MCA – Judicial Enforcement
- § 85-2-115, MCA – Entry on Land
- § 85-2-116, MCA – Legal assistance
- § 85-2-122, MCA – Penalties
- § 85-2-381, MCA – Water Right Enforcement of Ground Water Uses Exempt from Permitting -- Findings and Purpose



Future Forward

- Supply and demand challenges in Montana are increasing every year.
- As of May 2025, every basin in the state has now been issued an enforceable decree.
- The DNRC's role in the Adjudication process is winding down.
- The DNRC has begun transitioning some existing adjudication staff towards distribution and enforcement.
- Now is the perfect time to clarify roles and responsibilities, statutory authority, and have a future forward policy discussion around the meaningful management and protections of Montana's water resources.



Thank you.

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