

MT Water Law

Legislative Days June 25 & 26, 2026

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Agenda

Water Right Basics

Permitted vs. Exempt Rights

WPIC Review

MARA Goals

Headwater State:

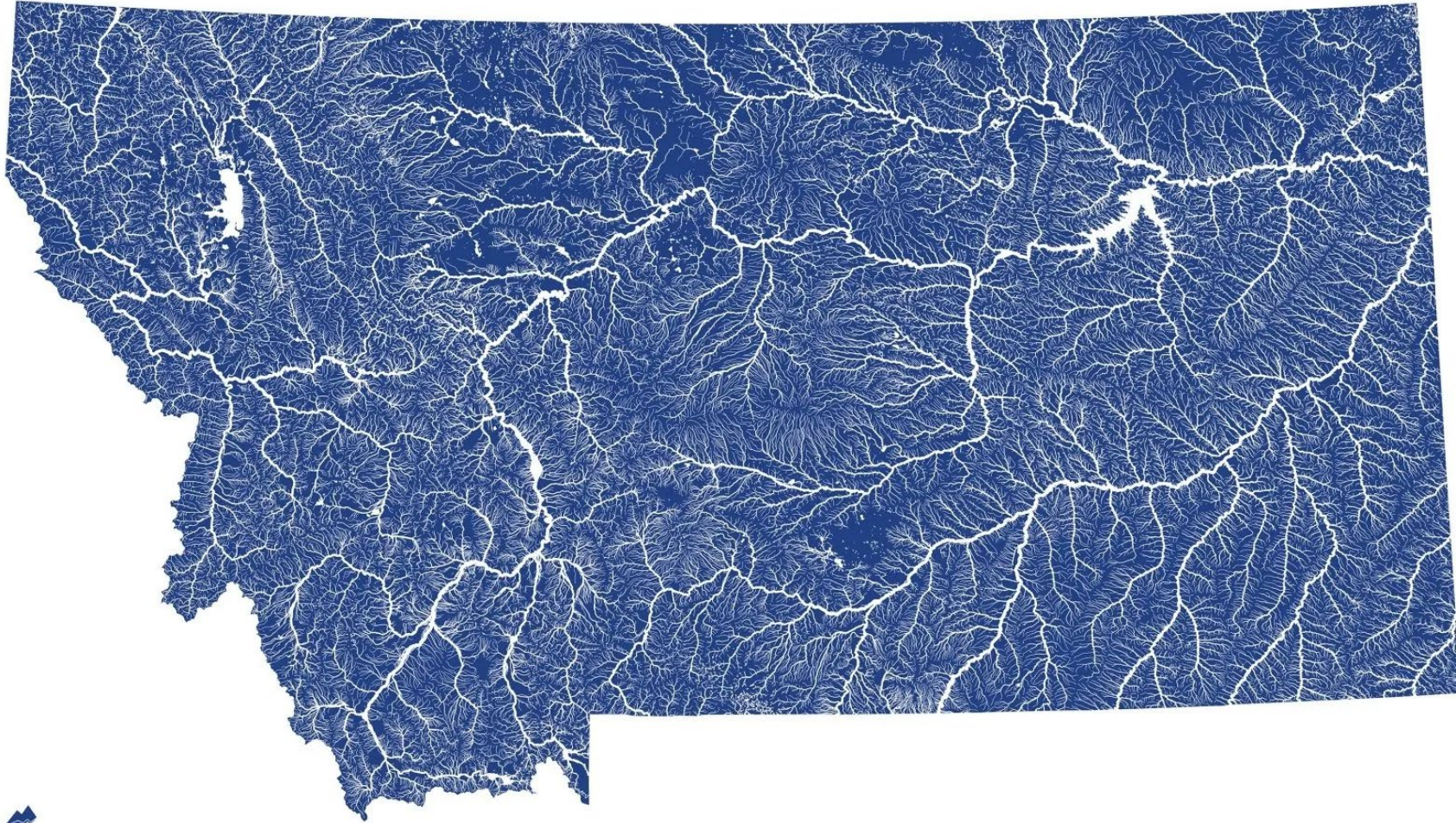
- A state where major rivers and regional watersheds originate
- Montana, Colorado, Wyoming

MT sends water into 3 different major continental watersheds:

- Gulf of Mexico (Missouri River)
- Pacific Ocean (Clark Fork, Flathead, Kootenai Rivers)
- Hudson Bay (St. Mary River)

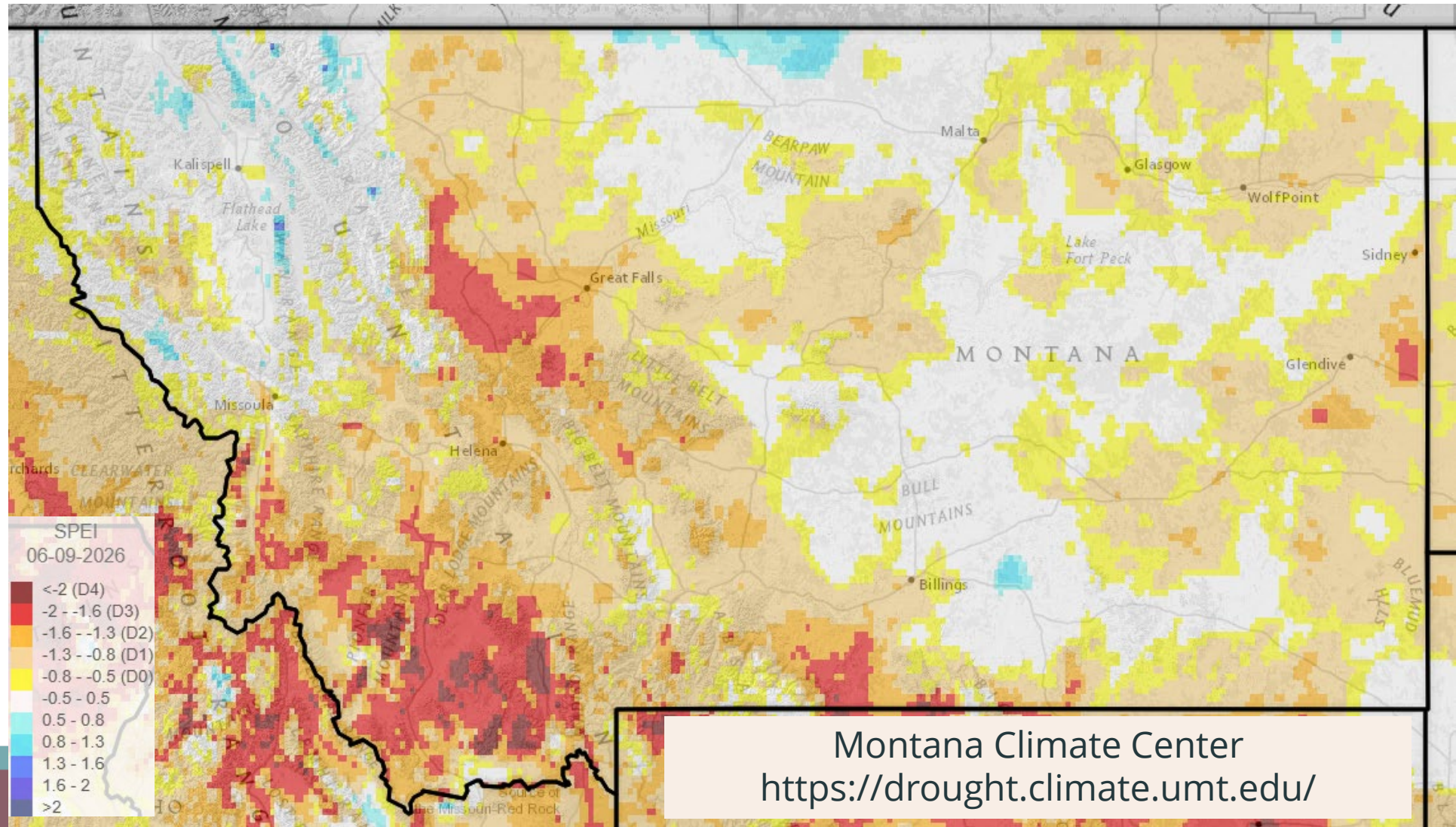
THE STATE OF MONTANA HYDROLOGICAL MAP

WATERWAYS BASED ON STRAHLER STREAM ORDER



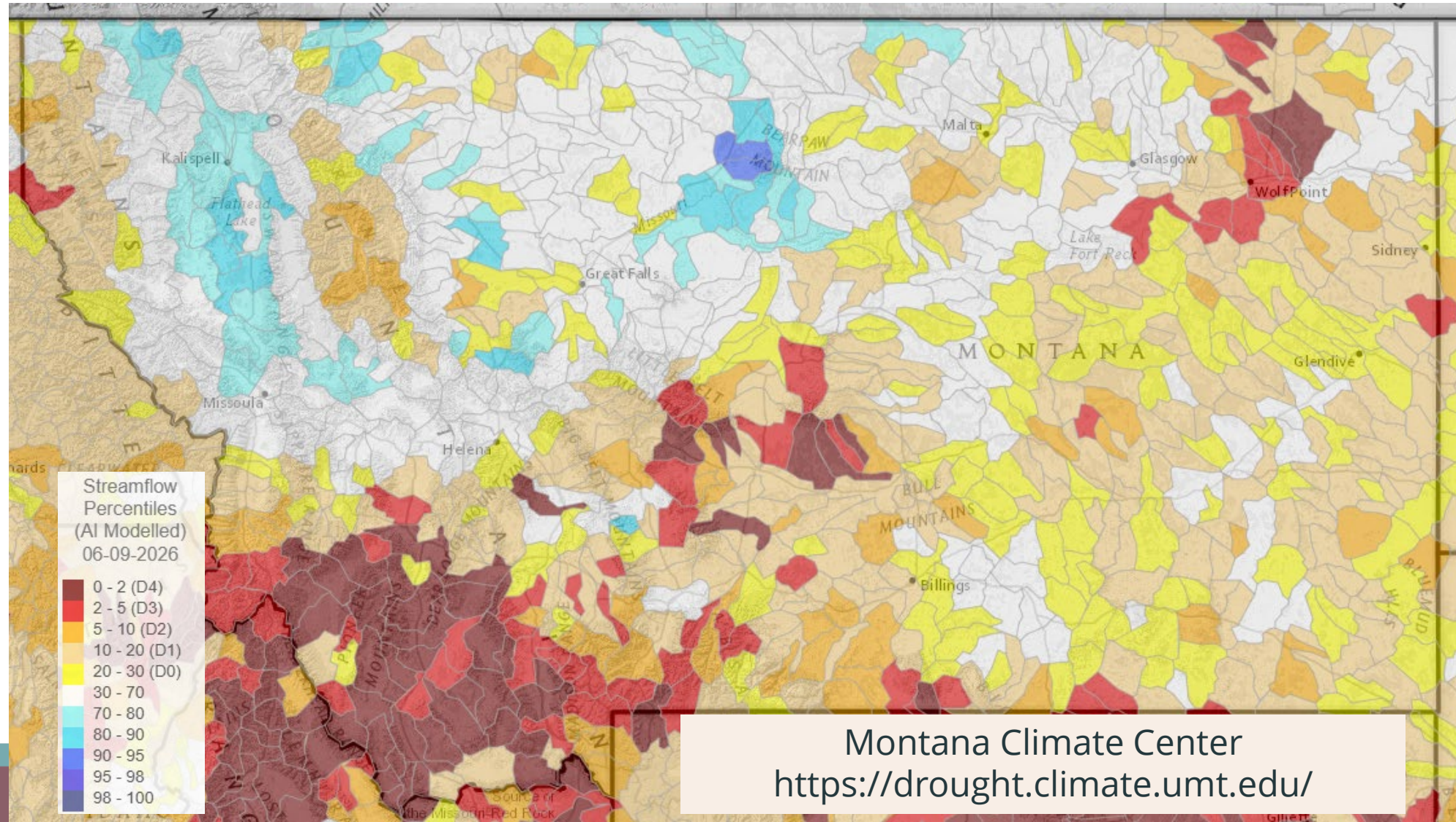
Headwaters state means the only supply is precipitation

2-Year Standardized Precipitation Evapotranspiration Index (SPEI)
Precipitation minus Evaporation compared to Average



Insufficient precipitation results in lower stream flows (and likely groundwater/storage supplies)

Streamflow Percentiles for 6-9-2026
Compares Current Flow to Historic Flow Levels



MT Constitution:

Article IX, Section 3:

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The **use of all water** that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water **shall be held to be a public use.**

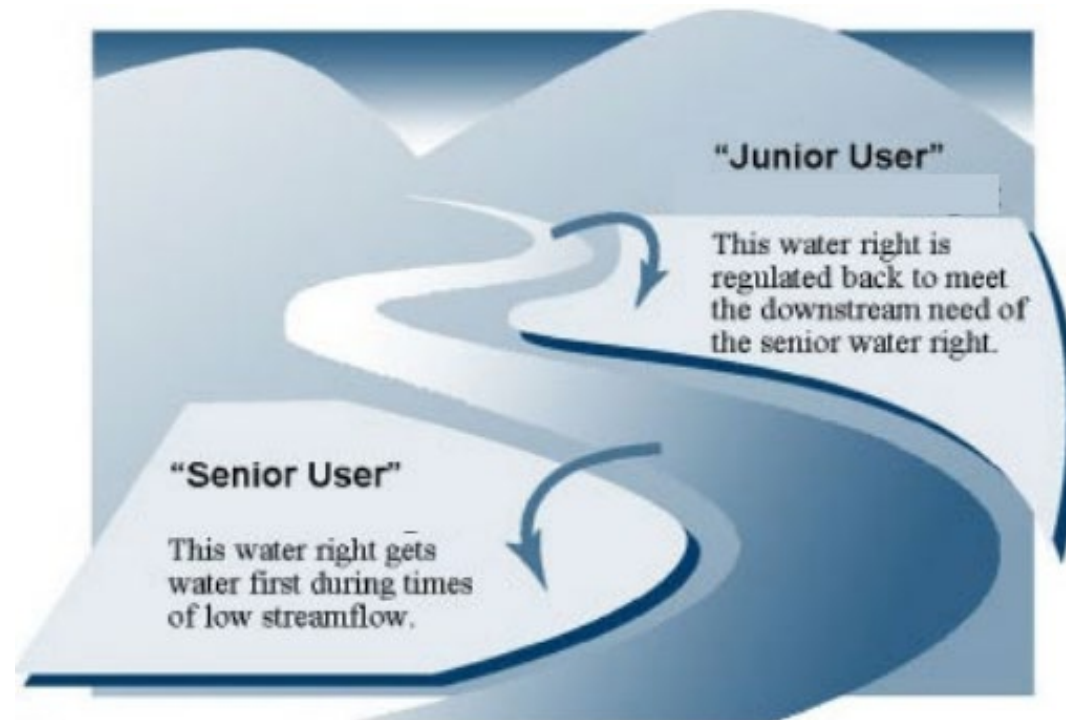
(3) **All** surface, underground, flood, and atmospheric **waters** within the boundaries of the state **are the property of the state for the use of its people** and are **subject to appropriation for beneficial uses** as provided by law.

(4) The **legislature shall provide** for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Who Gets the Water?

Prior Appropriation Doctrine:

“First in time, first in right”



Department of Natural Resources & Conservation

Who Gets the Water?

Physical vs. Legal Availability

Looks like lots of water, so irrigating should be easy...



User must have legal right to the water, for this purpose

Getty Stock Images

...it depends...

Who Gets the Water?

Physical vs. Legal Availability

Water availability:

- how much water is physically accessible (water **quantity**) and
- whether that water is safe to use (water **quality**)

- *United States Geological Survey (USGS)*

Agencies involved in Measuring Water Availability

State Library – Montana Water Information System

Weather information gathered by NOAA, NWS, Montana Climate Center, Mesonet, Ag Extension

Water quality measured by DEQ

Stream gages measuring flow and temperature: USGS, FWP, DNRC, tribes, irrigation districts

Unsaturated Zone

Groundwater measured by the Montana Board of Mining & Geology at MT Tech using many monitoring wells

Surface Water

Groundwater

Unconfined Aquifer

Confining Bed

History

**1973: Montana
Water Use Act**

Pre-1973

Post-1973

User puts water to beneficial use
=
valid water right, no legal
requirement to file claim
(Existing Water Right)

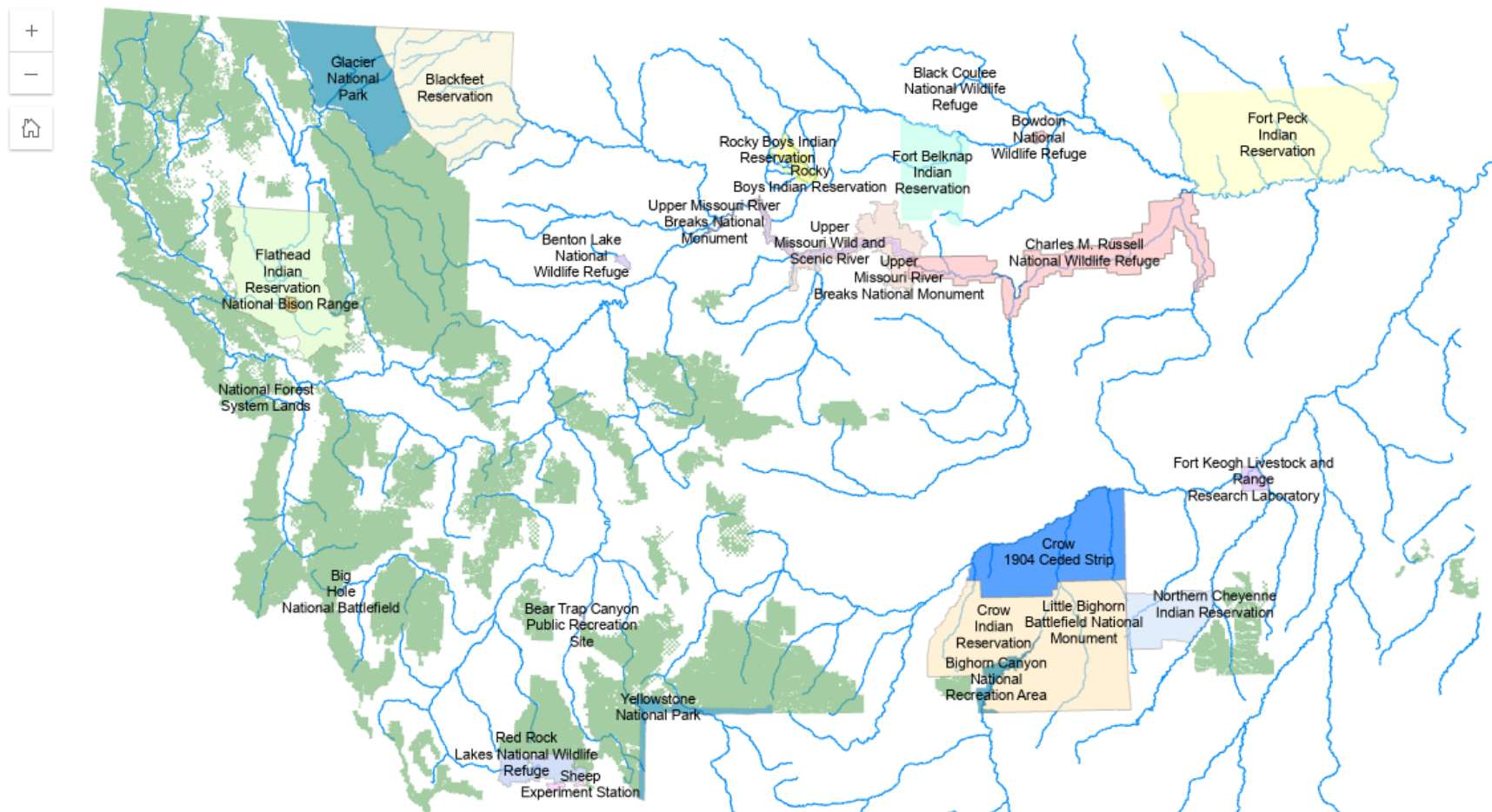
- User required to obtain beneficial use permit (permit to appropriate)
- Adjudication begins
- Centralized record system established (DNRC)

Types of Water Rights

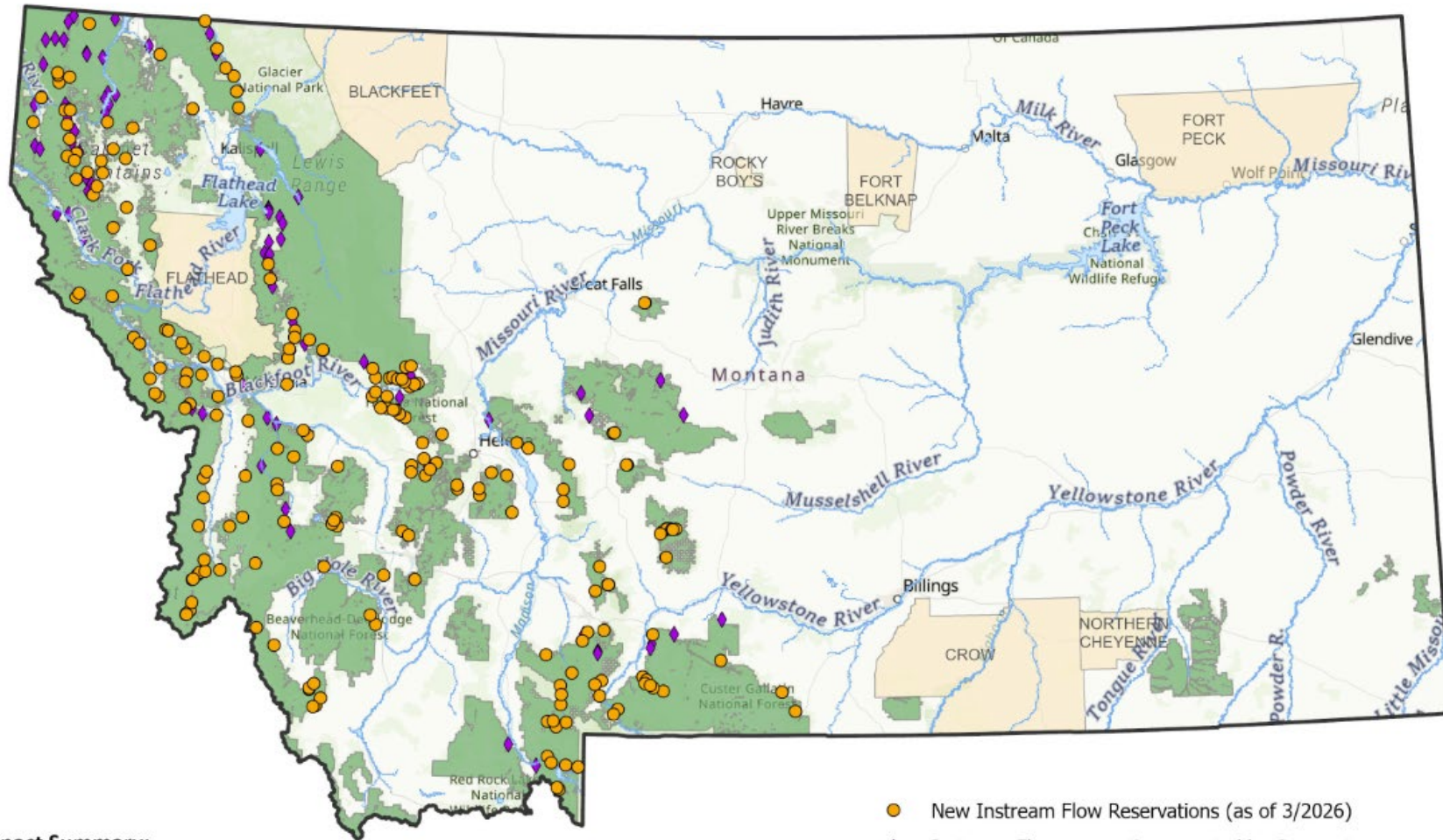
1. **Existing Water Rights** (pre-1973) – need to be adjudicated
2. **Reserved Water Rights** (State and Federal)
 - Federal:
 - 7 Tribal Compacts;
 - 11 Federal Compacts.
 - State Reservations of Water:
 - Municipal;
 - Conservation districts for ag use
 - Instream & water quality
3. **New Appropriations** (permitted uses)
4. **Exceptions** to permit process

Tribal and Federal Water Compacts

ArcGIS API for JavaScript: WRD/WMB_WaterRightsCompacts (MapServer)



USDA Forest Service - Montana Water Compact



Compact Summary:

- The Compact quantifies Current and future administrative uses on USFS lands—including ranger stations, pack stock, and road watering. Priority dates relate to the creation dates of each National Forest.
- Instream flow rights established under Compact include 77 streams, 1 wetland and a permit process to create reservations for more.
- 216 additional instream flow rights have been approved as of March of 2026.

- New Instream Flow Reservations (as of 3/2026)
- ◆ Instream Flow reservations created by Compact
- MT Indian Reservations
- National Forest Land System



Map updated by Joel Harris: 2026-03-16

Post-1973: Water Right Permits

INITIAL STEP:

Applicant must prove certain criteria (85-2-311, MCA):

- Water is physically available
- Water is legally available
- Prior appropriators will not be adversely affected (senior water rights holders)
- Adequacy of diversion
- Beneficial use
- Possessory interest in place of use (property right)

Post-1973: Water Right Permits

ADDITIONAL STEPS:

- Public Comment & Objections
- DNRC may condition as necessary to satisfy criteria (85-2-312, MCA)
- Water Right on approval

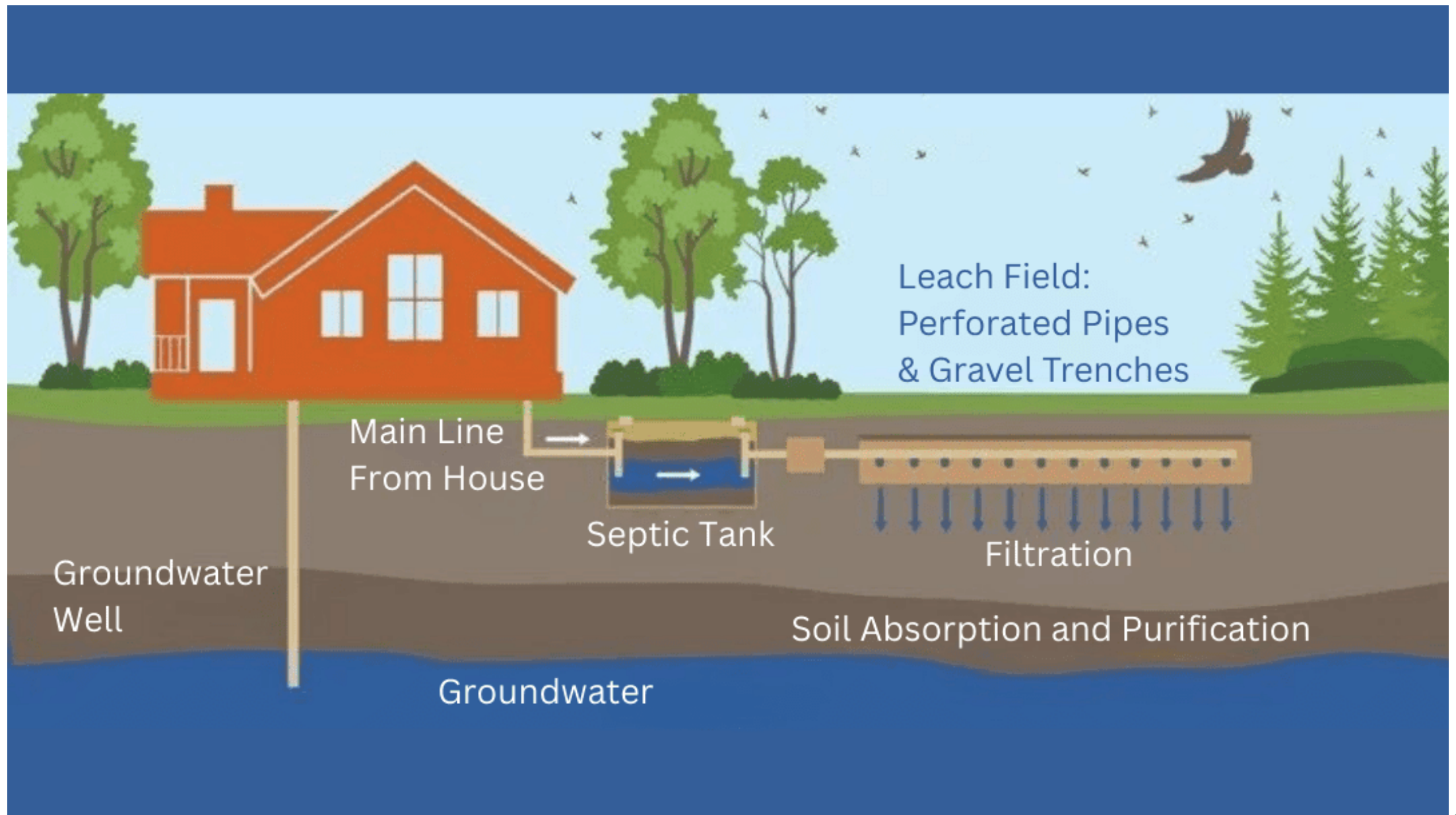


Permit Exceptions (85-2-306, MCA)

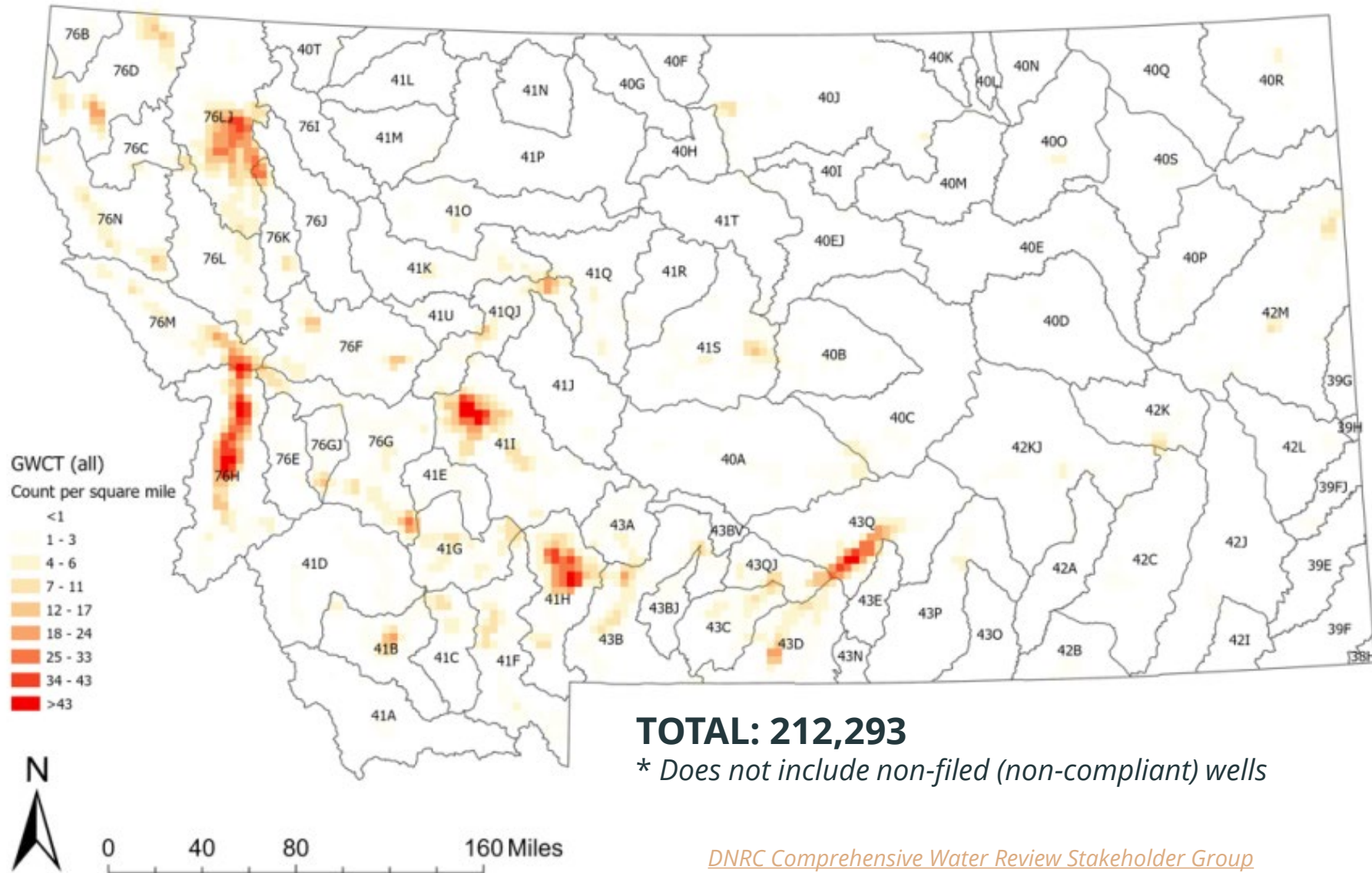
3 Situations Exempt from Permitting:

1. Local government fire agency for emergency fire protection, fire training, or fire-related operations;
2. Nonconsumptive geothermal heating/cooling (≤ 350 gal/minute);
3. "Small (*de minimus*)" groundwater wells
 - Flow rate: 35 gpm or less;
 - Volume: 10 acre-feet per year or less, including combined appropriations
 - 10 acre-feet = 3,260,000 gallons

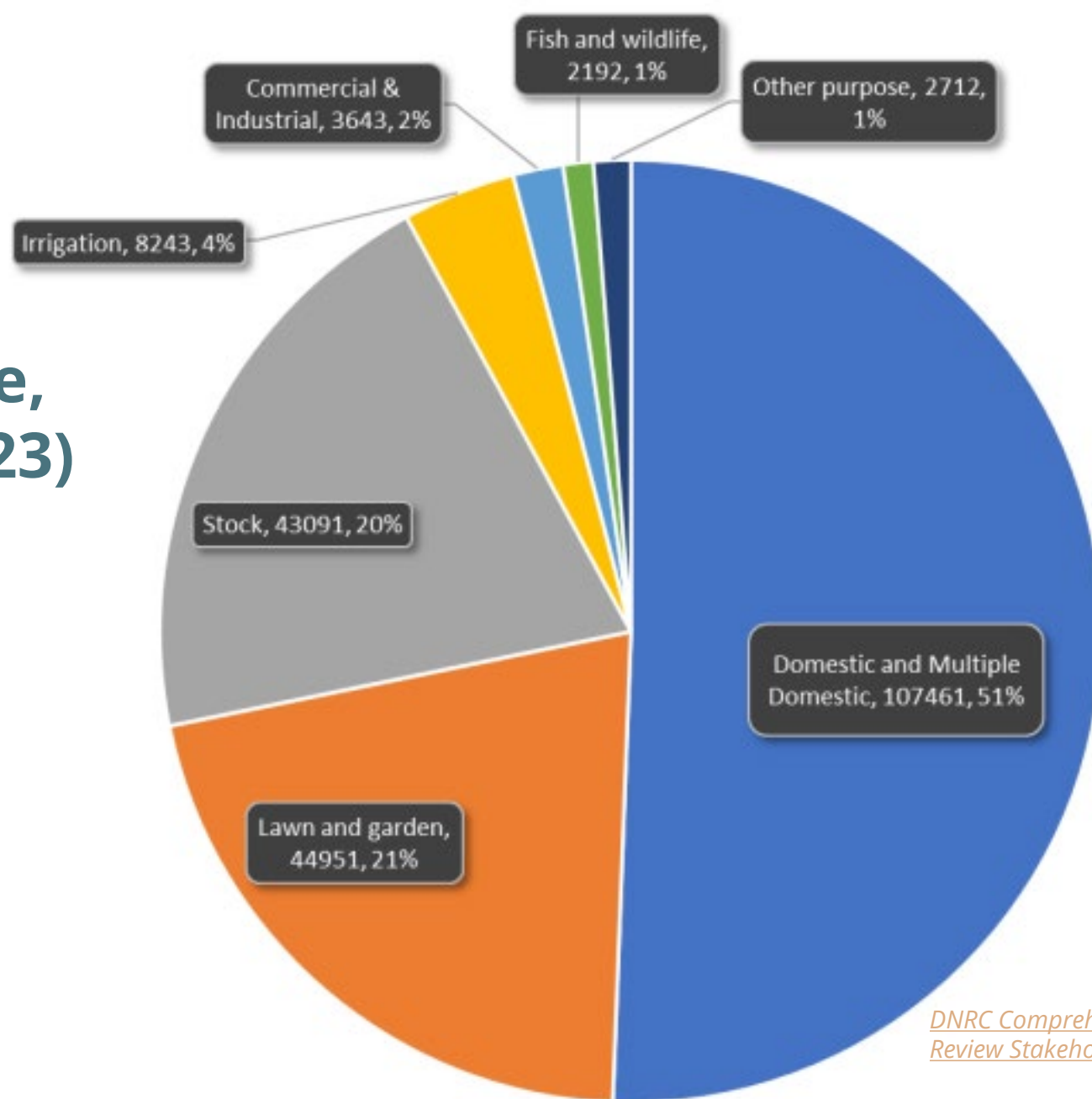
"Exempt wells"



Count of Exempt Wells per Square Mile (2023)*



Exempt Well Purpose of Use, Statewide (2023)



*DNRC Comprehensive Water
Review Stakeholder Group*

Closed Basins & Controlled Groundwater Areas

Reasons to control or close basins or aquifers:

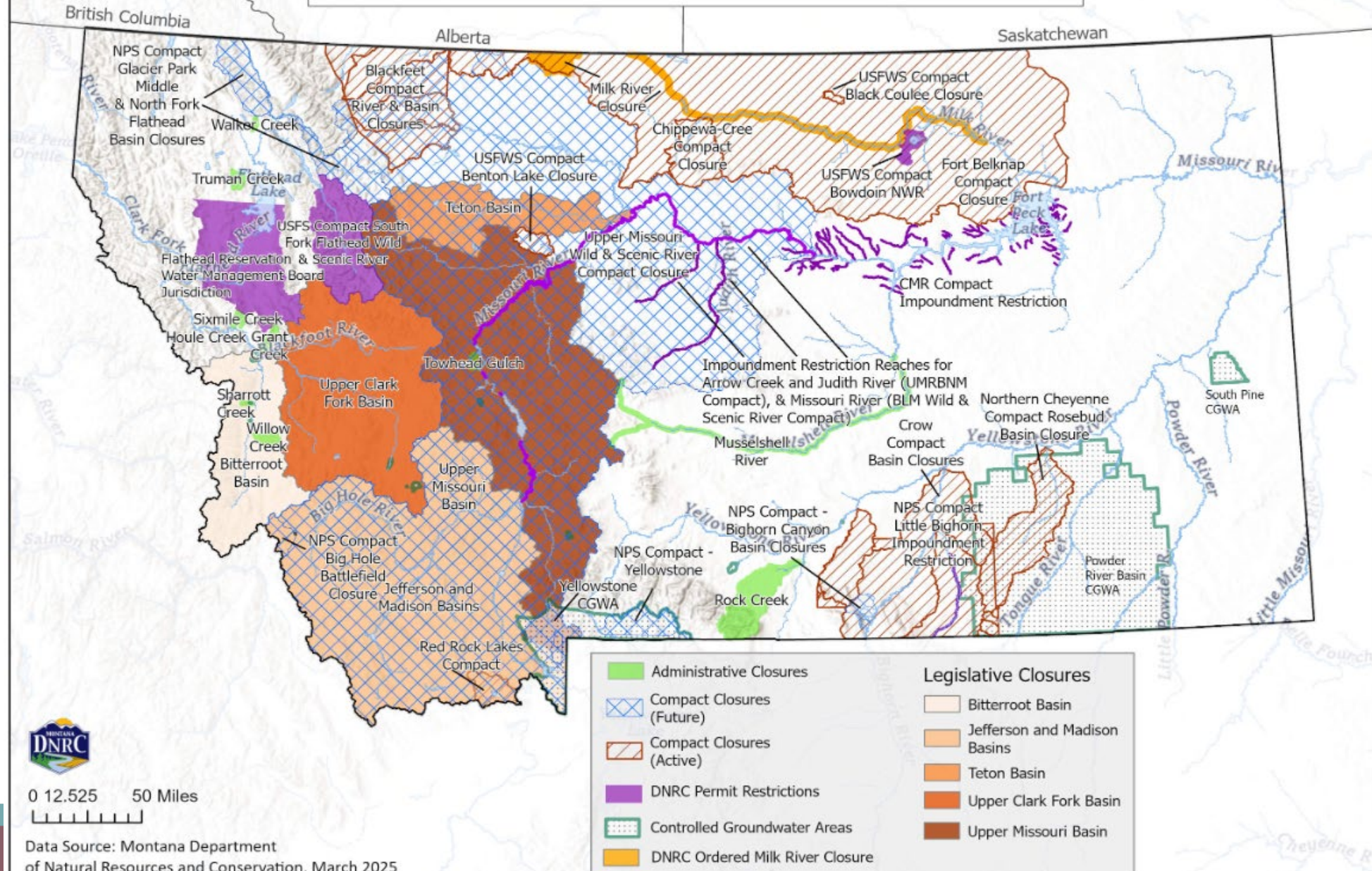
1. Water availability;
2. Water contamination;
3. Protecting existing water rights.



Types of control or closures:

1. Controlled groundwater areas (85-2-506);
2. Petitioned Surface Water Basic Closure by rule (85-2-316);
3. Dept. Ordered Milk River Closures (85-2-321);
4. Legislative Closures (85-2-319);
5. Compact Closures (Reserved Water Rights Compact Commission).

Montana Basin Closures, Compact Closures, & Controlled Groundwater Areas



Water Policy Interim Committee 2025-26

Currently working on 4 exempt well bill concepts:

1

Grandfathering subdivisions whose water rights were imperiled by 2024 District Court Case

2

Require measuring/metering/ reporting on wells

3

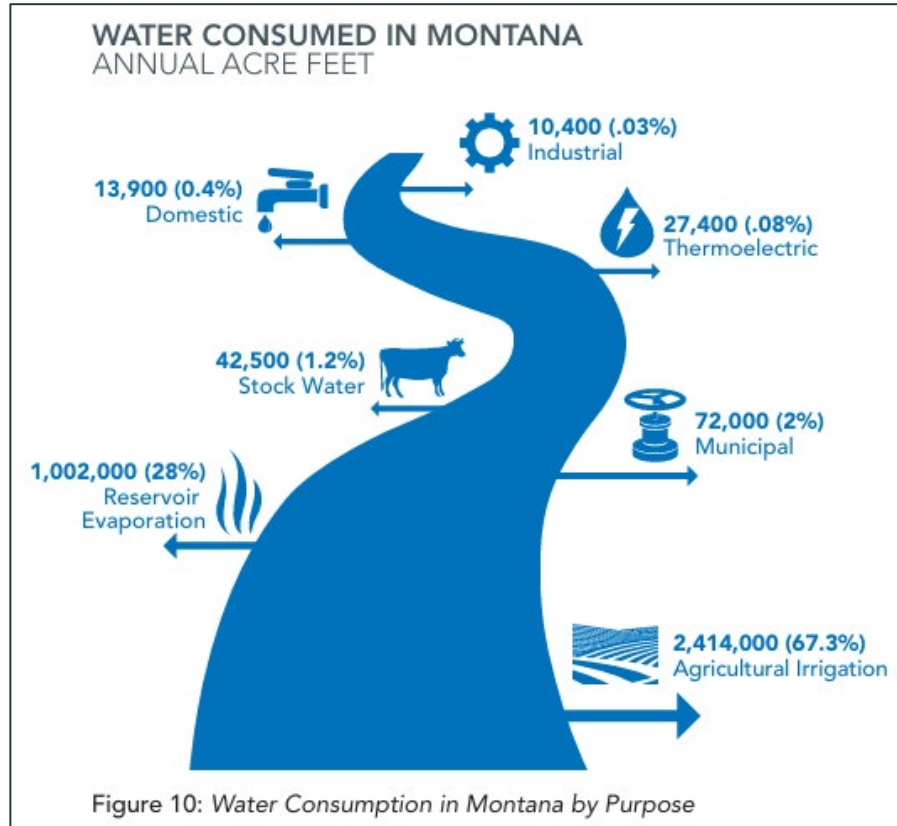
Comprehensive overhaul (de minimus proposal)

- Reduce volume allowed to exempt wells, revise how controlled ground water areas are administered

4

Streamline the mitigation process

Modernization and Risk Analysis (MARA) Goals



Graphic from Montana State
Water Plan, DNRC

- Better understand water issues upcoming in the next 20 years
 - What data is available to measure water supply and demand?
 - How will water availability limit development?
 - Do we need to build more water storage?

Hydrologic Data and the Agencies that Maintain it

- Realtime Streamflow+ **USGS (231)** & DNRC (79 of 100) & CSKT
 - Non-Realtime Streamflow; FWP, DNRC, “other” ~100+/-
- Well Logs – MBMG-water wells, DNRC BOG-oil/gas wells
- Groundwater Level – MBMG, **USGS**, DEQ
- Aquifer Properties - DNRC
- Scientific Investigations – **USGS**, DNRC, MBMG, **BOR**, **MT Univ. Sys.**
- Climate – **MT Climate Office**, **NOAA**, **NASA**, **USGS**
- Land Classification – **NRCS**, **USDA**, **USGS**
- Soil & Soil Moisture – **MT Climate Office**, **NOAA**, **NASA**, **USDA**, DOAg.
- Snowpack – **NRCS**, **NOAA**, **NASA**
- Hydrologic Models – **USGS**, **NOAA**, **NRCS**, **BOR**, **IJC**, DNRC, MBMG, **NGO's**, Private
- Water Use – OpenET, DNRC
- Water Rights – DNRC

List provided by DNRC Water Sciences Bureau

Modernization and Risk Analysis (MARA) Goals

- Understand local water system costs

Funding / Appropriation	2027 Biennial Amount
HB 6 – Renewable resource grants	\$10.1 million
HB 7 – Reclamation and development grants	\$6.2 million
HB 8 – Renewable resource grants and loans	\$36.3 million in new loans \$84.6 million reauthorized
HB 11 – Coal endowment for local infrastructure	\$23.7 million
State revolving loan fund	\$113.3 million (FY 2026 BA)

- Are localities charging users appropriately?
- Will Montana be able to maintain these systems if federal dollars are cut?
- What is the expected costs from all Montana towns in the upcoming decades?

State Water Projects

- Montana currently manages 31 dams, 250 miles of canals, and 1 hydropower facility



Water storage is critical to managing water seasonality and surviving long-term drought in a headwaters state.

Questions and Discussion

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