

COMPREHENSIVE WATER REVIEW LEGISLATIVE UPDATE

JANUARY 4, 2023

LIEUTENANT GOVERNOR JURAS

ANNA PAKENHAM STEVENSON

CORY SHAW

RYAN MCLANE

KRISTA LEE EVANS



The Montana Department of
**Natural Resources
& Conservation**

AGENDA

- Welcome & Introductions
- Comprehensive Water Review Overview
- DNRC Legislative Updates
 - SB 76 Water Distribution and Administration After Adjudication
 - HB 114 Permit and Change Process Overhaul
- Continued Work by the Stakeholder Working Groups Post Session
- Questions and Answers



GOVERNOR'S DIRECTION (LIEUTENANT GOVERNOR KRISTEN JURAS)

- Meeting Montana's future water challenges is a priority of the Gianforte Administration
- Two pieces of legislation (SB 72 and HB114) are the result of intense collaborative process that began in June of 2021- the Comprehensive Water Review
 - SB 72 brings Montana into the next era of water right administration- all water rights (both pre-1973 and post-1973) after Final Decrees are issued
 - HB 114 cuts red tape by expediting permitting for those seeking new appropriations or different uses, while protecting senior water users and the resource



GOVERNOR'S DIRECTION

- **Governor's Montana Comeback**
Plan: streamline permitting processes, eliminate needless delays; responsibly develop and simultaneously protect Montana resources
- **Governor's Red Tape initiative (EO 1-2021):** a comprehensive review of the regulations issued by each agency



WPIC 2020 (HJ 14)

- Fund a **comprehensive, third-party study** to examine and propose a water rights system
- The structure of the **Water Court presumed constitutional**
- Appointment and senate confirmation was important for **public appraisal of judge's performance**

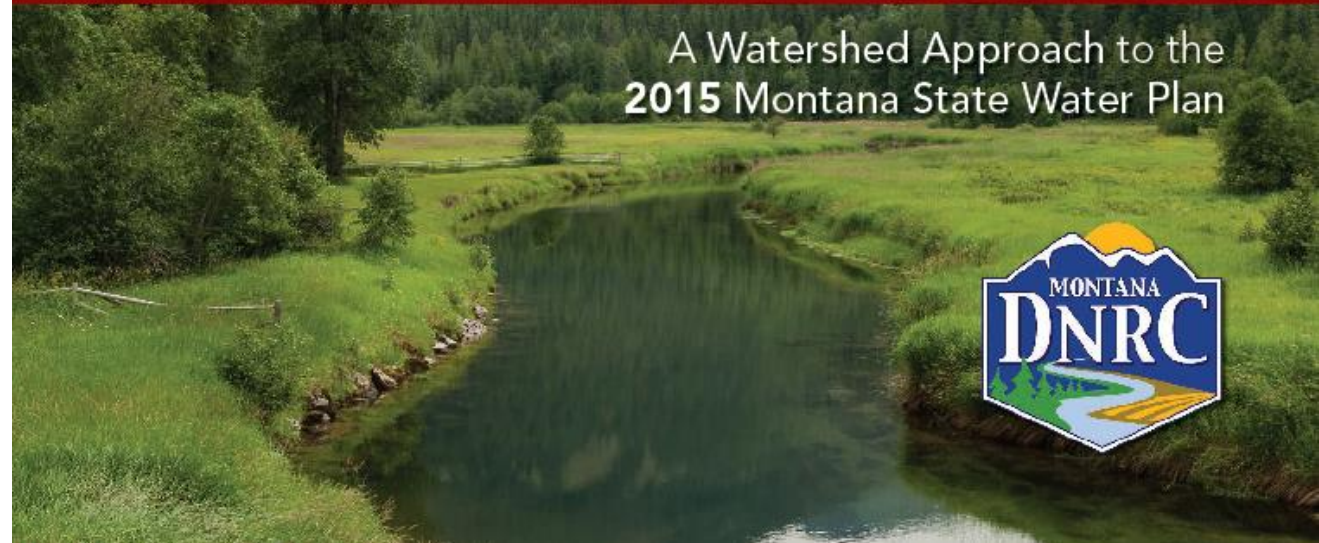
2015 STATE WATER PLAN

- **Manage water in real-time-** seasonal changes in supply & demand, longer term climatic changes.
- **Protect existing and senior water right holders & improve the state's ability meet new demands.**
- Be better prepared to endure **droughts**.
- Be better able to **supply water** to serve growing populations and natural systems.
- **Public better understands** water supply & water rights.



Montana State Water Plan

A Watershed Approach to the
2015 Montana State Water Plan



BUILDING ON MOMENTUM...

2015
Montana
State Water
Plan

2019-2020
Water Policy
Interim
Committee

EO 1-2021:
Red Tape
Initiative

Need for review
& update to the
Water Use Act

COMPREHENSIVE WATER REVIEW



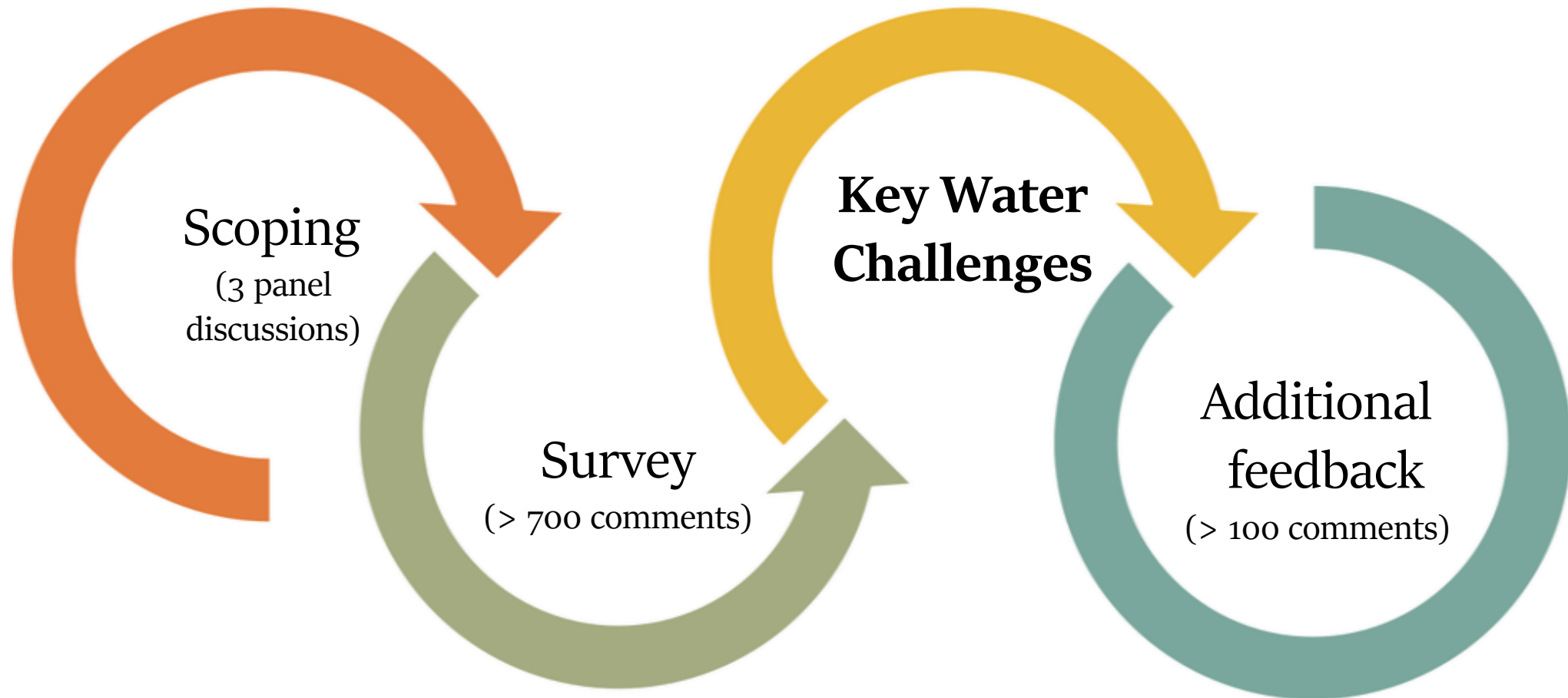
Why:

- 50 years of implementation and piecemeal adjustments to WUA
- Issuance of final decrees
- Population increase & demand challenges
- Drought & supply challenges
- Agency timelines and transparency

How:

- Evaluate and reform state water administration and management
- Input from diverse stakeholders at front and center of decision-making
- Meet future water needs while protecting existing users
- Address affordable housing and water availability

INPUT & COLLABORATION



KEY CHALLENGES



**Final decree
transition**



**Water right
application
processes**



**Changes,
mitigation,
exceptions**



**Drought
management**



**Water rights
query system**



**Water
division
website**



**Stakeholder
engagement,
outreach, and
education**

WORKING GROUPS & PUBLIC PROCESS

- Go slow to go fast
- Meaningful dialog creates lasting solutions
- Diverse working groups- industry, agriculture, municipal, conservation, distribution, development, and Tribes
- Monthly stakeholder meeting, public comment and input, public website and materials
- Tremendous amount of time



STAKEHOLDER WORKING GROUPS

Final Decree Transition Working Group

John Bloomquist, WAAC, Water Attorney

Abigail Brown, WAAC, Water Attorney

Krista Lee Evans, Agriculture

Peter Fritsch, Water Commissioner

Andrew Gorder, Conservation/Water Attorney

Thomas Jodoin, Municipal

Ryan McLane, Hydropower/Water Attorney

Mike Murphy, Irrigation

Mike Roberts, Water Commissioner Trainer

Melissa Schlichting, Tribal

Ronda Wiggers, Development

Changes, Mitigation, and Exceptions Working Group

Pat Byorth, Conservation/Water Attorney

Pat Eller, Development/Irrigation

Krista Lee Evans, Agriculture

Brian Heaston, Municipal

Abby St. Lawrence/ **Cory Shaw, Development**

Raylee Honeycutt, Agriculture

Kelly Lynch, Municipal

Ryan McLane, Hydropower/Water Attorney

Julie Merritt, Water Consultant

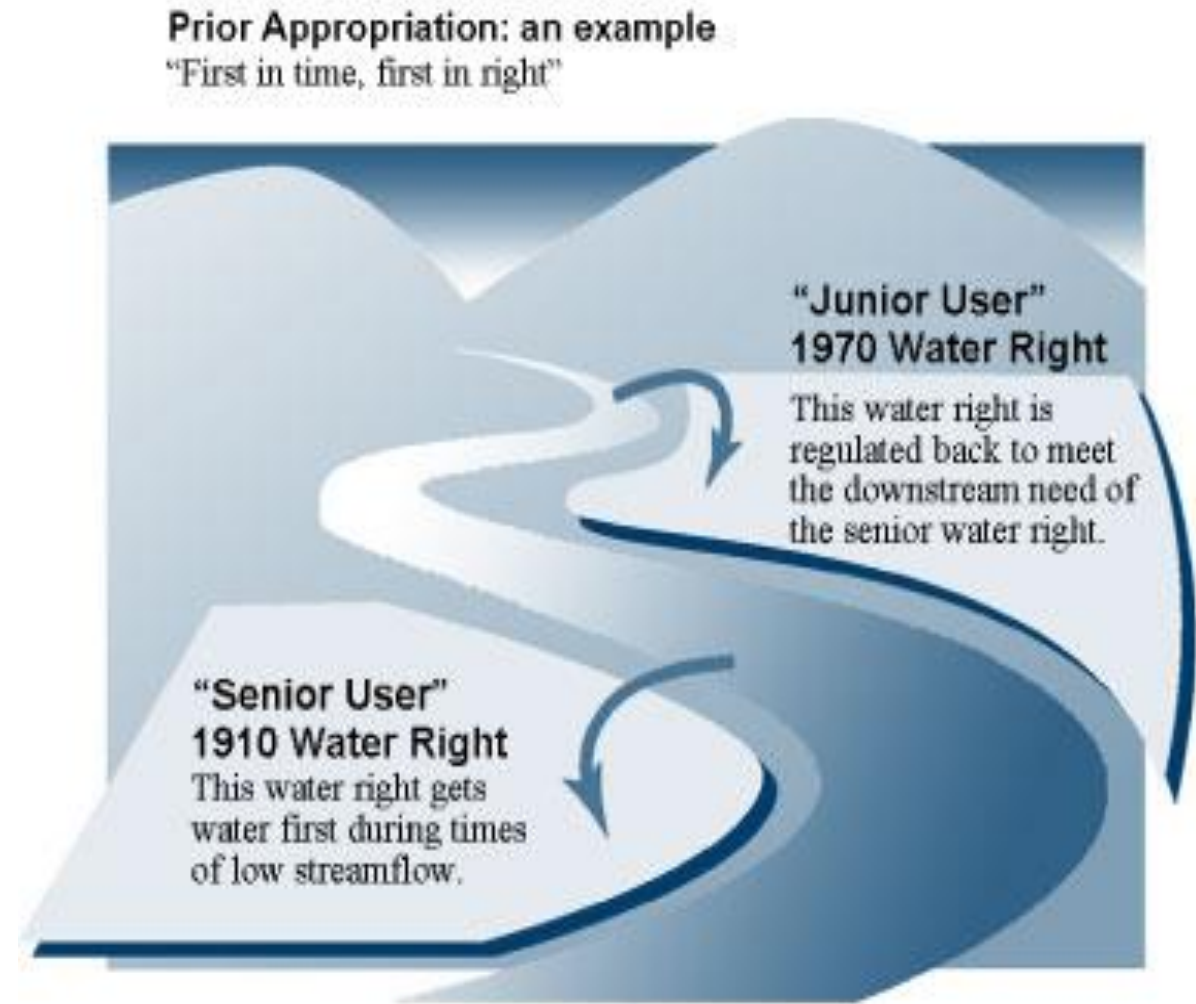
Deb Stephenson, Water Consultant

John Tietz, Water Attorney

John Youngberg, Agriculture

WATER IN MONTANA

- Doctrine of Prior Appropriation
- Appropriation for beneficial uses
- Property right
- No hierarchy of uses
- Use it or lose it
- Transferability/changes through voluntary transactions





WATER ADMINISTRATION POST ADJUDICATION (SB 72)
- SENATOR FITZPATRICK (BILL SPONSOR)



FINAL DECREE TRANSITION WORKING GROUP

Goal: Determine if the current statutory structure for the post final decree administration and regulation of water rights are adequate to meet future water policy objectives.

Questions:

- **Role of the Judiciary**
- **Final Decrees**
- Water Distribution and Disputes
- Water Complaints and Enforcement

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 as of July 1, 1973
- DNRC assists the Water Court through examination of the claims & conducts technical analyses
- Far more expensive and time consuming than contemplated

New Appropriations

- New water rights (post July 1, 1973) and changes to existing water rights are administered by the DNRC through a permitting process

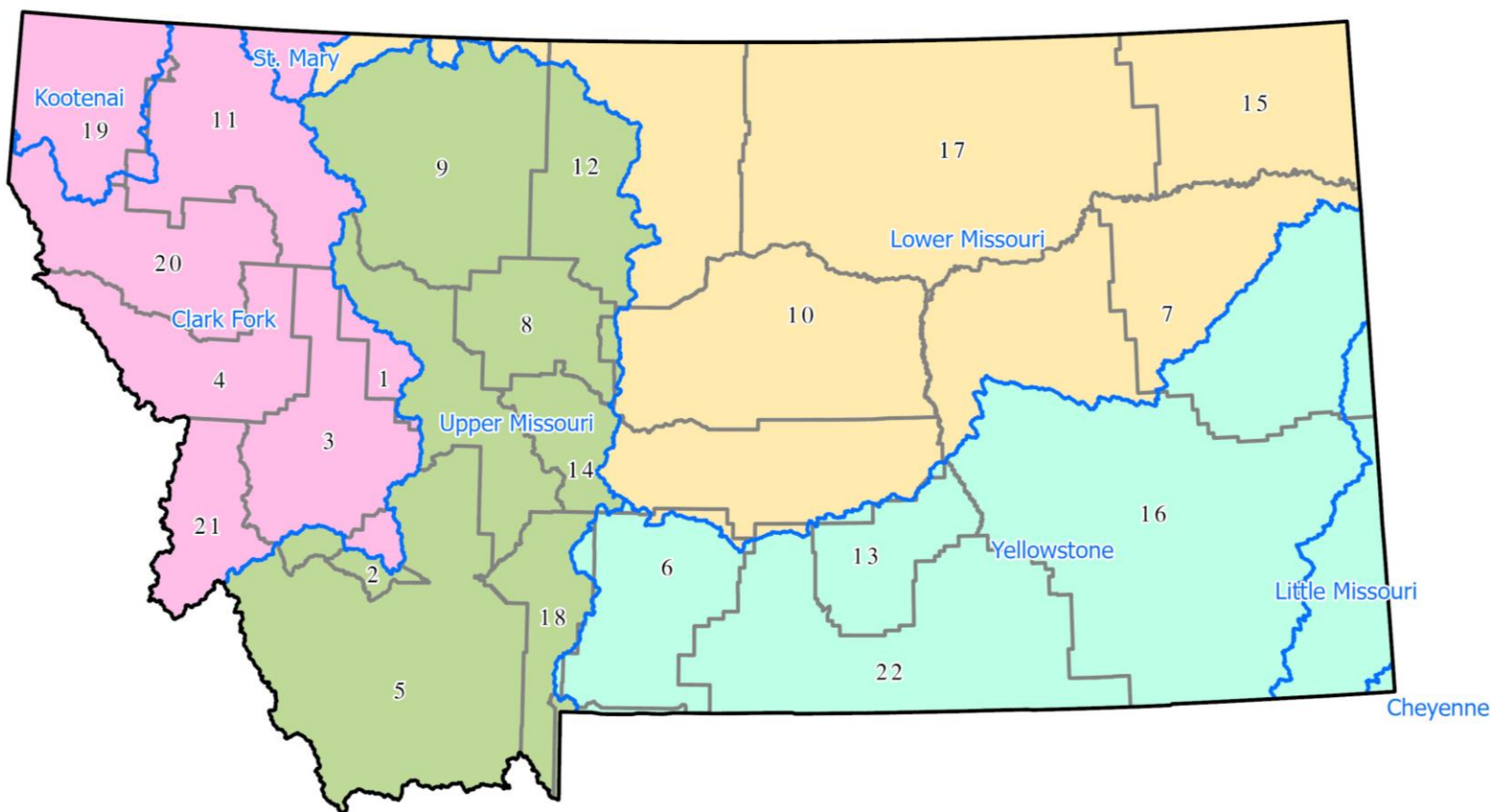


WATER ADMINISTRATION POST ADJUDICATION (SB 72) (RYAN MCCLANE)

- Merges the pre and post 1973 structures for one seamless system of water administration in Montana
- Revitalizes existing four Water Divisions and maintains subject area expertise in Water Court Judges
- Eases burdens on water user from having to appear in multiple courts for one dispute & streamlines process for reaching judicial resolution
- Provides flexibility to water user to petition for the district court for water distribution supervision
- Ensures changes and provisional permits are consistent with final decrees
- Maintains adjudication under current timelines

JUDICIAL APPOINTMENT, RETENTION & ELECTION

- Revitalizes existing four Water Divisions and maintains subject area expertise in Water Court Judges
- One judicial place to hear water quantity issues: adjudication; agency decision; distribution, enforcement, & abandonment; ditch easements issues ancillary to water right disputes
- Balance water expertise and local accountability
- Governor appointment, Senate confirmation, retention election
- Water Judges are assigned to a Water Division
- Additional judges based on workload



Water Court Divisions

- | | |
|----------------------------|-------------------------|
| Yellowstone River Basin | Major Drainage Areas |
| Lower Missouri River Basin | Montana District Courts |
| Upper Missouri River Basin | State of Montana |
| Clark Fork River Basin | |



0 50 100 Miles





LOCALIZED WATER DISTRIBUTION WITH COMMISSIONERS

- Provides relief for District Court Judges, streamlines filing and record keeping processes for water users and commissioners
- Water Court Judge supervises water commissioners
- Water users may petition for supervision by the local District Court
- Requires proceedings in county or division where the controversy occurs.

This legislation does **NOT**

- Change a water commissioner's roles or responsibilities
- Change the petitioning, hiring, or compensation structures associated with water commissioners
- Create a centralized system of water commissioners
- Make water commissioners state employees



PROVISIONAL PERMITS AND CHANGES ISSUED PRIOR TO FINAL DECREE

- Due to the long time between claim filing and issuance of final decrees, provisional permits and changes may not be consistent with the final decree
- Ensure changes and provisional permits are consistent with final decrees and provides certainty to water users
- Holds DNRC accountable to water users by creating a clear and transparent process for consistency



PERMIT AND CHANGE OVERHAUL (HB 144)
- REPRESENTATIVE VINTON (BILL SPONSOR)

CHANGES, MITIGATION, AND EXCEPTIONS WORKING GROUP

Goal: Evaluate the coordination of water development, use, and protection to meet new demands in Montana.

Questions:

- Permit and change process simplification
- Mitigation and marketing for mitigation
- Water planning and growth
- Permit exceptions (exempt wells)



HB 114 MOTIVATION (CORY SHAW)

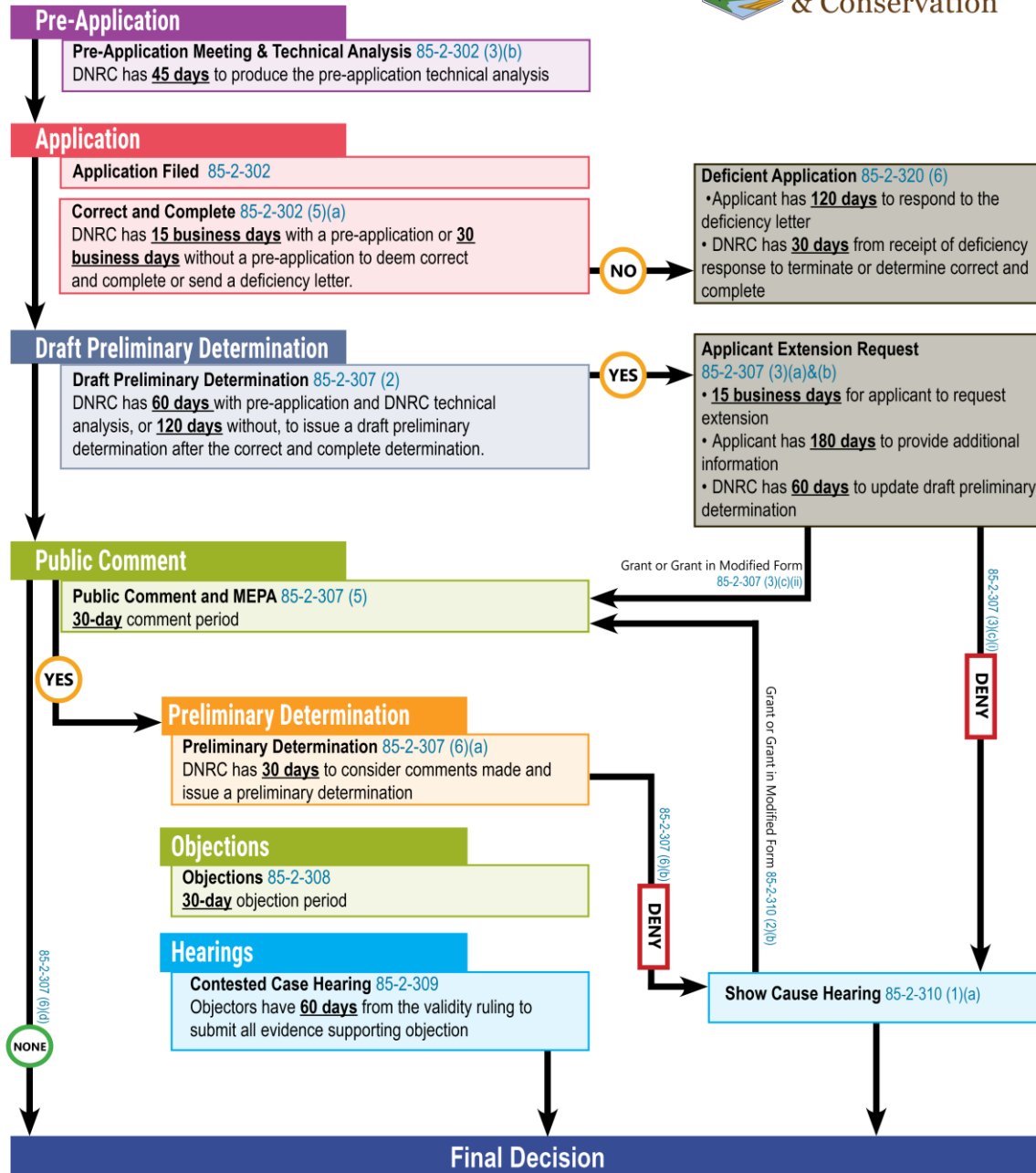
- Current water permit and change process is not timely, transparent, or streamlined
- A new permit can take several years to issue
- Permitting inefficiencies increase costs to projects
- All of which result in a significant financial burden for not only developers but also applicants in general



LEGISLATION HIGHLIGHTS

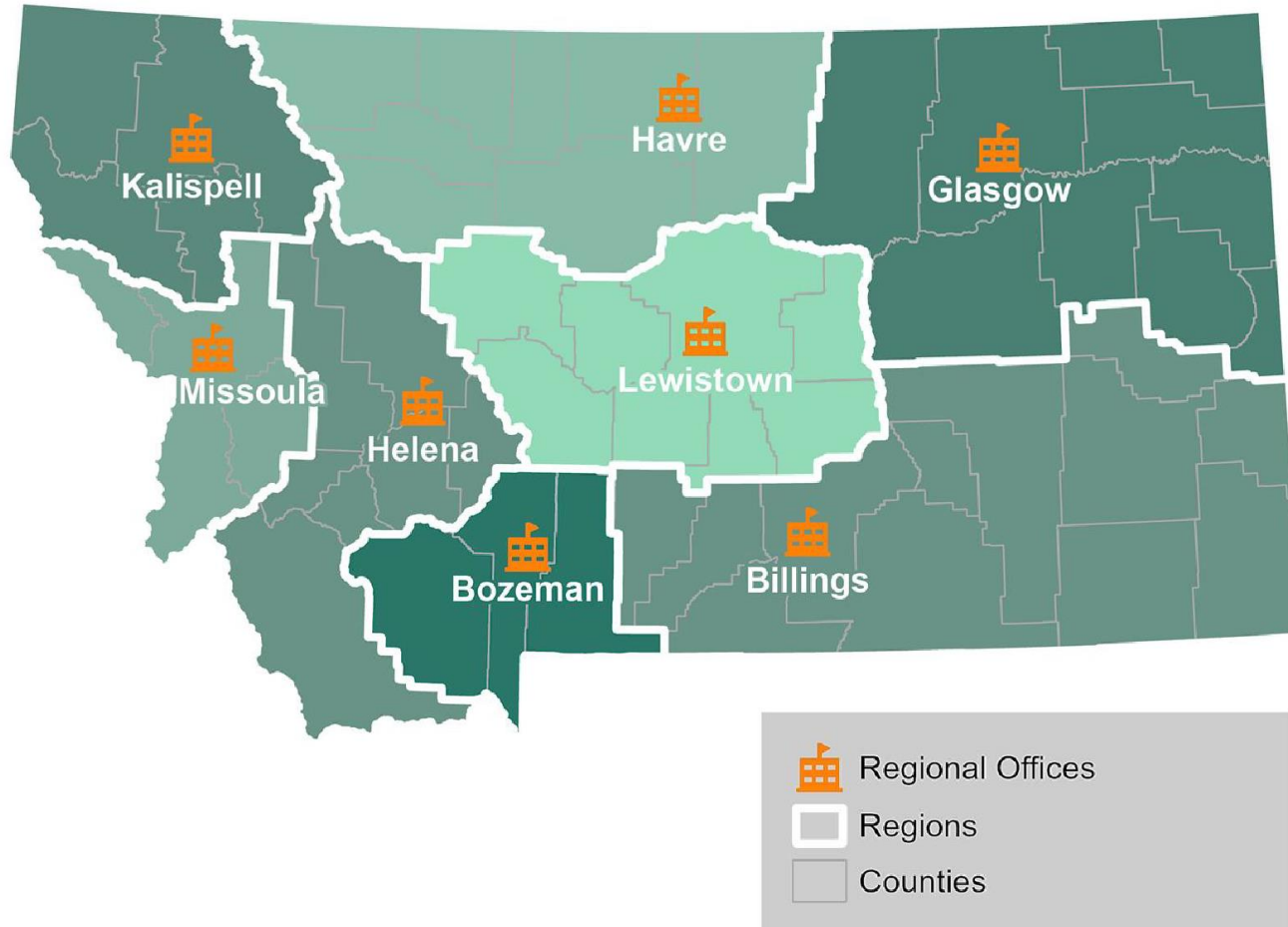
- More timely and efficient processes- shortens timeframes from 360 days to 105 days (if no extension, deficiencies, or comments are filed)
- Incentivizes a pre-application meeting to improve application quality and process transparency
- Frontload necessary analyses, reducing costs to water rights applicants and the need for application adjustments later in the permitting process
- Clear statutory timelines for each step in the application process
- Allows DNRC to consider and address public comments on decision documents prior to the hearings process
- Consensus recommendation by Working Group





	Current Process (Days)	Proposed Process (days w/additional resources)
Pre-Application Meeting & Technical Analysis	N/A	45
Correct & Complete	180	15
Deficiency Response	120	120
Deficiency Response Review (black hole)	*	30
Draft Preliminary Determination	120	60
Applicant can request extension		15
Timeline Extension & Applicant Provide Information	*	Max 6 months
Review of New Information	*	60
Public Objections (current) /Comment (new)	60	30
Preliminary Determination	N/A	30
Public Objections	N/A	30
Hearings & Final Order		
Time Once Application Filed (no extension/ no deficiencies/ no comments)	360	105
Time Once Application Filed (no extension/ no deficiencies/ public comments)		165
	* no statutory timeline	

LEGISLATION FISCAL IMPACTS



- Dramatic decrease in timelines and increase in service
- 8 regional office staff: pre-application meetings, processing applications, direct interface and support to public
- 5 central office staff: conduct technical analyses and ensuring statewide consistency in application of rule and decision-making
- Increase in water demand = increased number and complexity of water right applications; anticipate more applications from HB 114; Department working to reduce its existing backlog



WORKING GROUPS(KRISTA LEE EVANS)

- Value of the collaborative dialog continuing
- Working Groups Continued Work
 - Water Distribution, Measurement, and Disputes
 - Water Complaints and Enforcement
 - Mitigation and Marketing for Mitigation
 - Water Planning and Growth
 - Permit Exceptions
 - Drought Resiliency

A photograph of a bicycle leaning against a wooden fence in a field of dry, yellowish-brown grass. The bicycle is positioned on the left side of the frame, with its front wheel and handlebars visible. The fence is made of dark wood and runs horizontally across the middle of the image. The background is a vast field of dry grass under a clear sky. The right half of the image is overlaid with a dark blue semi-transparent rectangle containing white text.

WORK POST SESSION WORK

- Working Groups Continue
 - Water Distribution and Disputes; Water Complaints and Enforcement; Mitigation and Marketing for Mitigation; Water Planning and Growth; Permit Exceptions
- DNRC application processes rulemaking (2023)
- Drought Plan (May 2023) & Implementation (2023+)
- Water Rights Query System and Website (2023)
- Standing Stakeholder Advisory Committee (2024)

THANK YOU & QUESTIONS



Anna Pakenham Stevenson
Water Administrator
406-444-6605

Anna.pakenhamstevenson@mt.gov

<https://dnrc.mt.gov/Water-Resources/Comprehensive-Water-Review/>