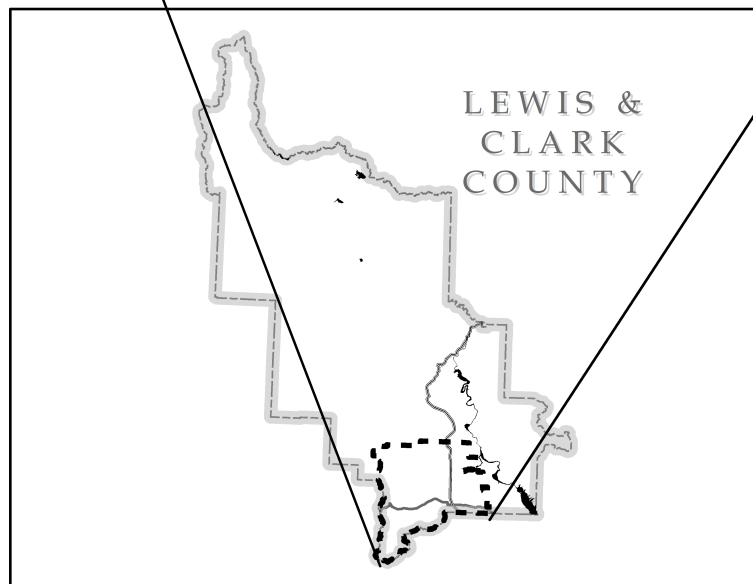
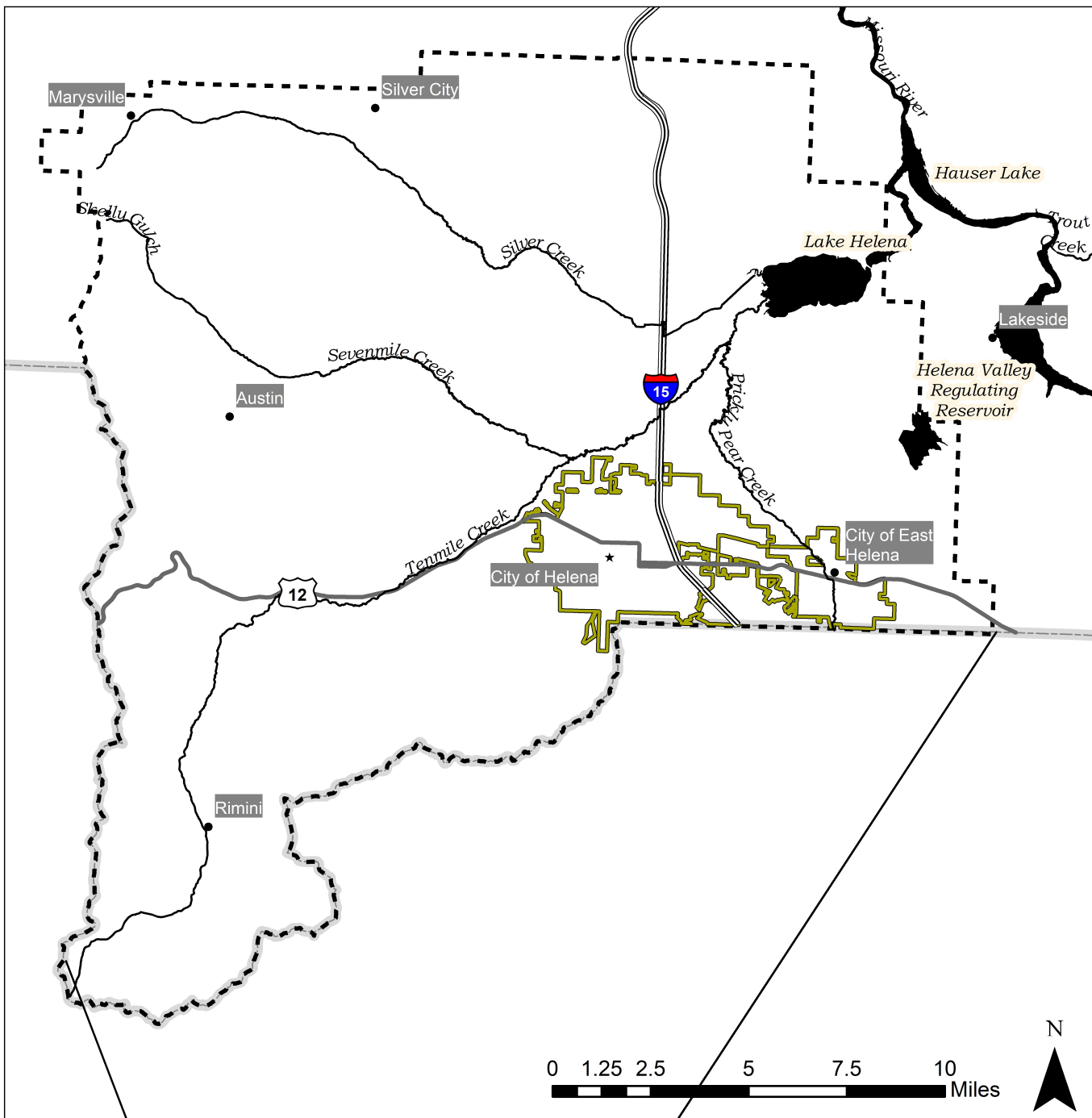




Lewis and Clark County Water Quality Protection District

Board Meeting Agenda Tuesday, February 25, 2025 Hybrid - In person Health Department – 1930 9th Ave

What (Content)	How (Process)	Who	Page	Time (When)
1. Call to Order & Establish Quorum –	Roll Call	Patrick Johnson	1	4:00 p.m.
2. Review of Agenda	Present	Board	3	4:05 p.m.
3. Lewis & Clark County Floodplain Program	Present	Worby McNamee, LCC Floodplain Manager	4	4:10 p.m.
4. Previous Minutes Review – October 2024 & January 2025	Vote	Board	5	4:40 p.m.
5. Update on Grizzly Gulch Placer Mine Reclamation Project	Discuss	Jennifer McBroom	10	4:50 p.m.
6. MT Legislature Update	Discuss	Board/Jennifer McBroom	11	5:05 p.m.
7. Board Member Discussion	Discuss	Board	33	5:15 p.m.
8. Public Comment	Present	Board	34	5:25 p.m.
9. Adjourn Meeting	Present	Board		5:30 p.m.



Water Quality Protection District Facts:

Total Acres: ~240,000

Total Square Miles: ~370

Miles of Stream: ~100

**LEWIS & CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
Helena, Montana**

BOARD AGENDA ITEM

Meeting Date

February 25, 2025

Agenda Item No.

2

☐ Minutes ☒ Board Member Discussion ☐ Staff & Other Reports ☐ Action ☐ Hearing of Delegation

AGENDA ITEMS: Review of Agenda

PERSONNEL INVOLVED: Board Members

BACKGROUND: Time is allowed for board members to review the agenda and place any items under action or to add any new agenda items.

RECOMMENDATION: n/a

☐ ADDITIONAL INFORMATION ATTACHED

BOARD ACTION:

NOTES:

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
B. MacLaurin						
A. Hunthausen						
J. Ryan						
A. Johnson						

**LEWIS & CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
Helena, Montana**

BOARD AGENDA ITEM

Meeting Date

February 25, 2025

Agenda Item No.

3

☐ Minutes ☒ Board Member Discussion ☒ Staff & Other Reports ☒ Action ☐ Hearing of Delegation

AGENDA ITEMS: Lewis & Clark County Floodplain Program

PERSONNEL INVOLVED: Worby McNamee, LCC Floodplain Manager

BACKGROUND: Ms. McBroom will present the financial report for the second quarter of fiscal year 2025.

☒ ADDITIONAL INFORMATION ATTACHED

BOARD ACTION:

NOTES:

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
B. MacLaurin						
A. Hunthausen						
J. Ryan						

**LEWIS & CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
Helena, Montana**

BOARD AGENDA ITEM

Meeting Date

February 25, 2025

Agenda Item No.

4

☒ Minutes ☒ Board Member Discussion ☐ Staff & Other Reports ☒ Action ☐ Hearing of Delegation

AGENDA ITEMS: Minutes of the October 22, 2024, and January 28, 2025

PERSONNEL INVOLVED: Board Members

BACKGROUND: Upon approval, the minutes represent official actions of the Water Quality Protection District. Every effort is made to have these recommended minutes accurately portray the proceedings and procedures of the board.

RECOMMENDATION: Approval

☒ ADDITIONAL INFORMATION ATTACHED

BOARD ACTION:

NOTES:

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
B. MacLaurin						
A. Hunthausen						
J. Ryan						
A. Johnson						

LEWIS AND CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
BOARD MEETING
Hybrid - Zoom
October 22, 2024

Members Present

Patrick Johnson, Chair
Ed Kerins, Vice Chair
Jeff Ryan
Diana Hammer
Comm. Candace Payne
Brie MacLaurin

Staff

Jennifer McBroom
Gary Burton
Kegan McClanahan
Dawn Sullivan
Natalie Emerson
Drenda Niemann
Sandy Whittington

Members Absent

Ryan Leland

Guests Present

Patrick Johnson, Chair, called the 279th meeting of the Lewis and Clark County Water Quality Protection District (WQPD) Board of Directors (Board) to order at 5:34 p.m. A quorum was established. Introductions of Board members and WQPD staff were made.

REVIEW OF AGENDA

No changes were made to the agenda.

MINUTES

Mr. Johnson requested one edit to the September 24, 2024 minutes. Under Board Member Discussion, Montana Elders Conservation Youth Expose should be Montana Conservation Elders Youth Expose. After this revision was made, Mr. Ryan moved to approve the minutes, Comm. Payne seconded the motion. Motion carried 6-0.

FY 25 QTR 1 FINANCIALS

Ms. McBroom presented the first quarter fiscal year 2025 financial report to the board. For the primary WQPD fund, despite being 25% through the fiscal year, 27% of the payroll budget has been used due to three pay periods in the month of August. Overall, however, only 22.9% of the personnel budget has been paid because staff hours are not fixed. Total expenditures were at 20.8% at the end of the first quarter. Total revenue was at 2.55%, but the first fee assessment for the year comes in November, so that number will correct in the next quarter. Total cash available is slowly dropping toward the 90-day reserve, as expected.

For fund 124, the Placer Mine reclamation in Grizzly Gulch project, the bid process will be starting soon. The project itself should begin in March.

The rewatering project, fund 140 has a report due to the Bonneville Environmental Foundation in mid-December. It was a good year where everyone who was supposed to receive water did receive water.

CITY OF HELENA GROWTH POLICY INPUT

The Board held a generous discussion about the City of Helena Land Use Plan. Topics included city and county development, stormwater, groundwater, wastewater, jurisdictional waters, road plans, water availability, and infrastructure. The Board decided that they would like to draft a letter to submit to Mr. Christopher Brick, Community Development and Planning Department, at the City of Helena regarding language they would like to see included in the new Land Use Plan. The letter will be drafted and voted on by the board members for approval before submission.

BOARD MEETING ATTENDANCE

Ms. McBroom sent a second Doodle poll to the board members prior to the meeting regarding alternate dates for board meetings. All board members responded. Based on the totality of the responses, board members selected Tuesday or Thursday from 4:00pm-5:30pm as the best alternate day and time for board meetings. Mr. Kerins moved to change the day and time for WQPD board meetings to the fourth Tuesday of the month from 4:00pm-5:30pm beginning January 2025. Ms. Hammer seconded the motion. Motion carried 6-0.

BOARD/REALTORS/COMMUNITY TRAINING

Ms. McBroom announced that at the December 3, 2024 board meeting there would be a Groundwater 101 training led by Mr. McClanahan and an overview of septic systems led by Ms. Beth Norberg. Additionally, Ms. Norberg reached out to Mr. Bill Gowan at the Realtors Association to provide similar training for local realtors. Finally, a well and septic workshop for community members is being arranged for the spring months in conjunction with DEQ.

BOARD MEMBER DISCUSSION

Ms. Hammer mentioned that the City of East Helena will be hosting “Strong Towns” with Chuck Marohn, hosted by the Helena Area Habitat for Humanity in November. She will email the board with more information.

PUBLIC COMMENT

There was no public comment.

Next meeting will be December 3, 2024, at 5:30pm

There being no public comment, the meeting adjourned at 6:55pm.

**LEWIS AND CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
BOARD MEETING**

Hybrid – Zoom
January 28, 2025

Members Present:

Patrick Johnson, Chair
Brie MacLaurin
Ryan Leland
Jeff Ryan
Adel Johnson
Diana Hammer
Ed Kerins, Vice Chair

Members Absent:

Andy Hunthausen

Staff Present:

Jennifer McBroom, Gary Burton, Kegan
McClanahan, Natalie Emerson, Drenda
Niemann, Janet Janus

Patrick Johnson, Chair, called the 281st meeting of the Lewis and Clark County Water Quality Protection District (WQPD) Board of Directors (Board) to order at 4:05 p.m. A quorum was established. Introductions of Board members and WQPD staff were made.

REVIEW OF AGENDA

It was discussed that the tour of the Water Treatment Plant would be postponed until March, due to construction issues.

Jennifer added two additional items to the agenda:

- Saying goodbye to Natalie
- Discuss any bills for the current legislative session.

MINUTES

Mr. Johnson brought forward that there is a revision to the December minutes – That a quorum was eventually established later in the meeting, but the October minutes were not addressed. It was discussed that the October minutes would be reviewed during the February 25, 2025, meeting.

Motioned approved and seconded for the December minutes, as amended: The Board voted unanimously to approve the December minutes.

FINANCIAL REPORT – QUARTER TWO

Ms. McBroom presented a summary of the Quarter Two Financial Report. As of January 17, 2025, we are 50% through the fiscal year. Total expenditures are at \$206,155.76 or 41.35% of the budgeted amount; total revenue to date is \$199,063.32 or 48.98 of the budgeted amounts leaving a cash balance of \$344,055.05. There was a question regarding printing costs being well over the projected amount. Jennifer advised that this was a onetime occurrence due to the printing being outsourced instead of being done in house per the norm. Ms. Neimann mentioned that the goal is to have a 90-cash reserve which is at \$124,000.

Fund 140, which is the Re-watering Project has a balance of \$40,126.00 with additional funding from the Natural Damage Resource Program. While discussing Fund 124, the Grizzly Gulch Placer Mine Project, there was an in-depth discussion about the project. Jeff talked about coordinating discussions about the project with the board and discussed the possible need for expanding the amount of willow cuttings being used for this specific project, as well as getting volunteers to do the cuttings. There was additional discussion about the length of the permit issued being sufficient.

BOARD MEMBER DISCUSSION

Ms. McBroom brought up Natalie Emerson leaving, thanking her for her hard work. Gary will be managing the well duties. Ms. McBroom also discussed that she will be keeping track of any bills involving water for the current session. Drenda did comment that MACO (Montana Association of Counties) is also keeping track of any bills involving water. It was discussed that if the board wanted to support any legislation there would have to be an executive committee formed to talk about it. Ms. Hammer asked about a nutrient's standards revision bill; Ms. McBroom advised that there was little information available on it at this time. Mr. Ryan voiced concerns about the new administration developing a task force to investigate FEMA and how that would affect Montana. Mr. Johnson asked about the possibility of the current flood plain administrator coming to speak to the board.

PUBLIC COMMENT

There was no public comment.

Next meeting will be February 25, 2025, at 4:00 p.m.

There being no public comment, the meeting adjourned at 5:15 p.m.

**LEWIS & CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
Helena, Montana**

BOARD AGENDA ITEM

Meeting Date

February 25, 2025

Agenda Item No.

5

☐ Minutes ☒ Board Member Discussion ☒ Staff & Other Reports ☐ Action ☐ Hearing of Delegation

AGENDA ITEMS: Grizzly Gulch Update

PERSONNEL INVOLVED: Jennifer McBroom

BACKGROUND: Tenmile Treatment plant filters and upgrades

☐ ADDITIONAL INFORMATION ATTACHED

BOARD ACTION:

NOTES:

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
B. MacLaurin						
A. Hunthausen						
J. Ryan						
A. Johnson						

**LEWIS & CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
Helena, Montana**

BOARD AGENDA ITEM

Meeting Date

February 25, 2025

Agenda Item No.

6

☐ Minutes ☒ Board Member Discussion ☐ Staff & Other Reports ☐ Action ☐ Hearing of Delegation

AGENDA ITEMS: MT Legislature Update

PERSONNEL INVOLVED: Jennifer McBroom

BACKGROUND: Amendment to 85-2-113, MCA

☒ ADDITIONAL INFORMATION ATTACHED

BOARD ACTION:

NOTES:

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
B. MacLaurin						
A. Hunthausen						
J. Ryan						

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GROUND WATER LAWS; REVISING
5 EXCEPTIONS FROM WATER RIGHT PERMITTING; PROVIDING FOR CLOSURE AND MONITORING OF
6 AQUIFERS; REVISING DESIGNATION OF CONTROLLED GROUND WATER AREAS; REVISING
7 DEPARTMENT DUTIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 85-2-113, 85-2-
8 306, 85-2-381, 85-2-506, AND 85-2-524, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 85-2-113, MCA, is amended to read:

13 **"85-2-113. Department powers and duties.** (1) The department may prescribe fees or service
14 charges for any public service rendered by the department under this chapter, including fees for the filing of
15 applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for
16 administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field
17 verification of issued and completed permits, and for all change approvals. There may not be fees for any
18 action taken by the department at the request of the water judge or for the issuance of certificates of existing
19 rights.

20 (2) The department may adopt rules necessary to implement and carry out the purposes and
21 provisions of this chapter. These rules may include but are not limited to rules to:

22 (a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit
23 under this chapter to begin appropriating water immediately, pending final approval or denial by the department
24 of the application for a regular permit;

25 (b) require the owner or operator of appropriation facilities to install and maintain suitable
26 controlling and measuring devices, ~~except that the department may not require a meter on a water well outside~~
27 ~~of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation~~
28 ~~of the well is in excess of the limitation contained in 85-2-306 and report data;~~

1 (c) require the owner or operator of appropriation facilities to report to the department the readings
2 of measuring devices at reasonable intervals and to file reports on appropriations; and

3 (d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or
4 pollution of ground water.

5 (3) The department shall adopt rules providing for and governing temporary emergency
6 appropriations, including for emergency fire training and emergency fire-related operations, without prior
7 application for a permit, necessary to protect lives or property.

8 (4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility
9 on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-
10 2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after
11 designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the
12 department specifically finds that the installation of measuring devices along the entire watercourse or portions
13 of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

14 (b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any
15 method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using
16 recognized methods of flow measurement, as determined by the department, are in compliance with subsection
17 (4)."

18
19 **Section 2.** Section 85-2-306, MCA, is amended to read:

20 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b),
21 ground water may be appropriated only by a person who has a possessory interest in the property where the
22 water is to be put to beneficial use and exclusive property rights in the ground water development works.

23 (b) If another person has rights in the ground water development works, water may be
24 appropriated with the written consent of the person with those property rights or, if the ground water
25 development works are on national forest system lands, with any prior written special use authorization required
26 by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
27 impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

28 (c) If the person does not have a possessory interest in the real property from which the ground

1 water may be appropriated, the person shall provide to the owner of the real property written notification of the
2 works and the person's intent to appropriate ground water from the works. The written notification must be
3 provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded
4 works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a
5 notice requirement only and does not create an easement in or over the real property where the ground water
6 development works are located.

7 (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated
8 only:

9 (a) according to a permit received pursuant to 85-2-508; or

10 (b) according to the requirements of a rule promulgated pursuant to 85-2-506.

11 (3) A permit is not required for an appropriation within the Rye Creek stream depletion zone in
12 Ravalli County by means of a well or developed spring if the appropriation is 20 gallons a minute or less and
13 does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more
14 wells or developed springs exceeding 20 gallons a minute or 2 acre-feet a year requires a permit.

15 (4) (a) Outside the boundaries of a controlled ground water area, a stream depletion zone, or a
16 legislative aquifer closure, a permit is not required before appropriating ground water by means of a well or
17 developed spring:

18 (i) when the appropriation is made by a local governmental fire agency organized under Title 7,
19 chapter 33, and the appropriation is used only for emergency fire protection, emergency fire training, and
20 emergency fire-related operations, which may include enclosed storage;

21 (ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive
22 geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the
23 same source aquifer, and the distance between the extraction well and both the nearest existing well and the
24 hydraulically connected surface waters is more than twice the distance between the extraction well and the
25 injection well; or

26 (iii) for an appropriation on a parcel of land not being divided pursuant to Title 76, chapter 3 or 4,
27 when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed
28 10 acre-feet a year, 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; ~~or. The department shall consider the following factors when evaluating if two or more wells or developed springs is a combined appropriation:~~

(A) ~~a physically manifold water system;~~

(B) ~~the purpose or purposes of use;~~

(C) ~~the place of use;~~

(D) ~~tract information;~~

(E) ~~ownership;~~

(F) ~~proximity of wells or developed springs;~~

(G) ~~source of water; and~~

(H) ~~topography;~~

(iv) ~~for a parcel with a certificate of subdivision approval from the department of environmental quality before February 14, 2024. The water uses for the subdivision lots and volumes allocated by the department predetermination letter define the amount of water allowed to be appropriated without a permit under this subsection (4).~~

(v) ~~for an appropriation on a parcel of land divided pursuant to Title 76, chapter 3 or 4, when the appropriation is 35 gallons a minute or less and:~~

(A) ~~(I) the parcel was created through a division of a tract of record as defined in 76-3-103 and in existence on October 17, 2014;~~

~~(II) water use is limited to use on no more than 24 parcels created pursuant to subsection (4)(a)(v)(I);~~

~~(III) the volume of water appropriated for a parcel does not exceed 0.5 acre-feet a year for each acre of land and does not exceed 1 acre-foot a year for the parcel; and~~

~~(IV) the cumulative volume appropriated for a tract of record in subsection (4)(a)(v)(I)(A) may not exceed 24 acre-feet a year; or~~

(B) ~~if the parcel was divided from a tract of record as defined in 76-3-103 and in existence on or before October 17, 2014, and received a certificate of subdivision approval from the department of environmental quality and a predetermination letter from the department of natural resources and conservation~~

1 before February 14, 2024, then the water uses for the subdivision lots and volumes allocated in the
2 predetermination letter define the amount of water allowed without a permit under the exception in this
3 subsection (4) and will count toward the maximum cumulative volume limit in subsection (4)(a)(v)(A)(IV).

4 (b) (i) The water appropriated under subsection (4)(a)(v) must be measured and reported annually
5 to the department. A totalizing metering device must be used and the measurements must be reported annually
6 on a form provided by the department. The department may issue a fine for noncompliance with this metering
7 and reporting requirement.

8 (ii) An appropriation exceeding the amounts or conditions in subsection (4)(a)(v) requires a permit.

9 (iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and
10 does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more
11 wells or developed springs exceeding this limitation requires a permit.

12 (b)(c) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground
13 water for beneficial use, the appropriator shall file a notice of completion with the department on a form
14 provided by the department through its offices.

15 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a
16 certificate of water right, return a defective notice for correction or completion, together with the reasons for
17 returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and
18 refiled with the department within 30 days of notification of defects or within a further time as the department
19 may allow, not to exceed 6 months.

20 (iii) If a notice is not corrected and completed within the time allowed, the priority date of
21 appropriation is the date of refileing a correct and complete notice with the department.

22 (e)(d) A certificate of water right may not be issued until a correct and complete notice has been filed
23 with the department, including proof of landowner notification or a written federal special use authorization as
24 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department
25 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date
26 of priority of the right.

27 (d)(e) (i) Construction of a water supply system subject to Title 75, chapter 6, part 1, and use of a
28 permit exception for the appropriation of water pursuant to this section is proof of beneficial use.

(ii) The department shall allocate a volume of 10 acre-feet a year to the system and issue a certificate of water right after the conditions in subsection ~~(3)(d)(i)~~ (4)(e)(i) are met.

(iii) The department shall consider a water right as perfected after the conditions in subsection ~~(3)(d)(i)~~ (4)(e)(i) are met.

(iv) When the appropriation is for a water supply system that is subject to Title 75, chapter 6, part 1, and is located outside of a stream depletion zone and does not exceed 10 acre-feet a year:

(A) For the purposes of subsection ~~(3)(b)(i)~~ (4)(c)(i), the appropriation will be considered perfected upon completion of construction of the water supply system.

(B) A copy of the department of environmental quality approval for the water supply system must be submitted with the notice of completion. This section does not preclude the public water supply developer or any subsequent owners from expanding the water system or from revising the water use restrictions within the subdivision, provided that the total amount does not exceed 10 acre-feet per year.

(C) Water appropriated under this exception must be measured and reported annually to the department.

~~(4)(5)~~ An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection ~~(3)~~ (4), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection ~~(3)~~ (4), or the date of the filing of the claim of existing water right.

~~(5)(6)~~ An appropriation under subsection ~~(4)~~ (5) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

~~(6)(7)~~ A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

1 (b) the appropriation is less than 30 acre-feet a year;

2 (c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other
3 than a perennial flowing stream; and

4 (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is
5 owned or under the control of the applicant and that is 40 acres or larger.

6 ~~(7)(8)~~ (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a
7 permit as prescribed by this part. Subject to subsection ~~(7)(b)~~ (8)(b), upon receipt of a correct and complete
8 application for a stock water provisional permit, the department shall automatically issue a provisional permit. If
9 the department determines after a hearing that the rights of other appropriators have been or will be adversely
10 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make
11 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights
12 of other appropriators.

13 (b) If the impoundment or pit is on national forest system lands, an application is not correct and
14 complete under this section until the applicant has submitted proof of any written special use authorization
15 required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
16 impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

17 (c) The purpose of use authorized for a provisional permit pursuant to subsection (9) may not be
18 changed pursuant to 85-2-402.

19 ~~(8)(9)~~ A person may also appropriate water without applying for or prior to receiving a permit under
20 rules adopted by the department under 85-2-113.

21 ~~(9)(10)~~ Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior
22 boundaries of the Flathead Indian reservation."
23

24 NEW SECTION. Section 3. Legislative aquifer closures and monitoring areas. (1) Subject to
25 subsection (2), ground water may only be appropriated by a permit issued pursuant to 85-2-302 in the following
26 legislative aquifer closure areas as designated by the department:

27 (a) the Gallatin Valley aquifer within the department administrative boundary 41H, including the
28 unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the

1 surface hydrologic divide between major subbasins;

2 (b) the Helena Valley aquifer within the department administrative boundary 41I, including the
3 unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the
4 surface hydrologic divide between major subbasins;

5 (c) the Bitterroot Valley aquifer within the department administrative boundary 76H, including the
6 unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the
7 surface hydrologic divide between major basins; and

8 (d) the Missoula Valley aquifer within the department administrative boundary 76M, including the
9 unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the
10 surface hydrologic divide between major basins.

11 (2) In a legislative aquifer closure area pursuant to subsection (1), a ground water appropriation:

12 (a) must appropriate ground water by a permit issued pursuant to 85-2-302, except the department
13 may authorize an appropriation for up to 0.5 acre-feet a year without a permit that is authorized by the
14 department for:

15 (i) a single living unit on a tract of record in existence on January 1, 2025, when connection to a
16 public water system and mitigation is infeasible; or

17 (ii) stockwater.

18 (b) may not change the purpose of a water right excepted from permitting pursuant to subsection
19 (2)(a);

20 (c) must meter and report all new water rights and authorizations pursuant to 85-2-306, 85-2-311,
21 and 85-2-402. A totalizing metering device must be used and measurements must be reported annually on a
22 form provided by the department. The department may issue a fine for noncompliance with this metering and
23 reporting requirement.

24 (d) may not appropriate ground water pursuant to 85-2-306, except for the completion of
25 appropriation for parcels created after October 17, 2014, that have received a certificate of subdivision approval
26 from the department of environmental quality and a predetermination letter from the department of natural
27 resources and conservation before February 14, 2024.

28 (3) Subject to subsection (4), the following areas are established as legislative aquifer monitoring

1 areas as defined by the department:

2 (a) Flathead Valley deep and shallow aquifers within the department administrative boundary
3 76LJ, including the unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is
4 not present to the surface hydrologic divide between major basins; and

5 (b) Billings terrace level 3 aquifer within the department administrative boundary 43Q up to the
6 consolidated bedrock contact and where it is not present to the terrace level 2 contact as described in literature
7 published by the Montana bureau of mines and geology.

8 (4) A legislative aquifer monitoring area must include:

9 (a) a provision requiring metering and reporting for all new water rights and authorizations
10 pursuant to 85-2-306, 85-2-311, and 85-2-402 in a legislative aquifer monitoring area. A totalizing metering
11 device must be used and measurements must be reported annually on a form provided by the department. The
12 department may issue a fine for noncompliance with this metering and reporting requirement.

13 (b) a department review of the monitoring data at least once each biennium to determine if a
14 change in status is needed.

15

16 **Section 4.** Section 85-2-381, MCA, is amended to read:

17 **"85-2-381. Water right enforcement of ground water uses exempt from permitting -- findings**
18 **and purpose.** (1) The legislature finds that:

19 (a) the state of Montana has managed the allocation of water under the prior appropriation
20 doctrine for more than 100 years;

21 (b) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water
22 rights;

23 (c) the right to the use of water through a water right is a recognized property right;

24 (d) the development of ground water wells that are exempt from permitting may have an adverse
25 effect on other water rights;

26 (e) the Water Use Act requires the department to coordinate the development and use of the water
27 resources of the state so as to effect full utilization, conservation, and protection of its water resources; and

28 (f) the ability to develop ground water wells that are exempt from permitting contributes to the full

1 utilization of the water resources of the state.

2 (2) The establishment of a stream depletion zone pursuant to 85-2-380 provides a conclusive,
3 scientific basis for determining where ground water rights that are exempt from permitting are affecting senior
4 surface water rights.

5 (3) The purpose of this section is to continue allocating water under the exemptions provided for in
6 85-2-306 while providing a process by which senior water right holders may protect their rights under the prior
7 appropriation doctrine. Nothing in this section is intended to limit the ability of a senior water right holder to
8 enforce a water right or limit that enforcement to a specific area. Creation of a stream depletion zone is not a
9 prerequisite to an enforcement action.

10 (4) Any use of water granted by a certificate of water right pursuant to 85-2-306(3)(a) is subject to
11 enforcement according to priority by:

12 (a) any remedy legally available;

13 (b) the department, upon receiving a complaint, through the provisions of 85-2-114 and 85-2-122;
14 or

15 (c) a water commissioner appointed pursuant to 85-5-101.

16 (5) For each certificate issued pursuant to 85-2-306(3)(a) after October 1, 2013, the department
17 shall include written notice of the provisions of this section."
18

19 **Section 5.** Section 85-2-506, MCA, is amended to read:

20 **"85-2-506. Controlled ground water areas -- designation or modification.** (1) The department may
21 by rule designate or modify ~~permanent or temporary~~ controlled ground water areas as provided in this part. The
22 rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

23 (2) There are six types of controlled ground water areas for:

24 (a) public health, safety, and welfare;

25 (b) temporary public health, safety, and welfare;

26 (c) water quantity;

27 (d) ground water monitoring for water quantity;

28 (e) water quality; or

1 (f) ground water monitoring for water quality.

2 ~~(2)(3)~~ The department may initiate the rulemaking process for designation or modification of a
3 controlled ground water area may be initiated by after the submission of a correct and complete petition for:

4 (a) the department a public health, safety, and welfare controlled ground water area pursuant to
5 subsection (6), by the department, a state or local public health agency, a municipality, county, conservation
6 district, or local water quality district formed under Title 7, chapter 13, part 45, the department of environmental
7 quality, or at least one-third of the water right holders in a proposed area;

8 (b) submission of a correct and complete petition from a state or local public health agency for
9 identified public health risks a water quantity controlled ground water area pursuant to subsections (8) and (9),
10 by the department or at least one-third of the water right holders in a proposed area; or

11 (c) submission of a correct and complete petition:

12 (i) by a municipality, county, conservation district, or local water quality district formed under Title
13 7, chapter 13, part 45; or

14 (ii) signed by at least one-third of the water right holders in a proposed controlled ground water
15 area a water quality controlled groundwater area pursuant to subsections (10) and (11), by a municipality,
16 county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45, the
17 department of environmental quality, or at least one-third of the water right holders in a proposed area.

18 ~~(3)(4)~~ (a) A correct and complete petition must:

19 (i) be in a form prescribed by the department and must contain analysis prepared by a
20 hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of
21 the criteria provided in ~~subsection (5)~~ subsections (6) through (11) are met; and

22 (ii) describe proposed measures, if any, to mitigate effects of the criteria identified in ~~subsection (5)~~
23 subsections (6) or (7) that are alleged in the petition;

24 (b) For petitions submitted pursuant to subsection (8) or (9), the department shall conduct the data
25 collection and analysis if more than 50% of the water right holders whose point of diversion falls within the
26 proposed area sign the petition. The department may not conduct more than two analyses a year for a petition.

27 ~~(b)(c)~~ When the department proposes a rule pursuant to this section, the place for the hearing must
28 be within or as close as practical to the proposed or existing controlled ground water area.

1 ~~(e)~~(d) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the
2 department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct
3 and complete.

4 (ii) A petition that is not made correct and complete within 90 days from the date of notification by
5 the department of any defect is terminated.

6 ~~(4)~~(5) (a) Within 60 days after a petition is determined to be correct and complete, the department
7 shall:

8 (i) deny in writing the petition in whole or in part, stating the reasons for denial;

9 (ii) inform the petitioner that the department will study the information presented in the petition for
10 a period not to exceed 90 days before denying or proceeding with the petition; or

11 (iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

12 (b) Failure of the department to act under subsection ~~(4)(a)~~ (5)(a) does not mandate that the
13 department grant the petition for rulemaking.

14 (c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department
15 shall provide public notice of the rulemaking hearing by:

16 (i) publishing a notice at least once each week for 3 successive weeks, with the first notice not
17 less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties
18 in which the proposed controlled ground water area is located;

19 (ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each
20 person or public agency known from an examination of the records of the department to be a water right holder
21 with a diversion within the proposed controlled ground water area, all landowners of record within the proposed
22 controlled ground water area, and each well driller licensed in Montana whose address is within any county in
23 which any part of the proposed controlled ground water area is located; and

24 (iii) serving by mail a copy of the notice upon any other person or state or federal agency that the
25 department feels may be interested in or affected by the proposed designation or modification of a controlled
26 ground water area.

27 (d) The notice under subsection ~~(4)(e)~~ (5)(c) must include a summary of the basis for the proposed
28 rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be

1 sufficient notice of the hearing to all interested persons.

2 ~~(5)(6)~~ (a) The department may designate a permanent public health, safety, and welfare controlled
3 ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have
4 been met and cannot be appropriately mitigated:

5 ~~(a)(i)~~ current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled
6 ground water area will cause ground water levels to decline to the extent that water right holders cannot
7 reasonably exercise their water rights;

8 ~~(b)(ii)~~ current or projected ground water withdrawals from the aquifer or aquifers in the proposed
9 controlled ground water area have reduced or will reduce ground water levels or surface water availability
10 necessary for water right holders to reasonably exercise their water rights;

11 ~~(c)(iii)~~ current or projected ground water withdrawals from the aquifer or aquifers in the proposed
12 controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding
13 relevant water quality standards;

14 ~~(d)(iv)~~ current or projected ground water withdrawals from the aquifer or aquifers in the proposed
15 controlled ground water area have impaired or will impair ground water quality necessary for water right holders
16 to reasonably exercise their water rights based on relevant water quality standards;

17 ~~(e)(v)~~ ground water within the proposed controlled ground water area is not suited for beneficial use;
18 or

19 ~~(f)(vi)~~ public health, safety, or welfare is or will become at risk.

20 (b) A public health, safety, and welfare controlled ground water area may include provisions for:

21 (i) closing a controlled ground water area to further appropriation of ground water;

22 (ii) restricting the development of future ground water appropriations in the controlled ground water
23 area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria the
24 department determines are necessary;

25 (iii) requiring measurement of future ground water or surface water appropriations;

26 (iv) requiring the filing of notice on land records within the boundary of a permanent controlled
27 ground water area to inform prospective holders of an interest in the property of the existence of a permanent
28 controlled ground water area. This notice of the designation must be removed or modified as necessary to

1 accurately reflect the modification or repeal of a permanent designation within 60 days.

2 (v) well spacing requirements, well construction constraints, and prior department approval before
 3 well drilling unless the well is regulated pursuant to Title 82, chapter 11;

4 (vi) mitigation of ground water withdrawals;

5 (vii) water quality testing;

6 (viii) data reporting to the department; and

7 (ix) other provisions the department determines are appropriate and adopts through rulemaking.

8 ~~(6)(7)~~ (a) If the department finds that sufficient facts are not available to designate a permanent public
 9 health, safety, and welfare controlled ground water area, it may designate by rule a temporary public health,
 10 safety, and welfare controlled ground water area to allow studies to obtain the facts needed to determine
 11 whether or not it is appropriate to designate a permanent controlled ground water area. The department shall
 12 set the length of time that the temporary ~~controlled ground water~~ area will be in effect. Subject to subsection ~~(6)~~
 13 ~~(7)(c)~~, the term of a temporary ~~controlled ground water~~ area may be extended by rule.

14 (b) A temporary public health, safety, and welfare controlled ground water area designation is for
 15 the purpose of study and cannot include the control provisions provided in subsection ~~(7)~~ (6), other than
 16 measurement, water quality testing, and reporting requirements.

17 (c) A temporary public health, safety, and welfare controlled ground water area designation may
 18 not exceed a total of 6 years, including any extensions.

19 (d) Prior to expiration of a temporary public health, safety, and welfare controlled ground water
 20 area, the department may amend or repeal the rule establishing the temporary ~~controlled ground water~~ area or
 21 may designate a permanent ~~controlled ground water~~ area through the rulemaking process under this section.

22 (e) Studies for temporary public health, safety, and welfare controlled ground water areas may be
 23 considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.

24 (f) If there is a ground water investigation program within the bureau, the ground water
 25 assessment steering committee established by 2-15-1523 shall consider temporary public health, safety, and
 26 welfare controlled ground water areas for study.

27 ~~(7) — A controlled ground water area may include but is not limited to the following control provisions:~~

28 ~~(a) — a provision closing the controlled ground water area to further appropriation of ground water;~~

(b) ~~_____ a provision restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;~~

(c) ~~_____ a provision requiring measurement of future ground water or surface water appropriations;~~

(d) ~~_____ a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.~~

(e) ~~_____ a provision for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;~~

(f) ~~_____ a provision for mitigation of ground water withdrawals;~~

(g) ~~_____ a provision for water quality testing;~~

(h) ~~_____ a provision for data reporting to the department; and~~

(i) ~~_____ other control provisions that the department determines are appropriate and adopts through rulemaking~~

(8) (a) The department shall designate or modify a water quantity controlled ground water area by rule if it finds by a preponderance of the evidence that there is a high concentration of ground water use exempt from permitting pursuant to 85-2-306(4), and the department determines:

(i) the ground water level is declining or is projected to decline due to pumping based on a review of the most recent 10-year period of record that demonstrates a chronic lowering of the ground water table or permanent loss of aquifer storage. This review must be based on available data or in consultation with the Montana bureau of mines and geology or other relevant agencies;

(ii) that 80% or more of the ground water in the aquifer has been appropriated; or

(iii) that 100% or more of the hydraulically connected surface water has been appropriated during any month. Ground water that is hydrologically connected to surface water is all ground water that, if extracted, may cause stream depletion by induced infiltration or pre-stream capture of tributary ground water.

(b) Control provisions for a water quantity controlled ground water area must include but are not limited to:

1 (i) closing the water quantity controlled ground water area to all exceptions from the permitting
2 process pursuant to 85-2-306, except for those specific appropriations authorized by rule pursuant to this
3 section;

4 (ii) requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-
5 306, 85-2-311, and 85-2-402 in water quantity controlled ground water areas. A totalizing metering device must
6 be used and measurements must be reported annually on a form provided by the department. The department
7 may issue a fine for noncompliance with this metering and reporting requirement;

8 (iii) allowing for the completion of appropriations on parcels created after October 17, 2014, that
9 received a certificate of subdivision approval from the department of environmental quality and a
10 predetermination letter from the department of natural resources and conservation before February 14, 2024;

11 (iv) closing an aquifer area to all exceptions from the permitting process pursuant to 85-2-306,
12 except for appropriations pursuant to subsection (8)(b)(iii) or one exception allowing for up to 0.5 acre-feet a
13 year without a permit that is authorized by the department for a single living unit on a tract of record in existence
14 on January 1, 2025, when connection to a public water system and mitigation is infeasible or for stockwater. A
15 change in the purpose of a water right excepted from permitting pursuant to this subsection (8)(b)(iv) is
16 prohibited;

17 (v) other control provisions the department determines are appropriate and adopts through
18 administrative rule.

19 (9) (a) The department shall designate or modify a water quantity ground water monitoring area by
20 rule if it finds by a preponderance of the evidence that there is a high concentration of ground water use exempt
21 from permitting pursuant to 85-2-306(4), and the department:

22 (i) determines the ground water level is declining or is projected to decline due to pumping based
23 on a review of the most recent 10-year period of record that demonstrates a chronic lowering of the ground
24 water table or permanent loss of aquifer storage. This review must be based on available data or in consultation
25 with the Montana bureau of mines and geology or other relevant agencies.

26 (ii) determines that 70% or more of the ground water in the aquifer has been appropriated;

27 (iii) determines that aquifer recharge is reliant on irrigation losses or where the geologic structure
28 or formation has limited storage or limited storage potential based on available data or in consultation with the

1 Montana bureau of mines and geology or other relevant agencies; or

2 (iv) determines that 90% or more of the hydraulically connected surface water has been
3 appropriated during any month.

4 (b) (i) Control provisions for water quantity ground water monitoring areas must include but are not
5 limited to:

6 (A) requiring the department to develop a monitoring plan for each designated ground water
7 monitoring area in consultation with the Montana bureau of mines and geology or other relevant agencies;

8 (B) requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-
9 306, 85-2-311, and 85-2-402 in water quantity ground water monitoring areas. A totalizing metering device must
10 be used and measurements must be reported annually on a form provided by the department. The department
11 may issue a fine for noncompliance with this metering and reporting requirement;

12 (ii) The department shall review the monitoring data and plan provided for in subsection (8)(b)(i)(A)
13 each biennium to determine if a change in area status is necessary.

14 (10) (a) The department shall designate or modify a water quality controlled ground water area by
15 rule if it finds by a preponderance of the evidence that using site-specific data, 50% of the designated area is
16 classified as high septic system density, as defined in department circular PWS 6 from the department of
17 environmental quality, and one of these criteria is met:

18 (i) nitrate concentrations exceed standards in department circular DEQ-7, department circular
19 DEQ-12A, or department circular DEQ-4 from the department of environmental quality;

20 (ii) exceedance of a ground water human health standard in department circular DEQ-7 in more
21 than 25% of a set of no fewer than 30 ground water wells;

22 (iii) exceedance of a U.S. environmental protection agency human health advisory for a toxic or
23 carcinogenic compound is more than 25% of a set of no fewer than 30 ground water wells; or

24 (iv) (A) if the aquifer is known or may be demonstrated to be interconnected with surface water:

25 (I) aquatic life or recreation beneficial uses of the connected surface water are listed as impaired
26 by the department of environmental quality pursuant to Title 75, chapter 5; and

27 (II) impaired by total nitrogen or total phosphorus attributable to on-site subsurface wastewater
28 treatment and disposal systems sources at a source contribution rate equal to or greater than 10%; or

1 (B) if a connected surface water is not listed as impaired by the department of environmental
2 quality, the petitioner may provide substantial credible data and analysis conducted in accordance with water
3 quality assessment methods prescribed by the department of environmental quality to demonstrate an
4 impairment:

5 (I) to aquatic life or recreation beneficial uses; and

6 (II) based on total nitrogen or total phosphorous attributable to on-site subsurface wastewater
7 treatment and disposal system sources at a source contribution rate of equal to or greater than 10%.

8 (b) The department shall determine appropriate control provisions for a water quality controlled
9 ground water area by rule.

10 (11) (a) The department shall designate or modify a water quality ground water monitoring areas by
11 rule if it finds by a preponderance of the evidence that using site-specific data, 50% of the designated area is
12 classified as moderate septic system density, as defined in department circular PWS 6 from the department of
13 environmental quality, and one of these criteria is met;

14 (i) background nitrate as nitrogen levels are 5.0 micrograms a liter or more using nondegradation
15 methods for drainfields that are not required to get a discharge permit;

16 (ii) exceedance of a ground water human health standard in department circular DEQ-7 in more
17 than 10% of a set of no fewer than 30 ground water wells; or

18 (iii) exceedance of a U.S. environmental protection agency human health advisory for a toxic or
19 carcinogenic compound is more than 10% of a set of no fewer than 30 ground water wells.

20 (b) The department shall determine appropriate control provisions for a water quality ground water
21 monitoring area by rule.

22 (12) (a) The department may initiate rulemaking for the modification or removal of an area
23 designated pursuant to subsections (6) and (8) through (11) if the area no longer meets the designation criteria.

24 (b) A petition may be filed pursuant to subsection (3) to modify or remove an area designated
25 pursuant to subsections (6) and (8) through (11). The petitioners shall provide facts of how the area no longer
26 meets the designation criteria. If the petitioners prove the criteria are no longer being met, the department shall
27 modify or remove the designation.

28 (c) The entities in subsection (3) may file a petition to modify or remove a designated area to the

1 department.

2 (8)(13) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior
3 boundaries of the Flathead Indian reservation."
4

5 **Section 6.** Section 85-2-524, MCA, is amended to read:

6 **"85-2-524. Criteria for petition applications.** Municipalities, counties, conservation districts, and
7 local water quality districts may establish specific criteria for acceptance of an application to the municipality,
8 county, conservation district, or local water quality district to petition for creation of a controlled ground water
9 area and other criteria necessary to implement this part. Those criteria may include but are not limited to:

10 (1) the submission of substantial credible evidence that one or more of the criteria provided in 85-
11 2-506(5) are met;

12 (2) a description of proposed measures, if any, to mitigate effects of the criteria identified in 85-2-
13 506(5);

14 (3) a description of proposed studies for a temporary controlled ground water area;

15 (4) a requirement that an application be supported by owners of at least one-fourth of the water
16 rights with a point of diversion of water within the boundaries of the proposed controlled ground water area;

17 (5) a requirement that an applicant pay an application or processing fee for the application; and

18 (6) a description of proposed funding for studies for a controlled ground water area."
19

20 NEW SECTION. **Section 7. Notification to tribal governments.** The secretary of state shall send a
21 copy of [this act] to each federally recognized tribal government in Montana.
22

23 NEW SECTION. **Section 8. Codification instruction.** [Section 3] is intended to be codified as an
24 integral part of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5, apply to [section 3].
25

26 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.
27

- END -



LC1455: Exempt Wells

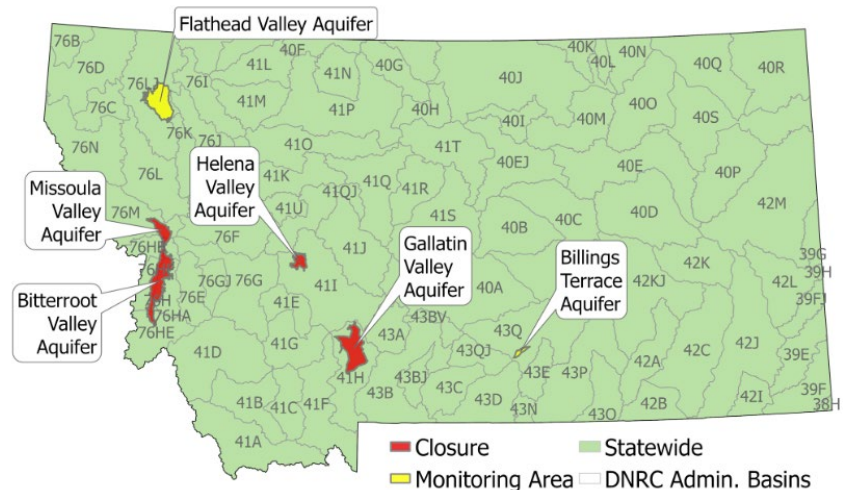
*This bill concept is a product of DNRC's **Comprehensive Water Review Stakeholder Working Group**, which spent the past 15 months+ collaborating on policy recommendations for water resource administration in Montana.*

One of the main objectives of Department of Natural Resources and Conservation's (DNRC) Comprehensive Water Review Stakeholder Working Group was to understand the current use of exempt wells in Montana and develop recommendations for the future based upon scientific and legal criteria. The working group began by developing criteria for assessing the impacts of exempt wells on an aquifer-specific basis. The working group found that, in much of the state, exempt wells are an appropriate water supply option with minimal impacts to physical or legal water supply. In certain high-growth areas of the state, the working group found that the cumulative impacts of exempt well use could be problematic. Instead of a "one-size-fits-all" solution across the state, the working group recommends exempt well regulations that match exempt well impacts.

WHAT DOES THIS BILL DO?

Based on the existing statutory framework for designating controlled groundwater areas, this bill divides the state into three different categories: **closure areas**, **monitoring areas**, and **the rest of the state**.

Statewide. For most of the state, this bill creates two pathways – one for when no division of land is occurring, and one for landowners dividing property.



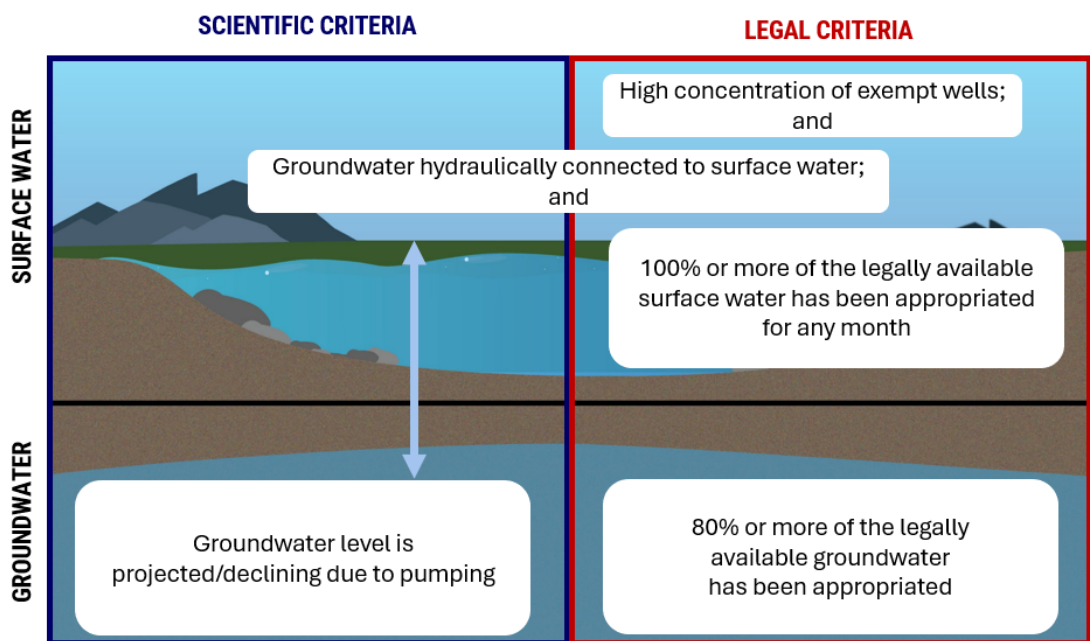
- **Not dividing land:** For water users not dividing land, the status quo will continue, except that this bill codifies criteria DNRC currently uses to evaluate combined appropriation¹, increasing transparency and clarity.
- **Dividing land:** Creation of a lot pursuant to the Subdivision and Platting Act (<160 acres) triggers the second pathway. This pathway assigns each lot in the subdivision a fixed maximum volume of water – increasing certainty and predictability in the amount of water available under the exemption. Divisions of land² will be subject to:
 - **Lot cap of 24 or fewer lots.** The exemption cannot be used to supply water to more than 24 lots; divisions resulting in more than 24 lots require a water permit or connection to a public water supply system.
 - **Volume cap** of up to 0.5 acre-feet per acre based on lot size, and no more than 1 acre-foot per lot.
 - **Metering and reporting** of new exempt well use.

¹ The term "combined appropriation" refers to two or more wells or developed springs that draw from the same source and serve the same project. A combined appropriation is limited to a single permit exception – any use in excess of 10 acre-feet per year or 30 gallons per minute requires a permit.

² Note: this legislation applies to an appropriation of water for use on lots created prior to 10/17/14, with exceptions for certain appropriations that received a COSA or predetermination letter before the effective date of this legislation.

Closure Areas. In areas where the scientific or legal criteria for closure are met, no new use of exempt wells will be allowed except in extremely limited circumstances³. Residents of these areas will need to connect to a public water supply or go through the full permitting or change authorization process to appropriate water. Metering and reporting will be required for all new water uses in these areas. The bill designates four aquifers for closure: Missoula Valley Aquifer, Helena Valley Aquifer, Gallatin Valley Aquifer, and Bitterroot Valley Aquifer. It also provides a process by which future closure areas could be designated if the scientific and legal criteria indicate closure is necessary.

The bill provides that a closure may be designated when an aquifer is experiencing impacts to water quality⁴ and exceedance of the following scientific and legal criteria thresholds:



Monitoring Areas. In areas that are nearing closure thresholds under the scientific or legal criteria, all water use will be subject to metering and reporting requirements. This will support adaptive decision-making to determine if a future closure is needed. The regulations are otherwise identical to the statewide category. The bill designates two aquifers for monitoring: Billings Terrace Aquifer and Flathead Valley Aquifer. It also provides a process by which future monitoring areas could be designated if the scientific and legal criteria indicate this is necessary.

Scientific and legal criteria for monitoring areas are the same as for closures, with lower impact thresholds. Designation of a monitoring area requires a high concentration of exempt wells and:

Criteria 1: Surface Water

- **Scientific & legal:** Groundwater hydraulically connected to surface water; and
- **Legal:** 90% or more of the legally available surface water has been appropriated for any month

Criteria 2: Groundwater

- **Scientific:** A decreasing groundwater level trend or limited storage potential
- **Legal:** 70% or more of the legally available groundwater has been appropriated.

Criteria 3: Water Quality (DEQ)

- **Source Aquifer:** moderate septic system density; AND nitrate concentration, exceedance of any ground water human health standard; exceed health advisory

³ Exigent circumstances that will still qualify for an exempt well withdrawing no more than 0.5 acre-feet annually are (1) stockwater and (2) single dwellings on an existing lot where connection to public water or obtaining a permit are infeasible.

⁴ For example, where the source aquifer has high septic system density and nitrate concentrations or exceeds any ground water human health standard, or where the water quality of connected surface water sources is impaired in part by nonpoint sources.

**LEWIS & CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
Helena, Montana**

BOARD AGENDA ITEM

Meeting Date

February 25, 2025

Agenda Item No.

7

☐ Minutes ☒ Board Member Discussion ☐ Staff & Other Reports ☐ Action ☐ Hearing of Delegation

AGENDA ITEMS: Board Member Discussion

PERSONNEL INVOLVED: Board Members

BACKGROUND: This time has been set-aside for the board members to bring up any topics they would like to discuss or add to the agenda for future meetings.

ADDITIONAL INFORMATION ATTACHED

BOARD ACTION:

NOTES:

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
B. MacLaurin						
A. Hunthausen						
J. Ryan						
A. Johnson						

**LEWIS & CLARK COUNTY
WATER QUALITY PROTECTION DISTRICT
Helena, Montana**

BOARD AGENDA ITEM

Meeting Date

February 25, 2025

Agenda Item No.

8

☐ Minutes ☒ Board Member Discussion ☐ Staff & Other Reports ☐ Action ☐ Hearing of Delegation

AGENDA ITEMS: Public Comment

PERSONNEL INVOLVED: Public and Board Members

BACKGROUND: Time is allowed for public comment on matters within the Water Quality Protection District's boundaries not mentioned on the agenda.

RECOMMENDATION: n/a

☐ ADDITIONAL INFORMATION ATTACHED

BOARD ACTION:

NOTES:

	M O T I O N	S E C O N D	A Y E	N A Y	A B S T A I N	O T H E R
D. Hammer						
P. Johnson						
E. Kerins						
R. Leland						
B. MacLaurin						
A. Hunthausen						
J. Ryan						
A. Johnson						

**Attendance Record for the
Lewis & Clark County Water Quality Protection District
FY 2025**

	Jul	Aug	Sep	Oct	Dec	Jan	Feb	Mar	Apr	May	Jun
D. Hammer	O	X	X	X	OE	X					
P. Johnson	X	X	X	X	X	X					
E. Kerins	X	X	X	X	OE	X					
R. Leland	X	O	X	O	X	X					
J. Ryan	X	X	X	X	X	X					
J. Staldine	O	O	---	----							
C. Payne	X	X	OE	X	OE						
B. MacLaurin	O	X	X	X	X	X					
A. Johnson					X	X					
A. Hunthausen						OE					

Legend:

X = Present

Xp = By phone

--- = Not a member of the board at that time.

* = No meeting held

O = Absent

OE = Absent/Excused

T = Tour



Lewis and Clark County Water Quality Protection District

316 N. Park. Rm. 230
P.O. Box 1723
Helena, MT 59624
Ph: 406.457.8584
Fax: 406.447.8398

Commissioner Andy Hunthausen

316 N. Park Helena, MT 59623

406-347-8303 (W)

Email: ahunthausen@lccountymt.gov

Representing the Board of County
Commissioners

Vacant

Representing the East Helena City Council

Jeff Ryan

6425 Jasper Road Helena, MT 59602

(406) 202-4003 (C)

Email: jeff@rfryan.com

Representing the L & C Conservation District

Ryan Leland

316 N. Park Helena, MT 59623

(406)447-8433 (406)431-5689 (C)

Email: rleland@helenamt.gov

Representing the Helena City Commission

Diana Hammer

30 South Harrison Helena, MT 59601

(406)461-4148 (C)

Email: diana.hammer.hcc@gmail.com

Representing the Helena Citizen's Council

Brie MacLaurin

710 N. Davis St. Helena, MT 59602

(406)461-0784

Email: briemacclaurin@gmail.com

Representing the Board of Health

Edward Kerins, Vice Chair

920 Peosta Ave. Helena, MT 59601

(406)594-1040 (H)

Email: kerins@mt.net

Term ends 06/30/25 – General Public 1st Term

Patrick Johnson, Chair

1271 Sawbuck Place Helena, MT 59602

(406)465-3428 (C)

Email: pnjhnsn@gmail.com

Term ends 06/30/27 – General Public 2nd Term

Adel Johnson

647 N Rodney Street, Helena MT 59602

406-431-4579

Email: Adel.Johnson@gmail.com

Term ends 06/30/26 – General Public 1st Term



Lewis and Clark County Water Quality Protection District

1930 Ninth Ave
P.O. Box 1723
Helena, MT 59601
Ph: 406.457.8584
Fax: 406.457.8990

MEETING DATES FOR FISCAL YEAR 2025

January 28, 2025

February 25, 2025

March 25, 2025

April 22, 2025

May 27, 2025

June 24, 2025

All board meetings are held in room 72 of the Murray Building- Lewis and Clark Public Health, 1930 Ninth Ave, Helena, Montana and via Zoom at 4:00 p.m. The meetings are generally completed by 5:30 p.m. The public is always welcome to join and meeting.

For Your Information



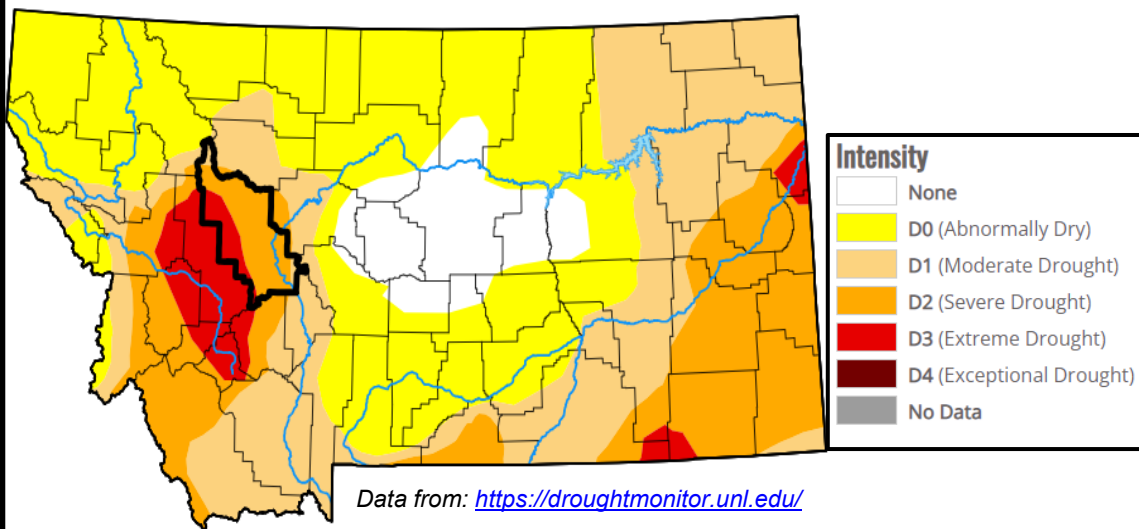
Lewis & Clark City-County
Water Quality Protection District
316 North Park
Helena, MT 59601

Upper Missouri Water Supply Report

February 10, 2025

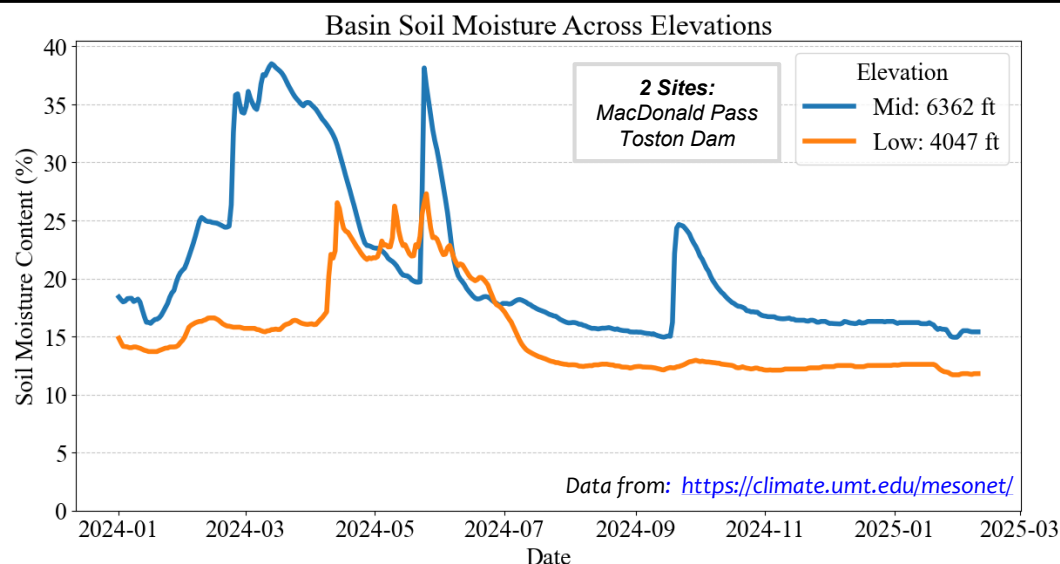
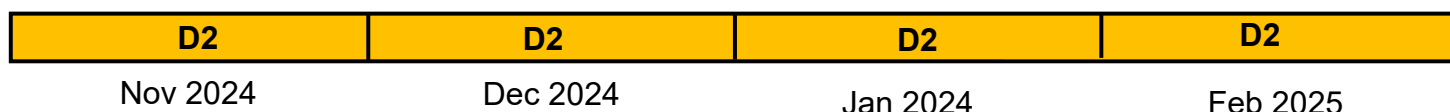


The Montana Department of
**Natural Resources
& Conservation**



OVERALL DROUGHT

- Majority of the watershed in D2.
- Headwater counties have a larger portion of D1 while western portion of Lewis and Clark in D3.
- Consistent over past few months.



SOIL MOISTURE

- Soil moisture slightly below last year.
- Precipitation events shown in summer and fall drive infiltration.
- Steady soil moisture after summer declines. Cold temps lock in the soil moisture for the winter.

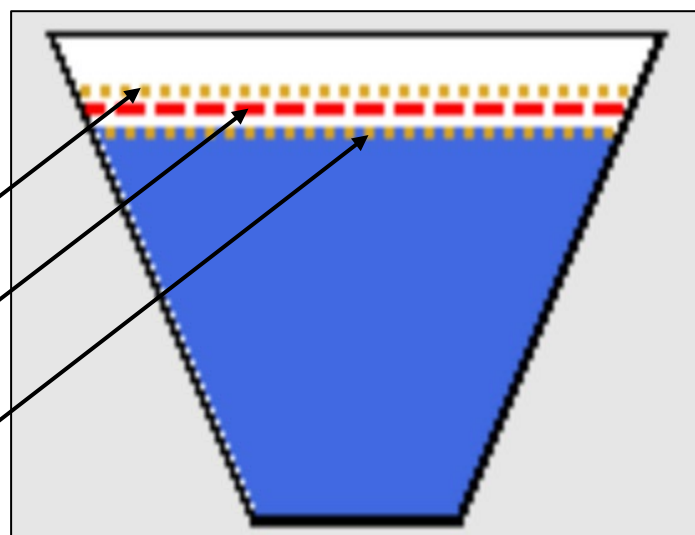
RESERVOIR STORAGE

- Canyon Ferry is **74%** full
- Current Storage: 1,399,150 AF
- Total Storage: 1,886,950 AF
- **93%** of the 30-year average

90th Percentile

Average

10th Percentile

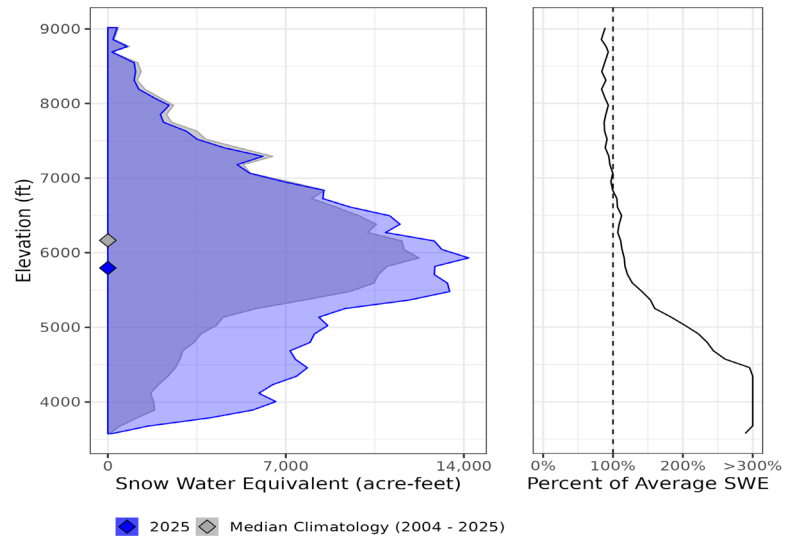


Data from:
<https://www.arcgis.com/apps/dashboard/s/81aaec3e74024ce6b9a5e50caa20984e>

SNOWPACK

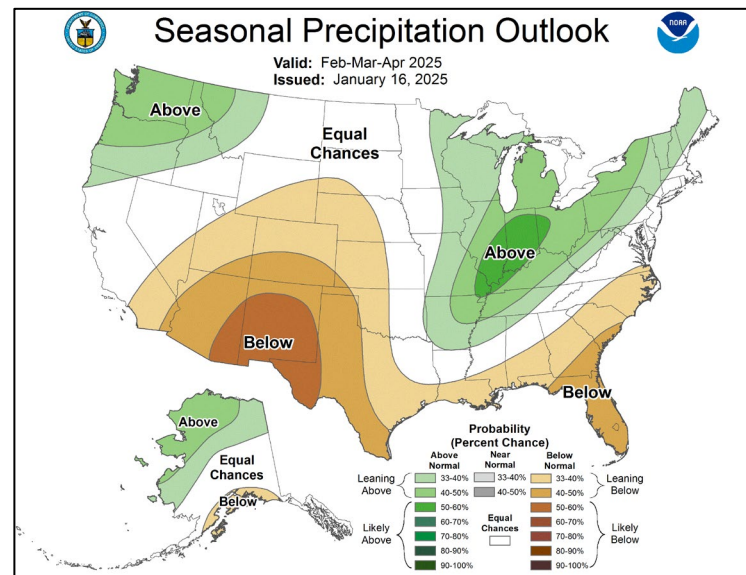
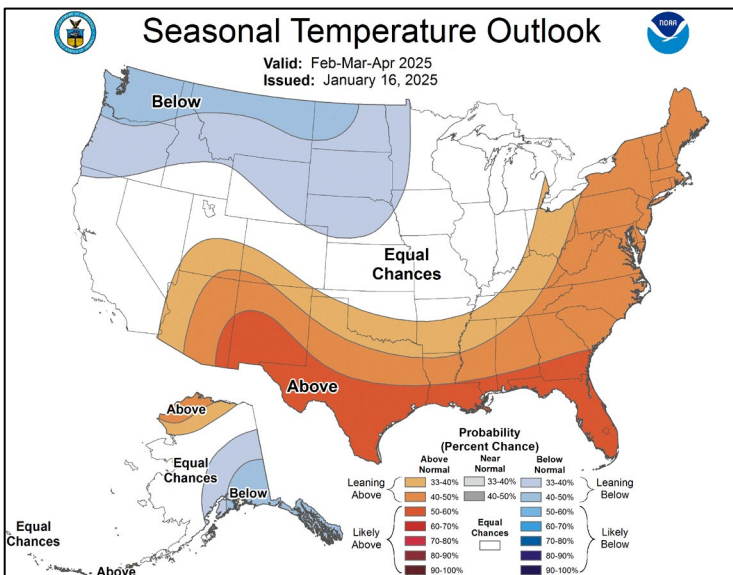
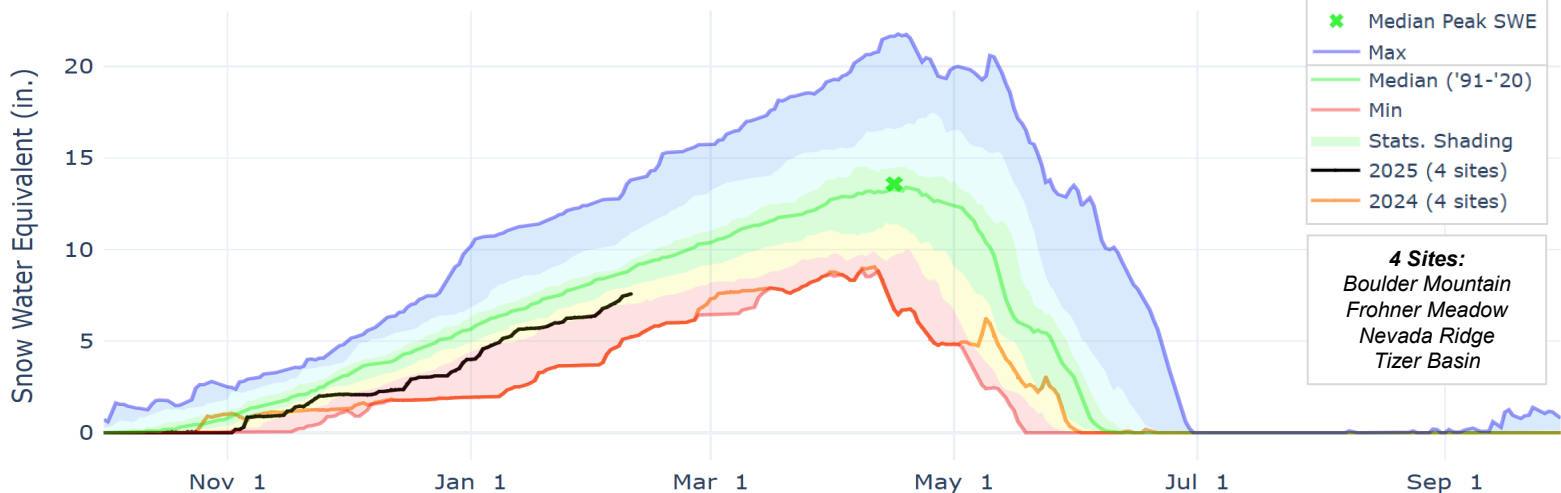
- Snow Water Equivalent (SWE) represents the total volume available in the snowpack (shown in both graphs).
- Snowpack in **low elevation** is **well above** the median compared to **high elevation** snowpack is **slightly below** in the Upper Missouri (right graph).
- Snowpack across four SNOTEL sites is **15% below** the median for the period of 1991-2020 (below graph) but **higher** than **2024 water year**.

Hypsom-SWE for Upper Missouri (HUC8: 10030101) 2025-02-10 (135% of Normal)



SNOW WATER EQUIVALENT IN HELENA VALLEY

Data from: <https://nwcc-apps.sc.egov.usda.gov/basin-plots/#MT>



WINTER OUTLOOK (FEB-APRIL)

- La Niña: Seasonal forecasts below average temperatures and above average precipitation.

Data from: <https://www.cpc.ncep.noaa.gov/>

Produced by:
Maddie McKeefry
Hydrologist, Montana DNRC
Madeline.mckeefry@mt.gov