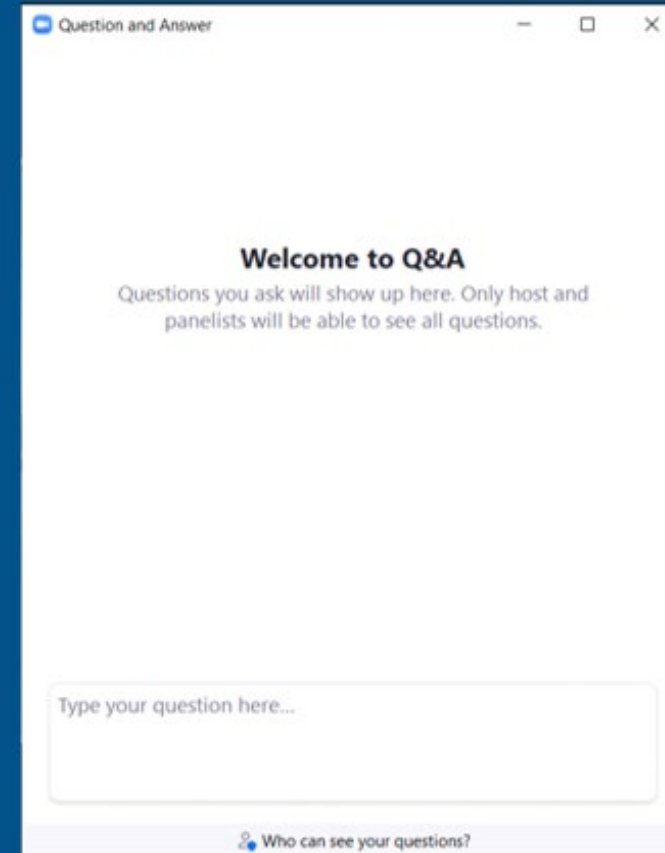


Subdivision Seminar

June 16, 2022

Welcome!

- This meeting is a Zoom webinar
- Only presenters are panelists
- Please hold questions until the Q&A portion of the meeting (slides are numbered)
- Members of the public can raise their hand or use the Q&A feature to ask questions during the Q&A portion of the meeting
- *9 raises your hand if you're on the phone
- Please state your name and affiliation before providing your comment



Meeting Objective:

Provide information about the various parts of the subdivision review process, why it's important, and how key entities are working together to improve the application and review process



Panelists

- County - Shannon Therriault, RS (Missoula), Beth Norberg, RS (Lewis and Clark), Brittney Krahn, RS (Gallatin)
- DEQ - Margarite Juarez Thomas, Susan Bawden, Eric Trum, Eric Regensburger, Scott Patterson
- DNRC - Nate Ward
- MACo - Karen Alley
- Facilitator – Rebecca Harbage, DEQ



Agenda:

Welcome and Meeting Overview – Rebecca Harbage

Subdivision and Platting Act – Karen Alley, Montana Association of Counties General Counsel

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Title 50 – Shannon Therriault, RS (Missoula County), Beth Norberg, RS (Lewis and Clark County), Brittney Krahn, RS (Gallatin County)

11:30 Panel Q & A



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11:30 Panel Q & A



Montana Subdivision and Platting Act

What and Why

Karen Alley

kalley@mtcounties.org



Montana Subdivision and Platting Act

- Introduced as SB 208 in 1973 Legislative Session
- 1973 Legislative Purpose
 - Promote public health, safety, and general welfare by regulating subdivision of land
 - Prevent overcrowding of land
 - Lessen congestion on streets and highways
 - Provide adequate light, air, water supply, sewage disposal, park and recreation areas, ingress and egress, and other public requirements
 - Encourage development in harmony with natural environment
 - Require uniform monumentation of land subdivisions and transferring interests in real property be reference to plat or certificate of survey



Montana Subdivision and Platting Act

- SB 208 (1973) sponsored by Senator Jean Turnage
 - Stated its purpose was to bring order out of the confusion with land subdivisions and the role of local government therein.
- Widely supported
 - Hal Price, State Planning Board, stated the bill was to designed to deal with problems that result from poor subdivisions
 - Rick Mayfield, Bozeman City-County Planning Board, provided the legislative committee with an illustration of how land was subdivided with no concern for roads or drainage
 - Jean Anderson, League of Women Voters, supported SB 208, stating, in particular, the bill addressed the achievement of orderly community growth and enabled governmental services to be economically and efficiently supplied



Montana Subdivision and Platting Act

- 1973 passage applied to divisions of land of 10 acres or less, which was the most controversial part of the bill.
 - This acreage was quickly changed in 1974 to apply to divisions of land 20 acres or less.
 - Present definition of subdivision, effective as of April 6, 1993
 - “division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.” (MCA 76-3-103(16))



Montana Subdivision and Platting Act

- Overarching goal of MSPA is two-fold
 - Government regulation of development (both local and state)
 - Prior to 1973, local government had minimal, if any, review of subdivided lands
 - Public participation in community growth and development
 - SB 208 (1973) included public participation in subdivision review, specifically in the creation of regulations created by the local governing bodies.



Montana Subdivision and Platting Act

- Current iteration of the Act
 - By and large the purpose remains the same, though in the intervening years, the legislature has added the following to the purpose of the Act:
 - Promote preservation of open space
 - Promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services
 - Protect the rights of property owners
 - Provide for phased developments



Montana Subdivision and Platting Act

- Each governing body's subdivision regulations must reasonably provide for:
 - “(a) the orderly development of their jurisdictional areas;
 - (b) the coordination of roads within subdivided land with other roads, both existing and planned;
 - (c) the dedication of land for roadways and for public utility easements;
 - (d) the improvement of roads;
 - (e) the provision of adequate open spaces for travel, light, air, and recreation;
 - (f) the provision of adequate transportation, water, and drainage;
 - (g) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
 - (h) the avoidance or minimization of congestion; and
 - (i) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.” (MCA 76-3-501)



Montana Subdivision and Platting Act

- Review of each subdivision application requires analysis of several primary criteria under MCA 76-3-608(3)(a):
 - Agriculture;
 - Agricultural water user facilities;
 - Local services;
 - The natural environment;
 - Wildlife;
 - Wildlife habitat; and
 - Public Health and Safety



Montana Subdivision and Platting Act

- It is the role of local government to analyze any adverse impacts to the primary criteria
 - Significant adverse impacts are mitigated with conditions of approval, imposed through the review process itself
- In completing its review, local governing body relies upon not only representation from the subdivider but also on public participation.
- Public still plays a critical role in community growth, both in the development of regulations as well as in the site-specific (application) review



Montana Subdivision and Platting Act

- Specific to Sanitation in Subdivision
 - Under MCA 76-4-102(23), subdivision is defined by a division of land that creates parcels of land less than 20 acres. Any parcel under 20 acres is reviewed by the Montana DEQ for water and sanitation review. Parcels over 20 acres are reviewed by the local county sanitarian for water and sanitation review.
 - Subdivision applications, submitted under MCA Title 76, Chapter 3 “must be accompanied by preliminary water and sanitation information required under MCA 76-3-622.”
 - As part of the review process, the local governing body is required to collect public comment related to water and sanitation review. Those comments are provided to the subdivider and passed along to the appropriate reviewing authority, pursuant to MCA 76-3-604.



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11:30 Panel Q & A



Water Rights: Permits & Exceptions

Nate Ward
Bureau Chief
Water Rights Bureau
nward@mt.gov



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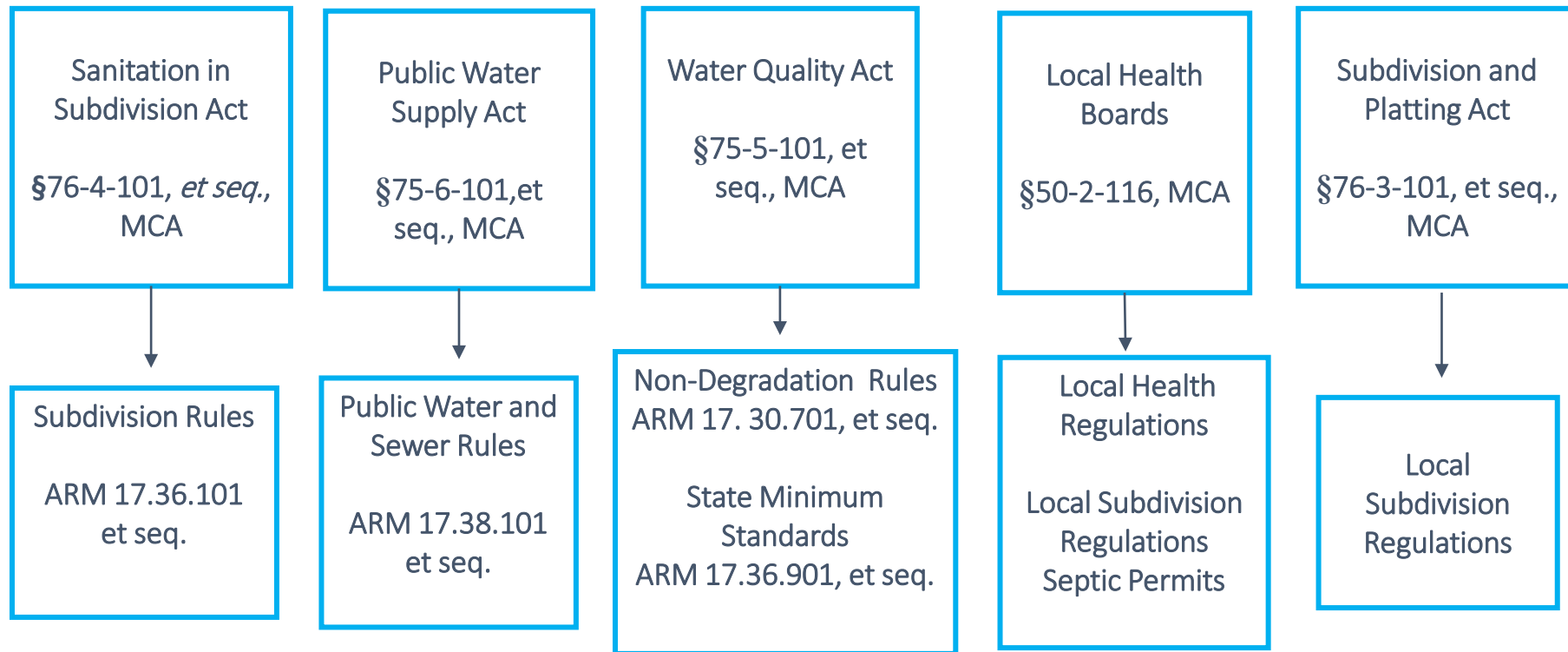
11:30 Panel Q & A



DEQ Subdivision Review Process

Margarite Juarez Thomas
mjuarezthomas@mt.gov

Statutory Authority for DEQ



Water Rights Coordination

17.36.103 APPLICATION--CONTENTS

- DNRC Letter
 - water supply is exempt
or
 - water right complete

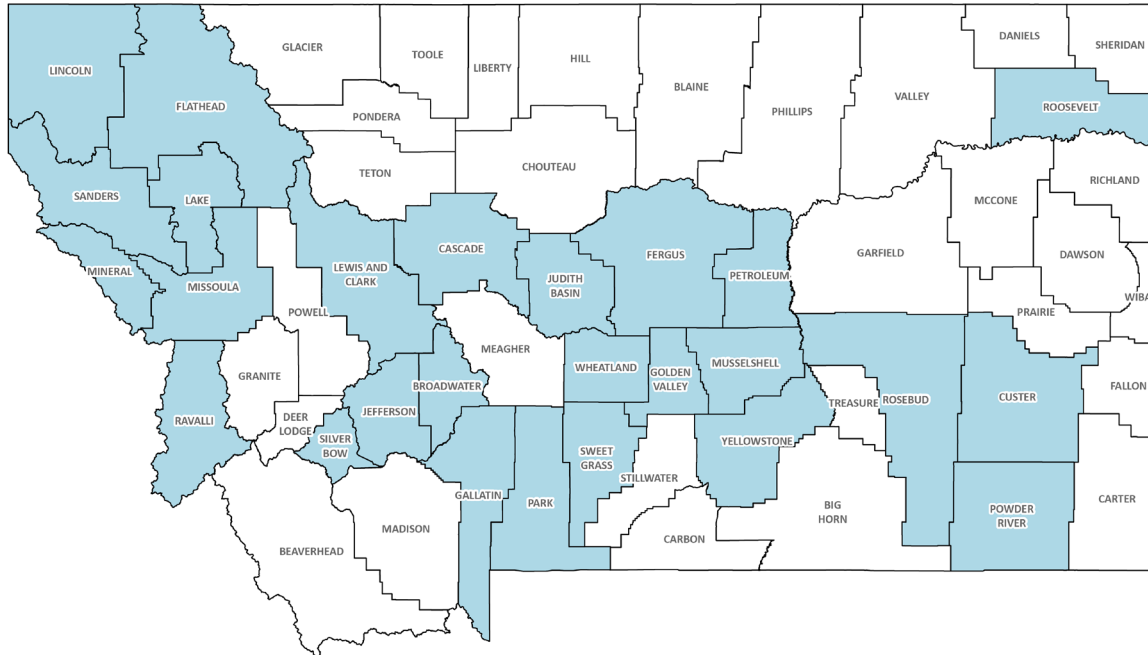


Water Quality Division Engineering Bureau

"Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for recreational camping vehicles or mobile homes.
MCA76-4-102 (23)

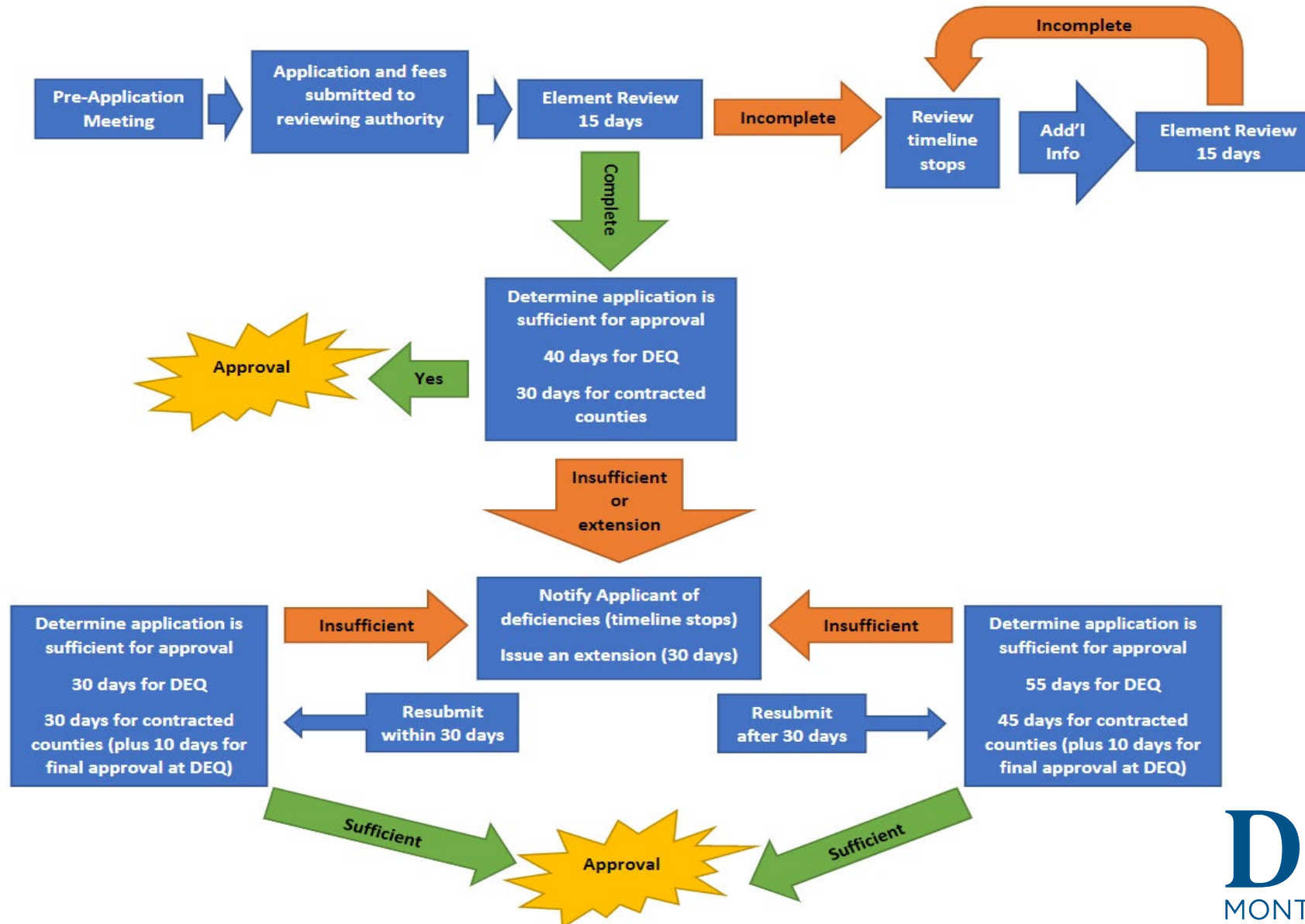
Contracted Counties Subdivision Review

Approximately half of the counties in Montana are contracted to conduct reviews of subdivision applications in their county, for compliance with laws and rules.



After the County's review is complete, they make a recommendation for approval of the application to the MDEQ.

DEQ Review process



Strategies to Improve Timelines

- Hiring
- Exploring pay adjustments and overtime
- Career path for EIT to PE
- Program "people-sharing"
- Technology – online application submittals
- Contracts – city engineers/private engineers
- Rulemaking
- Funding
- Efficiency

Subdivision Review

- Receive Subdivision Applications
- DEQ Reviews Application using the Application Part IV: Subdivision Checklist

We look at:

- Proper formatting of the lot layout
 - Water quality, quantity, and dependability
 - Proper functioning of the wastewater system
 - Setbacks
 - Non-degradation of state waters
 - Storm water drainage
- Issue Certificates of Subdivision Approval (COSA)

System Classification

- **Individual**
 - serves one living unit or commercial unit and that is not a public system
- **Shared**
 - serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public system
- **Multi-user**
 - serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public system
- **Public**
 - Serves 15 or more connections, or
 - 25 or more persons for 60 or more days per year

Identification of DEQ's Rulemaking Priorities

Red Tape Relief

Incorporation of legislative changes from 2021 session

Changes based on concerns the subdivision program has consistently heard over the past several years.



Subdivision Advisory Task Force

Acts as a liaison between DEQ, counties and sanitarians, and the public as part of the Department's continual improvement process focused on improving subdivision and development related processes and policies while protecting public health and the environment.

Work is guided by the policies set out under the Water Quality Act MCA 75-5-101 and the Sanitation and Subdivisions MCA 76-4-101.

DEQ Proposed Pathway

Phase 1 - Moving forward in 2022/2023

- Subchapter 1
- Portions of Subchapters 3, noted on following slides
- DEQ-3 and DEQ-20
- To be adopted in February of 2023

Phase 2 - Will continue work in SATF subcommittees

- Subchapter 6
- Subchapter 9
- DEQ-4, Portions of Subchapter 3
- DEQ-8
- Nondeg circular 4A may be included in phase 2
- Tentative adoption in November of 2023

Phase 2 - Timeline

- Continue to work on Phase 2 with the SATF
- Tentatively in June of 2023, we would enter the Rule and Refinement of Draft Rules for Phase 2.



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11:30 Panel Q & A





Septic System Water Quality Review

Eric Regensburger
eregensburger@mt.gov

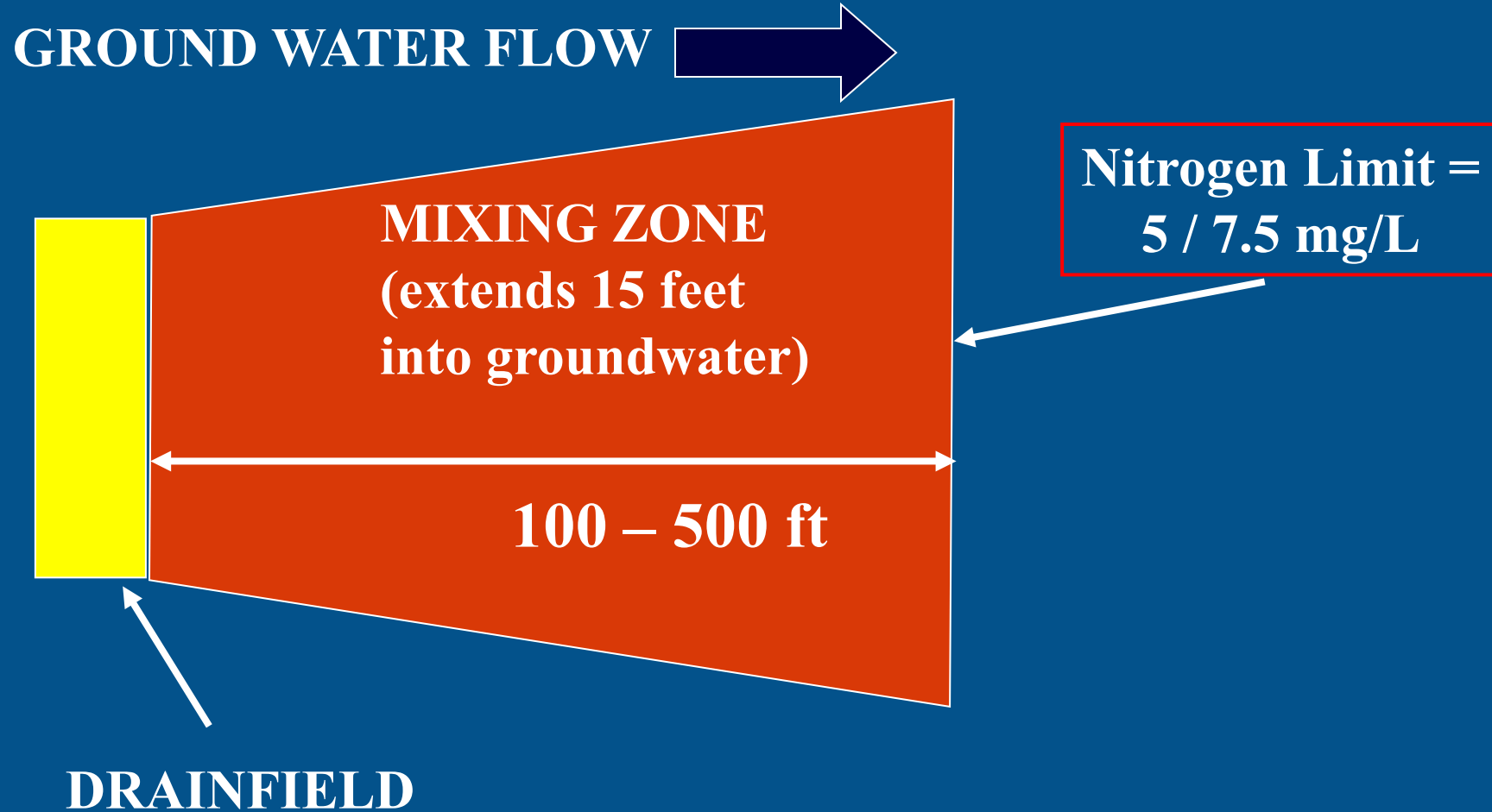
Overview

- Review Nitrogen (N) impacts to groundwater (and surface water when close enough)
- Review Phosphorus (P) impacts to surface water

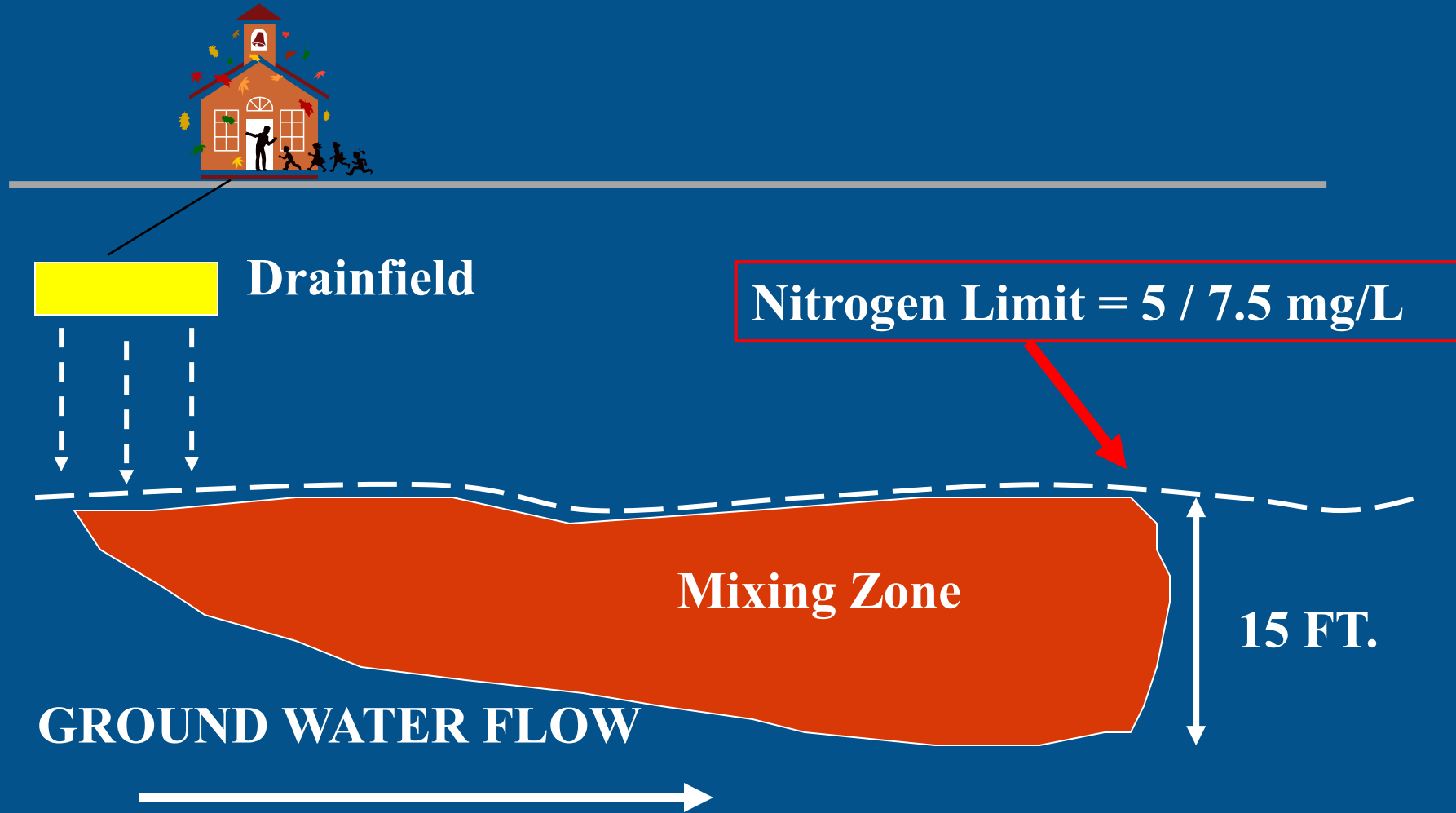
Nitrogen Groundwater Review Basics

- Allow effluent to mix with groundwater
- Calculate nitrogen (N) concentration at end of groundwater mixing zone.
- Nondegradation limit is 5 or 7.5 mg/L (total concentration) at end of mixing zone

Mixing Zone (Top View)



Mixing Zone (side view)



Phosphorus Review Basics

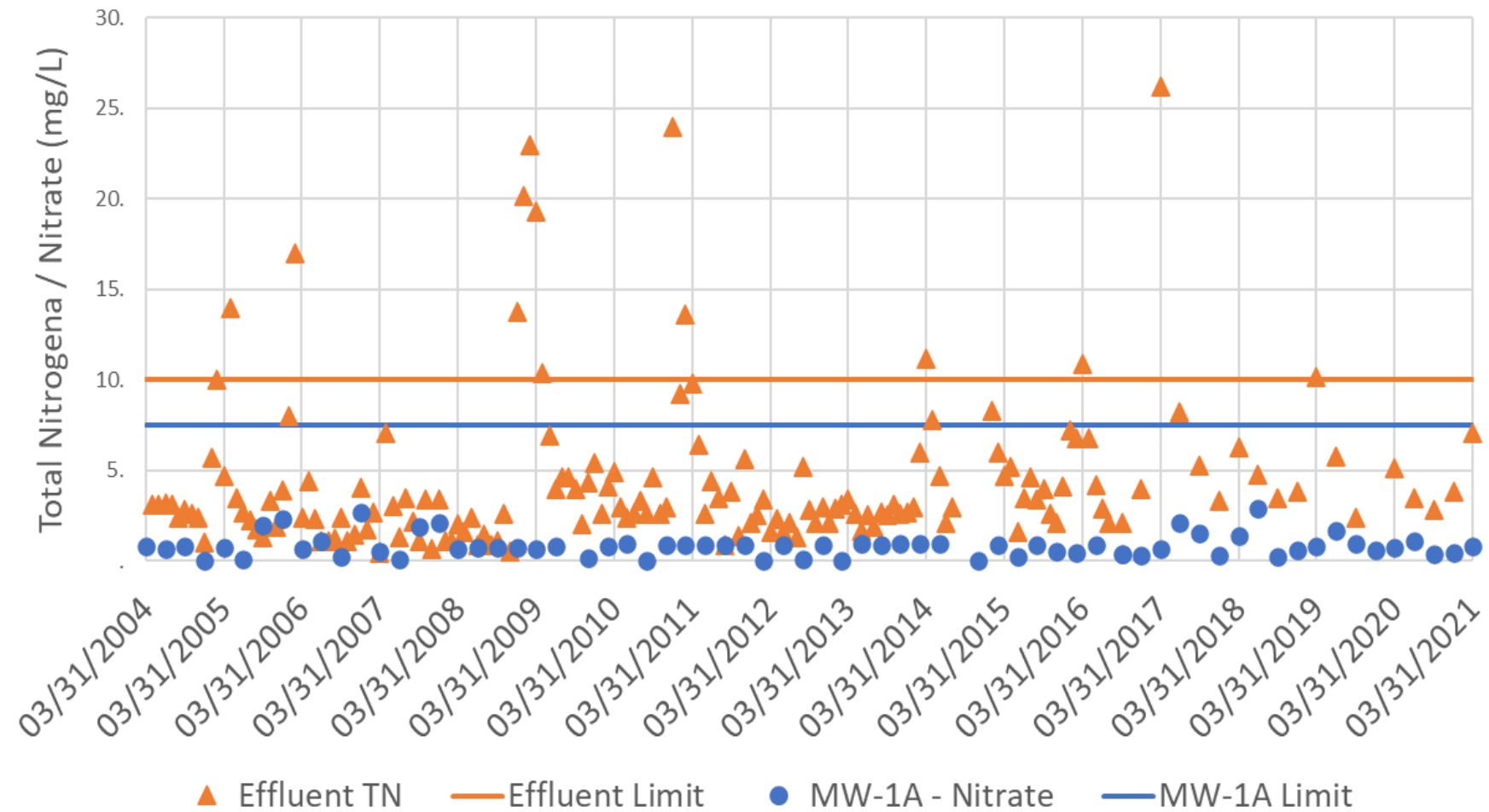
- Calculate amount of soil between drainfield and surface water available to adsorb P.
- Need at least 50 years of adsorptive capacity.

Surface Water Review Basics

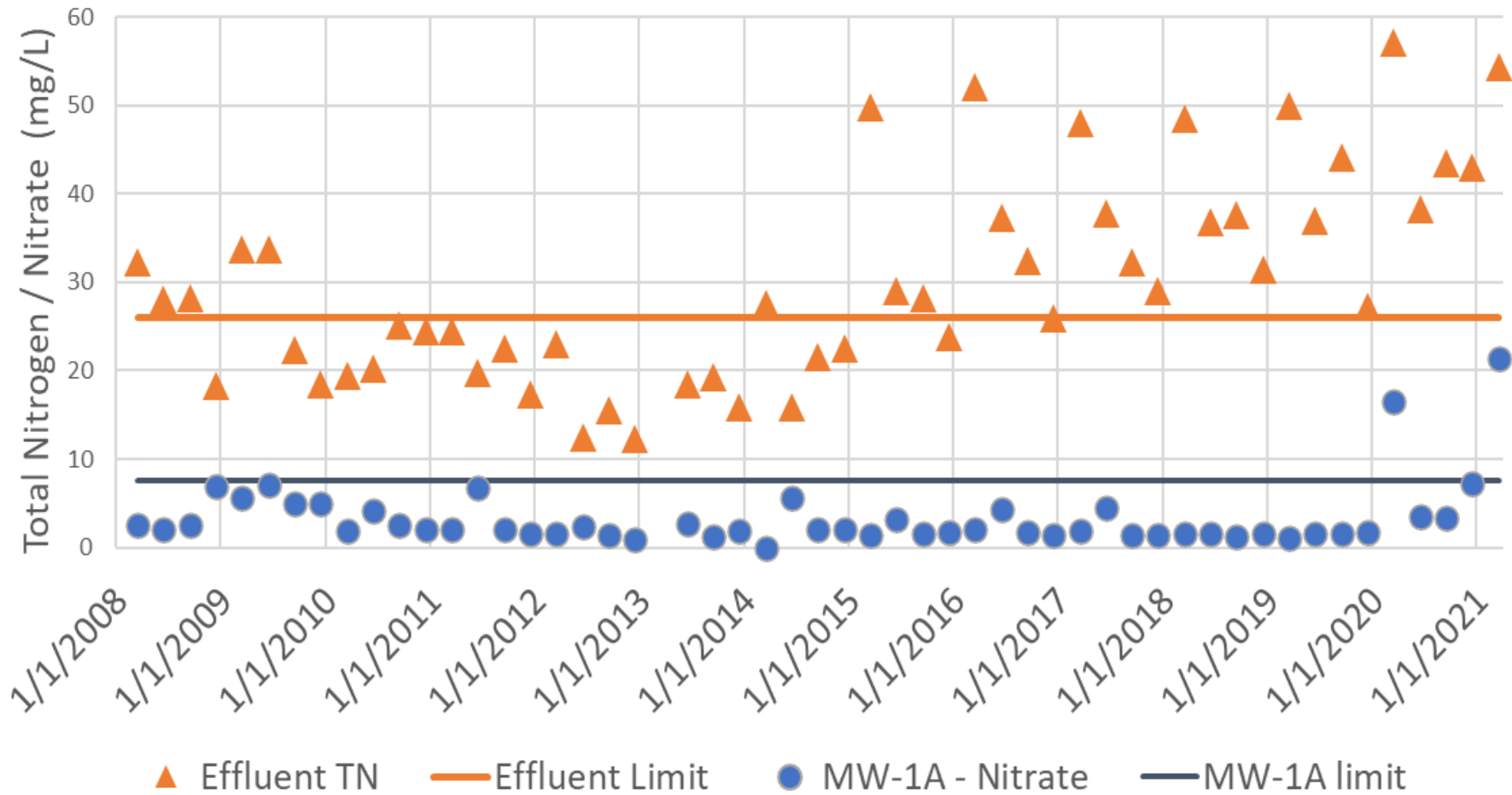
- Drainfield within $\frac{1}{4}$ or $\frac{1}{2}$ mile of surface water (soil type dependant)
- Allow effluent N and P to mix with surface water.
- Calculate nitrogen N and/or P concentration after mixing with a statistical low flow streamflow.
- Allow a defined increase of N and P in surface water after mixing (0.01 and 0.001 mg/L)

Examples of Wastewater Treatment and Monitoring Data.

EFFLUENT AND MONITORING WELL NITROGEN DATA EXAMPLE



EFFLUENT AND MONITORING WELL NITROGEN DATA EXAMPLE



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11:30 Panel Q & A





Nitrate and Pathogens Contamination in Drinking Water Wells

Scott Patterson

MT DEQ – Nitrate and GWUDISW Rule Manager

Public Water Supply Bureau

spatterson@mt.gov

406-444-5360

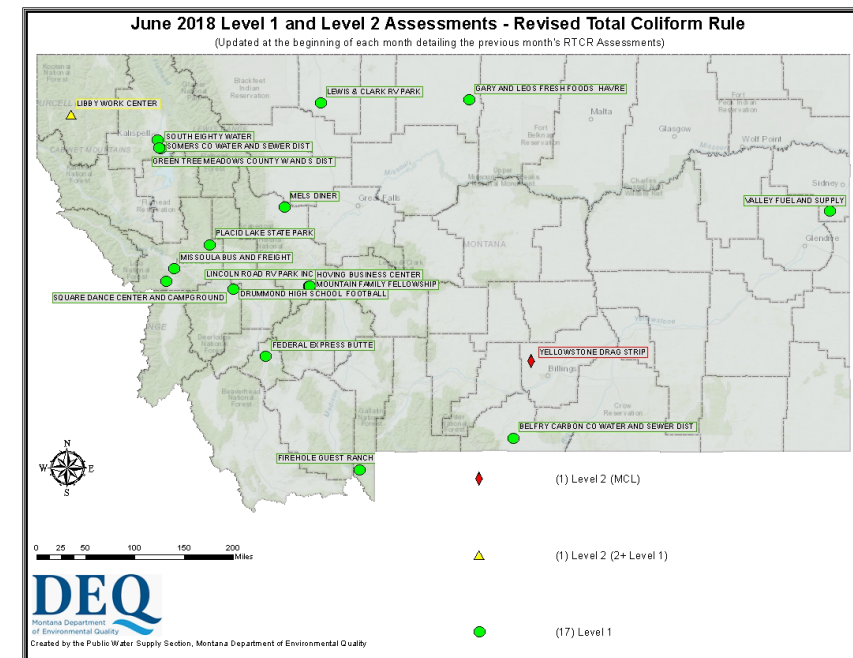
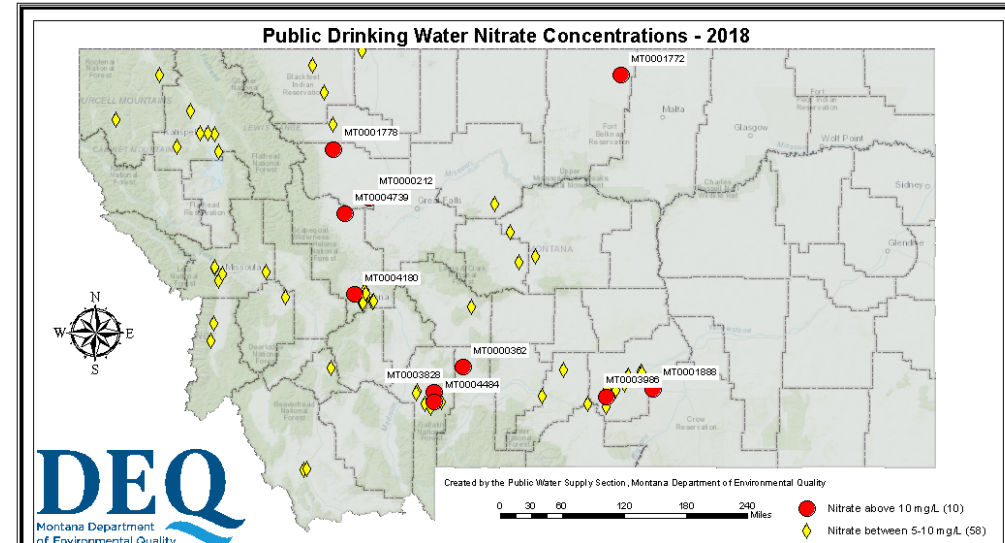
Drinking Water Health Standards

- Safe Drinking Water Act sets health standards for quality of drinking water served
- These health standards are adopted by Subdivision rules
- Maximum Contamination Level (MCL) = Health Standards
 - Nitrate = 10 mg/L
 - *E. coli* = Presence
- Acute vs. Chronic contaminants

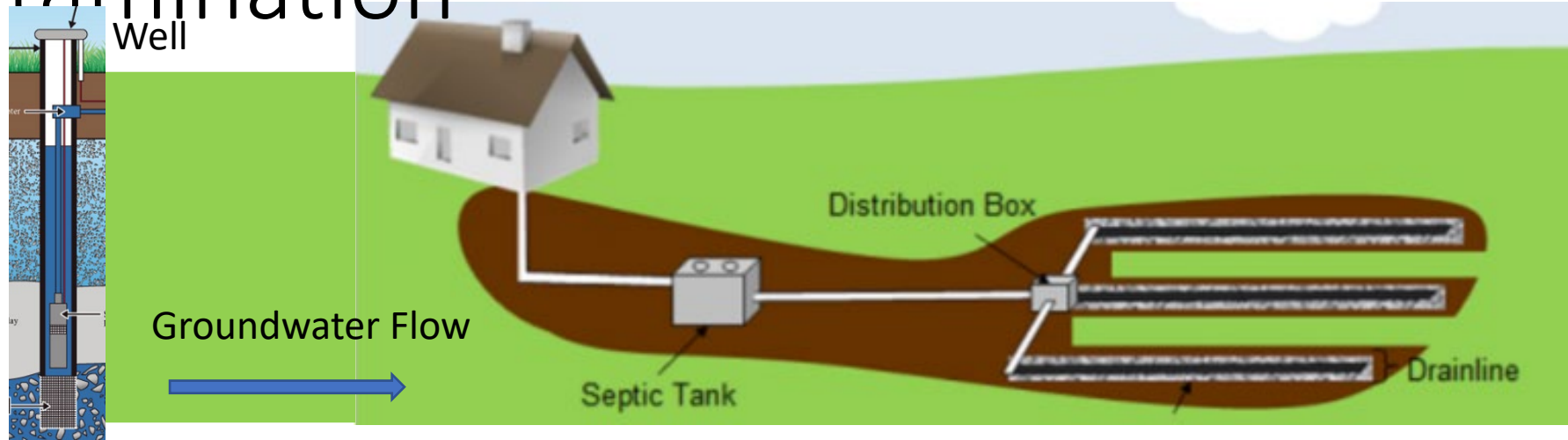
Acute – Consumption of single dose over health limit can cause illness	Chronic – Consumption over health limit for extended period of time can cause illness
Examples: <i>E. coli</i> , Nitrate	Examples: Arsenic, Benzene, Lead, etc.

Nitrate and Pathogens are Common Groundwater Contaminates

- ~25% of PWS have nitrate above background (3 mg/L)
 - Indication of groundwater contamination
- ~11 PWS exceed the Nitrate MCL each year
 - Health concern
- Sources of Nitrate
 1. Fertilizer
 2. Animal manure
 3. Human sewage
 4. Natural deposits
- ~13% of PWS have Total coliform positive samples each year
- ~7 PWS have positive *E. coli* samples from wells each year
- Sources of pathogens
 - Human feces
 - Animal manure
 - Naturally occur in soil

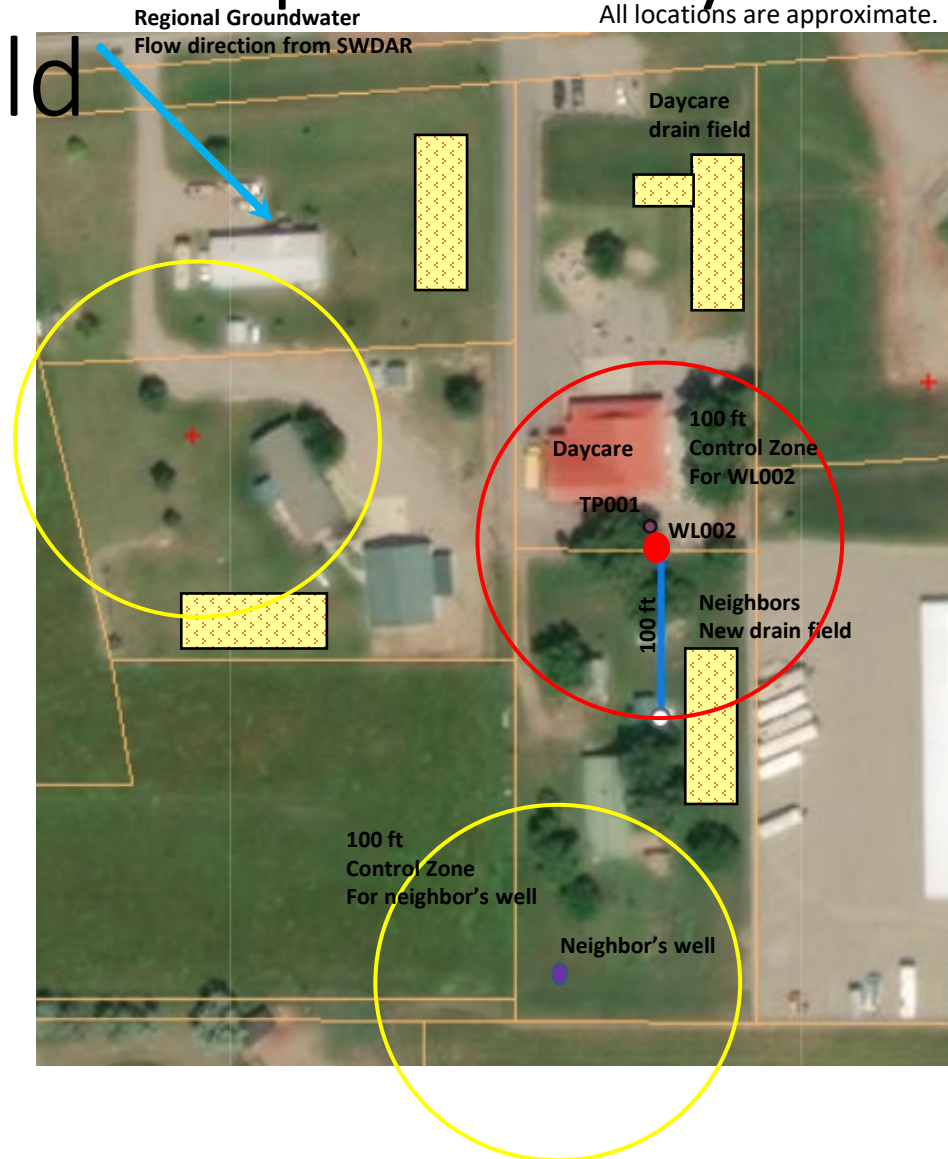


Onsite WW are a source of GW Contamination



- Type of waste – Septic systems handle human waste (which contain nitrate and pathogens)
- Siting Considerations – Wells should be sited upgradient of wastewater systems for an individual property
 - Consider neighbors well and wastewater system
- Well Proximity – The closer the well is to a septic system drain field increases the likelihood of well contamination
 - Well has 100 control zone around which no contamination should be present

An Example: A Daycare and a Neighbors Drain Field



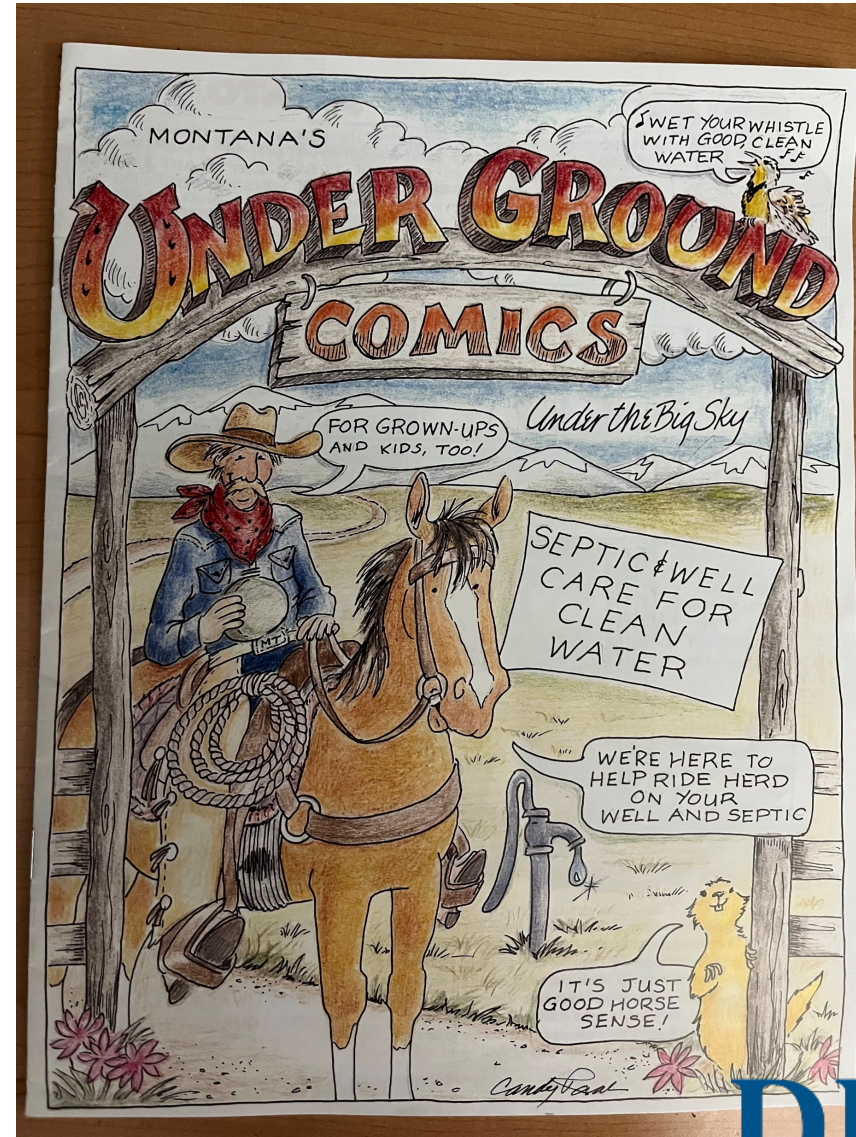
Nitrate Levels from Daycare's well



- Daycare's nitrate levels were elevated above background and jumped in 2021
- Neighbors drain field extends within 100 ft control zone of Daycare's well
- Small lot sizes limit the places where wells and drain fields can be installed while maintaining appropriate setbacks

In Summary

- Nitrate and Pathogens are acute contaminants
- Onsite wastewater is a significant source for these acute contaminants
- Design considerations can reduce GW contamination – siting wells up gradient of wastewater facilities
- This creative Well and Septic Care brochure is available



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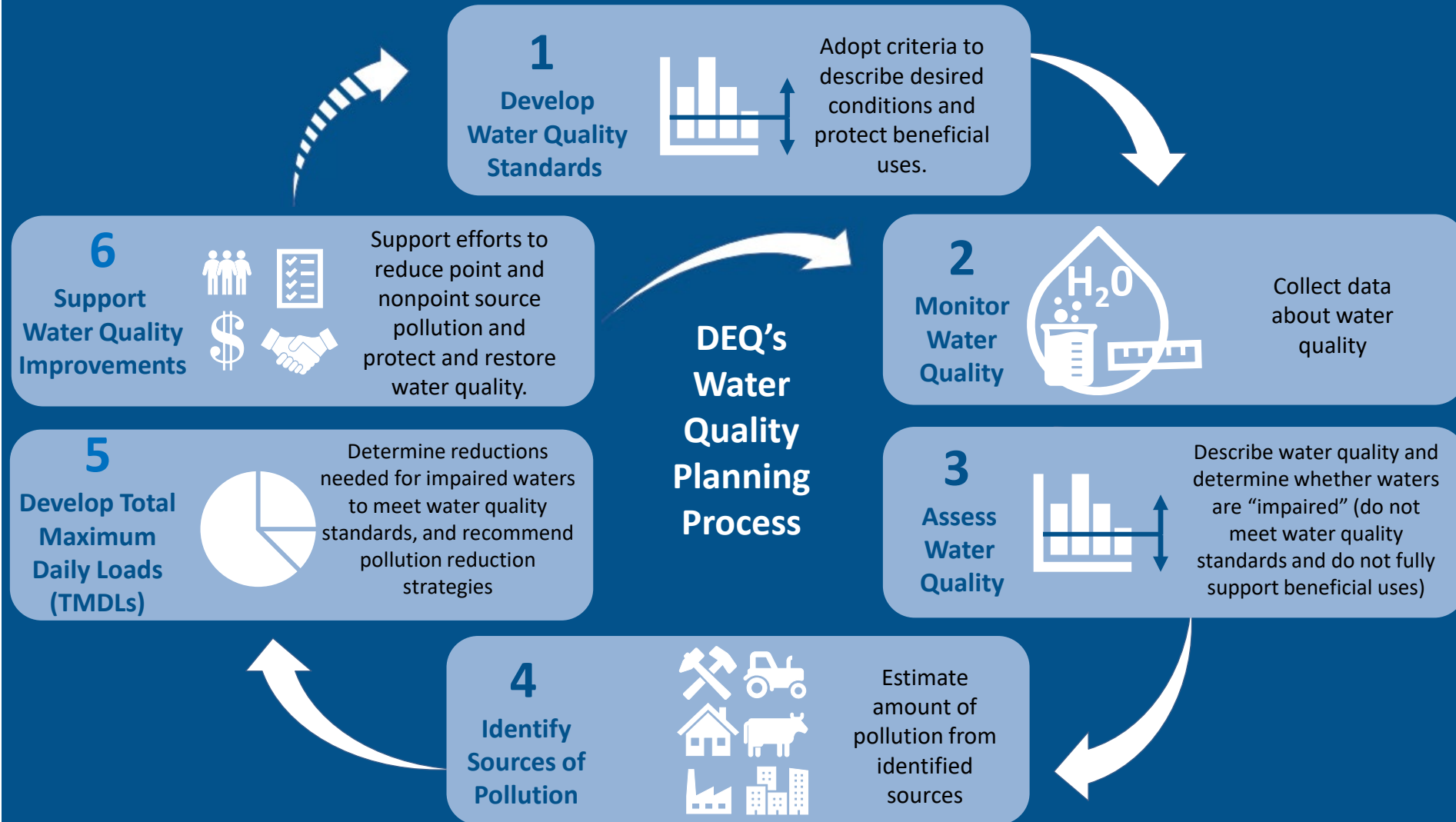




Nonpoint Sources of Nutrient Contamination to Surface Water

Eric Trum
etrum@mt.gov

DEQ Water Quality Planning



Onsite Wastewater Treatment – Flathead

TMDLs

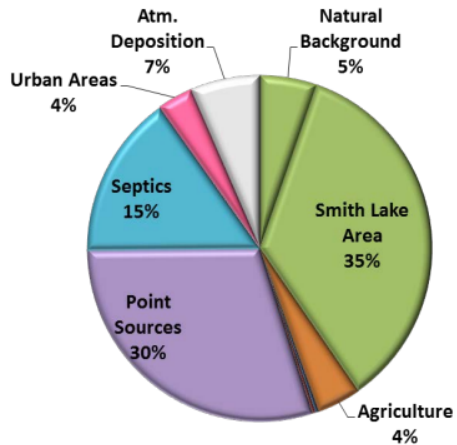


Figure 5-18. Contribution of TN Sources to Lower Ashley Creek during the Summer Growing Season

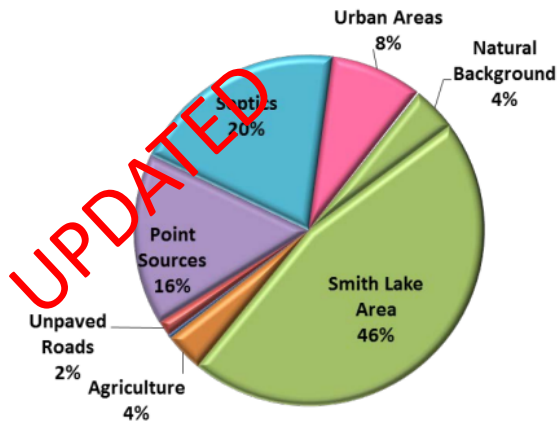


Figure 5-19. Contribution of TP Sources to Lower Ashley Creek during the Summer Growing Season

Flathead-Stillwater Planning Area TMDLs (2014)

- Nutrients
 - estimated septic systems contribute 6-50% of nutrients to impaired surface waters
- Sediment
- Temperature

MEANSS model

- Method for Estimating Attenuation of Nutrients from Septic Systems

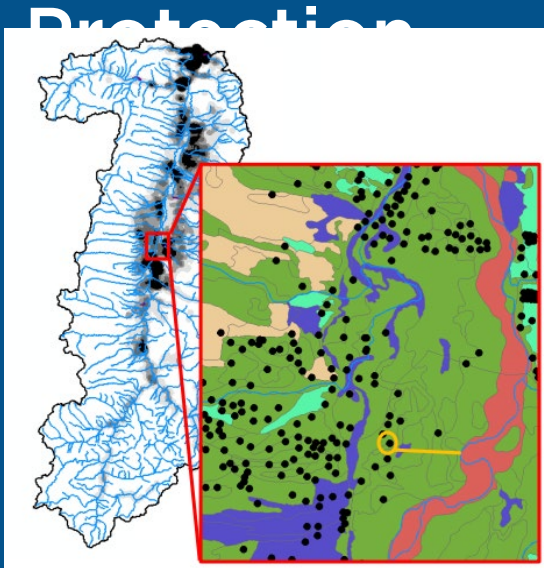
Existing loads (TN)

- Point Sources = 68.7 lbs/day
- NPS+NB = 161.9 lbs/day

Required reductions (all sources)

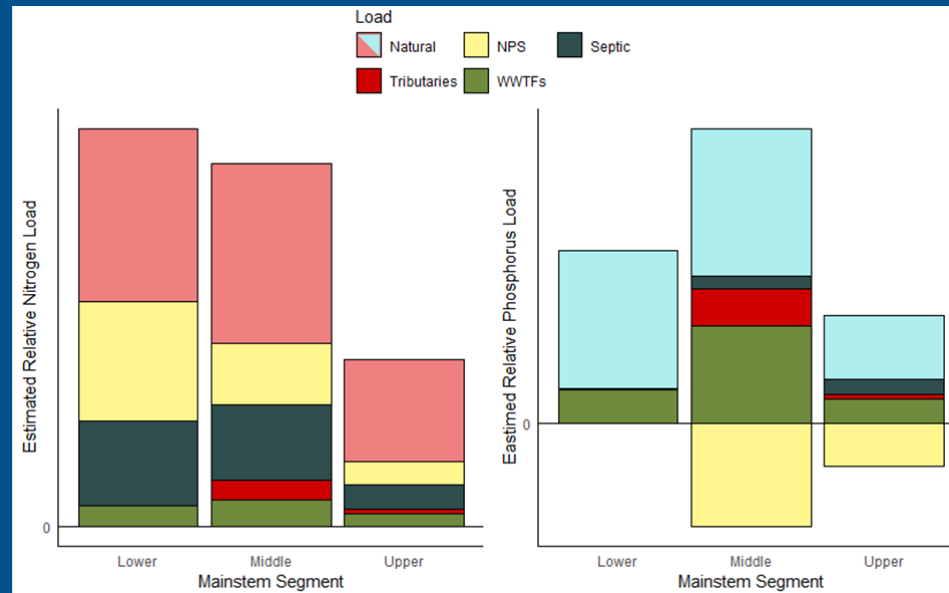
- TN = 91%
- TP = 91%

Onsite Wastewater Treatment – Bitterroot



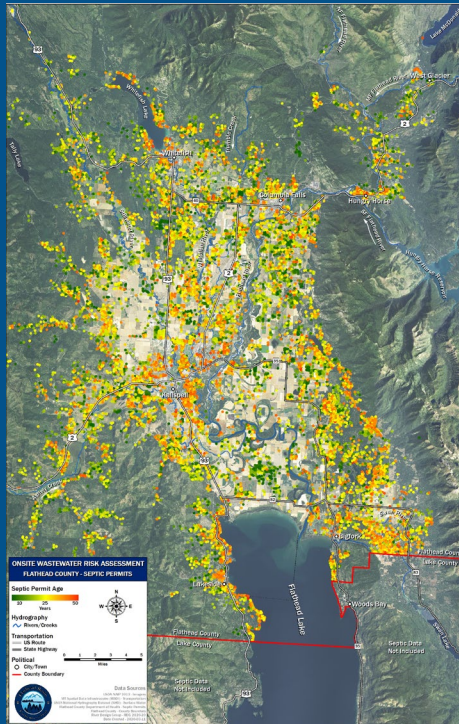
- Septic systems were estimated to contribute more than 20% of the TN loading to the Bitterroot River
 - 5 times or more what local wastewater treatment plants are contributing
 - nearly equivalent to all other nonpoint sources estimated

Relative estimated TN and TP loads from natural background, septic systems, other NPS, tributaries, and WWTFs



Onsite Wastewater Treatment - NPS

- Septic Risk Mapping in the Flathead
 - 30% older than 30 years
- Septic maintenance cost share
 - Education and Outreach



Did you know your septic system may be hurting water here in the Flathead Basin?

Photo: A Harmful Algal Bloom, which is caused by excess nutrients in surface water that can leach from septic systems

Jane Doe
11 Fake Lake Avenue
Polson MT 59860

We need your help to keep water clean! See back to see how you can help, and save money!

Your local conservation district is now offering a septic maintenance reimbursement program!

Regular pumping of your system reduces the risk of leaking pollutants like nutrients and viruses, and the risk of costly system failures!

50% (up to \$200) reimbursement of pumping cost is available for eligible members of Flathead and Lake County

Contact Jillian Henrichon with questions:
flatheadsepticprogram@macdnet.org / 413-923-4880
Lake County Conservation District, 64352 US Highway 93 Ronan, MT 59864

Want half off your next septic pumping? Scan QR code or visit
<https://lakecountycnservationdistrict.org/> or
<https://flatheadcd.org/> for more info and to apply!

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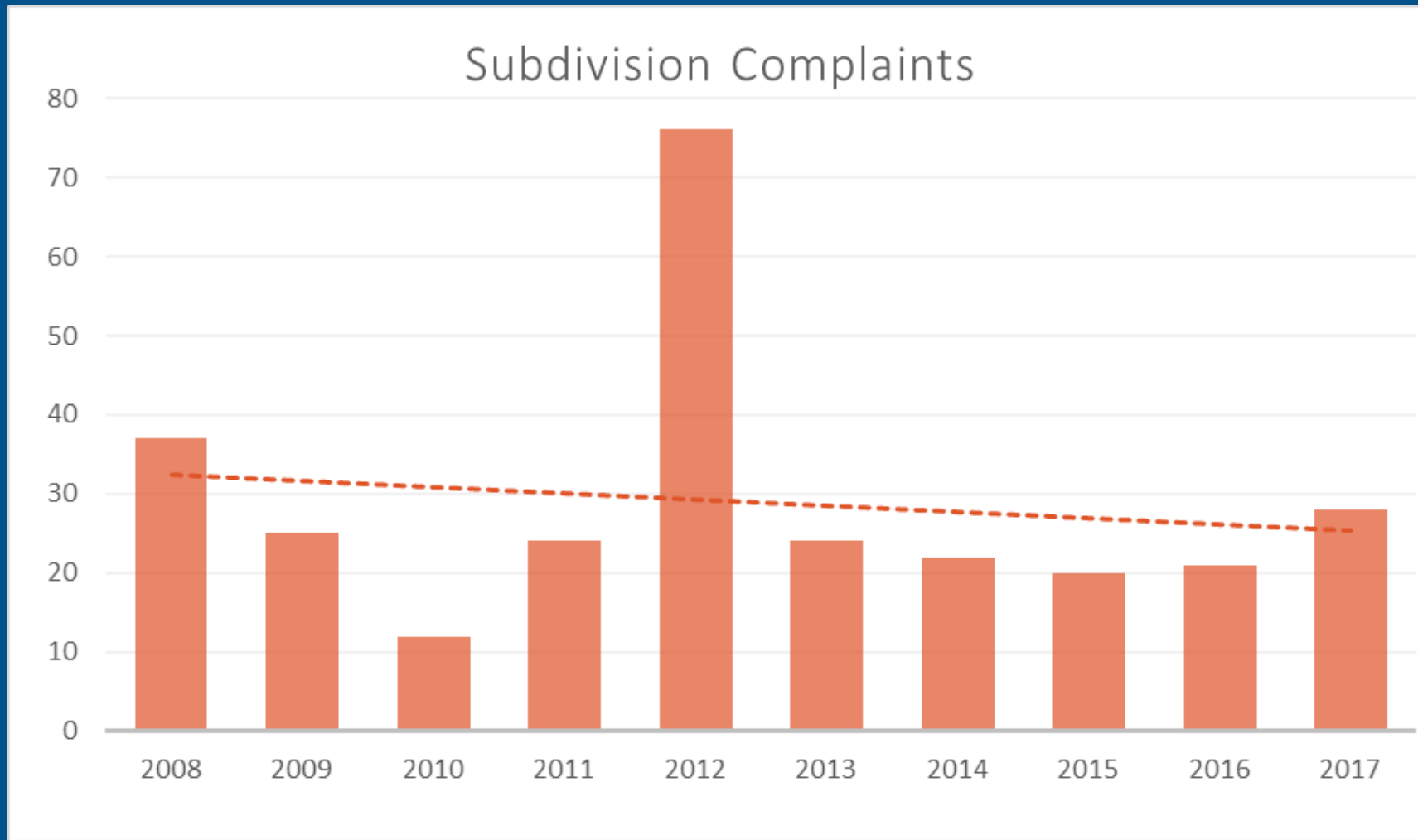
SUBDIVISION COMPLAINTS

Susan Bawden
Enforcement Specialist
ENF Liaison-Subdivisions
sbawden@mt.gov
(O) 406.444.3390
(C) 406.578.1338

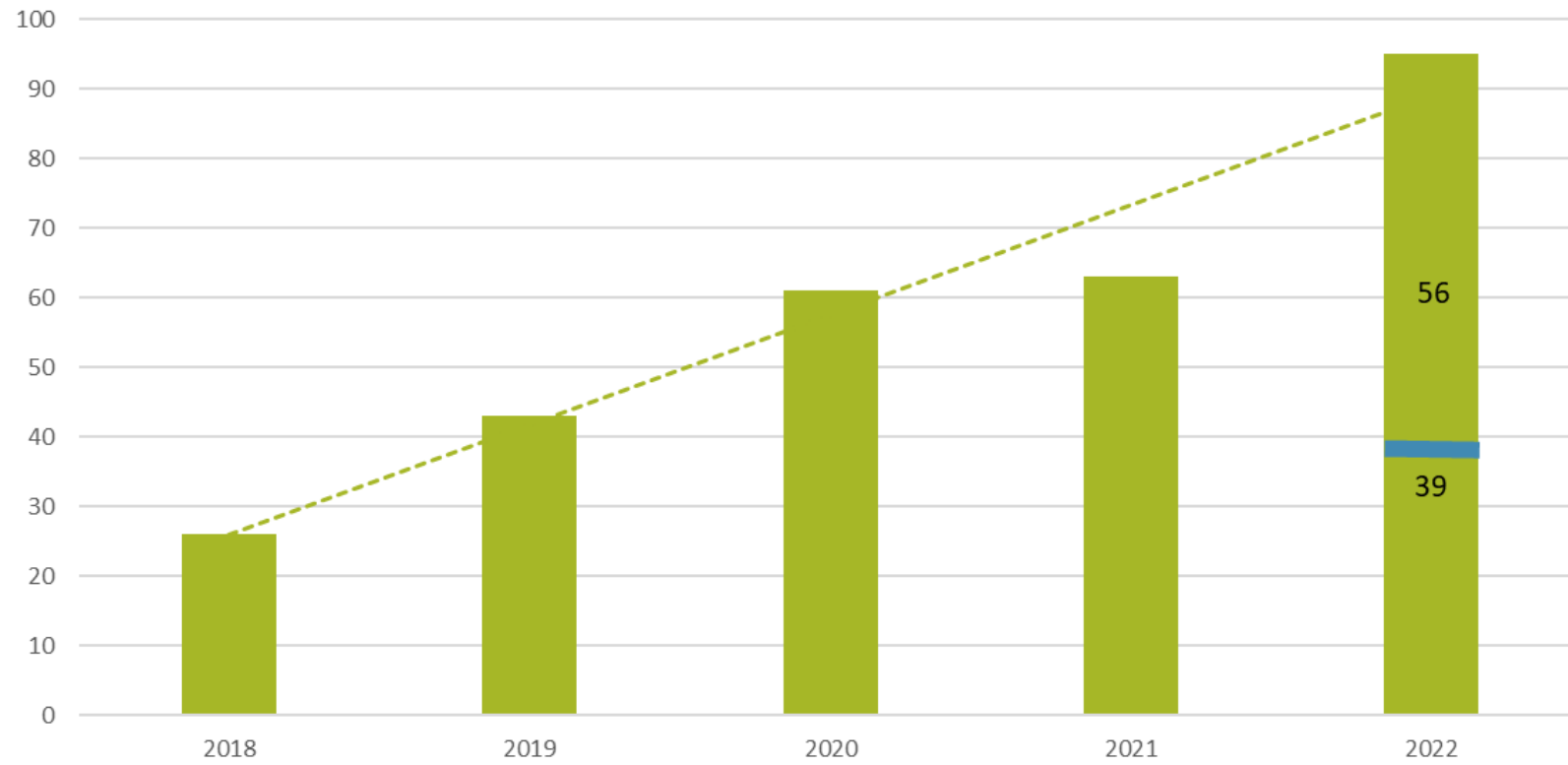
Enforcement Program

DEQ Complaint Hub





Subdivision Complaints













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11:30 Panel Q & A



Role and Perspective of Local Health Departments: Title 50, Local Permitting and Subdivision Review

BRITTNEY KRAHN, RS-GALLATIN COUNTY

BETH NORBERG, RS-LEWIS AND AND CLARK COUNTY

SHANNON THERRIAULT, RS-MISSOULA COUNTY



Title 50, Chapter 2

Local Boards of Health

69

- ▶ Every city and county required to have a Local Health Board
- ▶ Can be a combined City-County Board or a District Board
- ▶ 50-2-116, MCA grants the powers and duties
- ▶ Includes what they SHALL do and what they MAY do
- ▶ All health boards have to propose wastewater regulations for adoption
- ▶ Health boards may adopt maintenance permits, rules to implement public health laws

Local permitting supported

70

- ▶ Title 76, Chapter 4, MCA
 - ▶ Require certification from local health officer that wastewater systems will meet local rules
 - ▶ Local health officer approval required before plat, survey or declaration can be filed
- ▶ ARM Title 17, Chapter 36
 - ▶ Requires local health officer approval be submitted
 - ▶ Requires compliance with local requirements
- ▶ Certificate of Subdivision Approvals (COSA)
 - ▶ Language requiring compliance with local rules



Local Permitting-additional

- ▶ ARM 17.36.900
 - ▶ Requires that under Title 50 local Boards of Health must adopt regulations that are no less stringent for the disposal of sewage from public and private buildings and facilities.
 - ▶ Defines and sets forth the minimum standards for construction, alteration, repair, extension and use of wastewater treatment systems in the state.
 - ▶ Reviewing Authority (local Board of Health, Health Officer or designee) shall administer a permit system for wastewater treatment and disposal systems.



Circular DEQ-4

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- ▶ Set forth the minimum standards and requirements for:
 - ▶ Size
 - ▶ Design
 - ▶ Construction
- ▶ Cannot be less stringent



Differences in Local Regulations: “No More Stringent”

- ▶ MCA 50-2-130
- ▶ No comparable state standard-Examples:
 - ▶ Certified Installer Programs
 - ▶ Standards and methods for enforcement-Authority in Title 50-2-116
- ▶ Being more stringent than the state minimum requires written finding that protects public health and can mitigate harm to the public or environment
- ▶ Allows petition of review of a rule under certain circumstances

Local Variances

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- ▶ May be granted by a Local Board of Health under the authority in Title 50
- ▶ Procedure and requirements are set forth in 17.36.922
- ▶ Variances may be granted as an exception to the 900 rules and/or Circular DEQ-4, but not the requirements established by statute.
- ▶ Local Board of Health's decision on any variance may be appealed to the Montana DEQ.
- ▶ Variances **MUST** meet the criteria set forth in ARM 17.36.922(2)

Local Variance and Subdivision Review

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- ▶ The Board of Health may grant a variance from any requirement in ARM 17.36.900 or Circular DEQ-4
- ▶ The variance approval is included in the submission of a Subdivision Application
- ▶ The Department of Environmental Quality may grant a waiver or Deviation with the local variance used as supporting documentation
 - ▶ Waiver: Departure from requirements set out in rule in accordance with ARM 17.36.601
 - ▶ Deviation: Departure from a requirement contained in Circular

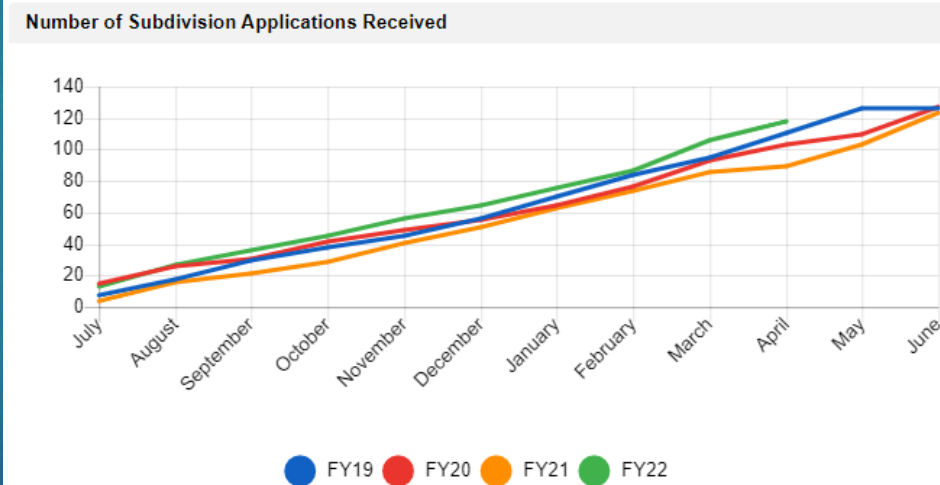
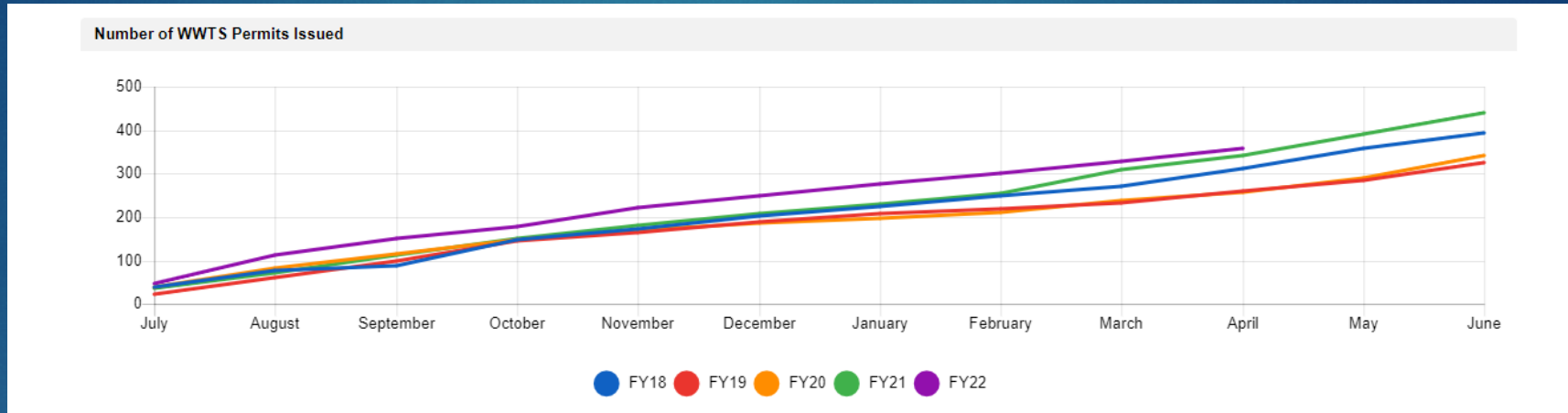
Contracted Sanitation Act Review—why?

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- ▶ Changing local conditions
 - ▶ Impaired water ways, floodplain, high background nitrates, etc
- ▶ Site visits
- ▶ Historical data including GIS specific to the area
- ▶ Compliance work

Gallatin County Wastewater Permits and Sanitation Act Reviews

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76-4-105 MCA allows a local authority (contracted county) to establish a fee to review applications. The fee must not exceed the actual costs less any reimbursement from DEQ (80/20)

Agenda:

Welcome and Meeting Overview – Rebecca Harbage

Subdivision and Platting Act – Karen Alley, Montana Association of Counties General Counsel

Sanitation in Subdivisions Act – DEQ and DNRC

- *Water Rights and Well Exemptions* – Nate Ward, DNRC Water Rights Bureau Chief
- *Environmental Application and Review Process* – Margarite Juarez Thomas, DEQ Public Water Supply
- Ground water – Eric Regensburger, DEQ Water Quality Planning Bureau
- Drinking water – Scott Patterson, DEQ Public Water Supply Bureau
- Surface water – Eric Trum, DEQ Water Quality Planning Bureau
- Stormwater – Susan Bawden, DEQ Enforcement Program

Title 50 – Shannon Therriault, RS (Missoula County), Beth Norberg, RS (Lewis and Clark County), Brittney Krahn, RS (Gallatin County)

11:30 Panel Q & A



Panel Q & A

County - Shannon Therriault, RS (Missoula), Beth Norberg, RS (Lewis and Clark), Brittney Krah, RS (Gallatin)

DEQ - Margarite Juarez Thomas, Susan Bawden, Eric Trum, Eric Regensburger, Scott Patterson

DNRC - Nate Ward

MACo - Karen Alley

Facilitator – Rebecca Harbage, DEQ

Thank you for attending

