

valid objections, one objector withdrew unconditionally (Objection #63204 by Five Corners Storage, LLC.) and two objectors were dismissed from this proceeding for failure to appear at a mandatory pre-hearing conference conducted on April 25, 2012 (Objection #63192 by Leffers; Objection #63196 by Rose).

The valid objectors/objections were: Jerry Williams (physical availability and adverse effect); Steven and Carol Bergquist (physical availability and adverse effect), Rod and Kathy Kline (physical availability, legal availability and adverse effect), Carol and Allen Betts (physical availability and adverse effect); Donald Gervais (physically availability); Patrick Hanley (adverse effect); Terri Kaye Kirkland (physical availability and adverse effect); Quentin Nelson (physical availability and adverse effect); and Keith Elders (physical availability).

Additionally, objectors raised concerns regarding the potential for water to be marketed and taken out of state and traffic concerns. This application is for water marketing for use in Montana only and this will be clarified in the permit conditions. Additional criteria apply to beneficial water use permits for out of state transport of water, §85-2-311(4), MCA. The Department does not have authority over traffic concerns, but rather must evaluate the permit application on the basis of the criteria set forth in §85-2-311, MCA.

No valid objections were received regarding the following criteria under §85-2-311, MCA: beneficial use, possessory interest, adequate diversion or water quality.

APPEARANCES

Applicant Peila Land Company appeared at the hearing by and through counsel Jo Messex Casey. Testifying on behalf of the Applicant were Sam Peila; Quentin Eggart, Eggart Engineering Company; and Pat Riley, water consultant.

Objectors Jerry Williams, Steven and Carol Bergquist, Rod and Kathy Kline, Carol Betts and Donald Gervais appeared at the hearing *pro se*. Objectors Patrick Hanley and Terri Kaye Kirkland appeared at the hearing *pro se*, but departed from the hearing prior to closing. Objectors Quentin Nelson and Keith Elders made no appearance at the hearing. Only Objectors Jerry Williams, and Rod and Kathy Kline provided direct testimony and evidence on their objections.

EXHIBITS

Applicant offered eight exhibits at the hearing, all of which were admitted:

Exhibit A-1 consists of two maps/plat depicting the general area of the proposed application.

Exhibit A-2 consists of two pages titled "GWIC Data>Well Construction Data>Township: 02 N Range: 27E Sec: 21, dated 8/15/2008.

Exhibit A-3 consists of 26 pages titled "72 Hour Aquifer Test Data Form 633", dated 7/1/2009.

Exhibit A-4 consists of 6 pages titled "Observation Notes for Shepherd Water Station" from March 2012.

Exhibit A-5 consists of a one page graph titled "Peila Aquifer Test Comparison." (undated)

Exhibit A-6 consists of a two page stock certificate certifying that Samuel P. Peila owns four shares of Capital Stock in the Billings Bench Water Association.

Exhibit A-7 consists of a one page map titled "Projected Drawdown Contour Map" in the vicinity of the proposed Shepherd Water Station. (undated)

Exhibit A-8 consists of four pages that are well log reports for GWIC Id Nos. 251031 and 251033 in the name of Sam Peila.

Objector Kline offered five exhibits at the hearing which were admitted:

Exhibit K-1 consists of eleven photographs generally depicting springs on the Kline property and of the pump test conducted for the application dated from 2/1/2012 to 3/14/2012.

Exhibit K-2 consists of one page titled "Lot 2, Sun West Subdivision, Yellowstone County, Soil Descriptions" dated 2/16/09 by Eggart Engineering Company.

Exhibit K-3 consists of a two pages: one a page aerial image in the vicinity of the proposed project and one a General Abstract of Water Right No. 43Q-70824 for a well owned by Rod and Kathy Kline.

Exhibit K-4 consists of a one page Affidavit from Herman Thaut, documenting that livestock watered from springs on the Kline property dated 1/19/2011.

Exhibit K-5 is a one page duplicate of a geologic map in the Shepherd area hand titled “Water Table Aquifer Map.” (origin unknown)

Objector Kline offered one exhibit that was not admitted at the hearing on the grounds of relevance. The refused Exhibit consists of 18 pages of Yellowstone County property tax records.

FINDINGS OF FACT/CONCLUSIONS OF LAW

General Findings of Fact

1. Application for Beneficial Water Use Permit No. 43Q-30048536 in the name of Peila Land Company, and signed by Sam Peila, was filed with the Department on May 7, 2010. (Department File)
2. The Environmental Assessment (EA) prepared by the Department for this application was reviewed and is included in the record of this proceeding. (Department File)
3. Applicant proposes to divert water from the unconfined alluvial sand and gravel aquifer of the Yellowstone River Valley, Terrace 3, by means of two wells, 26 and 28 feet deep. The Applicant proposed to divert water at 51 gallons per minute (gpm) up to 82 acre-feet (AF) for water marketing use for domestic purposes from January 1 through December 31. The location of the wells is approximately 10 miles northeast of Billings near Shepherd and Huntley Montana approximately ½ mile from Twelve Mile Creek in the SESWSW Sec. 21, T2N, R27, Yellowstone County. The purpose of the proposed appropriation is to supply water for domestic use to households in the area that utilize cisterns or holding tanks for their domestic needs. The Applicant proposes to utilize only one well at a time. (Department File; Testimony of Peila #03 @ 1:30)
4. Notice of the Application and PD was published on January 4, 2012, in the Billings Gazette and the Department provided notice by first class mail to interested individuals on January 3, 2012, as required by § 85-2-307, MCA. (Department File)
5. At the time of hearing, nine valid objections remained. The remaining objections challenged the findings on physical availability, legal availability, and adverse effect under § 85-2-311(1)(a)(i) and (ii), and -311(2), MCA. (Department File)

General Conclusions of Law

6. The Department has jurisdiction to issue a provisional permit for the beneficial use of water if the applicant proves the criteria in § 85-2-311, MCA. § 85-2-311, MCA, reads in pertinent part:

...the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a)(i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use[.]

(Criteria relating to water quality are not implicated by the instant Application)

7. § 85-2-309, MCA, states: "(1) If the department determines that an objection to an application . . . states a valid objection, it shall hold a contested case hearing . . . *on the objection . . .*" (emphasis provided).

After the Department issues a PD to grant an application, if objections are received on that application a hearing on the objections is held by the Department's Hearing Examiner.

Only those criteria that were at issue in the objections is subject to the hearing proceeding and the Hearing Examiner will summarily affirm the Department's determination on those criteria that were not objected to. Accordingly, the criteria of physical availability (85-2-311(1)(a)(i)), legal availability (85-2-311(1)(a)(ii), and adverse affect (85-2-311(1)(b) are at issue in this hearing. The following criteria are not at issue in this hearing – means of diversion (85-2-311(1)(c), beneficial use (85-2-311(1)(d), possessory interest (85-2-311(1)(e), and water quality (85-2-311(1)(f). The findings and conclusions on those criteria from the Preliminary Determination are hereby adopted.

8. Notice of the Application and PD was properly published and sent to known interested persons as required by § 85-2-307((2)(b), MCA. (Finding of Fact 4)

Physical Availability Findings of Fact

9. All remaining objectors raised the issue that the pump tests performed by the Applicant were conducted during the peak irrigation season when the Billings Bench Water Association ditch is operating. They also expressed the general concern that wells may go dry during dry years. (Department File – Objections)

10. The Billings Bench Water Association Ditch begins operation in April and influences the local aquifer through seepage and percolation from surrounding surface irrigation. (Department File; Exhibit A-4)

11. In response to objector's concerns, Applicant performed additional 72-hour drawdown testing in March 2012. The drawdown test methodology for the March 2012 used the same equipment and procedure as was used for the original pump test which was conducted in July 2009 as required by the Department. The March 2012 drawdown test was not performed to reestablish aquifer properties, but was conducted to show the pumping during the non-irrigation season would not create adverse effects in other local wells. (Department File; Exhibit A-3, A-4)

12. In March 2012, well #1 was pumped at a rate of 51 gpm for 72 hours. The pump ran continuously without problem. The static water level in well #1 prior to the start of the test was 15' 9" with a final static water level at 19' 9 ¾ " for a total drawdown of approximately 4 feet. Recovery in well #1 took 11 hours with the static water level at full recovery at 15' 9.5".

Pumping at a rate of 51 gpm for 72 hours yields approximately 220,320 gallons or 0.68 AF.
(Department File; Exhibit A-4)

13. The aquifer testing performed in 2009 (establishing aquifer characteristics) showed a total annual flux through the aquifer in the zone of influence of 2,570 AF/year. No objector challenged this finding. (PD ¶ 19)

Physical Availability Conclusions of Law

14. Pursuant to § 85-2-311(1)(a)(i), MCA, an applicant must prove by a preponderance of the evidence that “there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate.”

15. The Applicant has proven by a preponderance of the evidence that water is physically available at the proposed point of diversion in the amount that the Applicant seeks to appropriate during both the irrigation and non-irrigation seasons. The aquifer characteristics in this source do not change seasonally and the Department determined in the PD that water was physically available based on the aquifer characteristics established in the 2009 aquifer test. In addition, it is clear that water is physically available at the point of diversion during both the irrigation and non-irrigation season based on the pump tests performed in 2009 (irrigation season) and 2012 (non-irrigation season). (Findings of Fact 10 – 13)

Legal Availability Findings of Fact

16. The existing groundwater rights in the zone of influence total 502.63 AF/year. Subtracting those rights from the total flux through the aquifer on an annual basis yields 2,067.37 AF/year (2,570 AF available (as determined in the 2009 aquifer test) minus 502.63 AF existing legal demands.) (PD ¶23)

17. One objector (Klines) objected to the legal availability criterion. They raised the issue as to the basis for the assumption that 70% of the water diverted would be returned to the source as septic effluent when water could be sold to “anyone.” (Kline Objection – File)

18. The Klines also questioned the finding of legal availability based on applicants plan to use four Billings Bench Water Shares to offset potential depletions to irrigation water rights from Twelve Mile Creek from April 15 to October 15. The Klines questioned legal availability for

period October 16 through April 14 based on the Preliminary Determination finding of year-around depletion of 15.3 gpm. (Kline Objection- File)

19. Applicant's beneficial use analysis is based upon the assumption that the Shepherd Water Station would supply water for 82 households for domestic purposes in the Shepherd area. While the fill station *may be capable* of supplying water for commercial water hauling, that is not the basis of the amount of water applied for in the Application. Department analysis for the Application was premised on domestic use only in the Shepherd area based on Applicant's representation. The Application will need to be conditioned such that the use of the water will be for domestic use in the Shepherd area. (Application File)

20. In determining the consumptive use from domestic uses the Department generally considers a standard of 5% to 10% of the withdrawn water is consumed with 90% to 95% being returned to the aquifer through septic effluent. See *In the Matter of Application for Beneficial Water Use Permit 76H-30043133 by Town of Stevensville*, Final Order 4/22/2011 ("...in-home domestic consumption would be 5% of the domestic demand." quoting application); *76E-30043968 –Rocking J Ranch LLC*, Statement of Opinion, 9/3/2009 ("The 10% consumption figure is supported by references cited in 'Effects of Exempt Wells on Existing Water Rights', February 20008, DNRC.") In the instant matter, the Applicant is using a very conservative estimate of consumptive use at 30% of the diverted rate or 15.3 gallons per minute (0.034 cfs). (Application File)

21. Applicant attributes 100% of the 15.3 gpm consumption rate to depletion of Twelve Mile Creek, also a conservative estimate because consumption due to groundwater pumping generally comes from both the groundwater aquifer and any connected surface water source. *Stevensville*, supra. ("...stream depletion would begin to develop in the first year of pumping but would continue to increase slightly for each subsequent year." . . . "modeling suggests that at the end of a three hundred year period the depletion . . . would be 49.83 AF of the total 50.17 AF expected consumption"). In the instant matter the Applicant is proposing to mitigate 100% of the expected consumption beginning in the first year by utilizing his four shares of the Billings Bench Water Association representing 0.04 cfs. (Application File)

22. While the projected depletion to Twelve Mile Creek will be year round at a rate of 15.3 gpm (0.034 cfs), the Applicant's plan to offset depletions is to utilize the four shares of the Billings Bench Water Association (representing 0.04 cfs) during the period of diversion (April 15

through October 31) and to assign those shares to lands which are currently identified under Billings Bench Water Association right 43Q-208220-00 and which may be affected by potential depletions to Twelve Mile Creek. Applicant's analysis showed that during the months of January, February, and December adequate water exists in Twelve Mile Creek to meet all existing legal demands without additional water. Applicant's shares from the Billings Bench Water Association will be available during April through October in an amount that will fully offset the depletions to Twelve Mile Creek during those months. The Applicant's analysis for the remaining months March and November indicate that existing legal demands are not met. Applicant attempts to explain this by referring to those months as "paper months", i.e. there are water rights of record during those months but that the actual use of water does not occur until sometime in April and ending by the end of October. The PD is unclear on this matter. However, the full record provides additional information.

The Applicant assigned a period of diversion for irrigation water rights from Twelve Mile Creek from March 15 through November 15. This Hearing Examiner's review of the general abstracts for those rights show that none of them have a period of diversion earlier than April 1 and only 3 (out of a total of 10) show a period of diversion later than October 31 (one shows Nov. 4; one shows Nov. 30; and one shows Dec. 4). Thus, Applicant appears to have overestimated the legal demand on Twelve Mile Creek. Subtracting the irrigation water rights from the Applicant's legal demand figures for March clearly shows that water is legally available for that month. For November, if only the two water rights that run all the way through November are subtracted from the amount physically available, water is again shown to be legally available. (Application File – General Abstracts, Table 2-9)

23. Objector Kline questioned the use of Twelve Mile Creek as a natural flow boundary and the exclusion of wells north of Twelve Mile Creek from the analysis. The Department Hydrogeologist confirmed in his review of the Application that Twelve Mile Creek forms a natural flow boundary. Objectors presented no analysis to refute the Department's determination on this issue. (Kline Objection; Hearing Record)

24. No objector challenged either the finding by the Department that there is an annual flux of 2,570 AF through the aquifer on an annual basis or the Department's finding that the existing ground water legal demand is 502.63 AF/year. (Department File)

25. While the Department's documentation of the reasoning behind the PD is sparse, and the record is confusing, I find that the Applicant has shown that water, both ground and surface, can reasonably be considered legally available when a condition limiting water use to 82 acre-feet and for domestic use only in the Shepherd area is included.. (Findings of Fact 16 - 24)

Legal Availability Conclusions of Law

26. Pursuant to § 85-2-311(1)(a), MCA, an applicant must prove by a preponderance of the evidence that:

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

- (A) identification of physical water availability;
- (B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and
- (C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

E.g., ARM 36.12.101 and 36.12.120; Montana Power Co., 211 Mont. 91, 685 P.2d 336 (Permit granted to include only early irrigation season because no water legally available in late irrigation season.); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011), Pg. 7.

27. Where a proposed groundwater appropriation depletes surface water, applicant must prove legal availability of amount of depletion of surface water throughout the period of diversion either through a plan to offset depletions or by analysis of the legal demands on and availability of water in the surface water source. Wesmont Developers v. DNRC, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 7-8; Robert and Marlene Takle v. DNRC et al., Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994); *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 By Utility Solutions LLC* (DNRC Final Order 2006)(permits granted), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit 41H 30019215 by Utility Solutions LLC* (DNRC Final Order 2007)(permit granted), *affirmed*, Montana River Action Network et al. v. DNRC et al., Cause No. CDV-2007-602, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 By Utility*

Solutions LLC (DNRC Final Order 2007) (permit denied); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 By Utility Solutions LLC* (DNRC Final Order 2008); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009)(permit denied in part for failure to analyze legal availability for surface water for depletion). In this Application the applicant uses both: analysis of legal availability and replacement of irrigation water through Billings Bench shares in the irrigation season.

28. The Applicant has proven by a preponderance of the evidence that both surface water and ground water can be reasonably considered legally available, when the plan to not create an adverse effect is employed, during the period which the Applicant seeks to appropriate, in the amount requested based on the Applicant's proposal. (Findings of Fact 16 – 25; PD ¶¶ 22 – 44)

Adverse Effect Findings of Fact

29. Applicant's pump test in March 2012, utilized three wells in their analysis. Well #1 was the pumped well on the Peila property, Well #2 was used as an observation well approximately 96 feet to the east of Well #1, and Well #3, an observation well located approximately 426 feet west of Well #1. As discussed, *supra*, Well #1 showed a drop in the static water level of approximately 4 feet at the end of the 72-hour pump test with full recovery to the pre-test water level after 11 hours. Well #2 showed a maximum drawdown of 4 inches by the end of the 72-hour pump test and fully recovered in approximately 2 hours. Well #3 showed a maximum drawdown of one inch or less with immediate recovery. (Exhibit A-4)

30. In general Objectors primary concerns are potential decreases in well static water levels and the potential inability to water stock. (Application File – Objections)

31. Objectors produced limited evidence of decreased flow in springs and a reduction of static water levels in their wells though no causal relationship to this Application was established. (Department File – Objections)

32. The Department's analysis of the July 2009 pump and aquifer test along with Applicant's 2012 drawdown test demonstrate that drawdown in area wells will be in the order of 0.1 ft. at a distance of 4,600 ft. from the pumped well after 365 days of continuous pumping and a

drawdown of 0.01 ft. at a distance of 9,500 ft. The analysis also shows that the aquifer fully recovers within one day of the cessation of pumping. The drawdown tests and the Applicant's plan to offset any depletions to surface water through Billings Bench Water Association are adequate to prove that senior appropriators will be able to reasonably exercise their water rights. (PD ¶¶45 – 61)

Adverse Effect Conclusions of Law

33. Pursuant to § 85-2-311(1)(b), MCA, the Applicant bears the affirmative burden of proving by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Analysis of adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. See Montana Power Co. (1984), 211 Mont. 91, 685 P.2d 336 (purpose of the Water Use Act is to protect senior appropriators from encroachment by junior users).

34. As between appropriators, priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right. . § 85-2-401(1), MCA.

35. Uncontradicted expert testimony showing that the proposed appropriation will cause no significant drawdown in either applicant's or any of the surrounding objectors wells is sufficient to prove § 85-2-311(1)(b). In the Matter of Application for Beneficial Water Use Permit No. 49371-g43Q by MacDonald, DNRC Final Order (1983).

36. The Department's analysis in the PD, in combination with the latest March 2012 pump test supports the conclusion that the Applicant has proven by a preponderance of the evidence that water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected by the proposed appropriation if conditioned on the Applicants plan to prevent adverse effects and as described in this Final Order. § 85-2-311(1)(b). (Findings of Fact 29 – 32)

FINAL ORDER

Subject to the terms, analysis, and conditions in this ORDER, the Department finds that this Application for Beneficial Water Use Permit No. 43Q-30048536 should be **GRANTED**.

The Department determines that the Applicant may divert water from groundwater, by means of 2 wells, one 26" deep and one 28" deep from January 1 – December 31 at 51 gpm up to 82 AF, from 2 points in the SESWSW Section 21, T2N, R27E, Yellowstone County for water marketing use from January 1 – December 31. The place of use is located in the SESWSW Section 21, T2N, R27E, Yellowstone County.

The area that will be depleted of 15.3 gpm is located along Twelve Mile Creek from a point where Twelve Mile Creek crosses the north boundary of Section 19 to ½ section line on the eastern edge of Section 27, all in T2N, R27E, Yellowstone County. Four shares of irrigation water purchased by the Applicant will be left in Twelve Mile Creek to replace the depletions.

The Permit will be subject to the following conditions, limitations or restrictions.

1. THIS PERMIT IS LIMITED TO AN ANNUAL VOLUMETRIC AMOUNT OF 82 ACRE- FEET TO BE WITHDRAWN AT NO GREATER A RATE THAN 51 GALLONS PER MINUTE FOR MARKETING FOR DOMESTIC USE PURPOSES TO BE USED ONLY WITHIN THE VICINITY OF SHEPHERD MONTANA AND THE THIRD TIER BENCH AS DESCRIBED BY OLSON, 2005, MBMG; GROUND WATER ASSESSMENT ATLAS 3, PART B, MAP 3 (FIGURE 4-1, pp. 17 IN THE APPLICATION FILE).
2. DIVERSION UNDER THIS PERMIT MAY NOT COMMENCE UNTIL THE APPLICANT'S PLAN DESCRIBED IN THE PRELIMINARY DETERMINATION IS LEGALLY IMPLEMENTED. APPLICANTS PLAN IS TO UTILIZE FOUR SHARES OF BILLINGS BENCH WATER ASSOCIATION STOCK, REPRESENTING 0.04 CFS TO BE DURING THE PERIOD OF DIVERSION (APRIL 15 THROUGH OCTOBER 31) AND TO ASSIGN THOSE SHARES TO LANDS WHICH ARE CURRENTLY IDENTIFIED UNDER BILLINGS BENCH WATER ASSOCIATION RIGHT NO. 43Q-208220-00 AND WHICH MAY BE AFFECTED BY POTENTIAL DEPLETIONS TO TWELVE MILE CREEK. DIVERSION UNDER THIS PERMIT MUST STOP IF THE REQUIRED PLAN AS HEREIN REQUIRED, IN THE AMOUNT, LOCATION, AND DURATION, CEASES IN WHOLE OR IN PART.
3. THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE PERMIT. THE RECORDS MUST BE SENT TO THE BILLINGS WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE

MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

4. THE APPROPRIATOR HSALL SUBMIT A PROGRESS REPORT OF THE WORK COMPLETED UNDER THIS PERMIT BY NOVEMBER 30TH OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR UNTIL COMPLETION OF THE PROJECT. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR THE REVOCATION OF THE PERMIT. THE REPORTS MUST BE SENT TO THE BILLINGS WATER RESOURCE OFFICE.

5. ACCESS AT THE DEPOT SHALL BE CONTROLLED ENSURING ONLY THOSE USERS WITH CONTRACTS ARE ABLE TO ACQUIRE WATER.

6. WATER APPROPRIATED UNDER THIS PERMIT SHALL NOT BE TRANSPORTED OUTSIDE THE AREA IDENTIFIED IN CONDITION 1. CUSTOMERS SHALL BE INFORMED OF THIS CONDITION BY LANGUAGE INCLUDED IN THE CONTRACT AND BY SIGNS POSTED AT THE DEPOT.

NOTICE

This *Final Order* is the Department's final decision in this matter. A Final Order may be appealed by a party who has exhausted all administrative remedies before the Department in accordance with the Montana Administrative Procedure Act (Title 2, Chapter 4, Mont. Code Ann.) by filing a petition in the appropriate court within 30 days after service of the order

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcript prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements for preparation and payment of the written transcript. If no request is made, the Department will transmit only a copy of the audio recording of the oral proceedings to the district court.

Dated this 19th day of October 2012.

/Original signed by David A Vogler/

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and Conservation
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CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the FINAL ORDER was served upon all parties listed below on this 19th day of October 2012 by first class United States mail.

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