

**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 40S- 30066181 BY ATLANTIS WATER SOLUTIONS LLC)))	PRELIMINARY DETERMINATION TO GRANT FOLLOWING HEARING ON PRELIMINARY DETERMINATION TO DENY
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Pursuant to its authority under §§2-4-601 et seq., 85-2-310(1) MCA (2013), and Mont. Admin. R. 36.12.201 et. seq, the Department of Natural Resources and Conservation (Department) conducted a show cause hearing in this matter on July 15, 2014, to allow Atlantis Water Solutions, LLC (Applicant) to show cause by a preponderance of the evidence why the Application No. 40S-30066181 should not be denied under the terms of the Preliminary Determination to Deny dated April 17, 2014. (Preliminary Determination to Deny or PDD)

APPEARANCES

Atlantis Water Solutions, LLC appeared at the hearing by and through counsel John Bloomquist. The following witnesses testified on behalf of the Applicant: Forrest Dorn, executive of Iofina Resources, owner of Atlantis; Scott Formolo, geologist for Iofina Resources; and Jay Accashian, professional engineer with CDM Smith. Denise Biggar, DNRC Deputy Regional Manager, Glasgow, and Nate Ward, DNRC Water Resources Specialist, Glasgow, were called and questioned by counsel for Atlantis.

EXHIBITS

The Department considered the following information submitted by the Applicant.

Application as filed:

- Application for Beneficial Water Use Permit, Form 600 (complete file)
- Attachments (including maps and expanded answers)
- Preliminary Determination to Deny dated April 17, 2014

Information Received at Hearing

Applicant provided “Applicant’s Show Cause Hearing Memorandum.” The Applicant offered a “Show Cause Hearing Notebook” at the hearing consisting of 10 numbered exhibits. They were admitted into evidence and are listed individually below:

No.	DOCUMENT
1.	June 28, 2013 Deficiency Letter.
2.	Applicant’s Response and Attachments to Deficiency Letter dated August 9, 2013.
3.	Applicant’s Supplemental Response and Attachments to Deficiency Letter dated September 23, 2013.
4.	DNRC Draft Preliminary Determination to Deny and cover letter dated December 9, 2013.
5.	Applicant’s Responses and Attachments to Draft Preliminary Determination dated March 21, 2014.
6.	DNRC Preliminary Determination to Deny Permit dated April 7, 2014.
7.	Service Area Map
8.	Truck filling rate calculations. Culbertson Water Depot.
9.	DNRC Determinations to Grant Water Marketing Applications and Supporting Intent to Purchase Statements. Application Nos. 40S-30063842, 40S-30048631, 40S-30063074, and 40S-30051644.
10.	Affidavit of Tim Partin, Big Horn Leasing, LLC.

PRELIMINARY MATTERS

On April 29, 2013, Atlantis Water Solutions, LLC (Applicant) submitted Application for Beneficial Water Use Permit No. 40S 30066181 to the Glasgow Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC) for 5 CFS up to 3800 Acre-Feet (AF) per annum. The Department published receipt of the Application on its website. The Department sent the Applicant a deficiency letter under § 85-2-302, Montana Code Annotated (MCA), dated June 28, 2013. The Applicant requested a 15 day extension on the statutory time period to submit a deficiency response in order to keep their priority date. The Applicant provided responses to the identified deficiencies dated August 9, 2013 and September 23, 2013. The Application was determined to be correct and complete as of September 30, 2013. An Environmental Assessment for this Application was completed November 21, 2013. A draft Preliminary Determination to Deny was sent to the Applicant December 9, 2013. The Applicant requested a meeting with the Department and submitted a

waiver of timelines December 20, 2013. The meeting between the Applicant and Department occurred on January 30, 2014. On the day of the meeting, the Applicant requested a 60 day extension in which to provide additional information; a written request for the extension was provided February 2, 2014. Additional information was received by the Department March 24, 2014 that included an amendment to the Application requesting a reduction in the volume requested from 3800 AF/yr. to 3622 AF/yr.

This Order is structured the same as the Preliminary Determination to Deny. This document only addresses the sections on Adequacy of the Means of Diversion and Beneficial Use under the Final Determination, as these are the only sections with which the Applicant took issue. The other criteria, including Physical Availability, Legal Availability, Adverse Effect, and Possessory Interest were deemed met in the Preliminary Determination to Deny and those portions of the Preliminary Determination are hereby incorporated by reference.

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert water from the Missouri River, by means of a pump, from January 1- December 31 at 5 CFS up to 3622 AF, from a point in Government lot 3 of Section 3, T27N, R56E, Roosevelt County, for Water Marketing use within the State of Montana from January 1- December 31. The place of use is generally located NESE Section 28, T28N, R56E, Roosevelt County.
2. None of the water diverted will return to the source, therefore the use is considered 100% consumptive.
3. Applicant plans to market and sell water to oil and gas service companies, oil and gas operators, rural municipalities, and other private and public entities from a water depot located at NESE Sec. 28, T28N, R56E, Roosevelt County. In order to substantiate the beneficial use criteria and ensure that the requested flow rate and volume is not exceeded during years of high oil field activity, monitoring and flow rate reporting is necessary. Design plans included with the application call for a magnetic flowmeter at the river pump station which will be used to monitor flow rate and volume diverted.

4. The loadout stations at the water depot will be equipped with individual key code instrumentation which will be tied into the central software station to track purchaser volumes. Once a trucker pays for water, an automated valve on the fill line will open and fill the truck. This will allow Atlantis Water Solutions, LLC to control access to only those with water purchase contracts.

§ 85-2-311, MCA, BENEFICIAL WATER USE PERMIT CRITERIA

GENERAL CONCLUSIONS OF LAW

5. 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. Section 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)

6. The determination of whether an application has satisfied the § 85-2-311, MCA criteria is committed to the discretion of the Department. Bostwick Properties, Inc. v. Montana Dept. of Natural Resources and Conservation, 2009 MT 181, ¶ 21. The Department is required to grant a permit only if the § 85-2-311, MCA, criteria are proven by the applicant by a preponderance of the evidence. Id. A preponderance of evidence is “more probably than not.” Hohenlohe v. DNRC, 2010 MT 203, ¶¶33, 35.

7. If the Department issues a Preliminary Determination to Deny an application, the applicant is entitled to a show cause hearing in front of a Hearing Examiner appointed by the Department at which time the applicant is provided with the opportunity to show cause by a preponderance of the evidence why the permit should not be denied. §§ 85-2-307(2)(c) and - 310, MCA.

8. In the Preliminary Determination to Deny the Department found that the Applicant had satisfied the criteria of physical availability, legal availability, adverse effect and possessory interest. Therefore these criteria were not at issue at the July 15, 2014 show cause hearing, and Findings of Fact and Conclusions of Law Nos. 11 - 34 on those criteria from the Preliminary Determination are hereby adopted and incorporated into this decision by reference. The Applicant requested a hearing and presented evidence only as to the criteria of Adequacy of Means of Diversion and Beneficial Use.

ADEQUACY OF MEANS OF DIVERSION

This Hearing Examiner accepts original Findings of Fact No. 35, 36, 37 and 38 from the Preliminary Determination to Deny, which are restated verbatim below for purposes of continuity and context. However, based upon the evidence in the record and evidence and argument submitted at the show cause hearing, this Hearing Examiner modifies Finding of Fact No. 39 from the Preliminary Determination to Deny, to wit:

FINDINGS OF FACT

35. The proposed diversion is a surface water diversion from the Missouri River just upstream of the MT Hwy 16 Bridge. The means of diversion is three pumps set in a pump station consisting of a circular concrete wet well adjacent to the river. Water from the river will be transferred to the wet well via a 16 inch diameter intake pipe. The intake screen will be fitted with a compressed air-burst system for periodic cleaning and will be installed below the normal

low level of the river. The pumps used in the wet well will be Flowserve 12EMM or 12JKH pumps which are both 100 horsepower pumps each capable of diverting 780 gallons per minute at 290 feet of head. The pumped water will be manifold together once leaving the wet well and will pass through a 10 inch magnetic flow meter to measure flow and volume withdrawn. Diverted water will then be transported to the water depot via a 14 inch diameter HDPE pipeline. There will be two above ground storage tanks which will receive water from the pump station. The tanks will be capable of storing a total of 10.74 AF and will have safety overflows that pipe water to an overflow pond if pumps do not shut off when the tanks are full. Water level instrumentation in the storage tanks will control the pump station using high and low set points.

36. Water from the storage tanks will be pumped from the storage tanks through the truck bay water loop using 4 Peerless C1250A centrifugal pumps each capable of transporting 1000 GPM, for a maximum flow of 4000 GPM through the truck bay water loop. Water will be sent through filtration units prior to reaching fill stations. Each filling station will be capable of filling trucks at a rate up to 400 GPM.

37. The water depot itself will have 10 filling stations. Pressure will be maintained in the truck bay loop so that after a tanker truck pulls into a bay and pays for the water, an automated valve on the fill line will open and fill the truck. Each fill station will be equipped with a flow meter that will control the adjacent valve to dispense the correct volume of water. A hot water boiler system will be set up to provide heated water at five of the filling stations.

38. Any exposed parts of the system will be properly insulated to ensure that operation can occur during winter.

39. Original Finding of Fact 39 errs in failing to account for the storage capacity of the project (10.74 AF or approximately 3.5 million gallons) and "in assuming that filling trucks would be timed such that the river pump would pump continuously.

This Hearing Examiner analyzed the flow rate and volume requested. At the Applicant's proposed diversion rate of 5 CFS over the course of a year from the river, this Hearing Examiner finds that the requested volume of up to 3622 AF is attainable and that the 'output' side of the water depot is capable of delivering that volume of water. There will be ten truck filling stations in the filling bay, each capable of filling a truck at 400 gpm, for a total of 4000 gpm. If the truck filling station operated constantly at all bays it would take 204.9 days to achieve the total requested volume of 3622 AF. $(3622\text{AF}/\text{yr} * 325851 \text{ gal}/\text{AF} = 1.180 \text{ bgal}.$

1.180 bgal distributed at 4000 gal/min = 295,058 min. 295,058 min divided by 60min/hr = 4,917 hrs. 4,917 hrs at 24 hrs/day = 204.9 days.) The remaining 160 days are accounted for as the time it takes trucks to enter the depot, hook up to the delivery system and exit the depot. At times when the 'output' side of the depot exceeds the 5 cfs 'input' from the river water in the storage tanks would be depleted and vice versa.

This Hearing Examiner finds that the means of diversion are adequate to provide and distribute 3622 AF/year.

CONCLUSIONS OF LAW

This Hearing Examiner accepts Conclusions of Law No. 40 and 41 from the Preliminary Determination to Deny which are restated verbatim below for purposes of continuity and context. The Hearing Examiner further adds new Conclusion of Law (No. 42); and modifies original Conclusion of Law No. 42 from the Preliminary Determination to Deny (now No. 43), to wit:

40. Pursuant to § 85-2-311(1)(c), MCA, an Applicant must demonstrate that the proposed means of diversion, construction, and operation of the appropriation works are adequate.

41. The adequate means of diversion statutory test merely codifies and encapsulates the case law notion of appropriation to the effect that the means of diversion must be reasonably effective, i.e., must not result in a waste of the resource. *In the Matter of Application for Beneficial Water Use Permit No. 33983s41Q by Hoyt* (DNRC Final Order 1981); § 85-2-312(1)(a), MCA.

42. In *Application for Beneficial Use Permit No. 40S 30063842, Preliminary Determination to Grant (2013)*, the Applicant requested a flow rate of 351 gpm up to 566 AF/yr. which would require the Applicant's pumps to run constantly throughout the year. In *Application for Beneficial Use Permit No. 40S 30048631, Preliminary Determination to Grant (2010)*, the Applicant requested a flow rate of 1750 gpm up to 1843 AF/yr. to be delivered from a depot containing two bays, each capable of delivering 875 gpm. At 1843 AF/yr., Applicant's 1750 gpm pump would have to run continuously for 238 days. Likewise, it would take 238 days of constant delivery to fill two trucks at 875 gpm. The Department found that the means of diversion was adequate. See also, *Application for Beneficial Water Use Permit No. 40S*

30063074, Preliminary Determination to Grant (2013) (granting water marketing permit for water depot with four filling stations for a maximum volume of 1,500 AF which would require continuous operation for approximately 168 days at the maximum combined flow rate of 4.5 CFS for the four filling stations); Application for Beneficial Water Use Permit No. 40S 30051664, Preliminary Determination to Grant (2012) (granting water marketing permit for water depot with two filling stations for a maximum volume of 1,500 AF which would require continuous operation for approximately 111 days at the maximum combined flow rate of 2.25 CFS for the two filling stations).

43. Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use of 3622 acre-feet. § 85-2-311(1)(c), MCA. (FOF 35-39)

BENEFICIAL USE

FINDINGS OF FACT

This Hearing Examiner modifies original Finding of Fact No. 43 (now No. 44) from the Preliminary Determination to Deny; accepts original Finding of Fact No. 44 (now No. 45) from the Preliminary Determination to Deny; modifies original Finding of Fact 45 (now No. 46); and rejects original Findings of Fact Nos. 46 – 51 from the Preliminary Determination to Deny as being inconsistent with Department precedent; and adds new Findings of Fact No. 47 and 48, to wit:

44. The Applicant proposes to use water for water marketing which is a recognized beneficial use (§85-2-102(4), MCA), at a rate of 5 CFS up to 3622 AF per annum. In order to achieve the requested volume of 3622 AF per year, constant pumping at the requested rate of 5 CFS is necessary. Marketing 3622 AF at 400 gpm per bay times 10 bays calculates out to 4,000 gpm, delivered continuously for 204.9 days ($3622 \text{ AF} \times 325,851 \text{ gal/AF} = 1,180,232,322 \text{ gallons} \div 4000 \text{ gallons/min} = 295,058 \text{ min}$. $295,058 \text{ min} \div 60 \text{ min/hr} = 4917.63 \text{ hrs}$. $4917.63 \text{ hrs} \div 24 \text{ hrs/day} = 204.9 \text{ days}$). The remaining 160 days are accounted for as the time it takes trucks to enter the depot, hook up to the delivery system and exit the depot.

45. Montana Code Annotated (MCA) 85-2-310 (9)(v)(D) states that if water will be marketed to other users, a firm contractual agreement must be provided, which is to include the specified amount of water for each person using the water. The Department has previously recognized

that it is difficult to obtain contractual commitments when an applicant does not yet have a water right to sell water, so the Department requires letters of intent to purchase water with applications for water marketing use in which the total volume of the letters is equal to or greater than 50% of the volume requested in the application.

46. Six letters of intent to purchase water were included in additional information provided by the Applicant following the January 30, 2014 meeting: Culbertson Volunteer Fire Department (500 acre-feet); Bainville Volunteer Fire Department (500 acre-feet); Sidney Volunteer Fire Department (500 acre-feet); Big Horn Leasing LLC (300 acre-feet); Trustland Oil Field Services (1000 acre-feet); and Halliburton (1000-1500 acre-feet). Three of the letters of intent provided were from volunteer fire departments for the purchase of 500 AF per annum for use in “various domestic uses which includes but not limited to firefighting, irrigation and lawn and gardening and for livestock.” As the volunteer fire departments are not in the business of irrigating, lawn and gardening or watering livestock, those letters of intent appear to contemplate water for resale. The Montana Water Use Act does not support speculation in water rights. Applicants must come forward with a defined plan for the beneficial use. While water for sale is a recognized beneficial use, it is marketing for a specific end use. This is consistent with the intent of the Montana Water Use Act to facilitate the provision of water for actual end use for the benefit of its citizens.

47. The letters of intent provided by the Applicant from the oil field service companies’ amount to a volume of between 2300 and 2800 AF, exceeding 50% (1811 AF) of the total volume requested which the Department requires. In addition, the uses for which the oil field services intend put the water to use are typical for an oil field service company and the Department has approved such uses under marketing applications in the past. *Application for Beneficial Water Use Permit No. 40S 30063482, Preliminary Determination to Grant Permit (2013)* (“[a]pplicant’s primary customers will be oil companies *and oil field service companies* to be used in oil well development and formation fracturing.” (emphasis provided)); *Application for Beneficial Water Use Permit No. 40S 30048631, Preliminary Determination to Grant (2010)* (“The Applicant states their primary customers will be oil companies *and oil field service companies* to be used in oil well development and formation fracturing.” (emphasis provided), also, Letter Agreement from Arrowhead Oil Field Services to Culbertson Water Depot, LLC “Arrowhead is a company that specializes in providing fresh water to oil and gas companies for use in the hydraulic fracturing stage of oil and has operations ...”). (See Hearing Exhibit No. 9)

48. Based on the information within the application, and information supplied at the hearing, the Department finds that the criteria for beneficial use have been met.

CONCLUSIONS OF LAW

This Hearing Examiner accepts original Conclusions of Law Nos. 52, 53, 54, 55 and 56 which are restated verbatim below as Conclusions of Law Nos. 49, 50, 51, 52 and 53 for purposes of continuity and context. This Hearing Examiner rejects original Conclusions of Law Nos. 57 – 64 from the Preliminary Determination to Deny as being inconsistent with Department precedent; and adds new Conclusions of Law Nos. 54 – 56, to wit:

49. Under § 85-2-311(1)(d), MCA, an Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use.

50. An appropriator may appropriate water only for a beneficial use. See also, § 85-2-301 MCA. It is a fundamental premise of Montana water law that beneficial use is the basis, measure, and limit of the use. E.g., McDonald, supra; Toohey v. Campbell (1900), 24 Mont. 13, 60 P. 396. The amount of water under a water right is limited to the amount of water necessary to sustain the beneficial use. E.g., Bitterroot River Protective Association v. Siebel, Order on Petition for Judicial Review, Cause No. BDV-2002-519, Montana First Judicial District Court, Lewis and Clark County (2003), *affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518; *In The Matter Of Application For Beneficial Water Use Permit No. 43C 30007297 by Dee Deaterly* (DNRC Final Order), *affirmed other grounds, Dee Deaterly v. DNRC et al*, Cause No. 2007-186, Montana First Judicial District, *Order Nunc Pro Tunc on Petition for Judicial Review* (2009); Worden v. Alexander (1939), 108 Mont. 208, 90 P.2d 160; Allen v. Petrick (1924), 69 Mont. 373, 222 P. 451; *In the Matter of Application for Beneficial Water Use Permit No. 41S-105823 by French* (DNRC Final Order 2000).

Amount of water to be diverted must be shown precisely. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 3 (citing BRPA v. Siebel, 2005 MT 60, and rejecting applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet).

51. It is the Applicant's burden to produce the required evidence. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7; *In the Matter*

of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC., (DNRC Final Order 2005); see also Royston; Ciotti.

52. Water marketing is a recognized beneficial use. §85-2-102(4), MCA. Water marketing as a beneficial use has its roots in the 1889 Montana Constitution and is again found in the 1972 Montana Constitution. Article 9, section 3(2) of the 1972 Constitution provides that the, “use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use ...are held to be a public use.” See also, Mont. Const. Art. III, § 15 (1889).

53. Prior to 1973, appropriation for sale was complete at the time the appropriator completed the works and offered the water for sale for beneficial use by others. Bailey v. Tintinger, (1912) 45 Mont. 154, 122 P. 575. In 1985, with the threat of out-of-state interests appropriating Montana water and concern over the marketing of water, the Montana Legislature expressly altered the requirements for appropriating water for the purpose of sale. See generally Final Report of the Select Committee on Water Marketing to the 49th Legislature State of Montana (January 1985).

The Legislature passed what is now §85-2-310(9)(a)(v), MCA:

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

- (A) each person who will use the water and the amount of water each person will use;
- (B) the proposed place of use of all water by each person;
- (C) the nature of the relationship between the applicant and each person using the water; and
- (D) each firm contractual agreement for the specified amount of water for each person using the water; ...

The purpose of the legislation was to address speculation in the appropriation of Montana’s resources, i.e., tying up water for speculative future use.

The Department has previously recognized that it is difficult to obtain contractual commitments when an applicant does not yet have the water right to sell water. *In the Matter of Application Nos. 42B-30011045 and 42B-30014358 for Beneficial Water Use Permit by Fidelity Exploration and Production Company* (DNRC 2007), *rev’d on other grounds*, Northern Plains Resources Council et al. v. Montana Department of Natural Resources et al., Cause No. CDV-2007-425, Montana First Judicial District Court *Memorandum and Order on Petition for Judicial*

Review (December 15, 2008). Accordingly, the Department has accepted less than full contractual commitment at the permitting stage so long as the applicant demonstrates a good faith and *bona fide* intent to appropriate through commitments to purchase a substantial portion of the flow and volume sought. Potential speculation by an applicant is further addressed by the period of completion. At the end of the period of completion, the applicant will have a perfected right to market only that amount of water which he or she actually contracted and sold on annual basis during the period of completion, i.e., that amount of water put to actual beneficial use. E.g., McDonald supra.

54. The letters of intent from the oil field service companies (which account for more than 50% of the requested volume) indicate that the water purchased will be for purposes such as hydro- fracturing, fresh water treatment of oil and gas wells, and fresh water for drilling fluids used in oil, gas and water well drilling. The letters of intent provided are not unlike any other letters of intent provided for water marketing which have previously been approved by the Department. (FOF 47)

55. The letters of intent received following the January 30, 2014 meeting specified water would be used in Montana counties of Dawson, McCone, Richland, Roosevelt, and Sheridan. An attached map of the service area depicts a 50 mile radius covering all or parts of the five counties named in the letter of intent but not extending into North Dakota.

56. Applicant proposes to use water for Water Marketing which is a recognized beneficial use. § 85-2-102(4), MCA.

Applicant has proven by a preponderance of the evidence that the beneficial use of Water Marketing is needed and that 3622 AF of diverted volume and 5 CFS of water requested is the amount needed to sustain the beneficial use. § 85-2-311(1)(d), MCA. (FOF 44-48)

PRELIMINARY DETERMINATION

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that Application for Beneficial Water Use Permit No. 40S 30066181 by Atlantis Water Solutions LLC should be **GRANTED**. The Department determines that Applicant may divert from the Missouri River, by means of pumps, from January 1 – December 31 at 5 CFS up to 3622 AF, from a point in Government lot 3 of Section 3, T27N, R56E, Roosevelt County, for Water Marketing use within the State of Montana from January 1 – December 31. The Place of

use (point of sale) is located in the NESE Section 28, T28N, R56E, Roosevelt County. The permit will be subject to the following conditions, limitations or restrictions:

1. 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 JANUARY 31ST OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE GLASGOW WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.
2. THE APPROPRIATOR SHALL SUBMIT A PROGRESS REPORT OF THE WORK COMPLETED UNDER THIS RIGHT BY JANUARY 31ST 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 REVOCATION OF THE PERMIT. THE REPORTS MUST BE SENT TO THE GLASGOW WATER RESOURCES REGIONAL OFFICE.
3. ACCESS AT THE DEPOT SHALL BE CONTROLLED ENSURING ONLY THOSE USERS WITH CONTRACTS ARE ABLE TO ACQUIRE WATER.
4. WATER APPROPRIATED UNDER THIS PERMIT SHALL NOT BE TRANSPORTED OUTSIDE THE STATE OF MONTANA. CUSTOMERS SHALL BE INFORMED OF THIS CONDITION BY LANGUAGE INCLUDED IN THE CONTRACT AND BY SIGNS POSTED AT THE DEPOT.

NOTICE

This Department will provide public notice of this Application and the Department's Preliminary Determination to Grant pursuant to §85-2-307, MCA. The Department will set a deadline for objections to this Application pursuant to §§85-2-307, and -308, MCA. If this Application receives a valid objection, it will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and §85-2-309, MCA. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this Application as herein approved. If this Application receives a valid objection(s) and the valid objection(s) are conditionally withdrawn, the Department will consider the proposed condition(s) and grant the Application with such conditions as the Department decides necessary to satisfy the applicable criteria.

Dated this 3rd day of October 2014.

/Original signed by David A Vogler/

David A. Vogler, Hearing Examiner
Department of Natural Resources
and Conservation
Water Resources Division
P.O. Box 201601
Helena, Montana 59620-1601
(406) 444-6835

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT FOLLOWING HEARING ON PRELIMINARY DETERMINATION TO DENY was served upon all parties listed below on this 3rd day of October 2014 by first-class United States mail.

JOHN E. BLOOMQUIST - ATTORNEY
BLOOMQUIST LAW FIRM PC
PO BOX 799
HELENA, MT 59624-0799

Cc:
DNRC, GLASGOW REGIONAL OFFICE
PO BOX 1269
GLASGOW, MT 59230-1269

/Original signed by Jamie Price/

Jamie Price, Hearings Assistant
Hearings Unit, 406-444-6615