

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

\*\*\*\*\*

**APPLICATION FOR BENEFICIAL  
WATER USE PERMIT NO. 76LJ 30103012 )  
BY Spruce Meadows Homeowners ) PRELIMINARY DETERMINATION TO  
Association Inc. ) GRANT PERMIT**

\*\*\*\*\*

On September 1, 2015, Spruce Meadows Homeowners Association Inc. (Applicant) submitted Application for Beneficial Water Use Permit No. 76LJ 30103012 to the Kalispell Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC) for 140 gallons per minute (GPM) or 0.31 cubic feet per second (CFS) up to 9.75 AF for multiple domestic use and 14.53 AF for domestic lawn and garden irrigation. The Department published receipt of the Application on its website. The Application was determined to be correct and complete as of February 19, 2016. An Environmental Assessment for this Application was completed on March 16, 2016.

**INFORMATION**

The Department considered the following information submitted by the Applicant.

Application as filed:

- Application for Beneficial Water Use Permit, Form 600
- Attachments
- Maps:
  - Aerial map of Subdivision
  - USGS Topographic Site Vicinity Map
  - Plat layout of Subdivision
  - USGS Topographic Site of Aquifer Test Layout
- Aquifer Testing Addendum
- Engineered Water System Design Specifications/drawings

### Information within the Department's Possession/Knowledge

- Department Hydrologist Aquifer Test Report Dated November 5, 2015
- Department Hydrologist Depletion Report Dated November 6, 2015
- Department memo dated January 10, 2011 entitled "Legal Availability of Groundwater in the Flathead Deep Aquifer" written by Russell Levens and James Heffner; Groundwater Hydrologists for the Water Management Bureau.
- Independent review of USGS gage data for the Flathead River near Polson (Gage #12372000)
- Independent review of USGS gage data for the Flathead River near Columbia Falls (Gage #12363000)
- Department hydrologic investigation of Blaine Creek
- Independent review of senior appropriations on depleted surface sources

The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, MCA).

### **PROPOSED APPROPRIATION**

#### FINDINGS OF FACT

1. The Applicant proposes to divert water from two groundwater wells; East Well (GWIC #239590) and West Well (GWIC #239589) with depths of 260 feet below ground surface (bgs) each, from January 1 through December 31 at 140 GPM (0.31 CFS) up to 24.28 AF from points in the NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 34, Township 29N, Range 20W for 9.75 AF of multiple domestic use (30 hook-ups) from January 1 through December 31 and 14.53 AF for domestic lawn and garden irrigation on 7.5 acres from April 15 through October 15. The place of use is Spruce Meadows subdivision located in the SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 34, Township 29N, Range 20W, Flathead County approximately 2.8 miles north of Creston Montana.

2. Proposed wells are approximately 0.1 miles, 1.6 miles and 3.4 miles from Blaine Creek, Blaine Lake and the Flathead River respectively.
3. Wastewater from residences will be diverted to individual on-site septic systems and drainfields.
4. Using the Department standard of 10% consumption with drainfields, total domestic consumption would equal **0.98 AF** annually ( $9.75 \text{ AF} * .10$ ).
5. Domestic lawn and garden consumption is based on estimates provided in Irrigation Water Requirements (IWR) using the Creston site value of 16.27 inches or 1.36 feet per acre. Lawn and garden consumption would be **10.17 AF** annually ( $1.36 \text{ feet} * 7.5 \text{ acres}$ ).
6. Total consumption for the proposed application would be **11.15 AF** annually.
7. The following measuring condition will apply to the proposed application:

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 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR THROUGH PROJECT CERTIFICATION. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.



8. Proposed project is not within a Basin Closure or Controlled Groundwater area.

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

**GENERAL CONCLUSIONS OF LAW**

9. The Montana Constitution expressly recognizes in relevant part that:
- (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
  - (2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use . . . shall be held to be a public use.
  - (3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

Mont. Const. Art. IX, §3. While the Montana Constitution recognizes the need to protect senior appropriators, it also recognizes a policy to promote the development and use of the waters of the state by the public. This policy is further expressly recognized in the water policy adopted by the Legislature codified at § 85-2-102, MCA, which states in relevant part:

(1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter. . . .

(3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana . . .

10. Pursuant to § 85-2-302(1), MCA, except as provided in §§ 85-2-306 and 85-2-369, MCA, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the Department. See § 85-2-102(1), MCA. An applicant in a beneficial water use permit proceeding must affirmatively prove all of the applicable criteria in § 85-2-311, MCA. Section § 85-2-311(1) states in relevant 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, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

To meet the preponderance of evidence standard, “the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.” § 85-2-311(5), MCA (emphasis added). 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 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.

11. Pursuant to § 85-2-312, MCA, the Department may condition permits as it deems necessary to meet the statutory criteria:

(1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

E.g., Montana Power Co. v. Carey (1984), 211 Mont. 91, 96, 685 P.2d 336, 339 (requirement to grant applications as applied for, would result in, “uncontrolled development of a valuable natural resource” which “contradicts the spirit and purpose underlying the Water Use Act.”); see also, *In the Matter of Application for Beneficial Water Use Permit No. 65779-76M by Barbara L. Sowers* (DNRC Final Order 1988)(conditions in stipulations may be included if it further compliance with statutory criteria); *In the Matter of Application for Beneficial Water Use Permit No. 42M-80600 and Application for Change of Appropriation Water Right No. 42M-036242 by Donald H. Wyrick* (DNRC Final Order 1994); Admin. R. Mont. (ARM) 36.12.207.

12. The Montana Supreme Court further recognized in Matter of Beneficial Water Use Permit Numbers 66459-76L, Ciotti: 64988-G76L, Starner (1996), 278 Mont. 50, 60-61, 923 P.2d 1073, 1079, 1080, *superseded by legislation on another issue*:

Nothing in that section [85-2-313], however, relieves an applicant of his burden to meet the statutory requirements of § 85-2-311, MCA, before DNRC may issue that provisional permit. Instead of resolving doubts in favor of appropriation, the Montana Water Use Act requires an applicant to make explicit statutory showings that there are unappropriated waters in the source of supply, that the water rights of a prior appropriator will not be adversely affected, and that the proposed use will not unreasonably interfere with a planned use for which water has been reserved.

See also, Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court,

*Memorandum and Order* (2011). The Supreme Court likewise explained that:

.... unambiguous language of the legislature promotes the understanding that the Water Use Act was designed to protect senior water rights holders from encroachment by junior appropriators adversely affecting those senior rights.

Montana Power Co., 211 Mont. at 97-98, 685 P.2d at 340; see also Mont. Const. art. IX §3(1).

13. An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of § 85-2-311, MCA is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this § 85-2-311, MCA. § 85-2-311(6), MCA.

14. The Department may take notice of judicially cognizable facts and generally recognized technical or scientific facts within the Department's specialized knowledge, as specifically identified in this document. ARM 36.12.221(4).

### **Physical Availability**

#### **FINDINGS OF FACT**

15. A 24-hour aquifer test was performed on the PWS#1, East well at an average rate of 210 GPM. Discharge was measured using a 4" Badger flow meter and was conveyed 400 feet to a low-lying area away from the test well and monitoring wells. Maximum drawdown in the production well was 86 feet below the static water level of 47.6 feet bgs, leaving a water column of 109.4 feet above well perforations, which start at 243 feet bgs. Monitoring wells, PWS#2 - West well and Sweet well, are 117 feet and 1038 feet from the East well, at depths of 260 feet bgs and 218 feet bgs, experienced maximum drawdown of 35.74 feet and 2.29 feet respectively. Data from all wells was collected using In-Situ data loggers and pressure transducers. The modeling software, AQTESOLV<sup>®</sup>, was used to analyze drawdown to estimate aquifer properties. The Neuman-Witherspoon (1969) Solution for a leaky-confined aquifer was applied to the

drawdown data of the Sweet well to get an aquifer transmissivity of 2,675 ft<sup>2</sup>/day and storativity of 0.0004.

16. Maximum drawdown in the East well after pumping for 24 hours at a rate of 210 GPM was 86 feet below the static water level of 47.6 feet bgs leaving a water column of 109.4 feet above well perforations, which start at 243 feet bgs.

17. Maximum drawdown in the West well after pumping for 8 hours at a rate of 210 GPM was 90.3 feet below the static water level of 46.4 feet leaving a water column of 106.3 feet above well perforations, which start at 243 bgs.

18. Department Hydrologist, Attila Fohnagy, reviewed the aquifer test for the Spruce Meadows wells and found requirements were met under ARM 36.12.121 and an adequate basis to address criteria under MCA 85-2-311.

19. Based on the production wells being completed to the depth of 260 feet in the Flathead Valley's deep alluvial aquifer, the Department understands this groundwater source to be interconnected with surface water and therefore groundwater levels are effectively controlled by the Flathead River and Flathead Lake. Department memo dated January 10, 2011, acknowledges that this appropriation will not alter the regional gradient and thus the physical availability of groundwater (aquifer flux). This appropriation, however, will likely reduce discharge from the aquifer to the river and lake in the amount of the consumptive use. Therefore, physical availability has been analyzed for this application for the Flathead River and Flathead Lake as required by ARM 36.12.1702.

20. The data from USGS gage station on the main stem of the Flathead River near Columbia Falls (#12363000) was assessed to calculate physical availability from Flathead River. The discharge data is available from 1951 through September 2015. Table 1 represents year-round median of the mean monthly flow rates and volumes associated with the measurements. Calculated lows for the Flathead River were 4,565 CFS in November and 270,935 AF in February.

Table 1: Median of the Mean Monthly Flows and Volumes of the Flathead River (#12363000)

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Flow (CFS)	5,714.0	4,887.0	4,805.0	10,680.0	22,630.0	24,720.0	11,450.0	5,705.0	4,953.0	5,133.0	4,565.0	5,995.0
Volume (AF)	350,725.3	270,935.3	294,930.9	634,392.0	1,389,029.4	1,468,368.0	702,801.0	350,172.9	294,208.2	315,063.5	271,161.0	367,973.1

21. The data from USGS gage station on the Flathead River below Kerr Dam near Polson (#12372000) was assessed to calculate physical availability from Flathead Lake. This discharge data is for the period of 1938 through September 2015. Table 2 represents year-round median of the mean monthly flow rates and volumes associated with the measurements. Calculated lows for Flathead Lake were 6,076 CFS and 360,914 AF in September.

Table 2: Median of the Mean Monthly Flows and Volumes of the Flathead River (#12372000)

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Flow (CFS)	10,380.0	9,234.0	7,778.0	9,223.0	18,570.0	25,720.0	13,570.0	6,312.0	6,076.0	7,369.0	8,838.0	10,070.0
Volume (AF)	637,124.4	511,933.0	477,413.6	547,846.2	1,139,826.6	1,527,768.0	832,926.6	387,430.6	360,914.4	452,309.2	524,977.2	618,096.6

22. The requested flow of 140 GPM (0.31 CFS) up to 24.28 AF of water is physically available.

23. Depletions of an average of 6.9 GPM are likely to occur to Blaine Creek, downstream of Hwy 35 and approximately 2.8 miles away from Spruce Meadows Subdivision. South of Hwy 35, Blaine Creek becomes a perennial stream with a baseflow of 81.3 GPM and no water rights exist below.

CONCLUSIONS OF LAW

24. 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.”

25. It is the applicant’s burden to produce the required evidence *In the Matter of Application for Beneficial Water Use Permit No. 27665-411 by Anson* (DNRC Final Order 1987)(applicant

produced no flow measurements or any other information to show the availability of water; permit denied); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005).

26. An applicant must prove that at least in some years there is water physically available at the point of diversion in the amount the applicant seeks to appropriate. *In the Matter of Application for Beneficial Water Use Permit No. 72662s76G by John Fee and Don Carlson* (DNRC Final Order 1990); *In the Matter of Application for Beneficial Water Use Permit No. 85184s76F by Wills Cattle Co. and Ed McLean* (DNRC Final Order 1994).

27. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. § 85-2-311(1)(a)(i), MCA. (Findings of Fact 15 – 23)

**Legal Availability:**

**FINDINGS OF FACT**

28. Pursuant to Department memo dated January 10, 2011, evaluation of legal availability of groundwater for this application was based on depletions to Flathead River and Flathead Lake instead of calculating groundwater legal demands and aquifer fluxes required by ARM 36.12.1704.

29. The table 3 below represents proposed monthly depletions to surface waters:

**Table 3: Proposed Monthly Depletions**

Month	Domestic Consumption (AF)	Irrigation Consumption (AF)	Total Consumption (AF)	Depletion (GPM)
January	0.08	0.00	0.08	6.9
February	0.08	0.00	0.08	6.9
March	0.08	0.00	0.08	6.9
April	0.08	0.13	0.21	6.9
May	0.08	1.27	1.35	6.9
June	0.08	1.91	1.99	6.9
July	0.08	2.81	2.89	6.9
August	0.08	2.56	2.64	6.9
September	0.08	1.39	1.47	6.9
October	0.08	0.11	0.19	6.9

November	0.08	0.00	0.08	6.9
December	0.08	0.00	0.08	6.9
Total	0.98	10.17	11.15	

30. Flathead River legal demands from the USGS gaging station near Columbia Falls (#12363000) down to Flathead Lake were queried from the Department’s water right database. Monthly legal demands were calculated using flow rates and assuming total righted volumes needed to be available every month during the period of diversion. This assumption leads to an overestimation of legal demands for their respective periods and the Department finds this an appropriate measure of legal demands. A comparison of the physical availability data obtained from the USGS gauging station #12363000 Flathead River near Columbia Falls and the existing legal demands index for Flathead River to Flathead Lake are found in the table 4 below. The following table shows what is physically available from the source minus legal demands on the source, showing that the proposed monthly depletion of 6.9 GPM (.02 CFS) and total depletions of 11.15 AF is available.

**Table 4: Median of the Mean Monthly Flows Available at USGS Gage (#12363000) minus legal demands on Flathead River to inlet of Flathead Lake**

Month	Water Physically Available (CFS)	Existing Legal Demands (CFS)	Physically Available Water minus Legal Demands (CFS)	Physically Available Water minus Legal Demands (AF)
January	5,714.0	3,506.6	2,207.4	135,491.4
February	4,887.0	3,506.6	1,380.4	76,530.5
March	4,805.0	3,506.6	1,298.4	79,697.0
April	10,680.0	6,772.3	3,907.7	232,114.4
May	22,630.0	8,247.3	14,382.7	882,807.1
June	24,720.0	8,247.3	16,472.7	978,475.4
July	11,450.0	5,524.3	5,925.7	363,716.4
August	5,705.0	3,622.3	2,082.7	127,833.1
September	4,953.0	3,622.3	1,330.7	79,040.6

October	5,133.0	3,622.3	1,510.7	92,723.7
November	4,565.0	3,506.6	1,058.4	62,870.1
December	5,995.0	3,506.6	2,488.4	152,739.2

31. Legal demands on Flathead Lake down to the USGS gaging station on the Flathead River below Kerr Dam near Polson (#12372000) were queried from the Department water rights database. Monthly legal demands were calculated using flow rates and assuming total righted volumes needed to be available every month during the period of diversion. This assumption leads to an overestimation of legal demands for their respective periods and the Department finds this an appropriate measure of legal demands. A comparison of the physical availability data obtained from the USGS gauging station #12372000 Flathead River near Polson and the existing legal demands index for Flathead Lake to Kerr Dam are found in table 5 below. The following table shows what is physically available from the source minus legal demands on the source, showing that the proposed monthly depletion of 6.9 GPM (.02 CFS) and total depletions of 11.15 AF is available.

**Table 5: Median of the Mean Monthly Flows Available at USGS Gage (#12372000) minus legal demands on Flathead Lake to Kerr Dam**

Month	Water Physically Available (CFS)	Existing Legal Demands (CFS)	Physically Available Water minus Legal Demands (CFS)	Physically Available Water minus Legal Demands (AF)
January	10,380.0	104.7	10,275.3	630,699.9
February	9,234.0	104.7	9,129.3	506,130.2
March	7,778.0	104.7	7,673.3	470,989.1
April	9,223.0	172.1	9,050.9	537,621.3
May	18,570.0	172.1	18,397.9	1,129,260.9
June	25,720.0	172.1	25,547.9	1,517,543.1
July	13,570.0	172.1	13,397.9	822,360.9
August	6,312.0	172.1	6,139.9	376,864.9

September	6,076.0	172.1	5,903.9	350,689.5
October	7,369.0	172.1	7,196.9	441,743.5
November	8,838.0	104.7	8,733.3	518,759.9
December	10,070.0	104.7	9,965.3	611,672.1

32. Confederated Salish & Kootenai Tribes owns the hydropower water rights for Salish-Kootenai Dam. The two claimed water rights for Salish-Kootenai Dam are for 14,540 CFS up to 614,200 AF for power generation, and a volume of 614,700 second foot days for storage for power generation which is equivalent to 1,217,106 AF. (A second foot day is the volume of water represented by a flow of 1 cubic foot per second for 24 hours. The term is used extensively as a unit of runoff volume or reservoir capacity.) The total volume from the two claimed rights is 614,200 AF plus 1,217,106 AF which equals 1,831,306 AF. Flathead Lake is managed to keep a full pool of water during the late spring and summer months. At the claimed flow rate of 14,540 CFS flowing 24 hours per day, both of the claimed water rights, the direct flow hydropower right and storage for hydropower water right, can be fulfilled over a period of 64 days.

33. Salish-Kootenai Dam operations are complex and must accommodate many management factors including, but not limited to federal licensing (Flathead Lake levels required by FERC (Federal Energy Regulatory Commission) for fish and recreation, instream flow requirements, flood control, and irrigation needs. These factors fluctuate seasonally and from year to year. The average yearly flow of water through Flathead Lake is approximately 11,437 CFS as measured at the USGS gauge at Polson (12372000), for the time period of 1939-2006 (USGS, 2009). Even though hydropower water rights at Salish-Kootenai Dam require 1,831,306 AF to meet the hydropower water rights claimed in the adjudication, the records show that Salish-Kootenai Dam's reservoir, Flathead Lake, consistently obtains a full pool status each year.

34. Pending an adjudication of Confederated Salish & Kootenai Tribes hydropower water rights and completion of a water availability study that shows otherwise, the Department finds that water in Flathead River and Flathead Lake can reasonably be considered legally available during the period in which the Applicant seeks to appropriate. This finding is based on the

information and on the records of the Department and other evidence provided to the Department.

35. Depletions are also likely to occur to Blaine Creek, downstream of Hwy 35 and approximately 2.8 miles away from Spruce Meadows Subdivision. South of Hwy 35 Blaine Creek becomes a perennial stream with a baseflow of 81.3 GPM and no water rights exist below. The proposed monthly depletion of 6.9 GPM (.02 CFS) is legally available.

### CONCLUSIONS OF LAW

36. 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); *In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson* (DNRC Final Order 1992).

37. It is the applicant's burden to present evidence to prove water can be reasonably considered legally available. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (the legislature set out the criteria (§ 85-2-311, MCA) and placed the burden of proof squarely on the applicant. The Supreme Court has instructed that those burdens are exacting.); see also Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston (1991), 249 Mont. 425, 816 P.2d 1054 (burden of proof on applicant in a change proceeding to prove required criteria); *In the Matter of*

*Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005) (it is the applicant's burden to produce the required evidence.); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions, LLC* (DNRC Final Order 2007)(permit denied for failure to prove legal availability); see also ARM 36.12.1705.

38. Pursuant to Montana Trout Unlimited v. DNRC, 2006 MT 72, 331 Mont. 483, 133 P.3d 224, the Department recognizes the connectivity between surface water and ground water and the effect of pre-stream capture on surface water. E.g., Wesmont Developers v. DNRC, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 7-8; *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 by Utility Solutions LLC* (DNRC Final Order 2006)(mitigation of depletion required), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); see also 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) (affirming DNRC denial of Applications for Beneficial Water Use Permit Nos. 76691-76H, 72842-76H, 76692-76H and 76070-76H; underground tributary flow cannot be taken to the detriment of other appropriators including surface appropriators and ground water appropriators must prove unappropriated surface water, *citing* Smith v. Duff, 39 Mont. 382, 102 P. 984 (1909), and Perkins v. Kramer, 148 Mont. 355, 423 P.2d 587 (1966)); *In the Matter of Beneficial Water Use Permit No. 80175-s76H by Tintzman* (DNRC Final Order 1993)(prior appropriators on a stream gain right to natural flows of all tributaries in so far as may be necessary to afford the amount of water to which they are entitled, *citing* Loyning v. Rankin (1946), 118 Mont. 235, 165 P.2d 1006; Granite Ditch Co. v. Anderson (1983), 204 Mont. 10, 662 P.2d 1312; Beaverhead Canal Co. v. Dillon Electric Light & Power Co. (1906), 34 Mont. 135, 85 P. 880); *In the Matter of Beneficial Water Use Permit No. 63997-42M by Joseph F. Crisafulli* (DNRC Final Order 1990)(since there is a relationship between surface flows and the ground water source proposed for appropriation, and since diversion by applicant's well appears to influence surface flows, the ranking of the proposed appropriation in priority must be as against all rights to surface water as well as against all

groundwater rights in the drainage.) Because the applicant bears the burden of proof as to legal availability, the applicant must prove that the proposed appropriation will not result in prestream capture or induced infiltration and cannot limit its analysis to ground water. § 85-2-311(a)(ii), MCA. Absent such proof, the applicant must analyze the legal availability of surface water in light of the proposed ground water appropriation. *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. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 ; Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12.

39. Where a proposed ground water appropriation depletes surface water, applicant must prove legal availability of amount of depletion of surface water throughout the period of diversion either through a mitigation /aquifer recharge plan to offset depletions or by analysis of the legal demands on, and availability of, water in the surface water source. 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 for failure to analyze legal availability outside of irrigation season (where mitigation applied)); *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 depletion); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 (Court affirmed denial of permit in part for failure to prove legal availability of stream depletion to slough and Beaverhead River); Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12 (“DNRC properly determined that Wesmont cannot be authorized to divert, either directly or indirectly, 205.09 acre-feet from the Bitterroot River without establishing that the water does not belong to a senior appropriator”; applicant failed to analyze legal availability of surface water where projected surface water depletion from groundwater pumping); *In the Matter of Application for Beneficial Water Use Permit No. 76D-30045578 by GBCI Other Real Estate, LLC* (DNRC Final Order 2011) (in an open basin, applicant for a new water right can show legal availability by using a mitigation/aquifer recharge plan or by showing that any depletion to surface water by groundwater pumping will not take water already appropriated; development next to Lake Koocanusa will not take previously appropriated water). Applicant may use water right claims of potentially affected appropriators as a substitute for “historic beneficial use” in analyzing legal availability of surface water under § 85-2-360(5), MCA. Royston, *supra*.

40. Applicant has proven by a preponderance of the evidence that 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. § 85-2-311(1)(a)(ii), MCA. (Findings of Fact No. 28 – 35)

### **Adverse Effect**

#### **FINDINGS OF FACT**

41. The Applicant’s plan for the exercise of the permit, demonstrates that the Applicant’s use of water can be controlled so the water rights of a prior appropriator will be satisfied and contains measures of reduced use and finally total cessation. Applicant proposes to implement the following steps: initially reduce irrigation application 50 percent; cease irrigation

application; initiate domestic water rationing to 50 percent during extreme shortage and finally turning the well pump off.

42. The potential for adverse effect to senior groundwater right appropriators was evaluated using information derived from the aquifer properties. The Theis (1935) solution using a transmissivity value of 2,675 ft<sup>2</sup>/day and a storativity value of 0.0004 was used to calculate maximum drawdown in existing wells over a five-year period at a monthly pumping schedule for the subdivision. Drawdown in excess of 1 foot occurs in wells that are 35 feet from the Applicant's well. In this zone, there are 0 water rights that are predicted to experience drawdown greater than 1 foot.

43. A measuring condition will exist for this provisional permit. Diverted flow rates and monthly volumes will be reported to the Department on an annual basis to ensure the appropriator remains under the limitations of the permit.

44. Multiple domestic consumption was calculated by using DNRC standard of 10% of diverted volume is considered consumed when drainfields are used to treat wastewater (0.32 AF \* 30 lots \*.10) = **0.98 AF**. Annual IWR irrigation requirements for 7.5 acres of domestic lawn and garden irrigation at 16.27 inches (1.36 feet) calculated to **10.17 AF**. Total annual consumption for the subdivision would be **11.15 AF**.

45. The Well Pumping Depletion Model (WPDM) was used to calculate the long-term net depletion to surface water sources of Flathead Lake, Flathead River and Blaine Creek on a monthly basis. Depletion from the proposed use is expected to be generally constant year-round at a rate of 6.9 GPM (0.02 CFS). Water is physically and legally available for expected surface water depletions associated with the proposed appropriation.

#### CONCLUSIONS OF LAW

46. 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); Bostwick Properties, Inc. ¶ 21.

47. An applicant must analyze the full area of potential impact under the § 85-2-311, MCA criteria. *In the Matter of Beneficial Water Use Permit No. 76N-30010429 by Thompson River Lumber Company* (DNRC Final Order 2006). While § 85-2-361, MCA, limits the boundaries expressly required for compliance with the hydrogeologic assessment requirement, an applicant is required to analyze the full area of potential impact for adverse effect in addition to the requirement of a hydrogeologic assessment. Id. ARM 36.12.120(8).

48. Applicant must prove that no prior appropriator will be adversely affected, not just the objectors. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 4.

49. In analyzing adverse effect to other appropriators, an applicant may use the water rights claims of potentially affected appropriators as evidence of their “historic beneficial use.” See Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston (1991), 249 Mont. 425, 816 P.2d 1054.

50. It is the applicant’s burden to produce the required evidence. E.g., Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (legislature has placed the burden of proof squarely on the applicant); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005). (DNRC Final Order 2005). 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. Bostwick Properties, Inc. ¶ 21.

51. Section 85-2-311 (1)(b) of the Water Use Act does not contemplate a de minimis level of adverse effect on prior appropriators. Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pg. 8.

52. The Applicant has proven 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. § 85-2-311(1)(b) , MCA. (Findings of Fact No. 41 - 45)

### **Adequate Diversion**

#### **FINDINGS OF FACT**

53. Proposed means of diversion will include two groundwater wells both at depths of 260 feet bgs, 117 feet apart and constructed in 2007 by Water Well Services Inc (MT license #WWC-635). The wells are described as PWS#1 or East well (GWIC 239590) and PWS#2 or West well (GWIC #239589). At testing, static water levels were 47.6 feet bgs and 46.4 feet bgs respectively. This public water supply system was designed by Jeff Larsen, PE of Larsen Engineering and Surveying and will be regulated by the Department of Environmental Quality (DEQ). Each well will have a Goulds Model 150L15 pump with a 15 HP motor rated to produce 163 GPM at 270 feet of total dynamic head. By design, the two wells will be pumped alternately with a flow restrictor placed on the system to limit the flow to the designed peak capacity of 140 GPM. Twelve WX-350 pressure tanks have been installed to control the pressure in the system. Once the pressure drops below 50 psi, a pump will turn on and run until the pressure in the water system reaches 70 psi. Approximately 2,600 lineal feet of 4-inch AWWA C900 PVC water main will deliver water to each lot where a ¾-inch to 1½ inch reducer is utilized and a 1½-inch polyethylene service line is provided to each house. Pump curves and system specifications were included in the application.

#### **CONCLUSIONS OF LAW**

54. 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.

55. 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.

56. 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. § 85-2-311(1)(c), MCA (Finding of Fact No. 53).

### **Beneficial Use**

#### **FINDINGS OF FACT**

57. The proposed appropriation is for multiple domestic use on 30 lots up to 9.75 AF and domestic lawn and garden irrigation on 7.5 acres up to 14.53 AF for a total volume of **24.28 AF** and **140 GPM** (0.31 CFS) to be used in the Spruce Meadows Subdivision.

58. Multiple domestic volume demand was assumed to be 290 gallons per day per residential structure per Department of Environmental Quality Certificate of Subdivision Approval totaling **9.75** annually (290 gpd x 30 dwellings x 365 days per year ÷ 325,851 gallons).

59. Volume demand for the lawn and garden was based on Irrigation Water Requirements for the Creston site of 16.27 inches needed in a dry year. A system efficiency value of 70 percent for sprinkler irrigation in Climate Zone III was used, which calculates to 23.24 inches (16.27 inches ÷ .70 efficiency factor) or 1.94 AF per acre and is less than DNRC standard of 2.5 AF per acre for lawn and garden. Each lot is estimated to have an average of 0.25 acres of lawn and garden. Total volume expected for lawn and garden equals **14.53 AF** (23.24 inches ÷ 12 inches \* 30 lots \* 0.25 acres).

60. Requested flow rate of **140 GPM** from the wells is what is required to meet the calculated maximum day requirement of domestic daily peak demand of 90.6 GPM and peak demand for domestic lawn and garden use of 48.9 GPM as approved by DEQ.

#### **CONCLUSIONS OF LAW**

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

62. 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).

63. Applicant proposes to use water for domestic use (which includes garden and landscaping irrigation, also commonly referred to as 'lawn and garden irrigation') which is a recognized beneficial use § 85-2-102(4), MCA. "Domestic use" by DNRC rule means those water uses common to a household including...(g) garden and landscaping irrigation up to five acres." ARM 36.12.101(21). Applicant has proven by a preponderance of the evidence multiple domestic and lawn and garden irrigation are beneficial uses and that 24.28 AF of diverted volume and 140 GPM of water requested is the amount needed to sustain the beneficial use. § 85-2-311(1)(d), MCA, (Findings of Fact Nos. 57 - 60)

## Possessory Interest

### FINDINGS OF FACT

64. This application is for instream flow, sale, rental, distribution, or is a municipal use application in which water is supplied to another. It is clear that the ultimate user will not accept the supply without consenting to the use of water. The Applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

### CONCLUSIONS OF LAW

65. Pursuant to § 85-2-311(1)(e), MCA, an Applicant must prove by a preponderance of the evidence that it 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, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

66. Pursuant to ARM 36.12.1802:

(1) An applicant or a representative shall sign the application affidavit to affirm the following:

(a) the statements on the application and all information submitted with the application are true and correct and

(b) except in cases of an instream flow application, or where the application is for sale, rental, distribution, or is a municipal use, or in any other context in which water is being supplied to another and it is clear that the ultimate user will not accept the supply without consenting to the use of water on the user's place of use, the applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

(2) If a representative of the applicant signs the application form affidavit, the representative shall state the relationship of the representative to the applicant on the form, such as president of the corporation, and provide documentation that establishes the authority of the representative to sign the application, such as a copy of a power of attorney.

(3) The department may require a copy of the written consent of the person having the possessory interest.

67. The Applicant has proven by a preponderance of the evidence that it 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. § 85-2-311(1)(e), MCA. (Finding of Fact No. 64)

### **PRELIMINARY DETERMINATION**

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Application for Beneficial Water Use Permit No. 76LJ 30103012 should be GRANTED.

The Department determines the applicant may divert water from groundwater, by means of two wells at depths of 260 feet bgs, from January 1 through December 31 at 140 GPM (0.31 CFS) up to 24.28 AF, from points in the NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 34, Township 29N, Range 20W, for multiple domestic use from January 1 through December 31 and domestic lawn and garden irrigation from April 15 through October 15 on 7.5 acres. The place of use is located in SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> Section 34, Township 29N, Range 20W, Flathead County, known as Spruce Meadows subdivision, approximately 2.85 miles north of Creston, Montana.

The application 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 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR THROUGH PROJECT CERTIFICATION. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

## 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 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, the application and objection will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If valid objections to an application are received and withdrawn with stipulated conditions and the department preliminarily determined to grant the permit or change in appropriation right, the department will grant the permit or change subject to conditions necessary to satisfy applicable criteria.

DATED this 16th day of March 2016.

/Original signed by Kathy Olsen/  
Kathy Olsen, Deputy Regional Manager  
Kalispell Regional Office  
Department of Natural Resources and Conservation