

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

**APPLICATION FOR BENEFICIAL
WATER USE PERMIT NO. 43C 30104560
BY STILLWATER MINING COMPANY**) **PRELIMINARY DETERMINATION TO
GRANT PERMIT**

On March 16, 2016, Stillwater Mining Company (Applicant) submitted Application for Beneficial Water Use Permit No. 43C 30104560 to the Billings Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC) for 268 GPM and 131 AF for industrial and domestic use. The Department published receipt of the Application on its website. The Application was determined to be correct and complete as of August 8, 2016. The Department met with the Applicant's consultants, Lana Wilson and Lisa Boettcher, for a pre-application meeting on November 25, 2015. Mark Elison and Christine Schweigert were present for the Department. Applicant requested a variance from aquifer testing requirements (MCA 36.12.121) on September 1, 2015 and amended that request on December 9, 2015. The request was for all aquifer testing requirements based upon extensive studies in the source aquifer and a 4.5-hour injection test on a nearby well. The variance was granted on December 18, 2015. An Environmental Assessment for this Application was prepared by the United States Forest Service and the Montana Department of Environmental Quality on May 27, 2015. That Environmental Assessment was adopted by the Department on August 8, 2016, and can be found at <http://www.fs.usda.gov/project/?project=45224>.

INFORMATION

The Department considered the following information submitted by the Applicant.

Application as filed:

- Application for Beneficial Water Use Permit, Form 600
- Attachments

- Letter of approval from United States Forest Service to Stillwater Mining Company to conduct mining operations on Forest Service property, dated September 1, 2015, and signed by Mary Erickson, Forest Supervisor.
- Maps: USGS topographic map depicting location of point of diversion and place of use as well as the location of the injection well used to determine aquifer properties.

Information Received after Application Filed

- Aquifer Testing Addendum
- E-mail from Greg Bryce, Applicant’s consultant, to Mark Elison, Department hydrologist, dated July 11, 2016, defining place of use relative to the portal, waste rock facility and dust suppression on roads.

Information within the Department’s Possession/Knowledge

- Aquifer Test Report by Attila Fohnagy, Department Hydrogeologist, dated May 5, 2016
- Depletion Report by Department Hydrogeologist, Russell Levens, dated May 6, 2016.
- Environmental Assessment for Stillwater Mining Company’s Benbow Exploration Portal and Support Facilities Plan of Operations for Mineral Exploration, May 2015, United States Forest Service and Montana Department of Environmental Quality.
- USGS gage 06205000 Stillwater River near Absarokee, MT

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). **NOTE:** Department or DNRC means the Department of Natural Resources & Conservation; CFS means cubic feet per second; GPM means gallons per minute; AF means acre-feet; AC means acres; AF/YR means acre-feet per year; and POD means point of diversion.

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert groundwater, by means of a proposed well approximately 1385 feet deep in the Madison Group Aquifer, from January 1 to December 31 at 268 GPM up to 131.0 AF, from a point in the SENESE Section 20 T5S R16E (PB 40), Stillwater County, for industrial and domestic use from January 1 to December 31. The place of use is located in the NWNE, NENW, SENW, SWNW Section 13, SENE, NESE, NWSE, NESW,

NWSW Section 14, NESE, NWSE, NESW, NWSW, SWSW Section 15, SESE, SWSE Section 16, SWSE, SESW, SWSW, NESW, SENW, SWNE, NWNE Section 17, NENE, NWNE, SENE, NESE Section 20, NWNE, SENW, SWNW, NWNW, NWSW Section 21 T5S R16E, Stillwater County. The place of use includes the portal for underground mining and all locations where dust suppression may be conducted. The place of use is limited to National Forest Service lands and National Forest Service right-of-way.

2. The proposed well would be between Little Rocky Creek and Prairie Dog Creek on the north slope of the Absaroka Mountains. These creeks are tributary to the Stillwater River that lies approximately 3 miles to the northwest.

3. The Applicant states that, at maximum requested water use, 40.8 AF/YR will be returned to the source aquifer through an injection well indicating that 90.2 AF/YR would be consumed. The percentage of water returned to the source aquifer is approximately 31% of the diverted volume. The Department used the maximum depletion of 90.2 AF/YR in determination of potential adverse effect.

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

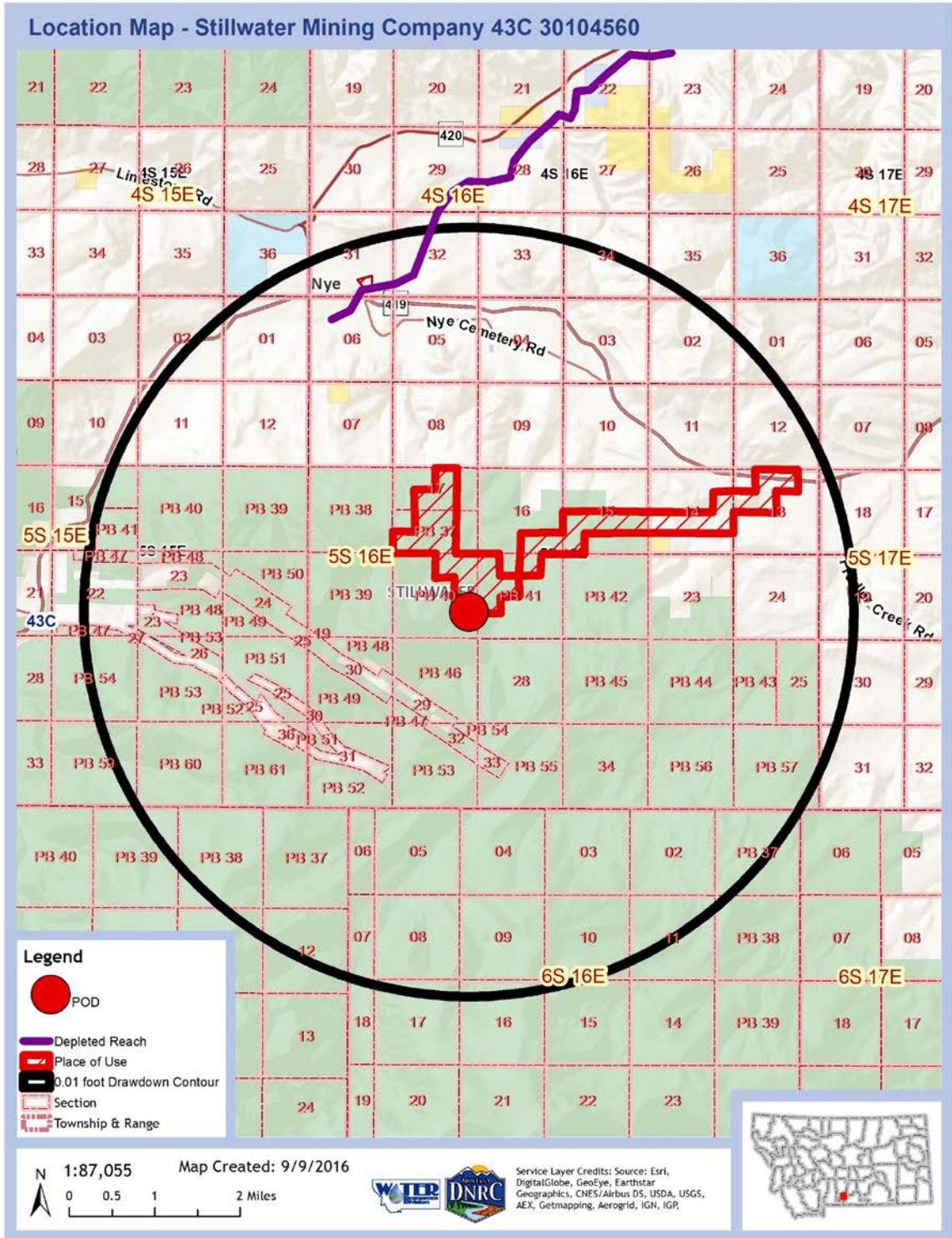
GENERAL CONCLUSIONS OF LAW

4. 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 . . .

5. 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.

6. 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.

7. The Montana Supreme Court further recognized in Matter of Beneficial Water Use Permit Numbers 66459-76L, Ciotti: 64988-G76L, Starnier (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).

8. 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.

9. 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

10. A variance was granted by the Department on December 18, 2015, that permitted the Applicant to submit results from a 4.5-hour injection test at a nearby well completed in the source aquifer instead of the required 72-hour pumping test. The Applicant requested that variance due to the extensive available aquifer data and the expense of drilling the well prior to obtaining a water right.

11. Department Hydrogeologist, Attila Fohnagy analyzed the injection test (see Aquifer Test Report in file) and recommended a transmissivity of 250 ft²/day and a storativity of 0.0003 be used for further analysis. Using a constant pumping rate of 81.2 GPM (The flow rate required to produce the requested annual volume), transmissivity and storativity given above and the Theis (1935) solution, a distance drawdown plot indicates that the 0.01 foot drawdown contour occurs at 23,500 feet from the proposed well. The volume of total aquifer flux each year within the zone of influence as defined by 0.01 foot of drawdown is 235,000 ft³/day or 1,969 AF/YR given by the equation, $Q = TWi$, where T is transmissivity (250 ft²/day), W is width of the zone of influence (47,000 ft.) and i is the groundwater gradient (0.02 ft./ft) .

12. Russell Levens, Department Hydrogeologist, evaluated information provided by Hydrometrics (consultant) as part of the application and produced a Depletion Report dated May 6, 2016. That report finds that the proposed appropriation would deplete the Stillwater River in the reach downstream of its confluence with the West Stillwater River in Section 6 T5S R16E Stillwater County. Information regarding the physical and legal availability of surface water potentially depleted by this appropriation is included under Adverse Effect (FOF 33 - 37).

CONCLUSIONS OF LAW

13. 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.”

14. 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).

15. 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).

16. Use of published upstream gauge data minus rights of record between gauge and point of diversion adjusted to remove possible duplicated rights shows water physically available. *In the Matter of Application for Beneficial Water Use Permit No. 41P-105759 by Sunny Brook Colony* (DNRC Final Order 2001).

17. 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. (FOF 10 - 12)

Legal Availability:

FINDINGS OF FACT

18. Drawdown modeling by Department hydrogeologists indicates that drawdown in excess of one foot would occur in wells within 25,000 feet of the proposed well. There is one water right owned by the Applicant (43C 30104050) within the zone of influence. That water right appropriates 9.8 AF/YR. Below is a comparison of the water supply and current legal demands for groundwater that could be reduced due to the proposed appropriation.

| Physically Available (AF/year) | Existing Legal Demands (AF/year) | Physically Available minus Existing Legal Demands (AF/year) |
|---------------------------------------|---|--|
| 1969 | 9.8 | 1959.2 |

19. The physical amount of groundwater available is 1969 AF/YR and the existing legal demands on groundwater within the zone of influence are 9.8 AF/YR. The difference between physically available groundwater and legal demands is 1959.2 AF/YR. The Applicant is requesting 131 AF/YR.

20. Depletion analysis indicates that the likely depleted surface water would be the Stillwater River below the confluence with the West Stillwater River in Section 6 T5S R16E, Stillwater County. Information regarding the physical and legal availability of surface water potentially depleted by this appropriation is included under Adverse Effect (FOF 33 - 37).

CONCLUSIONS OF LAW

21. 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).

22. 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.

23. 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.

24. 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.

25. A flow of water on a given date does not show that water is legally available without showing that all prior appropriators were diverting all claimed water at that moment. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pgs. 5-6. A flow of water past a point on a particular date or dates does not demonstrate that water is legally available. Id.

26. In analyzing legal availability for surface water, applicant was required to evaluate legal demands on the source of supply throughout the “area of potential impact” by the proposed use under §85-2-311(1)(a)(ii), MCA, not just within the “zone of influence.” Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 6.

27. *In the Matter of Beneficial Water Use Permit No. 62935-s76LJ by Crop Hail Management* (DNRC Final Order 1991)(Applicant showed water physically available for appropriation by producing evidence based on upstream diversions; however, he failed to show water legally available with information of downstream uses).

28. Use of published upstream gauge data minus rights of record between gauge and point of diversion adjusted to remove possible duplicated rights shows water physically available. Using same methodology and adding rights of record downstream of point of diversion to the mouth of the stream shows water legally available. *In the Matter of Application for Beneficial Water Use*

Permit No. 41P-105759 by Sunny Brook Colony (DNRC Final Order 2001); In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson (DNRC Final Order 1992);

29. 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. (FOF 18 – 20)

Adverse Effect

FINDINGS OF FACT

30. The Applicant can shut down their diversion in the event of a call. Their plan is to provide immediate relief that may include hauling water or providing an alternative water supply. If call is made on the well to provide water in the potentially depleted reach of the Stillwater River, the Applicant will use one or more of its senior surface water rights (43C 189537-00, 43C 189538-00, 43C 189541-00, 43C 189542-00 or 43C 33313-00) to provide water to the Stillwater River.

31. There is one water right completed in the source aquifer expected to experience greater than one foot of drawdown from the proposed appropriation. This water right (43C 30104050) is owned by the Applicant and has an available water column before predicted drawdown of 3393.88 feet.

32. The physically available groundwater exceeds the legal demands on groundwater by 1959.2 AF/YR. The Applicant is requesting 131.0 AF/YR

33. Department hydrogeologist, Russell Levens, determined that the proposed appropriation would cause surface water depletion to the Stillwater River below the confluence with the West Stillwater River. Due to the distance from the well and year-round pumping, surface water depletion will be constant over the year at 55.9 GPM and equal to the net consumption of 90.2 AF/YR. The depleted volume varies from 6.9 AF in February to 7.7 AF in months with 31 days.

34. USGS gage 06205000 Stillwater River near Absarokee MT was utilized to quantify median of mean monthly flows and volumes during the modeled period of depletion. The gage is approximately 20 miles downstream of the potentially depleted reach. Physical availability of water in the depleted reach was quantified by adding water rights between the gage and the upper limit of the depleted reach to the median of the mean monthly flow at the gage.

Physically Available Water in the Stillwater River at the Top of the Affected Reach

Flow Rate (CFS)

| Month | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--|--------|--------|--------|--------|---------|---------|---------|---------|---------|--------|--------|--------|
| USGS Gage 06205000 | 287.4 | 262.7 | 273.9 | 365.5 | 1496 | 3431 | 2136 | 810.3 | 558.8 | 514.1 | 414.3 | 321.4 |
| Water Rights Between Gage and Affected Reach | 1.35 | 1.57 | 91.92 | 276.86 | 468.36 | 469.46 | 469.47 | 469.47 | 468.51 | 348.48 | 98.83 | 3.62 |
| Physically Available | 288.75 | 264.27 | 365.82 | 642.36 | 1964.36 | 3900.46 | 2605.47 | 1279.77 | 1027.31 | 862.58 | 513.13 | 325.02 |

Volume (AF)

| Month | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--|---------|---------|---------|---------|---------|----------|----------|---------|---------|---------|---------|---------|
| USGS Gage 06205000 | 17640.6 | 14564.1 | 16812.0 | 21710.7 | 91824.5 | 203801.4 | 131107.7 | 49736.2 | 33192.7 | 31555.5 | 24609.4 | 19727.5 |
| Water Rights Between Gage and Affected Reach | 11.66 | 10.74 | 1373.04 | 4146.08 | 7564.12 | 7371.67 | 7617.88 | 7617.88 | 7312.97 | 5625.50 | 1822.78 | 34.83 |
| Physically Available | 17652.3 | 14574.8 | 18185.0 | 25856.8 | 99388.6 | 211173.1 | 138725.6 | 57354.1 | 40505.7 | 37181.0 | 26432.2 | 19762.4 |

35. The potential impact is considered to extend approximately 6 miles downstream to the confluence of the Stillwater River and Bad Canyon Creek in NW Section 23 T4S R16E, Stillwater County. There are several tributaries to the Stillwater River in the area of potential impact including Little Rocky Creek, Magpie Creek and Prairie Creek, before the confluence with Bad Canyon Creek. The comparison of physical availability and legal demands in the affected reach is shown in the table below.

Comparison of the Flow Rate and Volume of Water Physically Available and the Legal Demands in the Affected Reach of the Stillwater River.

Flow Rate (CFS)

| Month | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--|--------|--------|--------|--------|---------|---------|---------|---------|---------|--------|--------|--------|
| Physically Available | 288.75 | 264.27 | 365.82 | 642.36 | 1964.36 | 3900.46 | 2605.47 | 1279.77 | 1027.31 | 862.58 | 513.13 | 325.02 |
| Legal Demands in Affected Reach | 0.08 | 0.3 | 1.68 | 22.39 | 33.34 | 33.41 | 33.42 | 33.42 | 33.42 | 23.06 | 0.14 | 0.08 |
| Physically Available minus Legal Demands | 288.67 | 263.97 | 364.14 | 619.97 | 1931.02 | 3867.05 | 2572.05 | 1246.35 | 993.89 | 839.52 | 512.99 | 324.94 |

Volume (AF)

| Month | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--|---------|---------|---------|---------|---------|----------|----------|---------|---------|---------|---------|---------|
| Physically Available | 17652.3 | 14574.8 | 18185.0 | 25856.8 | 99388.6 | 211173.1 | 138725.6 | 57354.1 | 40505.7 | 37181.0 | 26432.2 | 19762.4 |
| Legal Demands in Affected Reach | 0.92 | 1.03 | 21.71 | 197.99 | 385.13 | 385.63 | 398.81 | 398.81 | 375.82 | 203.78 | 15.20 | 0.92 |
| Physically Available minus Legal Demands | 17651.3 | 14573.8 | 18163.3 | 25658.8 | 99003.5 | 210787.5 | 138326.8 | 56955.3 | 40129.9 | 36977.2 | 26417.0 | 19761.4 |

36. The flow rate and volume of water physically available minus the existing legal demands in the potentially depleted reach of the Stillwater River are greater in all months than the predicted

depletion. They are also greater than the Montana Department of Fish, Wildlife and Parks instream reservation at the mouth of the Stillwater River.

37. The Applicant proposes to treat and inject 40.8 AF of diverted water back to the aquifer through an injection well when the full 131.0 AF of water is diverted. The amount of water injected is estimated to be approximately 31% of the diverted volume. The Applicant submitted a letter from the United States Environmental Protection Agency dated August 6, 2013, authorizing the injection well. Because the predicted depletion to the Stillwater River is reduced by the injection of treated water back to the Madison Group Aquifer, the Department will add the following condition, agreed to by the Applicant on September 1, 2016.

WATER MEASUREMENT REQUIREMENT – OTHER INFORMATION

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE PRODUCTION AND INJECTION WELL DELIVERY LINES APPROVED BY THE DEPARTMENT. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE VOLUME OF ALL WATER DIVERTED AND INJECTED, INCLUDING THE PERIOD OF TIME. THE ANNUAL QUANTITY OF INJECTED WATER MUST EQUAL OR EXCEED 31% OF THE DIVERTED VOLUME. 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 WATER RESOURCES BILLINGS REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICES SO THEY ALWAYS OPERATE PROPERLY AND MEASURE VOLUME ACCURATELY.

CONCLUSIONS OF LAW

38. 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.

39. 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).

40. 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.

41. 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.

42. 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.

43. 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.

44. Simply asserting that an acknowledged reduction, however small, would not affect those with a prior right does not constitute the preponderance of the evidence necessary to sustain applicant’s burden of proof. Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11 (Court rejected applicant’s argument

that net depletion of .15 millimeters in the level of the Bitterroot River could not be adverse effect.); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pgs. 3-4 (Court rejected applicant's arguments that its net depletion (3 and 9 gpm, respectively to Black Slough and Beaverhead River) was "not an adverse effect because it's not measureable," and that the depletion "won't change how things are administered on the source.").

After calculating the projected depletion for the irrigation season, the District Court in Sitz Ranch v. DNRC explained:

Section 85-2-363(3)(d) MCA requires analysis whether net depletion will adversely affect prior appropriators. Many appropriators are those who use surface water. Thus, surface water must be analyzed to determine if there is a net depletion to that resource. Sitz's own evidence demonstrates that about 8 acre feet of water will be consumed each irrigation season. Both Sitz and any other irrigator would claim harm if a third party were allowed to remove 8 acre feet of water each season from the source upon which they rely.

Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pgs. 3-4.

45. Constant call is adverse effect. *In the Matter of Application for Beneficial Water Use Permit Nos. 56782-76H and 5830-76H by Bobby D. Cutler* (DNRC Final Order 1987); *In the Matter of Application for Beneficial Water Use Permit No. 80175-s76H by Tintzmen* (DNRC Final Order 1993); *In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson* (DNRC Final Order 1992)(applicant must show that at least in some years no legitimate call will be made): *In the Matter of Application for Beneficial Water Use Permit No. 76N 30010429 by Thompson River Lumber Company* (DNRC 2006).

46. Adverse effect not required to be measurable but must be calculable. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (DNRC permit denial affirmed; 3 gpm and 9 gpm depletion to surface water not addressed in legal availability or mitigation plan.); Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pg. 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 depletion from groundwater pumping); *In the Matter of Beneficial Water Use Permit No. 76N-30010429 by Thompson River Lumber Company* (DNRC Final Order 2006); see also Robert and Marlene Tackle v. DNRC et al., Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994). Artesian pressure is not protectable and a reduction by a junior appropriator is not considered an adverse effect. See In re Application No. 72948-G76L by Cross, (DNRC Final Order 1991); see also In re Application No. 75997-G76L by Carr, (DNRC Final Order 1991).

47. 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. (FOF 30 - 37)

Adequate Diversion

FINDINGS OF FACT

48. The proposed well will be approximately 1,385 feet deep and drilled at a 60 degree angle with the horizontal. It will be cased and grouted from the surface to approximately 20 feet into the Madison Group. The production interval will be approximately 500 feet of open borehole in the Mission Canyon Limestone member of the Madison Group. Preliminary specifications and requirements for public water supply demand that the well be drilled by a licensed well driller.

49. The pump in the well will be a submersible pump and motor equivalent to a Franklin SR series, 250 GTPM, 50HP, 15 stage pump (250SR50F66-1563) with the capacity to pump 274 GPM with 524 feet of total dynamic head. Power to the pump will be supplied by surface stationed diesel generators.

50. Water from the well will be pumped to a 55,000 gallon above ground storage tank at a rate regulated by water level in the tank. From the tank, water will be pumped to a 30-person dry/office, the portal and decline, the shop and wash bay and the water truck fill station.

51. Water for the dry/office will be routed to a treatment plant for disinfection before being used for drinking water, showers, toilets and sinks.

52. Water for the portal, decline, shop and wash bay will be pumped through 3-inch HDPE pipe to a clarified water tank in the water treatment plant. From the clarified water tank two

separate pipelines would carry water to the shop and wash bay (2-inch HDPE pipe) and underground for 24-hour mining operations (3-inch HDPE pipe).

53. Water will be pumped directly from the storage tank through a 4-inch pipeline to fill water trucks for dust suppression.

54. Approximately 31% of the water appropriated from the well will be treated to drinking water standards and injected back to the source aquifer.

55. Because the water will be used for public water supply at the portal and because water will be injected back to the aquifer, the Applicant must treat the water to drinking water standards and is subject to regulations of the United States Environmental Protection Agency and the Montana Department of Environmental Quality.

56. Diversions from the well will be measured using an in-line flow meter.

CONCLUSIONS OF LAW

57. 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.

58. 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.

59. Water wells must be constructed according to the laws, rules, and standards of the Board of Water Well Contractors to prevent contamination of the aquifer. *In the Matter of Application for Beneficial Water Use Permit No. 41I-105511 by Flying J Inc.* (DNRC Final Order 1999).

60. Information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies, based upon project complexity design by licensed engineer adequate. *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002).

61. 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 (FOF 48 - 56).

Beneficial Use

FINDINGS OF FACT

62. The Applicant proposes to use water for industrial and domestic uses. Industrial and domestic uses are recognized as beneficial under the Montana Water Use Act. The Applicant proposes to use 250 GPM up to 130 AF/YR for industrial use and 18 GPM up to 1 AF/YR for domestic use. The total proposed appropriation is 268 GPM up to 131 AF/YR.

63. Based on usage rates for similar mining operations in the Stillwater Mine, the Applicant needs 50 GPM for underground mining operations including drilling and washing down muck piles. The remaining 200 GPM is necessary for filling water trucks for dust suppression and washing equipment. Total estimated usage for mining operations is 130 AF/YR.

64. The domestic use will require 18 GPM to meet instantaneous flow rates based on the number of toilets, sinks, showers and drinking faucets. This flow rate is from Design of Small Water Systems, 2nd Edition, American Waterworks Association. Based on usage rates at existing Stillwater Mining Company facilities, the annual volume for domestic use will be 1.0 AF/YR.

CONCLUSIONS OF LAW

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

66. #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).

67. 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.

68. Applicant proposes to use water for industrial and domestic uses which are recognized beneficial uses. § 85-2-102(4), MCA. Applicant has proven by a preponderance of the evidence industrial and domestic uses are beneficial uses and that 268 GPM flow rate up to 131 AF of diverted volume of water requested is the amount needed to sustain the beneficial use. § 85-2-311(1)(d), MCA, (FOF 62 - 64)

Possessory Interest

FINDINGS OF FACT

69. Randy Weimer with Stillwater Mining Company signed the affidavit on the application form affirming the Applicant has 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.

CONCLUSIONS OF LAW

70. 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.

71. 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.

72. 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. (FOF 69)

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. 43C 30104560 should be **GRANTED**.

The Department determines the Applicant may divert groundwater, by means of an approximately 1385 foot deep well in the Madison Group Aquifer, from January 1 to December 31 at 268 GPM up to 131 AF, from a point in the SENESE Section 20 T5S R16E (PB 40), Stillwater County, for industrial and domestic use from January 1 to December 31. The place of use is located NWNE, NENW, SENW, SWNW Section 13, SENE, NESE, NWSE, NESW, NWSW Section 14, NESE, NWSE, NESW, NWSW, SWSW Section 15, SESE, SWSE Section 16, SWSE, SESW, SWSW, NESW, SENW, SWNE, NWNE Section 17, NENE, NWNE, SENE, NESE Section 20, NWNE, SENW, SWNW, NWNW, NWSW Section 21 T5S R16E, Stillwater County.

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

1. WATER MEASUREMENT REQUIREMENT – OTHER INFORMATION

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE PRODUCTION AND INJECTION WELL DELIVERY LINES

APPROVED BY THE DEPARTMENT. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE VOLUME OF ALL WATER DIVERTED AND INJECTED, INCLUDING THE PERIOD OF TIME. THE ANNUAL QUANTITY OF INJECTED WATER MUST EQUAL OR EXCEED 31% OF THE DIVERTED VOLUME. 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 WATER RESOURCES BILLINGS REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICES SO THEY ALWAYS OPERATE PROPERLY AND MEASURE 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 26th day of September, 2016.

/Original signed by Kimberly Overcast/
Kimberly Overcast, Manager
Billings Regional Office
Department of Natural Resources and Conservation