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

APPLICATION TO CHANGE WATER RIGHT
NO. 40C 30153043 BY MICHAEL GOFFENA,
DEBORAH GOFFENA, JANICE DENNEY
AND JUDY BOOGMAN

PRELIMINARY DETERMINATION TO
GRANT CHANGE

On September 9, 2021, Michael Goffena, Deborah Goffena, Janice Denney, and Judy Boogman (Applicant) submitted Application to Change An Existing Irrigation Water Right No. 40C 30153043 to change Statement of Claim No. 40C 204985-00 to the Lewistown Regional Office of the Department of Natural Resources and Conservation (Department or DNRC). The Department published receipt of the Application on its website and sent Applicant a deficiency letter under §85-2-302, Montana Code Annotated (MCA), on January 3, 2022. Applicant responded with information received January 18, 2022. The Application was determined to be correct and complete on March 8, 2022. An Environmental Assessment for this Application was completed and emailed on March 29, 2022.

INFORMATION

The Department considered the following information submitted by the Applicant.

Application as filed:
- Form 606 – Application To Change An Existing Irrigation Water Right, and attachments:
  - Maps of the existing and proposed project;
  - Water Commissioner records from 2017 - 2021.

Information Received after Application Filed:
- Applicant’s deficiency response received by the Department on January 18, 2022.

Information within the Department’s Possession/Knowledge
- Water right records, including the files for the Statement of Claim proposed to be changed in this matter and records of all water rights in the basin.
- 1948 Musselshell County Water Resources Survey materials, including field notes, aerial imagery, etc.
- USDA aerial photograph no. 178-224, dated 09/19/1979, owned by the Department and publicly-available.
• U.S. Geological Survey topographic maps and aerial photos owned by the Department and publicly-available.
• Environmental Assessment dated March 29, 2022.

The Department also routinely considers the following information. The following information is not included in the administrative file for this Application but is available upon request. Please contact the Lewistown Regional Office at 406-538-7459 to request copies of these documents.
  o Department Memorandum - Development of Standardized Methodologies to Determine Historic Diverted Volume, Sept. 2012.
  o Department Policy Memorandum on Return Flows, April 1, 2016.
  o Department Consumptive Use Methodology Memo, March 17, 2010

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, part 4, MCA).

**WATER RIGHTS TO BE CHANGED**

**FINDINGS OF FACT**

1. Applicant seeks to change Statement of Claim No. 40C 204985-00. The water right is for irrigation purposes from the Musselshell River. The proposed irrigated place of use is located 9.7 miles west south west of Musselshell, Montana. A table of the claimed elements of the water right follows:

Table 1: WATER RIGHT PROPOSED FOR CHANGE

<table>
<thead>
<tr>
<th>WR Number</th>
<th>Purpose</th>
<th>Flow Rate</th>
<th>Period of Use</th>
<th>Point of Diversion</th>
<th>Place of Use</th>
<th>Priority Date</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>40C 204985-00</td>
<td>Irrigation</td>
<td>11.14 CFS</td>
<td>3/1 – 11/30</td>
<td>W2 Sec 1, T8N, R27E, Musselshell County (pump)</td>
<td>S2S2SE Sec 35, T9N, R27E</td>
<td>Dec 14, 1904</td>
<td>10.0</td>
</tr>
</tbody>
</table>
CHANGE PROPOSAL

FINDINGS OF FACT

2. This change proposal includes moving the point of diversion for Applicant’s irrigation right. The diversion will change from a pump in Gov Lot 3 (W2) Section 1 T8N R27E to a pump site in the NESESE Section 35 T9N R27E, all in Musselshell County. The proposed pump site will convey up to 2.45 cubic feet per second (CFS) of water via a 15-inch pipeline to a 4-acre place of use in the SESESE Section 35. The flood water will then be applied to the field using 12-inch gated-pipe irrigation.

3. The Applicant leases the state land adjacent to their irrigated place of use and will also facilitate changing the point of diversion for Statement of Claim No. 40C 215290-00. This claim irrigates the adjacent state-owned acreage to the east of Applicant’s 4-acres of historical irrigation.

An overview map of the proposed project follows:
4. The Department is authorized to approve a change if the applicant meets its burden to prove the applicable § 85-2-402, MCA, criteria by a preponderance of the evidence. Matter of Royston, 249 Mont. 425, 429, 816 P.2d 1054, 1057 (1991); Hohenlohe v. DNRC, 2010 MT 203, ¶¶ 33, 35, and 75, 357 Mont. 438, 240 P.3d 628 (an applicant's burden to prove change criteria by a preponderance of evidence is “more probably than not.”); Town of Manhattan v. DNRC, 2012 MT 81, ¶8, 364 Mont. 450, 276 P.3d 920. Under this Preliminary Determination, the relevant change criteria in §85-2-402(2), MCA, are:

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:
(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.
(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.
(c) The proposed use of water is a beneficial use.
(d) 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 change involves 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. This subsection (2)(d) does not apply to: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

5. The evaluation of a proposed change in appropriation does not adjudicate the underlying right(s). The Department’s change process only addresses the water right holder’s ability to make a different use of that existing right. E.g., Hohenlohe, at ¶¶ 29-31; Town of Manhattan, at ¶8; In the Matter of Application to Change Appropriation Water Right No.41F-31227 by T-L Irrigation Company (DNRC Final Order 1991).
HISTORIC USE AND ADVERSE EFFECT

FINDINGS OF FACT - Historic Use

6. Water Right - The water right to be changed is Statement of Claim No. 40C 204985. The elements of historic use, as claimed or amended for adjudication purposes, are described above in Table 1, Finding of Fact No. 1.

7. Acres Irrigated and Place of Use for Statement of Claim No. 40C 204985 – A Water Resources Survey (WRS) was published for Musselshell County in 1948. Field notes were taken and irrigated parcels were recorded on aerial photos. These resources were reviewed by the Department to assess historic use.

The 1948 Musselshell County WRS supports five acres of historical irrigation on the Applicant's property. The irrigation appears to be part of a larger system that waters more acres on the state-owned property to the east. The WRS notes say that all land was irrigated from the Arkwright Ditch, now called the Goffena Pump Ditch. Applicant confirms that the five-acre portion of the place of use identified by the WRS was historically irrigated (pre-1973) by pumping water from the POD into the Goffena Pump Ditch and conveying it east and north through the ditch for approximately 2/3 of a mile to flood the place of use in the SESESE Section 35 T9N R27E. Department Technical Report.
8. The Department finds the historic maximum irrigated acreage to be 5 acres for Statement of Claim No. 40C 204985.

9. *Flow Rate for Statement of Claim No. 40C 204985* – The claimed flow rate was 5,000 gallons per minute (GPM) or 11.14 CFS, however the Applicant provided information to support a historical flow rate of 3,000 GPM or 6.69 CFS. This flow rate is based on the pre-1973 historical capacity of the pump used to supply water to the Goffena Pump Ditch. Water right records; Application; Department Technical Report.

10. *Historic Consumptive Volume* – Applicant proposes to use the Department’s methodology pursuant to ARM 36.12.1902(16) and DNRC’s consumptive use methodology memorandum updated March 17, 2010 to determine historical consumptive use for their historically flood irrigation acres. Pre-1973 irrigation consisted of a wild flood irrigation system gravity-fed by a ditch. The flood system was determined to be 25% efficient. Application; Department Technical Report.
11. **Statement of Claim No. 40C 204985 – 6.1 Acre-Feet (AF).** The historic consumptive use for the wild flood irrigation of 5 acres is equivalent to the Irrigation Water Requirement (IWR) for flood irrigation near Melstone of 24.22 inches (2.02 feet) multiplied by the Musselshell County Management factor of 50.0% for flood irrigation, plus estimated irrecoverable losses (such as non-crop consumption/evaporation). Irrecoverable losses of 1.0 AF were calculated by dividing the crop consumptive volume (5.05 AF) by the estimated on-farm efficiency (25%), multiplied by 5% \((5.05/0.25 \times 0.05 = 1.0 \text{ AF})\).

### Historic Flood Irrigation for 40C 204985 – Consumed Volume (HCV, including IL)

<table>
<thead>
<tr>
<th>Historic Consumptive Volume (HCV) Flood</th>
<th>Musselshell County Flood ET (Inches)</th>
<th>Musselshell County 1964-1973 Management Factor (Percent)</th>
<th>Historic Acres</th>
<th>HCV AF (minus IL)</th>
<th>On-farm Efficiency</th>
<th>Field Application AF</th>
<th>Historic Irrecoverable Losses (IL) 5%:</th>
<th>HCV AF (Inc IL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.22</td>
<td>50.0%</td>
<td>5.0</td>
<td>5.05</td>
<td>25%</td>
<td>20.2</td>
<td>1.0</td>
<td>6.1</td>
<td></td>
</tr>
</tbody>
</table>

12. **Historic Diverted Volume** – Historic diverted volume is calculated using Department methodology pursuant to ARM 36.12.1902(10) and the DNRC’s Technical Memorandum re: Development of standardized methodologies to determine Historic Diverted Volume, dated September 13, 2012. The formula to calculate the Historic Diverted Volume is calculated by dividing the Historic Consumptive Use by the irrigation efficiency and adding in any conveyance losses to the irrigated field. Memorandum - Development of Standardized Methodologies to Determine Historic Diverted Volume, Sept. 2012.

The Department estimates diverted volume based on a September 2012 memorandum from Mike Roberts and James Heffner, DNRC Hydrologists, which directs a standardized methodology for determining such volume.\(^1\) Diverted volume is calculated by the following: crop consumptive volume (see above) divided by the on-farm efficiency (percent of the water delivered to the field that is used by the crop), plus conveyance losses (ditch seepage, vegetation losses and ditch evaporation). Input parameters to the following table were based on the aforementioned memorandum, NRCS Web Soil Survey, ArcMap measurements and information from the Applicant. The diverted volume for 40C 204985 is estimated to have approximately 17.3 AF of conveyance loss for a total diversion of 37.5 AF per season.

---

\(^1\) Development of Standardized Methodologies to Determine Historic Diverted Volume, September 13, 2012
**Historic Flood Irrigation for 40C 204985 – Diverted Volume (Total HDV)**

<table>
<thead>
<tr>
<th>Historic Diverted Volume (HDV)</th>
<th>HCV AF (minus IL)</th>
<th>On-farm Efficiency</th>
<th>Seasonal Conveyance Loss Volume (seeage loss + vegetation loss + ditch evaporation)</th>
<th>Total HDV (AF)</th>
<th>Seepage Loss (/43560)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5.05</td>
<td>25%</td>
<td>17.3</td>
<td>37.5</td>
<td></td>
</tr>
</tbody>
</table>

**Seepage Loss:**
- Ditch Wetted Perimeter (Feet)
- Ditch Length (Feet)
- Ditch Loss Rate (ft3/ft2/day)
- Days Irrigated
- Seepage Loss (/43560)

|                      | 5.5              | 3357               | 1.2                                                                             | 30            | 15.3                 |

**Vegetation Loss:**
- % loss/mile
- Est. Flow Rate (CFS)
- Days Irrigated
- ditch length (miles)
- Vegetation Loss (*2)

|                      | 0.0075           | 6.69               | 30                                                                              | 0.6           | 1.9                  |

**Ditch Evaporation:**
- Ditch Width (Feet)
- Ditch Length (Feet)
- Annual Evaporation (Potts)
- Period Adjusted Evaporation
- Ditch Evaporation (/43560)

|                      | 3                | 3357               | 3.47                                                                            | 0.50          | 0.11                 |

**Statement of Claim No. 40C 204985 – 37.5 AF.** The Montana Water Court adjudicated Basin 40C and did not decree a specific volume for this right. The Applicant provided water commissioner records from 2017 through 2021, however they do not account for any water used by the Applicant’s water right from the Goffena Pump Ditch. The records only reflect diversions of the water used from the Kreuger-Spendiff headgate for the state-owned water right used for irrigation to the east (Statement of Claim 40C 215290-00). As described, this water right was generally used as part of a much bigger irrigation system (53 acres). The 5 acres of irrigation associated with this claim are located at the start of a gated-pipe system that also irrigates state lands to the east. The Applicant did not submit a Historic Use Addendum for use by the Department to determine historical use, they elected to use the standard methodology set out in ARM 36.12.1902.

13. **Historical Period of Diversion/Use** - The period of diversion and use for Statement of Claim No. 40C 204985 was claimed by Robert Goffena as May 1 to October 1. The period of use was amended and accepted by the Water Court as March 1 to November 30. Applicant does not have pre-1973 records of diversions, however they provided evidence showing the typical historical
irrigation schedule consisted of diverting water three times a year for five or six days. They generally diverted during the months of May, July, and August if water was available, however there have been good water years that they were able to divert irrigation water as early as March 15 and late as November 15. The historic place of use for this claim is located in Climatic Area #1, the area of highest consumptive use. The dates provided by the Applicant for the right being changed are within the standard date range.

14. Historic Use of Statement of Claim No. 40C 204985 – The following table displays the Department’s findings for the historical use (flood irrigation) of the water rights to be changed.

<table>
<thead>
<tr>
<th>Water Right No.</th>
<th>Flow Rate (CFS)</th>
<th>Diverted Volume (AF)</th>
<th>Consumed Volume (AF)</th>
<th>Period of Use</th>
<th>Place of Use</th>
<th>Priority Date</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>40C 204985</td>
<td>6.69</td>
<td>37.5</td>
<td>6.1</td>
<td>Mar 15 to Nov 15</td>
<td>5 Acres</td>
<td>December 14, 1904</td>
<td>Musselshell River</td>
</tr>
</tbody>
</table>

**FINDINGS OF FACT – Adverse Effect**

15. General - Applicant proposes to change their point of diversion (POD) for Statement of Claim No. 40C 204985 from a pump site in the W2 Section 1 T8N R27E to a pump site in the NESESE Section 35 T19N R27E, which is approximately 0.7 miles downstream. Conveyance to the place of use will utilize a 15-inch pipeline from a 2.45 CFScapacity pump to irrigate with 12-inch gated pipe. Applicant’s Deficiency Responses; Department Technical Report.

16. Adverse Effect Plan - The Applicant’s plan to prevent adverse effects is to measure its diversions with an in-line flow meter to ensure there is no increase in the historical flow rate or consumed volume. Applicant will be required to follow the law of priorities on the stream by complying with distribution as directed by water commissioners under District Court Order. Application; Applicant’s Deficiency Responses; Department Technical Report.

17. Flow Rate – The historical flow rate of the flood irrigation system associated with the water right proposed for change is based on the pre-1973 pump capacity of 3,000 GPM or 6.69 CFS. The flow rate of the proposed pump supplying the gated-pipe system under future appropriations is 2.45 CFS. The proposed change will result in a reduction in diverted flow rate of 4.24 CFS. Application; Department Technical Report.

18. Diverted and Consumed Volume – The Department calculated historic volume using its administrative rules and standard methodology. Department Memorandum - Development of
standardized methodologies to determine Historic Diverted Volume, Sept. 2012. Based on elimination of conveyance losses and the improved efficiency of the proposed gated-pipe irrigation system, the proposed diverted volume calculated for the gated-pipe operation is 11.1 AF.

### Proposed Gated-Pipe Irrigation -

<table>
<thead>
<tr>
<th>Proposed Consume d Volume (PCV)</th>
<th>Musselsh ell County Flood ET (Inches)</th>
<th>Musselshell County 1964-1973 Managemen t Factor (Percent)</th>
<th>PCV AF (minu s IL)</th>
<th>On-farm Efficiency</th>
<th>Field Application AF</th>
<th>Proposed Irrecoverabl e Losses (IL) 10%:</th>
<th>PCV AF (Includin g IL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.22</td>
<td>50.0%</td>
<td>5.6</td>
<td>50%</td>
<td>11.1</td>
<td>0.6</td>
<td>6.1</td>
<td></td>
</tr>
</tbody>
</table>

The post-change consumed volume is estimated to remain the same as historically, or 6.1 AF. Under the plan for future use, diverted volume will be reduced by 26.4 AF (37.5 AF – 11.1 AF = 26.4 AF), and there will be no increase in water consumption. ARM 36.12.1902; Application; Department Technical Report.

19. **Period of Diversion/Use** - The period of diversion/use will remain consistent with the climatic Area 1 guidelines of March 15 to November 15. The Department will require Applicant to record appropriations, including the period of diversion/use, and submit annual records annually to the DNRC’s Lewistown Regional Water Resources Office. Application; Conditions Section.

20. **Return Flows** - The change from the historical irrigation method to a more-efficient gated-pipe system will result in an alteration of return flows. Less water will be diverted and applied under the proposed flood system than the historical flood irrigation. The proposed gated-pipe will be more effective in managing water and the decreased field application with no conveyance loss with result in less return flows than have occurred historically.

21. According to the Department Policy Memorandum on Return Flows, under the changed conditions detailed, return flows will only be reviewed under a limited adverse effect analysis absent a valid objection. The policy requires that return flows will enter back into the source prior to or at the location of the next appropriator or a portion of the historically diverted water will be left instream to be available during the period of diversion either below the point of diversion or where return flows accrued to the source. In this proposed change, both criteria are true. Department Policy Memorandum on Return Flows, April 1, 2016.
22. The amount of water consumed under the Applicant’s irrigation operation is not proposed to change, however some elements on the water rights are changing. The point of diversion and place of use for Statement of Claim No. 40C 204985 will be modified, but since the proposed place of use is within the historical footprint, the location of the reduced return flows will generally be the same.

23. The following water rights are considered for adverse effect because they either share the historic point of diversion or have points of diversion in the reach of the Musselshell River in the same general legal description as Applicant’s pump site.

<table>
<thead>
<tr>
<th>Water Right Number</th>
<th>Owners</th>
<th>Priority Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>40C 215290-00</td>
<td>MONTANA STATE BOARD OF LAND COMMISSIONERS</td>
<td>JUNE 30, 1973</td>
</tr>
<tr>
<td>40C 209633-00</td>
<td>KITE CATTLE CO</td>
<td>MAY 31, 1904</td>
</tr>
<tr>
<td>40C 204052-00</td>
<td>R &amp; S GOFFENA RANCH INC</td>
<td>DECEMBER 31, 1912</td>
</tr>
<tr>
<td>40C 205073-00</td>
<td>BIG WALL LAND CO, HEART S CATTLE CO and R &amp; S GOFFENA RANCH INC</td>
<td>MAY 31, 1904</td>
</tr>
<tr>
<td>40C 204488-00</td>
<td>WILBUR A and SUSAN E GOFFENA</td>
<td>MAY 31, 1904</td>
</tr>
<tr>
<td>40C 7638-00</td>
<td>KITE CATTLE CO</td>
<td>MARCH 4, 1976</td>
</tr>
<tr>
<td>40C 33755-00</td>
<td>RUTLAND LLC</td>
<td>APRIL 20, 1981</td>
</tr>
<tr>
<td>40C 201651-00</td>
<td>FORTY FIVE HOLDINGS LLC</td>
<td>JUNE 2, 1898</td>
</tr>
<tr>
<td>40C 201654-00</td>
<td>RUTLAND LLC</td>
<td>NOVEMBER 4, 1903</td>
</tr>
<tr>
<td>40C 23799-00</td>
<td>MARK C RUTLEDGE</td>
<td>JULY 24, 1979</td>
</tr>
<tr>
<td>40C 204053-00</td>
<td>BIG WALL LAND CO</td>
<td>JANUARY 15, 1912</td>
</tr>
<tr>
<td>40C 30008849</td>
<td>MONTANA, STATE OF DEPT OF FISH WILDLIFE &amp; PARKS</td>
<td>JULY 1, 1985</td>
</tr>
</tbody>
</table>

MT FWP has an instream Fishery water reservation for 80 CFS. Provisional Permit Nos. 40C 23799 and 40C 33755, Statement of Claim Nos. 40C 201651, 40C 201654, 40C 204053 and 40C 215290-00 all appear to have a pump diversion in the same legal description as the Goffena Pump Ditch, the POD being changed in this proceeding. Provisional Permit No. 40C 7638 and Statement of Claim Nos. 40C 204052, 40C 204488, 40C 205073, 40C 209633 and 40C 215290-00 all still have the Krueger-Spendiff Ditch headgate as one of their PODs, however they have
multiple PODs and only Statement of Claim No. 40C 204052 uses the headgate and ditch as their sole diversion. The owner of 40C 204052 has recently discussed a POD change with the Department to move off the ditch and is in the process of splitting Statement of Claim No. 40C 205073 prior to submitting the change application.

24. Under the Applicant’s proposal, less water will be diverted from the source than was historically diverted under the pre-1973 flood irrigation system, and no more water will be consumed than was historically. Water not diverted by the pump and gated-pipe irrigation will remain instream and be available for appropriation by other water users. Application; Department Technical Report.

25. As part of its plan to prevent adverse effects, the Applicant will measure appropriations and comply with the District Court-enforced water distribution project on the Musselshell River. Accordingly, the Department imposes a condition of water measurement, including recordation of appropriations, in this Preliminary Determination. Application; Applicant’s Deficiency Responses.

26. Under the conditions (listed below) imposed in this determination, the Department finds the proposed change will not adversely affect the use of existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued.

**CONDITIONS**

IN THE MATTER OF APPLICATION TO CHANGE A WATER RIGHT NO. 40C 30153043 THE DEPARTMENT FINDS THE FOLLOWING CONDITIONS ARE NECESSARY TO MEET THE STATUTORY CRITERIA FOR CHANGES OF WATER RIGHT SET FORTH AT § 85-2-402, MCA AND ALLOW FOR ISSUANCE OF THE CHANGE AUTHORIZATION:

**WATER MEASUREMENT RECORDS REQUIRED**

THE APPROPRIATOR SHALL INSTALL A MEASURING DEVICE IN THE CONVEYANCE FACILITY AS NEAR AS PRACTICAL TO THE PUMPSITE, IN ORDER TO MEASURE APPROPRIATIONS. THE TYPE AND LOCATION OF THE DEVICE MUST BE APPROVED BY THE DEPARTMENT. THE APPROPRIATOR SHALL KEEP A WRITTEN RECORD OF THE FLOW RATE AND VOLUME OF WATER DIVERTED, INCLUDING THE PERIOD OF TIME OF DIVERSION. RECORDS MUST ACCOUNT SEPARATELY FOR ANY APPROPRIATIONS UNDER THIS AUTHORIZATION FROM APPROPRIATIONS UNDER ANY OTHER WATER RIGHT USING THE SAME DIVERSION WORKS AND CONVEYANCE FACILITY. RECORDS SHALL BE SUBMITTED BY DECEMBER 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS AS REQUIRED BY THESE CONDITIONS MAY BE CAUSE FOR REVOCATION OF THE CHANGE. THE RECORDS MUST BE SENT TO THE LEWISTOWN WATER RESOURCES REGIONAL OFFICE AT THE ADDRESS BELOW. THE APPROPRIATOR SHALL
MAINTAIN THE MEASURING/MONITORING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE ACCURATELY DURING PERIODS OF APPROPRIATION.

SUBMIT RECORDS TO:
LEWISTOWN WATER RESOURCES OFFICE
613 NE MAIN
LEWISTOWN, MT 59457
PHONE: 406-538-7459

BENEFICIAL USE

FINDINGS OF FACT

27. Applicant proposes to use water for irrigation of agricultural crops. Irrigation is identified as a beneficial use of water in § 85-2-102(4)(a), MCA.

28. System specifications for the proposed appropriation were provided by the Applicant and include a flow rate diversion of up to 2.45 CFS. The new diverted volume for the four acres of gated-pipe irrigation is up to 11.1 AF. The proposed flow rate of 2.45 CFS applied on four acres results in a very large per-acre allocation, however the gated-pipe irrigation also irrigates approximately 35 acres of adjacent state land under Statement of Claim No. 40C 215290-00. The proposed diverted volume is 11.1 AF for four acres, or 2.78 AF per acre. The per-acre allocation is reasonable for a graded 50% efficient gated-pipe irrigation system in Montana.

29. The consumed volume of water that will benefit crops under the gated-pipe system will not change. The diverted volume is based on administrative rule and industry-referenced gated-pipe efficiency. Application; ARM 36.12.1902(16); Department Technical Report.

30. Applicant intends on growing agricultural crops. The Department finds the proposed flow rate and volume to be a beneficial use of water.

ADEQUATE DIVERSION

FINDINGS OF FACT

31. Applicant’s water rights will be appropriated from the Musselshell River via a pump site located in the NESESE Sec 35, T9N, R27E. A 15-inch buried mainline will convey water to the gated-pipe irrigation, which is a 12-inch system. The proposed flow rate is based on pump capacity, or 2.45 CFS. Application; Department Technical Report.

32. The Department finds the proposed means of diversion, new conveyance method and operation of the new diversion works are adequate for the proposed beneficial use.
POSSESSORY INTEREST

FINDINGS OF FACT

33. The Applicant signed the affidavit on the application form affirming they have 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. Application; Applicant’s Deficiency Responses.

CONCLUSIONS OF LAW

HISTORIC USE AND ADVERSE EFFECT

34. Montana’s change statute codifies the fundamental principles of the Prior Appropriation Doctrine. Sections 85-2-401 and -402(1)(a), MCA, authorize changes to existing water rights, permits, and water reservations subject to the fundamental tenet of Montana water law that one may change only that to which he or she has the right based upon beneficial use. A change to an existing water right may not expand the consumptive use of the underlying right or remove the well-established limit of the appropriator’s right to water actually taken and beneficially used. An increase in consumptive use constitutes a new appropriation and is subject to the new water use permit requirements of the MWUA. McDonald v. State, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986)(beneficial use constitutes the basis, measure, and limit of a water right); Featherman v. Hennessy, 43 Mont. 310, 316-17, 115 P. 983, 986 (1911)(increased consumption associated with expanded use of underlying right amounted to new appropriation rather than change in use); Quigley v. McIntosh, 110 Mont. 495, 103 P.2d 1067, 1072-74 (1940)(appropriator may not expand a water right through the guise of a change – expanded use constitutes a new use with a new priority date junior to intervening water uses); Allen v. Petrick, 69 Mont. 373, 222 P. 451(1924)("quantity of water which may be claimed lawfully under a prior appropriation is limited to that quantity within the amount claimed which the appropriator has needed, and which within a reasonable time he has actually and economically applied to a beneficial use. . . . it may be said that the principle of beneficial use is the one of paramount importance . . . The appropriator does not own the water. He has a right of ownership in its use only"); Town of Manhattan, at ¶ 10 (an appropriator’s right only attaches to the amount of water actually taken and beneficially applied); Town of Manhattan v. DNRC, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, Order Re Petition for Judicial Review, Pg. 9 (2011)(the rule that one may change only that to which it has a right is a fundamental tenet of Montana water law and imperative to MWUA change provisions); In the Matter of Application to Change a Water Right No. 41I 30002512 by Brewer

35. Sections 85-2-401(1) and -402(2)(a), MCA, codify the prior appropriation principles that Montana appropriators have a vested right to maintain surface and ground water conditions substantially as they existed at the time of their appropriation; subsequent appropriators may insist that prior appropriators confine their use to what was actually appropriated or necessary for their originally intended purpose of use; and, an appropriator may not change or alter its use in a manner that adversely affects another water user. Spokane Ranch & Water Co. v. Beatty, 37 Mont. 342, 96 P. 727, 731 (1908); Quigley, 110 Mont. at 505-11, 103 P.2d at 1072-74; Matter of Royston, 249 Mont. at 429, 816 P.2d at 1057; Hohenlohe, at ¶¶43-45. 3

36. The cornerstone of evaluating potential adverse effect to other appropriators is the determination of the “historic use” of the water right being changed. Town of Manhattan, at ¶10 (recognizing that the Department’s obligation to ensure that change will not adversely affect other water rights requires analysis of the actual historic amount, pattern, and means of water use). A change applicant must prove the extent and pattern of use for the underlying right proposed for change through evidence of the historic diverted amount, consumed amount, place of use, pattern of use, and return flow because a statement of claim, permit, or decree may not include the beneficial use information necessary to evaluate the amount of water available for change or potential for adverse effect. 4 A comparative analysis of the historic use of the water right to the proposed change in use is necessary to prove the change will not result in expansion of the original right, or adversely affect water users who are entitled to rely upon maintenance of conditions on the source of supply for their water rights. Quigley, 103 P.2d at 1072-75 (it is necessary to ascertain historic use of a decreed water right to determine whether a change in use

2 DNRC decisions are available at:
3 See also Holmstrom Land Co., Inc., v. Newlan Creek Water District, 185 Mont. 409, 605 P.2d 1060 (1979); Lokowich v. Helena, 46 Mont. 575, 129 P. 1063(1913); Thompson v. Harvey, 164 Mont. 133, 519 P.2d 963 (1974)(plaintiff could not change his diversion to a point upstream of the defendants because of the injury resulting to the defendants); McIntosh v. Graveley, 159 Mont. 72, 495 P.2d 186 (1972)(appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion); Head v. Hale, 38 Mont. 302, 100 P. 222 (1909)(successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes); and, Gassert v. Noyes, 18 Mont. 216, 44 P. 959(1896)(change in place of use was unlawful where reduced the amount of water in the source of supply available which was subject to plaintiff’s subsequent right).
4 A claim only constitutes prima facie evidence for the purposes of the adjudication under § 85-2-221, MCA. The claim does not constitute prima facie evidence of historical use in a change proceeding under §85-2-402, MCA. For example, most water rights decreed for irrigation are not decreed with a volume and provide limited evidence of actual historic beneficial use. §85-2-234, MCA
expands the underlying right to the detriment of other water user because a decree only provides a limited description of the right); Royston, 249 Mont. at 431-32, 816 P.2d at 1059-60 (record could not sustain a conclusion of no adverse effect because the applicant failed to provide the Department with evidence of the historic diverted volume, consumption, and return flow); Hohenlohe, at ¶44-45; Town of Manhattan v. DNRC, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, Order Re Petition for Judicial Review, Pgs. 11-12 (proof of historic use is required even when the right has been decreed because the decreed flow rate or volume establishes the maximum appropriation that may be diverted, and may exceed the historical pattern of use, amount diverted or amount consumed through actual use); Matter of Application For Beneficial Water Use Permit By City of Bozeman, Memorandum, Pgs. 8-22 (Adopted by DNRC Final Order January 9,1985)(evidence of historic use must be compared to the proposed change in use to give effect to the implied limitations read into every decreed right that an appropriator has no right to expand his appropriation or change his use to the detriment of juniors). 5

37. An applicant must also analyze the extent to which a proposed change may alter historic return flows for purposes of establishing that the proposed change will not result in adverse effect. The requisite return flow analysis reflects the fundamental tenant of Montana water law that once water leaves the control of the original appropriator, the original appropriator has no right to its

5 Other western states likewise rely upon the doctrine of historic use as a critical component in evaluating changes in appropriation rights for expansion and adverse effect: Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy District, 717 P.2d 955, 959 (Colo. 1986)(“[O]nce an appropriator exercises his or her privilege to change a water right … the appropriator runs a real risk of requantification of the water right based on actual historical consumptive use. In such a change proceeding a junior water right … which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historic use of the right.”); Santa Fe Trail Ranches Property Owners Ass’n v. Simpson, 990 P.2d 46, 55-57 (Colo.,1999); Farmers Reservoir and Irr. Co. v. City of Golden, 44 P.3d 241, 245 (Colo. 2002)(“We [Colorado Supreme Court] have stated time and again that the need for security and predictability in the prior appropriation system dictates that holders of vested water rights are entitled to the continuation of stream conditions as they existed at the time they first made their appropriation); Application for Water Rights in Rio Grande County, 53 P.3d 1165, 1170 (Colo. 2002); Wyo. Stat. § 41-3-104 (When an owner of a water right wishes to change a water right … he shall file a petition requesting permission to make such a change …. The change … may be allowed provided that the quantity of water transferred … shall not exceed the amount of water historically diverted under the existing use, nor increase the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators.); Basin Elec. Power Co-op. v. State Bd. of Control, 578 P.2d 557, 564 -566 (Wyo,1978) (a water right holder may not effect a change of use transferring more water than he had historically consumptively used; regardless of the lack of injury to other appropriators, the amount of water historically diverted under the existing use, the historic rate of diversion under the existing use, the historic amount consumptively used under the existing use, and the historic amount of return flow must be considered.)
use and the water is subject to appropriation by others. E.g., Hohenlohe, at ¶44; Rock Creek Ditch & Flume Co. v. Miller, 93 Mont. 248, 17 P.2d 1074, 1077 (1933); Newton v. Weiler, 87 Mont. 164, 286 P. 133(1930); Popham v. Holloron, 84 Mont. 442, 275 P. 1099, 1102 (1929); Galiger v. McNulty, 80 Mont. 339, 260 P. 401 (1927); Head v. Hale, 38 Mont. 302, 100 P. 222 (1909); Spokane Ranch & Water Co., 37 Mont. at 351-52, 96 P. at 731; Hidden Hollow Ranch v. Fields, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185; In the Matter of Application for Change Authorization No. G(W)028708-411 by Hedrich/Straugh/Ringer, DNRC Final Order (Dec. 13, 1991); In the Matter of Application for Change Authorization No. G(W)008323-G76l By Starkel/Koester, DNRC Final Order (Apr. 1, 1992); In the Matter of Application to Change a Water Right No. 41L30002512 by Brewer Land Co., LLC, DNRC Proposal For Decision and Final Order (2004); Admin. R.M. 36.12.101(56)(Return flow - that part of a diverted flow which is not consumed by the appropriator and returns underground to its original source or another source of water - is not part of a water right and is subject to appropriation by subsequent water users).

38. In Royston, the Montana Supreme Court confirmed that an applicant is required to prove lack of adverse effect through comparison of the proposed change to the historic use, historic consumption, and historic return flows of the original right. 249 Mont. at 431, 816 P.2d at 1059-60. More recently, the Montana Supreme Court explained the relationship between the fundamental principles of historic beneficial use, return flow, and the rights of subsequent appropriators as they relate to the adverse effect analysis in a change proceeding in the following manner:

The question of adverse effect under §§ 85-2-402(2) and -408(3), MCA, implicates return flows. A change in the amount of return flow, or to the hydrogeologic pattern of return flow, has the potential to affect adversely downstream water rights. There consequently exists an inextricable link between the "amount historically consumed" and the water that re-enters the stream as return flow. . . . An appropriator historically has been entitled to the greatest quantity of water he can put to use. The requirement that the use be both beneficial and reasonable, however, proscribes this tenet. This limitation springs from a fundamental tenet of western water law-that an appropriator has a right only to that amount of water historically put to beneficial use-developed in concert with the rationale that each subsequent appropriator "is entitled to have the water flow in the same manner as when he located," and the appropriator may insist that prior appropriators do not

---

6 The Montana Supreme Court recently recognized the fundamental nature of return flows to Montana’s water sources in addressing whether the Mitchell Slough was a perennial flowing stream, given the large amount of irrigation return flow which feeds the stream. The Court acknowledged that the Mitchell’s flows are fed by irrigation return flows available for appropriation. Bitterroot River Protective Ass’n, Inc. v. Bitterroot Conservation Dist. 2008 MT 377, ¶¶ 22, 31, 43, 346 Mont. 508, ¶ 22, 31,43, 198 P.3d 219, ¶ 22, 31,43(citing Hidden Hollow Ranch v. Fields, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185).
affect adversely his rights.

This fundamental rule of Montana water law has dictated the Department’s determinations in numerous prior change proceedings. The Department claims that historic consumptive use, as quantified in part by return flow analysis, represents a key element of proving historic beneficial use.

We do not dispute this interrelationship between historic consumptive use, return flow, and the amount of water to which an appropriator is entitled as limited by his past beneficial use.

Hohenlohe, at ¶¶ 42-45 (internal citations omitted).

39. The Department’s rules reflect the above fundamental principles of Montana water law and are designed to itemize the type evidence and analysis required for an applicant to meet its burden of proof. Admin.R.M. 36.12.1901 through 1903. These rules forth specific evidence and analysis required to establish the parameters of historic use of the water right being changed. Admin.R.M. 36.12.1901 and 1902. The rules also outline the analysis required to establish a lack of adverse effect based upon a comparison of historic use of the water rights being changed to the proposed use under the changed conditions along with evaluation of the potential impacts of the change on other water users caused by changes in the amount, timing, or location of historic diversions and return flows. Admin.R.M. 36.12.1901 and 1903.

40. Applicant seeks to change existing water rights represented by its Water Right Claims. The “existing water rights” in this case are those as they existed prior to July 1, 1973, because with limited exception, no changes could have been made to those rights after that date without the Department’s approval. Analysis of adverse effect in a change to an “existing water right” requires evaluation of what the water right looked like and how it was exercised prior to July 1, 1973. In McDonald v. State, the Montana Supreme Court explained:

The foregoing cases and many others serve to illustrate that what is preserved to owners of appropriated or decreed water rights by the provision of the 1972 Constitution is what the law has always contemplated in this state as the extent of a water right: such amount of water as, by pattern of use and means of use, the owners or their predecessors put to beneficial use. . . . the Water Use Act contemplates that all water rights, regardless of prior statements or claims as to amount, must nevertheless, to be recognized, pass the test of historical, unabandoned beneficial use. . . . To that extent only the 1972 constitutional recognition of water rights is effective and will be sustained.


42. While evidence may be provided that a particular parcel was irrigated, the actual amount of water historically diverted and consumed is critical. *E.g.*, *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, DNRC Proposal for Decision adopted by Final Order (2005). The Department cannot assume that a parcel received the full duty of water or that it received sufficient water to constitute full service irrigation for optimum plant growth. Even when it seems clear that no other rights could be affected solely by a particular change in the location of diversion, it is essential that the change also not enlarge an existing right. *See MacDonald*, 220 Mont. at 529, 722 P.2d at 604; *Featherman*, 43 Mont. at 316-17, 115 P. at 986; *Trail's End Ranch, L.L.C. v. Colorado Div. of Water Resources* 91 P.3d 1058, 1063 (Colo., 2004).

43. The Department has adopted a rule providing for the calculation of historic consumptive use where the Applicant proves by a preponderance of the evidence that the acreage was historically irrigated. Admin. R. M. 36.12.1902 (16). In the alternative an Applicant may present its own evidence of historic beneficial use. In this case Applicant has elected to proceed under Admin. R.M. 36.12.1902. (FOF Nos. 13-15).

44. If an applicant seeks more than the historic consumptive use as calculated by Admin.R.M. 36.12.1902 (16), the applicant bears the burden of proof to demonstrate the amount of historic consumptive use by a preponderance of the evidence. The actual historic use of water could be less than the optimum utilization represented by the calculated duty of water in any particular case. *E.g.*, *Application for Water Rights in Rio Grande County* 53 P.3d 1165 (Colo., 2002) (historical use must be quantified to ensure no enlargement); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, supra; *Orr v. Arapahoe Water and Sanitation Dist.* 753 P.2d 1217, 1223 -1224 (Colo., 1988)(historical use of a water right could
very well be less than the duty of water); Weibert v. Rothe Bros., Inc., 200 Colo. 310, 317, 618 P.2d 1367, 1371 - 1372 (Colo. 1980) (historical use could be less than the optimum utilization “duty of water”).

45. Based upon the evidence, the Applicant has proven by a preponderance of the evidence the historic use of Statement of Claim No. 40C 204985. The historic flow rate is 6.69 CFS and the historic diverted volume is 37.5 AF. The estimated historic consumptive use is 6.1 AF. (FOF Nos. 6-15).

46. Based upon the comparative analysis of historic water use and planned use under the proposed change, the Applicant has proven that the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued. §85-2-402(2)(b), MCA. (FOF Nos. 16-27).

**BENEFICIAL USE**

47. A change applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. §§85-2-102(4) and -402(2)(c), MCA. Beneficial use is and has always been the hallmark of a valid Montana water right: “[T]he amount actually needed for beneficial use within the appropriation will be the basis, measure, and the limit of all water rights in Montana . . .” McDonald, 220 Mont. at 532, 722 P.2d at 606. The analysis of the beneficial use criterion is the same for change authorizations under §85-2-402, MCA, and new beneficial permits under §85-2-311, MCA. Admin.R.M. 36.12.1801. The amount of water that may be authorized for change 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 (2003) (affirmed on other grounds, 2005 MT 60, 326 Mont. 241, 108 P.3d 518); Worden v. Alexander, 108 Mont. 208, 90 P.2d 160 (1939); Allen v. Petrick, 69 Mont. 373, 222 P. 451(1924); Sitz Ranch v. DNRC, DV-10-13390, Montana Fifth Judicial District Court, Order Affirming DNRC Decision, Pg. 3 (2011)(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); Toohey v. Campbell, 24 Mont. 13, 60 P. 396 (1900)(“The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses. He is restricted in the
amount that he can appropriate to the quantity needed for such beneficial purposes.”); §85-2-312(1)(a), MCA (DNRC is statutorily prohibited from issuing a permit for more water than can be beneficially used).

48. Applicant proposes to use water for irrigation which is a recognized beneficial use. §85-2-102(4), MCA. Applicant has proven by a preponderance of the evidence that water use associated with 40C 204985, including a flow rate of 2.45 CFS and diverted volume of 11.1 AF, are the amounts needed to sustain the beneficial use and are within the standards set by DNRC Rule and other standards. §85-2-402(2)(c), MCA (FOF Nos. 28-31).

**ADEQUATE MEANS OF DIVERSION**

49. Pursuant to §85-2-402 (2)(b), MCA, the Applicant must prove by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. This codifies the prior appropriation principle that the means of diversion must be reasonably effective for the contemplated use and may not result in a waste of the resource. Crowley v. 6th Judicial District Court, 108 Mont. 89, 88 P.2d 23 (1939); In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC (DNRC Final Order 2002)(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).

50. Pursuant to §85-2-402 (2)(b), MCA, Applicant has proven by a preponderance of the evidence that the proposed means of diversion, means of conveyance, construction, and operation of the new diversion works are adequate for the proposed beneficial use. (FOF Nos. 32-34).

**POSSESSORY INTEREST**

51. Pursuant to §85-2-402(2)(d), MCA, the 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. See also Admin.R.M. 36.12.1802

52. 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. (FOF No. 35).
Preliminary Determination to Grant
Application to Change Water Right No. 40C 30153043

Preliminary Determination

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that Application to Change Water Right No. 40C 30153043 should be GRANTED subject to the following.

The Appropriator is authorized to change a point of diversion. The point of diversion for Statement of Claim No. 40C 204985 is authorized to move approximately 0.7 miles downstream from a pump in the W2 Section 1, T8N, R27E, to a pump site in the NESESE Section 35 T9N R27E. The place of use for Statement of Claim No. 40C 204985 will be reduced to 4 acres of gated-pipe irrigation in the SESESE Section 35 T9N R27E, all in Musselshell County.

The flow rate for the proposed system is 2.45 CFS, with an associated consumed volume of up to 11.1 AF. The period of diversion/use for the claim is March 15 to November 15. Appropriations must be measured and records kept and reported to the Department as described in the Conditions section of this Preliminary Determination.

Conditions

In the matter of application to change a Water Right No. 40C 30153043 the Department finds the following conditions are necessary to meet the statutory criteria for changes of water right set forth at § 85-2-402, MCA and allow for issuance of the change authorization:

**WATER MEASUREMENT RECORDS REQUIRED**

1. The Appropriator shall install a measuring device in the conveyance facility as near as practical to the pumpsite, in order to measure appropriations. The type and location of the device must be approved by the Department. The Appropriator shall keep a written record of the flow rate and volume of water diverted, including the period of time of diversion. Records must account separately for any appropriations under this authorization from appropriations under any other water right using the same diversion works and conveyance facility. Records shall be submitted by December 31 of each year and upon request at other times during the year. Failure to submit reports as required by these conditions may be cause for revocation of the change. The records must be sent to the Lewistown Water Resources Regional Office at the address below. The Appropriator shall maintain the measuring/monitoring device so it always operates properly and measures flow rate accurately during periods of appropriation.
NOTICE

This Department will provide public notice of this Application and the Department's Preliminary Determination to Grant pursuant to §85-2-307, MCA. The Department will set a deadline for objections to this Application pursuant to §§85-2-307, and -308, MCA. If this Application receives a valid objection, it will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and §85-2-309, MCA. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this Application as herein approved. If this Application receives a valid objection(s) and the valid objection(s) are conditionally withdrawn, the Department will consider the proposed condition(s) and grant the Application with such conditions as the Department decides necessary to satisfy the applicable criteria. E.g., §§85-2-310, -312, MCA.

DATED this 26th day of April 2022.

/Originally signed by Steven Hamilton/
Steven Hamilton, Deputy Regional Manager
Lewistown Regional Office
Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 26th day of April 2022, by first class United States mail.

Michael Goffena, Deborah Goffena, Judy Boogman, and Janice Denney
331 Allen Road
Roundup, MT 59072

_____________________________________________________
Regional Office, (406) 538-7459