On July 26, 2021, YSR Acquisition Co. LLC (Applicant) submitted Application for Beneficial Water Use Permit No. 43B 30152917 to the Bozeman Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC) for 77 gallons per minute (GPM) flow rate and 38.5 acre-feet (AF) volume for commercial purpose. The Department published receipt of the Application on its website. The Department met with the Applicant and the Applicant’s consultants on December 1, 2021, to discuss the proposed mitigation plan to offset net depletion under this permit application. The Department sent the Applicant a deficiency letter under § 85-2-302, Montana Code Annotated (MCA), dated January 21, 2022. The Applicant responded with information dated February 1, 2022. The Application was determined to be correct and complete as of March 14, 2022. An Environmental Assessment for this Application was completed on April 12, 2022.

INFORMATION

The Department considered the following information submitted by the Applicant, which is contained in the administrative record.

Application as filed:

- Application for Beneficial Water Use Permit, Form 600-GW
- Attachments
- Maps: Topographical map depicting the proposed points of diversion and place of use
- Montana Department of Environmental Quality certification and record drawings for public Well #1 (GWIC 296629)
- Montana Department of Environmental Quality certification and record drawings for public Well #2 (GWIC 296630)
- GWIC 288809 observation well lithology supplement
- Hydraulic gradient summary
• Water System Design Report for Sage Lodge, Emigrant, MT prepared by Madison Engineering, dated June 2021
• WaterCAD Reports summary (Appendix C)
• Aquifer Testing Addendum
• Form 633 attached to application and electronically as Microsoft Excel files

Information Received after Application Filed
• Water System Design Report for Sage Lodge, Emigrant, MT prepared by Madison Engineering, updated July 2021, received January 4, 2022
• Map of proposed infiltration gallery and existing well, received January 11, 2022
• Deficiency Letter Response, dated February 1, 2022
• Request for Variance from Aquifer Testing Requirements, dated February 1, 2022
• Request for Variance from Aquifer Testing Requirements, dated April 12, 2022
• Photos of aquifer test discharge location

Information within the Department’s Possession/Knowledge
• US Geological Survey surface water data:
  USGS 06192500 Yellowstone River near Livingston, MT (Period of record: May 1897 to October 2021)
  USGS 06191500 Yellowstone River at Corwin Springs MT (Period of record: August 1889 to May 2021)
• Aquifer Test Report, dated January 7, 2022
• Depletion and Mitigation Report, dated January 7, 2022
• Letter from the Department Granting Variance from Aquifer Testing Requirements dated March 14, 2022
• Letter from the Department Granting Variance from Aquifer Testing Requirements dated April 12, 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 Bozeman Regional Office at 406-556-3136 to request copies of the following documents.
  o Physical Availability of Surface Water with Gage Data, dated November 1, 2019
The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, MCA).

**PROPOSED APPROPRIATION**

**FINDINGS OF FACT**

1. The Applicant proposes to divert groundwater by means of two wells, from January 1 to December 31 at a flow rate of 77 GPM up to 38.5 AF, from two points in the SWNWSE Section 34, T05S R08E, Park County, for commercial purpose from January 1 to December 31. The two wells are located approximately 400 feet apart and referred to as Well #1 (GWIC ID 296629) and Well #2 (GWIC ID 296630). The Applicant proposes to serve the existing lodge, employee housing, a residential community with up to 20 homes, guest accommodations that includes a restaurant and retail space, and lodge expansion with up to 15 guest cabins, with a place of use located in the SW Section 34, T05S R08E, Park County. The proposed points of diversion are located approximately 0.4 miles from the Yellowstone River.

2. Wastewater will be treated on-site with individual drainfields. Of the total 38.5 AF diverted volume for commercial purpose, 3.85 AF will be consumed, based on Department's standard for individual drain fields, and 34.65 AF will return to the source aquifer.

3. The Applicant has filed Change Applications 43B 30152295 and 43B 30153217 to change a portion of four irrigation water rights to aquifer recharge purpose to offset depletions to hydraulically connected surface water occurring from this Permit Application 43B 30152917.

4. The following conditions have been incorporated into the analysis of this Preliminary Determination:

**IMPORTANT INFORMATION**

AQUIFER RECHARGE REQUIREMENT: THE APPROPRIATOR’S USE OF WATER UNDER THIS PERMIT IS CONDITIONED UPON THE 6.0 AC-FT OF AQUIFER RECHARGE VOLUME REQUIRED TO OFFSET ADVERSE EFFECTS FROM NET DEPLETION TO THE YELLOWSTONE RIVER. DIVERSION UNDER THIS PERMIT MAY NOT COMMENCE UNTIL THE AQUIFER RECHARGE PLAN AS SPECIFICALLY DESCRIBED AND APPROVED THROUGH CHANGE AUTHORIZATION 41H 30152295 AND 30153217 IS LEGALLY IMPLEMENTED. DIVERSION UNDER THIS PERMIT MUST STOP IF MITIGATION AS HEREIN REQUIRED IN AMOUNT, LOCATION AND DURATION CEASES.
IMPORTANT INFORMATION
THE TOTAL VOLUME OF WATER THAT MUST BE APPLIED TO THE INFILTRATION GALLERY IS 9.2 AC-FT. THIS IS 6.0 AC-FT REQUIRED TO OFFSET DEPLETIONS TO SURFACE WATER CAUSED BY PUMPING UNDER PERMIT 43B 30152917, PLUS 3.2 AC-FT TO REPLACE THE LOSS OF RETURN FLOWS FROM RETIRING 7 ACRES OF HISTORICAL IRRIGATION UNDER CHANGE 43B 30152295 AND 43B 30153217.

WATER MEASUREMENTS REQUIRED
FOR EACH WELL, THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE BOZEMAN DNRC WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.
Figure 1: Map of the proposed project location.

Preliminary Determination to Grant
Application for Beneficial Water Use Permit No. 43B 30152917.
§ 85-2-311, MCA, BENEFICIAL WATER USE PERMIT CRITERIA

GENERAL CONCLUSIONS OF LAW

5. 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 . . .

6. 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.

7. 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.

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

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

See also, Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, Memorandum and Order (2011). The Supreme Court likewise explained that:
Preliminary Determination to Grant Application for Beneficial Water Use Permit No. 43B 30152917.

9. 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.

10. 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

11. A 54-hour aquifer test was conducted on Well #1 on October 2, 2017, and a 72-hour test on Well #2 on November 15, 2017, by Allied Engineering and Potts Drilling. Variances from aquifer testing requirements described in ARM 36.12.121 (3)(c) and (3)(g) were requested because the discharge rate was not recorded according to the schedule on Form 633 and the discharge location was not specified on Form 633 as submitted. These deficiencies did not affect the Department’s ability to determine aquifer characteristics and the variance request was granted on March 14, 2022. In addition, a variance was granted on April 12, 2022, for ARM 36.12.121(3)(b) because the combined flow rates from both wells is less than the requested 77 GPM flow rate.


13. The source aquifer for the proposed points of diversion is the bedrock aquifer underlying unconsolidated glacial outwash deposits. Well #1 (GWIC 296629) is 317 feet deep with a static water level of 54.9 feet. Well #2 (GWIC 296630) is 518 feet deep with a static water level of 79.8 feet. Well #1 was pumped at an average flow rate of 30 GPM during the 54-hour aquifer test,
beginning on October 2, 2017. The maximum drawdown observed in Well #1 was 161.8 feet, leaving 100.3 feet of available water column above the bottom of the well. Well #2 was pumped at an average flow rate of 20 GPM during the 72-hour aquifer test, beginning on November 15, 2017. The maximum drawdown observed in Well #2 was 298.3 feet, leaving 139.9 feet of available water column above the bottom of the well (January 7, 2022, Aquifer Test Report).

14. Physical groundwater availability was evaluated by delineating a Zone of Influence (ZOI) corresponding to the 0.01-foot drawdown contour. The ZOI extends 7,500 feet from the proposed wells and is truncated to the northwest by mapped volcanics. The groundwater flux through the ZOI is 9,540 ft³/day or 80 AF/year (January 7, 2022, Aquifer Test Report).

15. The Department finds that groundwater is physically available for the proposed 77 GPM flow rate and 38.5 AF volume during the requested period of diversion.

CONCLUSIONS OF LAW

16. 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.”

17. It is the applicant’s burden to produce the required evidence. In the Matter of Application for Beneficial Water Use Permit No. 27665-41I 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).

18. 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).

19. 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 11-15)
Legal Availability:
FINDINGS OF FACT

Legal availability of groundwater
20. Modeling indicates that the Zone of Influence (ZOI), corresponding to the 0.01-foot drawdown contour, extends 7,500 feet from the proposed wells and is truncated to the northwest by mapped volcanics. The groundwater flux through the ZOI is 9,540 ft³/day or 80 AF/year (January 7, 2022, Aquifer Test Report). A total of 56 active groundwater rights with a well as a means of diversion are located within the ZOI. However, after review of the well logs, only two water rights are completed in the source aquifer which is composed of a leaky, confined claystone and sandstone bedrock aquifer (Table 1). The existing legal demand from the source aquifer within the ZOI is 9.28 AF, resulting in 70.72 AF legally available (March 14, 2022, Technical Report).

Table 1: List of groundwater rights within the zone of influence and completed in the same source aquifer.

<table>
<thead>
<tr>
<th>Water Right</th>
<th>Volume Diverted (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>43B 63884-00</td>
<td>3.0</td>
</tr>
<tr>
<td>43B 92537-00</td>
<td>6.28</td>
</tr>
<tr>
<td><strong>Total Volume (AF)</strong></td>
<td><strong>9.28</strong></td>
</tr>
</tbody>
</table>

Legal availability of surface water
21. The proposed wells are located approximately 0.4 miles east of the Yellowstone River and 2.2 miles north of Emigrant Creek. Analysis of well logs for wells located in the vicinity of Emigrant Creek indicate that this stream is not connected to groundwater and is not a potentially affected surface water source. Due to the proximity, significant down cut, and thicker Quaternary alluvium depth, the Yellowstone River is considered the hydraulically connected surface water (January 7, 2022, Depletion and Mitigation Report).

22. Depletion from pumping the proposed wells from the bedrock aquifer will accrue to the Yellowstone River downstream of the western section line of Section 34, T05S R08E, and are considered constant year round with a total annual net depletion of 3.9 AF (January 7, 2022, Depletion and Mitigation Report).

23. Two long-term stream gaging stations exist on the Upper Yellowstone River. The proposed point of diversion is located approximately 24 miles downstream of the USGS 06191500 Yellowstone River at Corwin Springs stream gage and approximately 21 miles upstream of the...
USGS 06192500 Yellowstone River near Livingston stream gage. Approved streamflow data was retrieved from the USGS website on December 12, 2021. Approved data was available from August 1889 to May 2021 for the Yellowstone River at Corwin Springs gage and May 1897 to October 2021 for the Yellowstone River near Livingston gage. Both stream gages have nearly a 135 year period of record and were used in the Department’s assessment of legal water availability at the proposed point of diversion.

24. The Yellowstone River is generally a gaining stream as it flows from Yellowstone National Park towards Livingston. On a smaller reach-scale level, the Yellowstone River alternates between gaining and losing segments as the surficial geology changes. A 2005 report by Montana Bureau of Mines and Geology (MBMG) titled Impacts of Non-Point Source Pollution on Water Resources in the Paradise Valley investigated surface and groundwater interactions in the Upper Yellowstone River basin. The MBMG report estimated that the reach from Corwin Springs to Mill Creek gains groundwater at an average rate of approximately 50 CFS, whereas the reach from Mill Creek to Pine Creek Bridge loses approximately 60 CFS. Nearly all groundwater and surface water flows accumulate in the river at Carter’s Bridge, gaining approximately 330 CFS between Pine Creek Bridge and Carter’s Bridge (MBMG, 2005). The proposed project is located approximately 6 miles upstream of Mill Creek.

25. Due to the number of ungaged tributaries and diversions between the proposed project area and both USGS stream gages, a logarithmic interpolation method was used to determine physical availability at the western section line of Section 34, T05S R08E, the point at which depletions from the proposed wells will begin to accrue to the Yellowstone River. A logarithmic interpolation is useful when the proposed point of diversion is located between two stream gages. This method estimates a streamflow characteristic at an intermediate location based on basin drainage area at the gaged sites and the ungaged site (proposed point of diversion). See DNRC memo Physical Availability of Surface Water with Gage Data dated November 1, 2019, for a detailed description of estimating physical water availability on surface water sources with gage data using the logarithmic interpolation method.

26. The Department’s December 20, 2021, Technical Report provides a detailed analysis of the surface water physical availability for this permit application and a summary is provided below. The interpolated flow rates and volumes in the last two columns of Table 2 are the estimated physical surface water availability at the point on the Yellowstone River where it crosses the western section line of Section 34, T05S R08E.
Table 2: Interpolated median mean monthly streamflow at the proposed point of diversion.

<table>
<thead>
<tr>
<th>MONTH</th>
<th>FLOW RATE</th>
<th>VOLUME</th>
<th>FLOW RATE</th>
<th>VOLUME</th>
<th>FLOW RATE</th>
<th>VOLUME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>UNITS</td>
<td>CFS</td>
<td>AF</td>
<td></td>
<td>CFS</td>
<td>AF</td>
</tr>
<tr>
<td>January</td>
<td>1194.0</td>
<td>73287.7</td>
<td>837.1</td>
<td>51381.2</td>
<td>993.9</td>
<td>61005.5</td>
</tr>
<tr>
<td>February</td>
<td>1187.0</td>
<td>65807.3</td>
<td>813.2</td>
<td>45083.8</td>
<td>976.4</td>
<td>54129.3</td>
</tr>
<tr>
<td>March</td>
<td>1296.5</td>
<td>79579.2</td>
<td>911.6</td>
<td>55954.0</td>
<td>1080.8</td>
<td>66341.8</td>
</tr>
<tr>
<td>April</td>
<td>1909.0</td>
<td>113394.6</td>
<td>1498.0</td>
<td>88981.2</td>
<td>1684.3</td>
<td>100047.2</td>
</tr>
<tr>
<td>May</td>
<td>7207.0</td>
<td>442365.7</td>
<td>6167.0</td>
<td>378530.5</td>
<td>6649.6</td>
<td>408152.5</td>
</tr>
<tr>
<td>June</td>
<td>13130.0</td>
<td>779922.0</td>
<td>11050.0</td>
<td>656370.0</td>
<td>12010.9</td>
<td>713447.5</td>
</tr>
<tr>
<td>July</td>
<td>7408.0</td>
<td>454703.0</td>
<td>6418.0</td>
<td>393936.8</td>
<td>6878.9</td>
<td>422228.5</td>
</tr>
<tr>
<td>August</td>
<td>3347.5</td>
<td>205469.6</td>
<td>2938.5</td>
<td>180365.1</td>
<td>3129.6</td>
<td>192094.4</td>
</tr>
<tr>
<td>September</td>
<td>2278.0</td>
<td>135313.2</td>
<td>1845.0</td>
<td>109593.0</td>
<td>2043.0</td>
<td>121352.4</td>
</tr>
<tr>
<td>October</td>
<td>1916.5</td>
<td>117634.8</td>
<td>1425.0</td>
<td>87466.5</td>
<td>1644.5</td>
<td>100939.6</td>
</tr>
<tr>
<td>November</td>
<td>1644.0</td>
<td>97653.6</td>
<td>1160.0</td>
<td>68904.0</td>
<td>1373.0</td>
<td>81557.4</td>
</tr>
<tr>
<td>December</td>
<td>1363.0</td>
<td>83660.9</td>
<td>961.5</td>
<td>59016.9</td>
<td>1138.2</td>
<td>69862.6</td>
</tr>
</tbody>
</table>

CFS = cubic feet per second  AF = acre-feet

27. The area of potential impact is defined as the reach of the Yellowstone River beginning at the western section line of Section 34, T05S R08E, Park County and extending downstream to the confluence with Mill Creek; a distance of approximately six miles. MBMG observed flows in Mill Creek ranging from nearly 900 CFS on June 3, 2002, to 0 CFS on August 23, 2002, as it crosses the highway just before the confluence with the Yellowstone River. Mill Creek frequently goes dry near the confluence with the Yellowstone River due to anthropogenic impacts and surface water infiltration to the underlying alluvium. However, the 2005 MBMG report also estimated that the reach of the Yellowstone River from Corwin Springs to Mill Creek gains approximately 50 CFS on average from groundwater inputs. The combination of tributary inflows and groundwater inputs through the potentially affected reach makes this an appropriate area of potential impact.

28. The Department’s Water Right Query System and a GIS application were used to identify all surface water rights on the Yellowstone River with a point of diversion located within the area of potential impact. Seven water rights were identified within the area of potential impact, shown in Table 3 below.
Table 3: Surface water rights with a point of diversion located within the area of potential impact on the Yellowstone River.

<table>
<thead>
<tr>
<th>WR No.</th>
<th>Owner name</th>
<th>Purpose</th>
<th>Priority date</th>
<th>Flow rate (CFS)</th>
<th>Period of diversion</th>
</tr>
</thead>
<tbody>
<tr>
<td>43B 194350 00</td>
<td>MONTANA DEPT OF FISH WILDLIFE &amp; PARKS</td>
<td>FISH AND WILDLIFE</td>
<td>12/14/1970</td>
<td>2000</td>
<td>04/15 to 10/31</td>
</tr>
<tr>
<td>43B 194349 00</td>
<td>MONTANA DEPT OF FISH WILDLIFE &amp; PARKS</td>
<td>FISH AND WILDLIFE</td>
<td>12/14/1970</td>
<td>1200</td>
<td>11/01 to 04/15</td>
</tr>
<tr>
<td>43B 30017770</td>
<td>MONTANA, STATE OF DEPT OF ENVIRONMENTAL QUALITY</td>
<td>FISHERY (WATER RESERVATION)</td>
<td>12/15/1978</td>
<td>Various¹</td>
<td>1/1 to 12/31</td>
</tr>
<tr>
<td>43B 192649 00</td>
<td>MONTANA STATE BOARD OF LAND COMMISSIONERS</td>
<td>IRRIGATION</td>
<td>2/20/1973</td>
<td>1.93</td>
<td>05/15 to 10/15</td>
</tr>
<tr>
<td>43B 23533 00</td>
<td>ESTANCIA 45 NORTH LLC; YELLOWSTONE RIVER RANCH ESTATES LLC</td>
<td>STOCK</td>
<td>6/5/1905</td>
<td>0.07</td>
<td>01/01 to 12/31</td>
</tr>
<tr>
<td>43B 66332 00</td>
<td>PARK CONSERVATION DIST</td>
<td>IRRIGATION</td>
<td>12/15/1978</td>
<td>1.33</td>
<td>05/01 to 10/15</td>
</tr>
<tr>
<td>43B 193534 00</td>
<td>MURPHYS OX YOKE RANCH LP</td>
<td>STOCK</td>
<td>3/1/1878</td>
<td>0.07</td>
<td>12/01 to 05/31</td>
</tr>
</tbody>
</table>

¹The MT Fish, Wildlife, and Parks Instream Flow Water Reservation flow rate fluctuates on a sub-monthly timescale. Refer to the water right general abstract for a complete list of the period of diversions and flow rates.

29. Flow rates and volumes of legal demands within the area of potential impact were identified from the water right general abstracts where available. Water rights without a decreed volume or flow rate required further analysis. For Statement of Claim 43B 192649-00 irrigation water right, a volume of two acre-feet/acre was used to define the diverted volume, which is the upper end of irrigation water requirements for Irrigation Climatic Area IV: Moderately Low Consumptive Use. For the two stock water rights (43B 23533-00 and 43B 193534-00), the adjudication standard of 30 gallons per day per animal unit was used for the diverted volume. The number of animal units were identified from the original claim file.

30. Montana Department of Fish, Wildlife, and Parks (FWP) has multiple instream flow water rights on the Yellowstone River within the area of potential impact. Two of these water rights, 43B 194349-00 and 43B 194350-00, are commonly referred to as ‘Murphy Rights’ and were established in 1970 to protect instream flows on Blue Ribbon trout streams. The reach of the Yellowstone River from Gardiner, MT to Livingston, MT also has an FWP Instream Flow Water Reservation with a priority date of 12/15/1978 (43B 30017770). This Instream Flow Reservation was intended to operate concurrently with existing FWP instream flow water rights, not in addition to, and is enforced at the USGS Yellowstone River near Livingston stream gage. The enforcement
point at the Livingston gage is outside of the area of potential impact. From April through
September, the physical supply exceeds the legal demand on the Yellowstone River. For the
month of September, the Murphy Right flow rate is greater than the FWP Instream Flow
Reservation.

31. Table 4 shows a comparison of the physical water availability in the Yellowstone River at
the proposed point of diversion and legal demand within the area of potential impact. The FWP
Instream Flow Water Reservation was not included in this legal demand calculation as this water
right is enforced at the Yellowstone River near Livingston USGS stream gage, as described
previously. A comparison of the physical availability at the Yellowstone River near Livingston
stream gage and the FWP Water Reservation is included as Table 5 below.

Table 4: Comparison of physical surface water availability and legal demand for hydraulically connected
surface water. Negative values in the Legal Availability column, identified by red text, indicates no water is
legally available for the associated month.

<table>
<thead>
<tr>
<th>MONTH</th>
<th>PHYSICAL AVAILABILITY</th>
<th>LEGAL DEMAND</th>
<th>LEGAL AVAILABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FLOW RATE (CFS)</td>
<td>VOLUME (AF)</td>
<td>FLOW RATE (CFS)</td>
</tr>
<tr>
<td>January</td>
<td>993.9</td>
<td>61005.5</td>
<td>1200.1</td>
</tr>
<tr>
<td>February</td>
<td>976.4</td>
<td>54129.3</td>
<td>1200.1</td>
</tr>
<tr>
<td>March</td>
<td>1080.8</td>
<td>66341.8</td>
<td>1200.1</td>
</tr>
<tr>
<td>April</td>
<td>1684.3</td>
<td>100047.2</td>
<td>1200.1</td>
</tr>
<tr>
<td>May</td>
<td>6649.6</td>
<td>408152.6</td>
<td>2003.3</td>
</tr>
<tr>
<td>June</td>
<td>12010.9</td>
<td>713447.5</td>
<td>2003.3</td>
</tr>
<tr>
<td>July</td>
<td>6878.9</td>
<td>422228.5</td>
<td>2003.3</td>
</tr>
<tr>
<td>August</td>
<td>3129.6</td>
<td>192094.4</td>
<td>2003.3</td>
</tr>
<tr>
<td>September</td>
<td>2043.0</td>
<td>121352.4</td>
<td>2003.3</td>
</tr>
<tr>
<td>October</td>
<td>1644.5</td>
<td>100939.6</td>
<td>2003.3</td>
</tr>
<tr>
<td>November</td>
<td>1373.0</td>
<td>81557.4</td>
<td>1200.1</td>
</tr>
<tr>
<td>December</td>
<td>1138.2</td>
<td>69862.6</td>
<td>1200.1</td>
</tr>
</tbody>
</table>

1Legal demand includes the FWP ‘Murphy Rights’ and private water rights with a point of diversion in the
area of impact on the Yellowstone River.

32. As shown in Table 4, water is not legally available during the months of January through
March, and October and December of each year within the area of potential impact. In addition,
a comparison of median mean monthly discharge at the Yellowstone River near Livingston stream

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gage and the FWP Water Reservation (Table 5) also indicates that water is not legally available from January through April and October through December. The Applicant has filed Change Applications 43B 30152295 and 30153217 for aquifer recharge to replace depletions to hydraulically connected surface water associated with this permit application.

Table 5: Comparison of the median mean monthly flows at the Yellowstone River near Livingston stream gage and the FWP instream flow water rights. The enforcement point for the FWP Reservation is the Yellowstone River near Livingston stream gage. The FWP Instream Flow Water Reservation and FWP Murphy Rights are shown separately for comparison but are intended to operate concurrently and are not additive.

<table>
<thead>
<tr>
<th>Month/day</th>
<th>YELLOWSTONE RIVER NEAR LIVINGSTON</th>
<th>FWP RESERVATION</th>
<th>MURPHY RIGHTS</th>
<th>DIFFERENCE BETWEEN GAGE DATA AND INSTREAM FLOW RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Flow Rate (CFS)</td>
<td>Volume (AF)</td>
<td>Flow Rate (CFS)</td>
<td>Volume (AF)</td>
</tr>
<tr>
<td>1/1-1/31</td>
<td>1194.0</td>
<td>61005.5</td>
<td>1330.0</td>
<td>81635.4</td>
</tr>
<tr>
<td>2/1-2/28</td>
<td>1187.0</td>
<td>54129.3</td>
<td>1320.0</td>
<td>73180.8</td>
</tr>
<tr>
<td>3/1-3/31</td>
<td>1296.5</td>
<td>66341.8</td>
<td>1350.0</td>
<td>82863.0</td>
</tr>
<tr>
<td>4/1-4/30</td>
<td>1909.0</td>
<td>100047.2</td>
<td>2490.0</td>
<td>147906.0</td>
</tr>
<tr>
<td>5/1-5/10</td>
<td>7207.0</td>
<td>408152.6</td>
<td>2500.0</td>
<td>49500.0</td>
</tr>
<tr>
<td>5/11-5/20</td>
<td>7207.0</td>
<td>408152.6</td>
<td>1900.0</td>
<td>37620.0</td>
</tr>
<tr>
<td>5/21-5/31</td>
<td>4700.0</td>
<td>102366.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6/1-6/10</td>
<td>13130.0</td>
<td>713447.5</td>
<td>7700.0</td>
<td>152460.0</td>
</tr>
<tr>
<td>6/11-6/20</td>
<td>13130.0</td>
<td>713447.5</td>
<td>9000.0</td>
<td>178200.0</td>
</tr>
<tr>
<td>6/21-6/30</td>
<td></td>
<td></td>
<td>8000.0</td>
<td>158400.0</td>
</tr>
<tr>
<td>7/1-7/10</td>
<td>7408.0</td>
<td>422228.5</td>
<td>5400.0</td>
<td>106920.0</td>
</tr>
<tr>
<td>7/11-7/20</td>
<td></td>
<td></td>
<td>3800.0</td>
<td>75240.0</td>
</tr>
<tr>
<td>7/21-7/31</td>
<td></td>
<td></td>
<td>2500.0</td>
<td>54450.0</td>
</tr>
<tr>
<td>8/1-8/10</td>
<td>3347.5</td>
<td>192094.4</td>
<td>1600.0</td>
<td>31680.0</td>
</tr>
<tr>
<td>8/11-8/31</td>
<td></td>
<td></td>
<td>2125.0</td>
<td>88357.5</td>
</tr>
<tr>
<td>9/1-9/30</td>
<td>2278.0</td>
<td>121352.4</td>
<td>1555.0</td>
<td>92367.0</td>
</tr>
<tr>
<td>10/1-10/31</td>
<td>1916.5</td>
<td>100939.6</td>
<td>2350.0</td>
<td>144243.0</td>
</tr>
<tr>
<td>11/1-11/30</td>
<td>1644.0</td>
<td>81557.4</td>
<td>1790.0</td>
<td>106326.0</td>
</tr>
<tr>
<td>12/1-12/31</td>
<td>1363.0</td>
<td>69862.6</td>
<td>1490.0</td>
<td>91456.2</td>
</tr>
</tbody>
</table>

33. Depletions to surface water occurring under this permit will be offset in full by the Applicant’s mitigation plan (see details below in Adverse Effect section). Net depletion from the proposed
groundwater pumping will accrue to the Yellowstone River, as identified in the Department’s January 7, 2022, Depletion and Mitigation Report. The mitigation plan is fully addressed in the Preliminary Determinations for Change Application Nos. 43B 30152295 and 30153217.

34. The Department finds that water is legally available for the proposed appropriation under the terms and conditions set out in this Preliminary Determination.

CONCLUSIONS OF LAW

35. 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).

36. 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.
37. 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;
38. 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.

39. 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.

40. Based on the Applicant’s proposed mitigation/aquifer recharge plan, the Department finds that the Applicant has proven by a preponderance of the evidence that surface water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested. (FOF Nos. 20-34)

41. The 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 Nos. 20-34)

**Adverse Effect**

**FINDINGS OF FACT**

42. The Department’s January 7, 2022, Aquifer Test Report evaluated the drawdown in existing wells after five years of a constant pumping schedule of 23.9 GPM equivalent to the requested annual volume of 38.5 AF. The report found that the 1-foot drawdown contour extends 10,600 feet from the centroid of the proposed points of diversion. Three water rights completed in the source aquifer are predicted to experience drawdown of greater than one foot. The affected water rights, well depths, static water levels and predicted drawdown and remaining available water column are shown in Table 6.

Table 6: List of groundwater rights considered for adverse effect.

<table>
<thead>
<tr>
<th>WR No.</th>
<th>Owner name</th>
<th>Distance from proposed POD (FT)</th>
<th>Well depth (ft)</th>
<th>Predicted drawdown (ft)</th>
<th>Static water level (ft bgs)</th>
<th>Remaining water column (ft)</th>
</tr>
</thead>
<tbody>
<tr>
<td>43B 63884-00</td>
<td>Terry Lee Altemus</td>
<td>4000</td>
<td>107</td>
<td>30</td>
<td>2</td>
<td>75</td>
</tr>
<tr>
<td>43B 92537-00</td>
<td>Susan V Kraft,</td>
<td>4500</td>
<td>174</td>
<td>24</td>
<td>132</td>
<td>18</td>
</tr>
<tr>
<td>43B 55138-00</td>
<td>Lindsay C Robb</td>
<td>9900</td>
<td>140</td>
<td>2</td>
<td>10</td>
<td>128</td>
</tr>
</tbody>
</table>

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43. The Department’s January 7, 2022, Depletion and Mitigation Report identified the Yellowstone River as the hydraulically connected surface water. Depletions from groundwater pumping under this permit application will accrue to the Yellowstone River beginning at the western section line of Section 34, T05S R08E, Park County. The Department’s modeling indicates that 3.9 AF of net depletion to the Yellowstone River will occur under the proposed appropriation. In addition, water is not considered legally available within the area of potential impact during January through April and October through December.

44. The Applicant proposes to offset the net depletion under this permit application by changing a portion of Statement of Claim Nos. 43B 194423-00, 194424-00, 194426-00, and 43B 194427-00 from irrigation to aquifer recharge (Change Application Nos. 43B 30152295 and 43B 30153217). The applicant will cease irrigation of 7 acres and deliver the historically applied volume of 9.2 AF to an infiltration gallery for aquifer recharge purpose. Water will continue to be conveyed from Emigrant Creek in the Morgan Ditch #1 to an infiltration gallery adjacent to the historical place of use located in the SESWNE Section 3, T06S R08E, Park County at a constant flow rate of 8 GPM from June 1 to August 31 to offset depletions to hydraulically connected surface water. The January 7, 2022, Depletion and Mitigation Report found that water delivered to the infiltration gallery during May, June, and July will offset year-round depletions from the proposed consumptive use. The Applicant’s aquifer recharge plan results in over-mitigation in some months but is required to offset depletions in every month that does not have water legally available.

45. The Applicant proposes to divert up to 38.5 AF per year for commercial purpose. The Department’s standard for wastewater treatment at individual drainfields is 10% consumed, resulting in a proposed consumptive volume of 3.85 AF. A breakdown of the monthly pumping schedule and comparison of accretion from mitigation and net depletion to the Yellowstone River is shown in Table 7.

46. As shown in Table 4, water is not legally available in the identified reach of the Yellowstone River in the months of January through March, October, and December. The volume needed for aquifer recharge is shown below in Table 11. Delivering 6.0 AF to the infiltration gallery during the historical period of diversion for irrigation results in over-mitigation during some months, but offsets depletions in full in every month.
Table 7: Comparison of monthly aquifer recharge and net depletion from the proposed use. Negative values in the last column indicate an increase in flows to the Yellowstone River. The historically consumed irrigation volume is the historical consumptive use on seven acres retired to meet the Applicant’s mitigation plan.

<table>
<thead>
<tr>
<th>Month</th>
<th>Historically Consumed Irrigation Volume (AF)</th>
<th>New Net Depletion (AF)</th>
<th>Aquifer Recharge Schedule (AF)</th>
<th>Modeled Accretion from Aquifer Recharge (AF)</th>
<th>Difference between Net Depletions and Accretions (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
<td>0.4</td>
<td>-0.1</td>
</tr>
<tr>
<td>February</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
</tr>
<tr>
<td>March</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
<td>0.4</td>
<td>0.0</td>
</tr>
<tr>
<td>April</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
</tr>
<tr>
<td>May</td>
<td>0.4</td>
<td>0.3</td>
<td>2.0</td>
<td>0.3</td>
<td>0.0</td>
</tr>
<tr>
<td>June</td>
<td>1.4</td>
<td>0.3</td>
<td>2.0</td>
<td>0.5</td>
<td>-0.1</td>
</tr>
<tr>
<td>July</td>
<td>1.9</td>
<td>0.3</td>
<td>2.0</td>
<td>0.7</td>
<td>-0.3</td>
</tr>
<tr>
<td>August</td>
<td>1.7</td>
<td>0.3</td>
<td>0.0</td>
<td>0.8</td>
<td>-0.5</td>
</tr>
<tr>
<td>September</td>
<td>0.6</td>
<td>0.3</td>
<td>0.0</td>
<td>0.7</td>
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<tr>
<td>October</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
<td>0.6</td>
<td>-0.3</td>
</tr>
<tr>
<td>November</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
<td>0.5</td>
<td>-0.2</td>
</tr>
<tr>
<td>December</td>
<td>0.0</td>
<td>0.3</td>
<td>0.0</td>
<td>0.5</td>
<td>-0.1</td>
</tr>
</tbody>
</table>

**TOTAL** 6.0 3.9 6.0 6.0

47. A list of water rights considered for adverse effect is included in Table 3. Surface water rights with a point of diversion within the area of potential impact described previously were considered for potential adverse effect.

48. The Department finds that no adverse effect to existing water rights will occur from the proposed appropriation under the terms and conditions set out in this Preliminary Determination. The following conditions have been incorporated into the analysis of this Preliminary Determination:

**IMPORTANT INFORMATION**

AQUIFER RECHARGE REQUIREMENT: THE APPROPRIATOR’S USE OF WATER UNDER THIS PERMIT IS CONDITIONED UPON THE 6.0 AC-FT OF AQUIFER RECHARGE VOLUME REQUIRED TO OFFSET ADVERSE EFFECTS FROM NET DEPLETION TO THE YELLOWSTONE RIVER. DIVERSION UNDER THIS PERMIT MAY NOT COMMENCE UNTIL THE AQUIFER RECHARGE PLAN AS SPECIFICALLY DESCRIBED AND APPROVED THROUGH CHANGE AUTHORIZATION 41H 30152295 AND 30153217 IS LEGALLY IMPLEMENTED. DIVERSION UNDER THIS PERMIT MUST STOP IF MITIGATION AS HEREBIN REQUIRED IN AMOUNT, LOCATION AND DURATION CEASES.
IMPORTANT INFORMATION
THE TOTAL VOLUME OF WATER THAT MUST BE APPLIED TO THE INFILTRATION GALLERY IS 9.2 AC-FT. THIS IS 6.0 AC-FT REQUIRED TO OFFSET DEPLETIONS TO SURFACE WATER CAUSED BY PUMPING UNDER PERMIT 43B 30152917, PLUS 3.2 AC-FT TO REPLACE THE LOSS OF RETURN FLOWS FROM RETIRING 7 ACRES OF HISTORICAL IRRIGATION UNDER CHANGE 43B 30152295 AND 43B 30153217.

WATER MEASUREMENTS REQUIRED
FOR EACH WELL, THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE BOZEMAN DNRC WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

CONCLUSIONS OF LAW
49. 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.

50. 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).
51. 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.

52. 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.

53. 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.

54. 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.

55. A plan to prove legal availability and prevent adverse effect can be to use mitigation or augmentation. § 85-2-360, MCA; e.g., In the Matter of Beneficial Water Use Permit Application Nos. 41H 30012025 and 41H 30013629 by Utility Solutions, LLC, (DNRC Final Order 2006)(permit conditioned to mitigate/augment depletions to the Gallatin River by use of infiltration galleries in the amount of .55 cfs and 124 AF), affirmed, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); In the Matter of Beneficial Water Use Permit Application Nos. 41H 30019215 by Utility Solutions, LLC, (DNRC Final Order 2007)(permit conditioned to mitigate 6 gpm up to 9.73 AF of potential depletion to the Gallatin River), affirmed, Montana River Action Network v. DNRC, Cause No. CDV-2007-602, Montana First Judicial District Court, (2008); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, Order Affirming DNRC Decision, (2011) Pg. 7; Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, Memorandum and Order, (2011) Pg. 12; In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 By Utility Solutions LLC (DNRC 2008)(permit conditioned on mitigation of 3.2 gpm up to 5.18 AF of depletion to the Gallatin River); In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer (HB 831, DNRC Final Order 2009) (permit denied in part for failure to analyze legal
availability for surface water for depletion of 1.31 AF to Bitterroot River)§ 85-2-360, MCA. The Department has a history of approving new appropriations where applicant will mitigate/augment to offset depletions caused by the new appropriation. In the Matter of Beneficial Water Use Permit Application No. 41I-104667 by Woods and Application to Change Water Right No 41I-G(W) 125497 by Ronald J. Woods, (DNRC Final Order 2000); In The Matter of Application To Change Appropriation Water Right 76GJ 110821 by Peterson and MT Department of Transportation, DNRC Final Order (2001); In The Matter of Application To Change Appropriation Water Right No. 76G-3235699 by Arco Environmental Remediation LLC,(DNRC Final Order 2003) (allows water under claim 76G-32356 to be exchanged for water appropriated out of priority by permits at the wet closures and wildlife to offset consumption). In The Matter of Designation of the Larsen Creek Controlled Groundwater Area as Permanent, Board of Natural Resources Final Order (1988). Montana case law also provides a history of mitigation, including mitigation by new or untried methods. See Thompson v. Harvey (1974),154 Mont. 133, 519 P.2d 963; Perkins v. Kramer (1966), 148 Mont. 355, 423 P.2d 587. Augmentation/ mitigation is also recognized in other prior appropriation states for various purposes. E.g. C.R.S.A. § 37-92-302 (Colorado); A.R.S. § 45-561 (Arizona); RCWA 90.46.100 (Washington); ID ST § 42-1763B and § 42-4201A (Idaho).

The requirement for mitigation in closed basins has been codified in § 85-2-360, et seq., MCA. Section 85-2-360(5), MCA provides in relevant part:

A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, location, and duration of the amount of net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

(Emphasis added.)

Pursuant to § 85-2-362, MCA, an aquifer recharge plan must include: evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to §§ 75-5-410 and 85-2-364, MCA; where and how the water in the plan will be put to beneficial use when and where, generally, water reallocated through exchange or substitution will be required; the amount of water reallocated through exchange or substitution that is required; how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated; evidence that an application for a change in appropriation right, if necessary, has been submitted; a description of the process by which water will be reintroduced to the aquifer; evidence of water availability; and evidence of how the aquifer recharge plan will offset the required amount.
of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

57. In this case Applicant proposes to mitigate its full consumptive use under the proposed appropriation. This mitigation provides mitigation of full depletion of surface waters by the proposed appropriation in amount, location, and duration of the depletion. Because Applicant proposes to mitigate the full amount of its consumptive use, there is no adverse effect from depletion of surface waters to the historic beneficial use of surface water rights. E.g., *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 By Utility Solutions LLC* (DNRC Final Order 2008).

58. 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 Nos. 42-48)

**Adequate Diversion**

**FINDINGS OF FACT**

59. The Applicant proposes to divert water from two wells for commercial purpose. Well #1 (GWIC ID 296629) is 317 feet deep with a static water level of 54.9 feet. Well #2 (GWIC ID 296630) is 518 feet deep with a static water level of 79.8 feet. (Department File). Both wells are equipped with submersible well pumps capable of pumping an average flow rate of 23 GPM for Well 1 and 19 GPM for Well 2 to supply the projected peak daily demand of 42 GPM for the lodge and workforce housing, which are the first components of this water supply system to be constructed. Water will be pumped to a 34,120 gallon storage tank. Several secondary pumps are located in a pump house to distribute water throughout the water distribution piping and to supply the fire suppression system.

60. At full build-out, including the existing lodge, employee housing, a residential community with up to 20 homes, guest accommodations that includes a restaurant and retail space, and lodge expansion with up to 15 guest cabins, the maximum peak daily demand is projected to be 77 GPM. The Applicant proposes to upgrade the existing submersible well pumps to meet the maximum projected peak daily demand. The projected additional flow rate capacity needed is 35 GPM achieved by increasing the capacity of the existing production wells. The Applicant identified the infrastructure needed for full build-out of this water supply system in the Water System Design
Preliminary Determination to Grant Application for Beneficial Water Use Permit No. 43B 30152917.

61. The existing water distribution system is capable of handling a fire suppression flow rate of 422 GPM for 30 minute periods provided by the booster station pumps to each component of the water supply system. Water is distributed through 4 to 6-inch water mains to each building served by the water supply system.

62. The Water System Design Report, updated July 2021, was prepared by Mark Juras with Madison Engineering, a licensed professional engineer in the state of Montana. The report identified the water system requirements needed for full build-out of the Applicant’s proposed guest accommodations and employee housing.

63. The Department finds this diversion infrastructure adequate for the proposed commercial water supply system.

CONCLUSIONS OF LAW

64. 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.

65. 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.

66. 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. 411-105511 by Flying J Inc. (DNRC Final Order 1999).

67. 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).

68. The 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 59-63).
Beneficial Use

FINDINGS OF FACT

69. The Applicant requests a maximum flow rate of 77 GPM and annual volume of 38.5 AF for commercial purpose at the existing lodge, employee housing, a residential community with up to 20 homes, guest accommodations that includes a restaurant and retail space, and lodge expansion with up to 15 guest cabins. The volumetric and flow rate requirements for each component of the proposed water supply system is shown in Table 8.


<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
<th>Period</th>
<th>Annual water use (AF)</th>
<th>Flow rate (GPM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing system</td>
<td>Existing Sage Lodge consisting of a lodge building, spa building, event center, restaurant, and four cabins.</td>
<td>Year-round</td>
<td>10.09</td>
<td>18.8</td>
</tr>
<tr>
<td>Workforce housing</td>
<td>RV parking pads, temporary canvas tents or yurts, permanent housing, common use building.</td>
<td>Year-round</td>
<td>6.55</td>
<td>12.7</td>
</tr>
<tr>
<td>Residences</td>
<td>20 homes and two recreation buildings.</td>
<td>Year-round</td>
<td>15.68</td>
<td>29.2</td>
</tr>
<tr>
<td>Fish camp</td>
<td>20 seasonal guest structures, restaurant, large activity/retail structure</td>
<td>Seasonal</td>
<td>2.61</td>
<td>9.7</td>
</tr>
<tr>
<td>Lodge cabin expansion</td>
<td>15 guest cabins</td>
<td>Year-round</td>
<td>3.58</td>
<td>6.7</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>38.5</strong></td>
<td><strong>77.0</strong></td>
</tr>
</tbody>
</table>

70. No irrigation is proposed for any components of this public water supply system. Lawn and garden irrigation around the lodge, event center, spa, cabins, and parking lot is served by existing Groundwater Certificate 43B 30020158.


72. The Department finds the proposed 77 GPM and 38.5 AF for commercial purpose to be a beneficial use of water.
CONCLUSIONS OF LAW

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

74. 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).

75. 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).

76. Applicant proposes to use water for commercial purpose which is a recognized beneficial use. § 85-2-102(5), MCA. The Applicant has proven by a preponderance of the evidence that commercial purpose is a beneficial use and that 38.5 AF of diverted volume and 77 GPM flow rate of water requested is the amount needed to sustain the beneficial use. § 85-2-311(1)(d), MCA. (FOF Nos. 69-72)

Possessory Interest

FINDINGS OF FACT

77. The Applicant signed 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

78. 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.

79. 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.

80. 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 No. 77)
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. 43B 30152917 should be GRANTED.

The Department determines the Applicant may divert groundwater, by means of two wells, from January 1 to December 31 at a flow rate of 77 GPM and volume up to 38.5 AF, from two points in the SWNWSE Section 34, T05S R08E, Park County, for commercial purpose from January 1 to December 31. The place of use is located in the SW Section 34, T05S R08E, Park County.

The surface water that will be depleted is the Yellowstone River. Water to mitigate the affected reach will be provided by Change Applications 43B 30152295 and 30153217 to change a portion of four irrigation water rights to aquifer recharge. Water will be delivered to an infiltration gallery located in the SESWNE Section 3, T06S R08E, Park County at a constant flow rate of 8 GPM from June 1 to August 31 to achieve the required aquifer recharge volume of 6.0 AF.

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

Important Information

AQUIFER RECHARGE REQUIREMENT: THE APPROPRIATOR'S USE OF WATER UNDER THIS PERMIT IS CONDITIONED UPON THE 6.0 AC-FT OF AQUIFER RECHARGE VOLUME REQUIRED TO OFFSET ADVERSE EFFECTS FROM NET DEPLETION TO THE YELLOWSTONE RIVER. DIVERSION UNDER THIS PERMIT MAY NOT COMMENCE UNTIL THE AQUIFER RECHARGE PLAN AS SPECIFICALLY DESCRIBED AND APPROVED THROUGH CHANGE AUTHORIZATION 41H 30152295 AND 30153217 IS LEGALLY IMPLEMENTED. DIVERSION UNDER THIS PERMIT MUST STOP IF MITIGATION AS HEREIN REQUIRED IN AMOUNT, LOCATION AND DURATION CEASES.

Important Information

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FOR EACH WELL, THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING
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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 13th day of April 2022.

/Original signed by Kerri Strasheim/
Kerri Strasheim, Manager
Bozeman 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 13th day of April 2022, by first class United States mail.

RENEÉ COPPOCK (ATTORNEY)
PO BOX 2529
BILLINGS, MT 59103-2529
<VIA EMAIL: RCOPPOCK@CROWLEYFLECK.COM>

__________________________________
Jack Landers
Bozeman Regional Office, (406) 556-4500