Date: February 26, 2018

Subject: Completion of the June 2016 SB330 Water Reservation Ten-Year Review.

The Department of Natural Resources and Conservation (Department) has completed a ten-year review of existing state water reservations. The review process was completed pursuant to Montana Code Annotated (MCA) §85-2-316 (10). The purpose of this review was to determine if the objectives (purpose, need, amount, and public interest) of each water reservation are being met according to the *Order of the Board of Natural Resources Establishing Water Reservations*. In making its determination, the Department considered all information available and submitted by entities possessing state water reservations. Instream reservation were considered perfected and therefore not included in this review.

As you may recall, the 2015 Montana Legislature enacted Senate Bill 330 which directed the Department to conduct a 10-year review of existing state water reservations by July 1, 2016 and provide a summary report to the Water Policy Interim Committee before September 15, 2016. A copy of this summary report, along with additional recommendations from the Department, is included with this letter.

Sincerely,

Division Administrator
Water Resource Division
1424 9th Avenue
P.O. Box 201601
Helena, MT 59620-1601
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Project Description:
The 2015 Montana Legislature enacted Senate Bill 330 which directed the Department of Natural Resources and Conservation (DNRC) to conduct a 10–year review of existing state water reservations as outlined in Administrative Rules of Montana, (ARM), 36.16.120 by July 1, 2016 and provide a report to the Water Policy Interim Committee before September 15, 2016. These rules require that each reservant submit a report reviewing the objectives of the reservation, how these are being met, and provide information which the DNRC will use to assess the ongoing need for the reservation.

On October 14, 2015 the DNRC sent a contact letter to each of the entities holding a reservation subject to review. The deadline for submission of the requested information was December 31, 2015. The DNRC compiled a list of questions, accompanying this letter, titled “Water Reservation Questionnaire” to help identify and answer the specific requirements outlined in ARM, 36.16.120. DNRC will consider the completed questionnaire a “report” as contemplated by the rules.

ARM 36.16.120 reads:

“Except for reservations for the purposes of maintaining a minimum flow, level, or quality of water or a reservation provided in 85-20-1401, MCA, the department shall review water reservations at least once every ten years to determine if the objectives of the reservation are being met...”

The bulk of all water reservations in Montana, (including all that require review through this order), are associated with the following three Final Orders issued by the State of Montana Board of Natural Resources and Conservation, (now the DNRC).

- Yellowstone Final Order (Issued December 15, 1978)
- The Upper Missouri Final Order (Issued July 1, 1992)
- The Lower Missouri Final Order (Issued December 30, 1994)

Water reservations created through these Orders include reservations to
maintain instream flow for fisheries, municipal reservations, reservations for 
irrigation, and reservations for multi-purpose use (chiefly large storage 
reservoirs). Instream reservation holders were not required to submit reports 
through SB330 as these reservations were considered perfected. Municipal, 
irrigation, and multi-purpose reservations were all required to submit a response 
to the DNRC request for information and are the subject of this report.

**Municipal Reservations:**

Table 1 provides the volume awarded each municipality through the three Final 
Orders and the amount currently put to use:

Table 1 – Summary of Use – Municipal Reservations

<table>
<thead>
<tr>
<th>Yellowstone Reservations</th>
<th>Lower Missouri Reservations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reservation #</td>
<td>Municipality</td>
</tr>
<tr>
<td>847600</td>
<td>Big Timber</td>
</tr>
<tr>
<td>964600</td>
<td>Billings</td>
</tr>
<tr>
<td>995300</td>
<td>Broadus</td>
</tr>
<tr>
<td>993700</td>
<td>Columbus</td>
</tr>
<tr>
<td>993800</td>
<td>Glendive</td>
</tr>
<tr>
<td>993900</td>
<td>Laurel</td>
</tr>
<tr>
<td>994000</td>
<td>Livingston</td>
</tr>
<tr>
<td>995400</td>
<td>Miles City</td>
</tr>
<tr>
<td>993800</td>
<td>Glendive</td>
</tr>
<tr>
<td>995400</td>
<td>Miles City</td>
</tr>
</tbody>
</table>
As is evident from the data outlined in Table 1 the anticipated use for almost all of the municipal reservations have not been achieved. Historically each of the individual municipalities have relied on existing water rights and, when these are insufficient, appropriation of additional volume was achieved through provisional permits and groundwater certificates. Additionally, the tabulated data highlights the disparity in awarded volume for the individual reservations. The Yellowstone Final Order, (1978), awarded substantially greater volume than did either the Lower Missouri Final Order, (1994), or the Upper Missouri Final Order, (1992).

In the recommendations for each of the municipalities the DNRC has drawn from a condition placed on municipal reservations in the Yellowstone Final Order. As conditioned in the Yellowstone Final Order; “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation.” As such the DNRC recommends that all appropriations for water, (including permits and groundwater certificates), granted after the date that the reservation was issued count against the awarded reservation flow and volume for the individual municipalities.

Only the Upper Missouri Final Order currently has a perfection date for municipal
reservations. This date in the Upper Missouri Order is December 31, 2025. The DNRC makes no recommendation regarding extension or removal of this deadline and only points this out in an effort to provide parity for all municipal reservations.

Yellowstone Final Order, (1978):
Eight municipalities were granted a water reservation through the Yellowstone Final Order. In the 38 years since the Final Order only two of the eight municipalities have used any portion of their reservation. For a detailed review of the individual reservations see Appendix A.

Statements of Claim for each of the eight municipalities were not required to be filed until April 30, 1982, well after the issue date of the Final Order. As such water available through existing water rights had not been quantified when the reservations were granted. Additionally, rather than using reserved water, five of the eight municipalities opted to file for additional water rights through the DNRC after they were issued their respective water reservation.

During the application process 250 gallons per person per day was commonly used to determine the projected future municipal use. Based on this estimate all eight of the municipalities that were issued a water reservation through the Yellowstone Final Order have municipal water rights that exceed their current municipal needs in terms of both flow and volume.

Table 2 – Estimated 2013 Use vs. Existing Water Rights

<table>
<thead>
<tr>
<th>City</th>
<th>2013 Population</th>
<th>Estimated Volume In Use AF/YR (2013)*</th>
<th>Existing Municipal Water Rights AF/YR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Big Timber</td>
<td>1,650</td>
<td>462</td>
<td>3,366</td>
</tr>
<tr>
<td>Billings</td>
<td>108,869</td>
<td>30,487</td>
<td>70,435</td>
</tr>
<tr>
<td>Broadus</td>
<td>480</td>
<td>134</td>
<td>506.5</td>
</tr>
<tr>
<td>Columbus</td>
<td>1,996</td>
<td>559</td>
<td>3,014</td>
</tr>
<tr>
<td>Glendive</td>
<td>5,399</td>
<td>1,512</td>
<td>3,206.60</td>
</tr>
<tr>
<td>Laurel</td>
<td>6,936</td>
<td>1,942</td>
<td>3,525.00</td>
</tr>
<tr>
<td>Livingston</td>
<td>7,245</td>
<td>2,029</td>
<td>10,084</td>
</tr>
<tr>
<td>Miles City</td>
<td>8,758</td>
<td>2,453</td>
<td>3,661</td>
</tr>
</tbody>
</table>
*250 gallons per person per day estimate.

As awarded, each municipality in the Yellowstone Final Order had an assigned perfection date. In 1997 the legislature passed HB 507 which eliminated the perfection dates for all of the municipal and conservation district reservations created through the Yellowstone Final Order and extended the deadline indefinitely.

Municipal reservations were conditioned in the Yellowstone Final Order as follows: “The reservation is intended to run concurrently with and overlap, rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation.”

**Department Recommendations:**

- The department recommends that all municipal water reservations granted through the Yellowstone Final Order remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating both the need & amount for the reservations.
- As conditioned in the Final Order establishing municipal reservations on the Yellowstone River the department determines all appropriations whether provisional permits, groundwater certificates, or water reservations are to be counted against the reservation total if they are perfected after December 15, 1978, (the date of adoption of the Yellowstone reservations).
- Due to the large awarded volume of all Yellowstone Water Reservations the department recommends that all provisional permits issued in the Yellowstone Basin have the following remark added to the provisional permit:
  - “This permit is subject to all existing reserved water reservations.”

**Lower Missouri Final Order, (1994):**

Eleven municipalities were granted a water reservation through the Lower Missouri Final Order. In the 22 years since the Final Order only one of the eleven municipalities have used any portion of their reservation. Four of the eleven municipalities opted to file for additional water rights through the DNRC after they were issued their respective water reservation. For a detailed review of the
individual reservations see Appendix B.

During the application process 250 gallons per person per day was commonly used to determine the projected future municipal use. Based on this estimate all eleven of the municipalities that were issued a water reservation through the Lower Missouri Final Order have municipal water rights that meet or exceed the current need in terms of both flow and volume.

Table 3 – Estimated 2013 Use vs. Existing Water Rights

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Circle</td>
<td>609</td>
<td>171</td>
<td>1,279</td>
</tr>
<tr>
<td>Culbertson</td>
<td>794</td>
<td>222</td>
<td>257.35</td>
</tr>
<tr>
<td>Ekalaka</td>
<td>345</td>
<td>97</td>
<td>367.52</td>
</tr>
<tr>
<td>Fort Peck</td>
<td>244</td>
<td>68</td>
<td>1,500</td>
</tr>
<tr>
<td>Havre</td>
<td>9,792</td>
<td>2,742</td>
<td>3,531.00</td>
</tr>
<tr>
<td>Malta</td>
<td>1,970</td>
<td>552</td>
<td>862.50</td>
</tr>
<tr>
<td>Plentywood</td>
<td>1,918</td>
<td>537</td>
<td>1,888</td>
</tr>
<tr>
<td>Poplar</td>
<td>876</td>
<td>245</td>
<td>1,881</td>
</tr>
<tr>
<td>Scobey</td>
<td>1,052</td>
<td>295</td>
<td>1,453</td>
</tr>
<tr>
<td>Wibaux</td>
<td>655</td>
<td>183</td>
<td>535</td>
</tr>
<tr>
<td>Wolf Point</td>
<td>2,835</td>
<td>794</td>
<td>2,804</td>
</tr>
</tbody>
</table>

*250 gallons per person per day estimate.

None of the municipal reservations in the Lower Missouri Final Order were required to meet a specific perfection date; however, all stated that the reservation would be perfected by the year 2020 in their original application. Finally, six of the eleven municipalities are within the service area for rural water projects that are either proposed or currently under construction. These projects, when completed, will provide additional water to the municipalities within their respective service areas thus reducing the need for reserved water.

**Department Recommendations:**
- The department recommends that all municipal water reservations granted through the Lower Missouri Final Order remain as granted pending a Final
Decree for all basins tributary to the Lower Missouri River. Upon Final Decree the department recommends re-evaluating both the need & amount for the reservations.

- After construction is completed for the proposed rural water projects the department recommends re-evaluating the need for reserved water for those municipalities that are within their service area.
- The department recommends that any future appropriation of water for the individual municipalities awarded a reservation through the Lower Missouri Final Order be counted against the reservation flow and volume.

Upper Missouri Final Order, (1992):
Fourteen municipalities were granted a water reservation through the Upper Missouri Final Order. In the 24 years since the Final Order three of the fourteen municipalities have utilized some portion of their reservation. Five of the fourteen municipalities opted to file for additional water rights through the DNRC after they were issued their respective water reservation. For a detailed review of the individual reservations see Appendix C.

During the application process 250 gallons per person per day was commonly used to determine the projected future municipal use. Based on this estimate thirteen of the fourteen municipalities that were issued a water reservation through the Upper Missouri Final Order have municipal water rights that meet or exceed the current need in terms of both flow and volume. In the one exception the only water right held by the Town of Chester is the reservation. Municipal water for the Town of Chester is provided under contract with the Bureau of Land Management.

See table next page
Table 4 – Estimated 2013 Use vs. Existing Water Rights

<table>
<thead>
<tr>
<th>City</th>
<th>Population</th>
<th>Estimated Volume in Use AF/YR (2013)*</th>
<th>Existing Municipal Water Rights AF/YR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgrade</td>
<td>7,798</td>
<td>2,184</td>
<td>3,147</td>
</tr>
<tr>
<td>Bozeman</td>
<td>41,660</td>
<td>11,666</td>
<td>13,217</td>
</tr>
<tr>
<td>Chester</td>
<td>860</td>
<td>241</td>
<td>0</td>
</tr>
<tr>
<td>Cut Bank</td>
<td>2,996</td>
<td>839</td>
<td>6,757</td>
</tr>
<tr>
<td>East Helena</td>
<td>2,060</td>
<td>577</td>
<td>7,364</td>
</tr>
<tr>
<td>Fairfield</td>
<td>724</td>
<td>203</td>
<td>2,246</td>
</tr>
<tr>
<td>Fort Benton</td>
<td>1,490</td>
<td>417</td>
<td>913</td>
</tr>
<tr>
<td>Great Falls</td>
<td>59,152</td>
<td>16,565</td>
<td>20,365</td>
</tr>
<tr>
<td>Helena</td>
<td>29,943</td>
<td>8,385</td>
<td>17,392</td>
</tr>
<tr>
<td>Lewistown</td>
<td>5,867</td>
<td>1,643</td>
<td>2,221</td>
</tr>
<tr>
<td>Shelby</td>
<td>3,301</td>
<td>924</td>
<td>3,292</td>
</tr>
<tr>
<td>Three Forks</td>
<td>1,903</td>
<td>533</td>
<td>1,090</td>
</tr>
<tr>
<td>West Yellow</td>
<td>1,322</td>
<td>370</td>
<td>3,502</td>
</tr>
<tr>
<td>Winifred</td>
<td>208</td>
<td>58</td>
<td>159</td>
</tr>
</tbody>
</table>

*250 gallons per person per day estimate

All municipal reservations in the Upper Missouri Final Order have a perfection date of December 31, 2025. Finally, six of the eleven municipalities are within the service area for rural water projects that are either proposed or currently under construction. These projects, when completed, will supply all municipal water thus reducing the need for reserved water.

**Department Recommendations:**

- The department recommends that all municipal water reservations granted through the Upper Missouri Final Order remain as granted pending a Final Decree for all basins tributary to the Upper Missouri River. Upon Final Decree the department recommends re-evaluating both the need & amount for the reservations.
- After construction is completed for the proposed rural water projects the department recommends re-evaluating the need for reserved water for those municipalities that are within their service area.
- The department recommends that any future appropriation of water for the individual municipalities awarded a reservation through the Upper Missouri Final Order be counted against the reservation flow and volume.
• The department makes no recommendation regarding the pending perfection date of December 31, 2025 for the Upper Missouri Municipal Reservations and only points this out in an effort to provide parity with other municipal reservations.

Conservation District Reservations:
Table 5 provides the volume awarded each conservation district through the three Final Orders and the amount currently put to use:

Table 5 – Summary of Use – Conservation District Reservations

<table>
<thead>
<tr>
<th>Reservation #</th>
<th>Conservation Dist.</th>
<th>Volume Granted</th>
<th>Volume In Use</th>
<th>Volume Remaining</th>
<th>% in Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>995200</td>
<td>Big Horn CD</td>
<td>20,185 AF/YR</td>
<td>14,207 AF/YR</td>
<td>5,978 AF/YR</td>
<td>70.4</td>
</tr>
<tr>
<td>994400</td>
<td>Carbon County CD</td>
<td>22,676 AF/YR</td>
<td>1,424 AF/YR</td>
<td>21,252 AF/YR</td>
<td>6.3</td>
</tr>
<tr>
<td>994700</td>
<td>Custer County CD</td>
<td>28,473 AF/YR</td>
<td>12,908 AF/YR</td>
<td>15,570 AF/YR</td>
<td>45.3</td>
</tr>
<tr>
<td>995100</td>
<td>Dawson County CD</td>
<td>45,855 AF/YR</td>
<td>5,525 AF/YR</td>
<td>40,330 AF/YR</td>
<td>12</td>
</tr>
<tr>
<td>1134500</td>
<td>Little Beaver CD</td>
<td>12,733 AF/YR</td>
<td>1,312 AF/YR</td>
<td>11,421 AF/YR</td>
<td>10.3</td>
</tr>
<tr>
<td>1000400</td>
<td>Park CD</td>
<td>64,125 AF/YR</td>
<td>1,122 AF/YR</td>
<td>63,003 AF/YR</td>
<td>1.7</td>
</tr>
<tr>
<td>994300</td>
<td>Powder River CD</td>
<td>13,680 AF/YR</td>
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<td>5,521.5 AF/YR</td>
<td>59.6</td>
</tr>
<tr>
<td>994600</td>
<td>Prairie County CD</td>
<td>68,467 AF/YR</td>
<td>8,285 AF/YR</td>
<td>60,182 AF/YR</td>
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<tr>
<td>994500</td>
<td>Richland County CD</td>
<td>45,620 AF/YR</td>
<td>5,435 AF/YR</td>
<td>40,185 AF/YR</td>
<td>11.9</td>
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<td>1000500</td>
<td>Rosebud County CD</td>
<td>87,003 AF/YR</td>
<td>3,754 AF/YR</td>
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<tr>
<td>993500</td>
<td>Stillwater CD</td>
<td>16,755 AF/YR</td>
<td>1,457 AF/YR</td>
<td>15,298 AF/YR</td>
<td>8.7</td>
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<tr>
<td>994800</td>
<td>Sweet Grass CD</td>
<td>46,245 AF/YR</td>
<td>5,733.5 AF/YR</td>
<td>40,511 AF/YR</td>
<td>12.4</td>
</tr>
<tr>
<td>1000300</td>
<td>Treasure County CD</td>
<td>18,341 AF/YR</td>
<td>2,077 AF/YR</td>
<td>16,264 AF/YR</td>
<td>11.3</td>
</tr>
<tr>
<td>994900</td>
<td>Yellowstone CD</td>
<td>57,963 AF/YR</td>
<td>5,999 AF/YR</td>
<td>51,964 AF/YR</td>
<td>10.3</td>
</tr>
</tbody>
</table>

(Continued next page)
As is evident from the data outlined in Table 2 the anticipated use for almost all of the conservation district reservations have not been achieved. Additionally, the tabulated data highlights the disparity in awarded volume for the individual conservation district reservations. The Yellowstone Final Order, (1978), awarded substantially greater volume than did either the Lower Missouri Final Order, (1994), or the Upper Missouri Final Order, (1992).
Only the Upper Missouri Final Order currently has a perfection date for conservation district reservations. This date in the Upper Missouri Order is December 31, 2025. The DNRC makes no recommendation regarding extension or removal of this deadline and only points this out in an effort to provide parity for all conservation district reservations.

**Yellowstone Final Order, (1978):**
Fourteen conservation districts were granted a water reservation through the Yellowstone Final Order. In the 38 years since the Final Order all fourteen districts have used at least a portion of their reservation, however, only about 20% of the combined volume for all conservation district reservations issued through the Yellowstone Final Order has been put to use. For a detailed review of the individual reservations see Appendix D.

For most of the Yellowstone Basin water remains available through provisional permits. The notable exception is within areas closed through the Crow – Montana Compact and the Northern Cheyenne – Montana Compact. Water is unavailable through state issued provisional permits, (exceptions exist), within the Crow and Northern Cheyenne Reservations. Additionally, all of the Big Horn, Little Big Horn, and Pryor Creek drainages both inside and outside the Reservation boundary are closed to provisional permits. The DNRC determines that the water reservation issued through the Yellowstone Final Order is an existing water right that pre-dates the compacts and can thus be developed within the closed areas.

As awarded, each conservation district reservation in the Yellowstone Final Order had an assigned perfection date. In 1997 the legislature passed HB 507 which eliminated the perfection dates for all of the municipal and conservation district reservations created through the Yellowstone Final Order and extended the deadline indefinitely.
**Department Recommendations:**

1. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
2. The department recommends re-evaluating both the need and amount for this reservation.
3. Due to the large awarded volume of all Yellowstone Water Reservations the department recommends that all provisional permits issued in the Yellowstone Basin have the following remark added to the provisional permit:
   - "This permit is subject to all existing reserved water reservations."

**Lower Missouri Final Order, (1994):**

Eleven conservation districts were granted a water reservation through the Lower Missouri Final Order. In the 22 years since the Final Order four of the eleven districts have used at least a portion of their reservation, however, only about 10% of the combined volume for all conservation district reservations issued. For a detailed review of the individual reservations see Appendix E.

In most of the Lower Missouri Basin water remains available through provisional permits. The notable exception is the Milk River basin which is closed to new appropriations through the Fort Belknap – Montana Compact. The DNRC determines that the water reservation issued through the Lower Missouri Final Order is an existing water right that pre-dates the compact and can thus be developed within the closed areas. That said, available water within the Milk River basin is limited and the priority date of the Lower Missouri Final Order would be subject to almost continuous call.

**Department Recommendations:**

1. The Department recommends that the reservations remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Water Reservations.

**Upper Missouri Final Order, (1992):**

Fifteen conservation districts were granted a water reservation through the Upper Missouri Final Order. In the 24 years since the Final Order four of the fifteen districts have used at least a portion of their reservation, however, only about 5% of the combined volume for all conservation district reservations issued. For a detailed review of the individual reservations see Appendix F.

The Missouri River above Morony Dam is closed to any new appropriations of water by the 1993 Upper Missouri River Administrative Closure. Additional closures within the Upper Missouri include the Blackfeet – Montana Compact Closure and the Teton River Administrative closure. As conditioned in the Upper Missouri Final Order conservation district reservations cannot be put to use in any area closed to new appropriations. Therefore, use of reserved water to irrigate above Morony Dam is rendered null and void for all conservation district reservations. In basins below Morony Dam water remains available through provisional permits and is thus available for those conservation districts.

**Department Recommendations:**

1. For those conservation districts that lie entirely within an area closed to new appropriations of water, (and thus closed to appropriations through the Upper Missouri Final Order), the department requests that the Conservation District voluntarily withdraw their water reservation. In the event that this withdrawal request is not received, the department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
2. The Department recommends that the reservations remain in place until December 2025, (date of perfection for all Upper Missouri conservation district reservations).
3. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.

4. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Water Reservations.

State & Federal Reservations
Table 3 provides the volume awarded each state & federal agency.

Table 3 – Summary of Use – State & Federal Reservations

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Yellowstone Final Order, (1978):

Bureau of Reclamation (BOR): The Yellowstone Final Order granted the Bureau of Reclamation reserved water for three storage reservoirs along the Yellowstone River. To date no progress has been made toward perfection of these reservoirs. In their response to the DNRC request for information the BOR cites a lack of funding as the determining factor for not having taken action.
toward perfection.

**Department Recommendations:**
- The department recommends no change in the status of the three Bureau of Reclamation reservations.

**Bureau of Land Management (BLM) & State of Montana Trust Lands (DSL):** The Yellowstone Final Order granted the Bureau of Land Management two reservations for irrigation. After a period of prolonged non-use, the BLM ceded half of these two reservations to the DSL. To date none of the reserved water has been put to use.

Both of these reservations were to be perfected by the year 2000. In their response to the DNRC request for information DSL acknowledged the fact that these reservations had expired. No response was received from the BLM.

**Department Recommendations:**
- Both Bureau of Land Management (BLM) & State of Montana Trust Lands (DSL) reservations are expired.

**State of Montana Trust Lands (DSL):** The Yellowstone Final Order granted the State of Montana Trust Lands three reservations for irrigation. To date none of the reserved water has been put to use.

All three of these reservations were to be perfected by the year 2000. In their response to the DNRC request for information DSL acknowledged the fact that these reservations had expired.

**Department Recommendations:**
All three State of Montana Trust Lands (DSL) reservations are expired.

**State of Montana Department of Natural Resources and Conservation (DNRC):** The Yellowstone Final Order granted the Montana Department of
Natural Resources and Conservation (DNRC) a water reservation for expansion of the existing Tongue River Reservoir. Although the reservoir was expanded through the Northern Cheyenne – Montana Compact, the expansion contemplated through the Yellowstone Water Reservation has not been completed. In their response to the DNRC request for information the State Water Projects Division cited the fact that expansion as described in the Final Order is not possible until the existing coal mines are finished mining coal which was likely at least 10 years off.

Department Recommendations:

1. The department recommends no change in the status of the Department of Natural Resources and Conservation (DNRC) Water Reservation.

Upper Missouri Final Order, (1992):

Bureau of Reclamation (BOR): The Upper Missouri Final Order granted the Bureau of Reclamation reserved water for an irrigation project that would divert Missouri River water from a point near Virgelle Montana into a 46-mile-long canal that terminates at the Milk River just up-stream of Havre Montana. To date no progress has been made toward perfection of the project. In their response to the DNRC request for information the BOR cites a lack of funding as the determining factor for not having taken action toward perfection.

Department Recommendations:

1. The department recommends no change in the status of the Bureau of Reclamation reservation.
Appendix A

Yellowstone Municipal Reservations

DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW
Reservation # 847600

City of Big Timber

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 365 acre-feet per year
- Source: Boulder River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Big Timber on December 31st, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The amount granted by reservation is as stated above, .5CFS up to 365 AF per year. None of the reserved water has been allocated as of this date. The methodology used to determine that amount as originally requested remains the same, anticipated population growth and current events. However, the anticipated population originally estimated to be 3000 by the year 2000 (see Application for Reservation of Water dated May 27, 1976), did not occur. Nevertheless, the anticipated population, based on projections from the past 20 years, does justify the amount reserved. Based solely on historical trend data, the City will reach a population of 3000 in 2040 (see attached chart). However, based on current events and the anticipated success of the City’s current efforts to attract industry (see responses to Questions 4 and 7 below), the City reasonably anticipates reaching a population of 3000 in 2025.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose for the water reservation remains the same and remains valid. The original purpose for the reservation was for municipal, residential and industrial use.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.
Response: The need for the reserved water still exists. At the time of submittal of the application and issuance of the order, it was anticipated that the water right adjudication would have been completed before 2015. The adjudication is not completed and is far from completion. As such, the city of Big Timber (“City”) must retain the reserved water right until the adjudication is complete and the water decreed to the City is a known quantity.

The flow rate and volume of water reserved by the City amounts to 50% of the water used in July, 2015. Simply put, anticipated residential growth in the foreseeable future could easily consume the reserved flow rate and volume. Further, the City is actively seeking industry to relocate and/or construct facilities in and around the City. The combination of residential growth and prospective industrial users necessitates and justifies the need for the reserved water granted to the City.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

Response: The amount of water reserved remains appropriate. The flow rate and volume amounts to approximately 50% of the maximum flow rate and volume of water actually used by the City in July 2015. A reservation of 50% is appropriate, and frankly should be greater, if the City is successful in attracting an industrial or commercial user, or if population continues to grow at a reasonable rate. Additionally, approximately 150 employees of Stillwater Mining Company’s East Boulder mine (“Stillwater”) commute to the City and are bused to the mine. If for any reason Stillwater terminated its transportation program, then the City believes that approximately 50% or more of those employees and their families would move to the City. Furthermore, as a result of the recent selection of the City to be the location of the Cowboy Hall of Fame, the City expects an influx of hotels, restaurants, and other service industries within the next 10 years to support the facility and an associated increase in tourism.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

Response: Yes, the City is the sole provider of clean potable water for its citizens, businesses, and industry users. As the sole source of water for its users, the public interest demands that the City continue to make available an adequate supply and reserve of water for all uses of water.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

Response: The City of Big Timber is in the process of compiling the requested compliance information; however, it did not want to delay this initial response. This response will be supplemented when such compliance information is in a form suitable for submission. The City expects to complete its supplement to this response in January 2016.
7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** Development of the reserved water has been delayed for several reasons. First, the anticipated population and industrial growth as set forth in the City’s application did not materialize. Better paying jobs in the Bakken oil fields recently drew a number of residents away from the City, resulting in a temporary reduction in population. The City already is seeing a return of some of those residents as a result of the recent Bakken downturn. Second, the City implemented water conservation measures in the past that resulted in a leveling off of the demand for water. However, as a result of the dramatic Bakken downturn, the City anticipates that demand for potable water will rise. As that demand increases, the City will take the necessary steps to perfect a portion of all of the reserved water.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population.¹ Water remains available for future appropriation through the provisional permit process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. The 2013 census indicates a population of 1,650 people for the City of Big Timber. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Big Timber would be 462 acre-feet per year \[\frac{(250 \text{ gallons per day})(1,650 \text{ persons})(365 \text{ days per year})}{325,851} = 462 \text{ acre-feet per year}\]. Existing “municipal” water rights for the City of Big Timber total 3,366 acre-feet.

It appears that the City of Big Timber has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the City should not rely on the excess claims for growth.
4. In the 38 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.
5. Conditions of the Final Order establishing municipal reservations in the Yellowstone River basin state: “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation”. (page 3, paragraph 13) In the 38 years since the adoption of the reservation the City of Big Timber has applied for and received one groundwater certificate for a total of 4.35 acre-feet of water which, under the conditions cited above, should count against the total flow and volume awarded through the Final Order.
Department Recommendation:
1. The department recommends that the water reservation for the City of Big Timber remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating the need & amount for this reservation.
2. As conditioned in the Final Order establishing municipal reservations on the Yellowstone River the department determines all appropriations whether provisional permits, groundwater certificates, or water reservations are to be counted against the reservation total if they are perfected after December 15, 1978, (the date of adoption of the Yellowstone reservations).

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City of Big Timber Water Rights:
Reservation # 964600       City of Billings

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 53,550 acre-feet per year
Source: Yellowstone River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Billings on December 28th, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The amount of the City of Billings water reservation is 53,550 acre-feet per year with a flow rate of 74 CFS. The date of the reservation is December 15, 1978 at 12:30PM.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose stated in the September 27, 1976 application for water reservation is still valid. The City of Billings is limited to the Yellowstone River to provide water to a community of over 110,000 populations. Without our ability to develop off site storage options the community is vulnerable to droughts, climate change, and the recent oil spill from oil pipelines within the river.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: The needs stated in the original application are not only still valid today, but have proven to true. The City of Billings is limited to the Yellowstone River as our single water source. The City’s comprehensive growth plan shows that at historical growth rates the City’s population will exceed 250,000 in 20 years and may exceed that population projection in less than 15 years. Without an additional off stream storage to provide additional water supply in the summer arid months, Billings will not be able to provide potable water to our community in future years. Billings has studied our options
for ground water and Raney well systems and neither option are viable in our area. The only viable ground water in the Billings area is being generated by seasonal irrigation ditch seepage.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** With an assigned water of 172 CFS for the City of Billings, the City’s population water needs will exceed our water rights when our population exceeds approximately 260,000 people. The City’s comprehensive growth plan estimates this will occur in 20 years.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** The City of Billings has only one source of water, the Yellowstone River. The current population of approximately 100,000 residents is dependent on the Yellowstone for domestic and commercial water. To ensure our current and future ability to supply water, we will need to augment our existing water rights of 172 CFS. The City of Billings has completed studies on ground water availability in the Billings area and off stream storage. The community’s only option for additional water is from off stream storage.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** The City of Billings has been developing a comprehensive strategy for the utilization of all water sources. Billings has developed a Comprehensive Growth Plan, Water Master Plan, Off Stream Storage Study, Integrated Water Plan, Storm Water Plan, Raney Well analysis, and Ground Water Study. These studies were developed to provide the City of Billings with the necessary information to adopt a long-term water resource plan. The City of Billings will be developing our long-term strategy for off stream storage. Billings has begun discussions with adjacent communities of Laurel and Lockwood regarding the joint development of a regional off stream storage facility.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** The City of Billings has been waiting for the determination of our water rights and comprehensive growth plan to determine the community’s current and future water needs. The City of Billings is completing our Integrated Water Plan which will provide the guidance to the City in developing our long-range water resource plan. One of the key components of the plan is the development of a long term off stream storage facility. Without the reservation rights, one of our key strategies will be removed from our options.
**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. **Need** for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Water remains available for future appropriation through the provisional permit process.
3. The **amount** granted appears to be greater than the demand that has materialized since the reservation was granted. Information submitted in the applicant’s response to the DNRC questionnaire estimates a population of 250,000 people by the year 2035. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2035 water use for the City of Billings would be 70,009 acre-feet per year \[(250 \text{ gallons per day}) (250,000 \text{ persons})(365 \text{ days per year}) ÷ 325,851\] = 70,009 acre-feet per year. Existing “municipal” water rights for the City of Billings total 70,435 acre-feet.
   
   It appears that the City of Billings has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing water rights should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the city should not rely on the excess claims for growth.
4. In the 38 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.
5. Conditions of the Final Order establishing municipal reservations in the Yellowstone River basin state: “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation”. (page 3, paragraph 13)

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Billings remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating the need & amount for this reservation.
2. As conditioned in the Final Order establishing municipal reservations on the Yellowstone River the department determines all appropriations whether provisional permits, groundwater certificates, or water reservations are to be counted against the reservation total if they are perfected after December 15, 1978, (the date of adoption of the Yellowstone reservations). See next page for a list of all water rights held by the City of Billings.
City of Billings Water Rights:

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Reservation # 995300  

Town of Broadus

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 605 acre-feet per year
- Source: Groundwater

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the town of Broadus on December 21st, 2015.

Reservant Response:

Required Reporting [36.16.120]

1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: 337 GPM up to 605 AF. Current needs are 550 AF. Water rights cover 505 AF so we have used about 45 AF of water reservation.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: Purpose is still municipal.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: Town is still planning on having coal mines coming in & population increase; therefore, the water reservation is still needed.

4. Amount: Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

Response: Yes, because of the coal mine development which is consistent with our original request. There also may be a need for continued oil well drilling.
5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** Yes, this is for municipal purpose.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** All of these documents are in the original application for water reservation.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** A portion of the reservation has been used. We cannot take any actions to ensure we complete the water reservation. We will use the water as the coal companies and energy industry are developed and families come to Broadus.

**Department Review & Recommendation:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.

2. Need for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Additionally, water remains available for future appropriation through the provisional permit process.

   It is noted that the reservant’s response indicates a current use of 550 acre-feet, however, given the 2013 population of 480 people this would amount to a per person use of over 1,000 gallons per day. More information is needed to substantiate this volume of current use.

3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. The 2013 census indicates a population of 480 people for the Town of Broadus. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the Town of Broadus was 134.42 acre-feet, \[
\frac{(250 \text{ gallons per day}) (480 \text{ people}) (365 \text{ days per year})}{325,851} \approx 134.42 \text{ acre-feet}.
\]

   Existing “municipal” water rights for the Town of Broadus total 506.5 acre-feet. It appears that the Town of Broadus has ample water for the current and projected populations. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration the town of Broadus should not rely on the volume expressed in the existing Powder River Declarations for growth and the reservation should be pursued for future growth.
4. In the 38 years since the Final Order establishing the reservation was issued the Town reports that 45 acre-feet or 7.4% of the total reservation has been perfected. No value was provided for the perfected flow rate.

5. Conditions of the Final Order establishing municipal reservations in the Yellowstone River basin state: “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation”. (page 3, paragraph 13)

In the 38 years since the adoption of the reservation the Town of Broadus has applied for and received one groundwater certificate for a total of 10 acre-feet of water which, under the conditions cited above, should count against the total flow and volume awarded through the Final Order.

Department Recommendation:

1. The department recommends that the water reservation for the Town of Broadus remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating both the need & amount for this reservation.

2. The department recommends that the Town of Broadus contact the Billings Regional Office to reconcile any potential discrepancies in the perfected flow and volume.

3. As conditioned in the Final Order establishing municipal reservations on the Yellowstone River the department determines all appropriations whether provisional permits, groundwater certificates, or water reservations are to be counted against the reservation total if they are perfected after December 15, 1978, (the date of adoption of the Yellowstone reservations).

Town of Broadus Water Rights:

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<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
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Reservation # 993700

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 883 acre-feet per year
- Source: Yellowstone River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the town of Shelby on December 7th, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The water reservation provides for 883 AF annual withdrawal from the Yellowstone River. In 2009, the town added the Heritage Park well onto the reservation by a change application. The well was added to the water reservation as a point of diversion and allocated 334 AF. It has been in service and producing water since 2011. The well is installed into an unconfined aquifer that is tributary to the Yellowstone River. There is no change in the purpose and need of the reservation or the methodology originally used to determine the amount.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose of the reservation, for municipal use by the Town of Columbus, has not changed since the reservation was granted. The purpose of the reservation is to ensure water availability and to protect streamflow for future needs of the Town of Columbus.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: The Town of Columbus continues to experience increased need for water supply due to population growth and new commercial businesses. Since the Town was granted its water reservation in 1978, the Town has extended its boundaries on several occasions to incorporate new subdivisions; Montana Silversmiths has constructed a manufacturing plant within the Town; a new hospital/clinic has
been constructed within the Town; and Stillwater Mining Company has built a smelter and two base metal refineries within the Town; a Town Pump Travel Plaza and a 72 room Super 8 Motel were built within the Town. The number of water service connections has increased from approximately 608 connections in 1978 to 952 at the present time. From 1990 to 2010 the population increased by 320. The positive population growth that has been observed ensures the water reservation will be fully perfected. The steady growth rate observed from census data is typical for municipal growth rates in Montana, and has not changed substantially since the time the final order was written.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount of the water reservation was determined by consideration of unit water use rates and population. The present conditions are consistent with the original values used to identify the water reservation amount of 883 AF for a population of 4,500. The population growth data (from 1910 to present) show the Town will fully perfect the volume of water designated by the reservation, and in fact, will require additional water rights in the future beyond the present amount. The Town’s future population can be projected to now exceed 4,500 persons. Once the reservation is fully used, the Town will obtain water rights by expanding the reservation or through water right transfers.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** The water reservation is being used for municipal uses in the Town of Columbus and provides for the necessary and orderly development of the water supply, and protection of streamflow, and therefore is in the public interest. A reliable water supply is a cornerstone of the Town’s economic vitality. The Town’s continued interest in the Yellowstone River helps to protect this valuable resource.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** As concluded in the prior DNRC 10-year report, the Town is in substantial compliance with the final order for the water reservation, and has made submittals to DNRC concerning the reservation whenever DNRC made such requests. Furthermore, the Town conducts routine water system planning that focuses on meeting water demand reliably and cost-effectively. This work includes evaluation of water supply sources and water rights, transmission and distribution piping, water storage, system improvements, billing rates, and financing. Leak detection and water conservation are ongoing efforts by the Town. Specific studies addressing these components of the public water system include: 1) Strategic Planning Study (1990); 2) Capital Improvements Plan (1998); and 3) Preliminary Engineering Report (2006). The Town’s planning office also evaluates growth policies, including water supply considerations, every five years and most recently in 2012. A water distribution analysis was completed.
in 2007 pertaining to a 200-lot subdivision annexation project. The Town also completed a Source Water Protection Plan in 2013.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** The primary factor affecting the level of perfection is population growth rate, however, the Town continues to perfect the water reservation to a greater degree each year. The Town has experienced positive growth rate, but the magnitude is variable and this results in variation of rate at which reservation water is beneficially used. For example, the growth rate leading up to the recession of 2008 was much greater than the present growth rate, as determined by the Montana Department of Commerce.

The Town is ensuring that the reservation is fully used by allocating the volume to new source development. The reservation is the only water right owned by the Town that can be used for new source development. The Town intends to construct and add two new wells onto the reservation. The first of these will be constructed by year 2020. With the addition of these two sources, the infrastructure to fully perfect the water reservation will have been constructed, and the water reservation will be fully allocated.

**Department Review:**

1. The reservant appears to be in substantial compliance with the *purpose*, *public interest*, and compliance.
2. **Need** for the reservation appears questionable. Information submitted in the applicant’s response to the DNRC questionnaire indicates that 344 acre-feet per year is currently being diverted under the reservation. Although the City is putting a portion of their reservation to use, water available through existing water rights appears to be more than adequate to serve the existing and projected population. Water remains available for future appropriation through the provisional permit process.
3. The **amount** granted appears to be greater than the demand that has materialized since the reservation was granted. The 2013 census identifies a population of 1,996 people for the City of Columbus. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Columbus was 559 acre-feet per year, \( \frac{250 \text{ gallons per day} \cdot 7,798 \text{ persons} \cdot 365 \text{ days per year}}{325,851 \text{ gallons}} = 559 \text{ acre-feet per year} \). Existing “municipal” water rights for the City of Columbus, (excluding the reservation), total 3,014 acre-feet per year.

It appears that the City of Columbus has sufficient water rights to serve the current population. However, these rights cannot be relied upon until a final decree is issued. The Montana Water Use Act (1973) initiated a statewide adjudication of all water rights that existed in the state prior to July 1, 1973. The act identifies historic beneficial use as the measure of a water right. The excess volume may not be deemed a valid as it was never put to use. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this
consideration, the Town should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

4. The City of Columbus has submitted one application to change their reservation. Through this change the City has perfected 0.8 CFS up to 334 acre-feet per year of their reservation. The remaining unused portion of the City’s reservation totals 539 acre-feet per year with 0.42 cubic feet per second, (188.5 gallons per minute), remaining flow.

5. Conditions of the Final Order establishing municipal reservations in the Yellowstone River basin state: “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation”. (page 3, paragraph 13) In the 38 years since the adoption of the reservation the Town of Columbus has applied for and received one groundwater certificate and three provisional permits for a total of 798 acre-feet of water which, under the conditions cited above, should count against the total flow and volume awarded through the Final Order. Under the conditions cited above the entire water reservation for the Town of Columbus has been perfected.

Department Recommendation:

1. The department recommends that the water reservation for the Town of Columbus remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating the need & amount for this reservation.

2. As conditioned in the Final Order establishing municipal reservations on the Yellowstone River the department determines all appropriations whether provisional permits, groundwater certificates, or water reservations are to be counted against the reservation total if they are perfected after December 15, 1978, (the date of adoption of the Yellowstone reservations).

Town of Columbus Water Rights:

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<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
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<th>Volume (AF)</th>
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Reservation # 993800

City of Glendive

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 3,281 acre-feet per year
Source: Yellowstone River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Glendive on December 31st, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: With the granted volume from this Reservation, the City has a water right of 7,233 gpm, The City’s current Yellowstone River intake capacity is 7200 gpm.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose does remain the same as previously identified; to ensure water availability and an adequate streamflow for future domestic and related industrial needs of the City. The City has seen a significant increase in population over the last four years so securing the most reasonable water reservation is important.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: There is a definite need for the reservation of water for the City of Glendive. Water Reservation is the sole means by which the City can be ensured of future water availability. This is important because of upstream competition within the Yellowstone Basin for available water resources and recent local economic growth.

4. Amount: Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.
Response: The amount is still appropriate and actually may become insufficient in the next decade if population growth continues or if the City annexes existing surrounding county subdivisions as their well water quality declines.

5. Public Interest: Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

Response: The Reservation does remain in the public interest. It is a beneficial use reservation which is a public use. A water reservation to the City of Glendive would aid Glendive, the State of Montana and their inhabitants from both an economic and public health standpoint.

6. Compliance: Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

Response: An engineering evaluation is currently under way to replace the known bottlenecks in the City’s treatment capacity to bring the entire plant’s capacity up to the 7200 gpm capability realized by our 1999-2000 river intake construction project. General plans are submitted with this questionnaire.

7. Perfection: If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

Response: The City of Glendive has made and continues to study and plan to perfect the Reservation. The City has the intake capability to obtain the full amount of the Reservation and as stated in (6. Compliance) general plans are included for the next phase of water treatment plant improvement and expansion.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Water remains available for future appropriation through the provisional permit process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. The 2013 census indicates a population of 5,399 people for the City of Glendive. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Glendive would be 1,512 acre-feet per year [(250 gallons per day) ( 5,399 persons)(365 days per year)]÷[325,851] = 1,512 acre-feet per year. Existing “municipal” water rights for the City of Glendive total 3,207 acre-feet.

It appears that the City of Glendive has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly
reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the City should not rely on the excess claims for growth.

4. In the 38 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. Information provided by the applicant indicates that the City has sufficient intake capacity to deliver the entire flow of all of its water rights from the Yellowstone River.

5. Conditions of the Final Order establishing municipal reservations in the Yellowstone River basin state: “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation”. (page 3, paragraph 13)

In the 38 years since the adoption of the reservation the City of Glendive has not applied for any additional water rights.

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Glendive remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating the need & amount for this reservation.

2. As conditioned in the Final Order, the department recommends that any future appropriation of water for the City of Glendive be counted against the reservation total.

---

### City of Glendive Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>42M 163757 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>4/26/1906</td>
<td>Municipal</td>
<td>Yellowstone River</td>
<td>4 CFS</td>
<td>1,116.50</td>
</tr>
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<td>42M 163758 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>11/12/1934</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>85 GPM</td>
<td>54</td>
</tr>
<tr>
<td>42M 163759 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>8/7/1941</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>135 GPM</td>
<td>84.4</td>
</tr>
<tr>
<td>42M 163756 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>8/18/1961</td>
<td>Municipal</td>
<td>Yellowstone River</td>
<td>7.58 CFS</td>
<td>1,952</td>
</tr>
<tr>
<td>42M 9938 00</td>
<td>Water Reservation</td>
<td>Active</td>
<td>12/15/1978</td>
<td>Municipal</td>
<td>Yellowstone River</td>
<td>4.53 CFS</td>
<td>3,281</td>
</tr>
</tbody>
</table>
Reservation # 993900  
City of Laurel

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 7,151 acre-feet per year
- Source: Yellowstone River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Laurel on December 7th, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The amount granted as stated in the reservation is 7,151 AF at a flow rate of 9.88 CFS. The amount allocated to date has been up to 244 AF of the reservation according to water distribution records from the past 5 years. There has been no change to the amount required to satisfy the purpose and need of the reservation, nor has there been any change in the methodology originally used to determine the amount.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose of the reservation has not changed from the original application which states: The purpose of this reservation is to ensure water availability and an adequate streamflow for the future domestic and related industrial needs of the City of Laurel, MT.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: The City of Laurel believes the need for the reservation has not changed from the original application.
4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** A portion of the reserved water has been put into use on an annual basis (generally) for the past 5 years. The amount of use of the reservation has ranged from 10 AF up to 244 AF. It is expected that the annual need for the reservation will continue to increase as the population of the City continues to grow and the industrial needs also continue to increase. The 20-year planning population and industrial demand predicts the annual water use to increase to nearly 4,000 AF, while the 50-year planning period predicts that demand to grow to over 5,400 AF. The following table contains the available data as presented in the 2014 Preliminary Engineering Report (PER) as well as the anticipated water use by the main industrial user CHS Inc.

Note: It must be noted that the City cannot predict what the annual growth will be. The assumptions used are based on the population and water use data available.

### City of Laurel – Water Use Projections

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
<th>Residential Average Day Demand (MGD)</th>
<th>Industrial Average Day Demand (MGD)</th>
<th>Annual Water Use (MG)</th>
<th>Annual Water Use (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>6,718</td>
<td>1.11</td>
<td>1.68</td>
<td>1,018</td>
<td>3,123</td>
</tr>
<tr>
<td>2015</td>
<td>6,974</td>
<td>1.15</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2025</td>
<td>7,515</td>
<td>1.24</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2035</td>
<td>8,098</td>
<td>1.34</td>
<td>2.20</td>
<td>1,291</td>
<td>3,961</td>
</tr>
<tr>
<td>2065</td>
<td>10,133</td>
<td>1.67</td>
<td>3.20</td>
<td>1,778</td>
<td>5,457</td>
</tr>
</tbody>
</table>

Note: Data from Preliminary Engineering Report (2014), available meter data and predicted water demand by CHS, Inc.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** The public interest has not changed from the original application. It is the sincere belief of the City of Laurel that the reservation is in the public interest because it is a beneficial use. Additionally, the reservation will contribute economically to the public interest. This is further evidenced by the fact that the reservation is currently being put to use and is predicted to be utilized on an increasing basis in the years to come.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** See attached documentation outlining the drought contingency plan, historic use & consumption, and water measurement.
7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** The perfection of the reservation is ongoing. The growth in the area is requiring the use of the reservation. The predicted continued growth of the residential and industrial demand for water will require the reservation continue to be utilized, increasing on an annual basis.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.

2. The applicant appears to be in substantial compliance with the need for the reservation. The water volume available through the city’s single existing water right was calculated based on the highest use prior to 1973. Expansion from this pre-1973 use appears to have been exclusively from the reservation.

   Information submitted through the City’s response to the DNRC questionnaire identifies an industrial demand greater than the residential demand, explaining the disparity in the current population and the total water use.

3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information submitted in the applicant’s response to the DNRC questionnaire estimates states that 244 acre-feet per year is currently being diverted under the reservation. The city further estimates a water use of 5,457 acre-feet per year by the year 2065. Using this estimate only 1,932 acre-feet would be diverted under the water reservation in the year 2065.

4. In the 38 years since the Final Order establishing the reservation was issued the City reports that 244 acre-feet per year or 3.4% of the total reservation has been perfected. No value was provided for the perfected flow rate.

5. Conditions of the Final Order establishing municipal reservations in the Yellowstone River basin state: “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation”. (page 3, paragraph 13) In the 38 years since the adoption of the reservation the City of Laurel has not applied for any additional water rights.

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Laurel remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating the need & amount for this reservation

2. The department recommends that the City of Laurel contact the Billings Regional Office to reconcile any potential discrepancies in the perfected flow and volume.

3. As conditioned in the Final Order, the department recommends that any future appropriation of water for the City of Laurel be counted against the reservation total.

### City of Laurel Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>43QJ 45730 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>12/31/1908</td>
<td>Municipal</td>
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<tr>
<td>43QJ 9939 00</td>
<td>Water Reservation</td>
<td>Active</td>
<td>12/15/1978</td>
<td>Municipal</td>
<td>Yellowstone River</td>
<td>9.88 CFS</td>
<td>7,151.00</td>
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</tbody>
</table>
Reservation # 994000       City of Livingston

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 4,510 acre-feet per year
Source: Yellowstone River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Livingston on December 28th, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The BNRC’s December 15, 1978 Order granted the City of Livingston the amount of 4,510 acre-feet per year at a flow rate of 6.23 cubic feet per second. For the reasons discussed below, there has been no change in the amount of water needed to satisfy the purpose and need of the reservation.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: According to Finding of Fact 2 of the BNRC’s Order, the reason for Livingston’s reservation was to “ensure water availability and an adequate streamflow for the future needs of the City of Livingston and adjacent areas.” The purpose of the reservation remains the same in that the City intends to use the water for the reasons called out in its Application and the BNRC’s Order. Specifically, Livingston continues to expand and grow, (although at a slower pace than originally anticipated), and access to additional water will become necessary in the future.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: Yes, the need still exists. While Livingston has not grown as rapidly as was predicted in the late 70’s, the City Administration strongly believes Livingston will continue to grow at a steady pace. The City recently commissioned a Preliminary Engineering Report (“PER”) in connection with its plan to
upgrade its waste water treatment facilities to meet Montana Department of Environmental Quality discharge permit requirements. (Relevant portions of the PER are attached hereto as Exhibit 1.) The PER reveals Livingston’s population grew from 6,701 to 6,851 residents between 1990 and 2000. The population again increased from 2000 to 2010, with the number of residents jumping to 7,044 in 2010. The PER predicts Livingston’s population will be 8,722 in 2020 and 10,500 in 2030.

As further evidence of the anticipated population growth, Livingston is currently expanding on its northwest side with ongoing, new residential development and construction. A hospital was recently built east of town, which is certain to spur more development in the immediate area. In addition, a 200+ lot subdivision was approved for an area very near the new hospital. Engineering studies for utility extensions related to the 200+ lot subdivision called for an additional well east of the Yellowstone River. Livingston’s Water Preliminary Engineering Report also recommends an additional water source for the City to be located east of the Yellowstone River. And, as touched on above, the City is in the process of upgrading its waste water treatment facilities to account for population growth in areas defined by the City’s growth policy. The upgrades are likely to have an effect on the City’s water usage. Finally, the Gallatin Valley’s sustained growth continues to spill over into Park County and Livingston. Provided similar growth in the surrounding areas persists, Livingston’s existing water supply may be stretched thin and the reservation will be vitally important.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount remains appropriate. As discussed in the City’s answer to Question 3 above, the PER predicts Livingston’s population will increase to 10,500 by the year 2030. Even though the PER’s population prediction is less than half that predicted by the BNRC when it granted Livingston a water reservation in the amount of 4,510 acre-feet per year at a flow rate of 6.23 cubic feet per second (see Finding of Fact 20 in BNRC Order), the PER evidences that Livingston’s population will continue to grow, thus placing strain on the current water supply. Moreover, unforeseen events may lead to a population boom not anticipated in the PER. For a municipality whose residents depend on it for a critically important resource like water, it is always better to have water and not need it than it is to need water and not have it. Accordingly, the amount of Livingston’s water reservation remains appropriate.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** Findings of Fact 28 and 33 of the BNRC’s Order provide as follows: “[M]unicipal water use is [a] recognized beneficial use of water under Montana law,” and reservation of water from “the Yellowstone River for the City of Livingston for municipal water supply use is in the public interest.” Because Livingston remains intent on using the reserved water for the reasons identified in its Application and the BNRC’s Order – i.e., for municipal water supply use – the reservation remains in the public interest. The City needs to retain its water reservation to grow in a responsible and prudent manner. The City relied upon the PER, its present growth patterns and water use in its corporate limits in coming to the foregoing conclusion.
6. **Compliance**: Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response**: All such reports in the City’s possession and/or control are collectively attached hereto as Exhibit 2. The submittal dates are not clear from the documents.

7. **Perfection**: If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response**: Livingston’s use has not reached the development level projected, mainly because 1970s population predictions have not come to fruition. There are many reasons Livingston’s population did not boom as expected, not the least of which was BNSF leaving town in the late 80s. However, as detailed in prior answers, studies show Livingston’s population will continue to increase through the year 2030. City officials must plan for growth as a result, and access to Livingston’s December 15, 1978 water reservation is an absolute necessity. The City will make every effort to perfect the reservation if and when its population rises to a level requiring use of the reserved water.

**Department Review**:

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population.\(^1\) Water remains available for future appropriation through the provisional permit process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information submitted in the applicant’s response to the DNRC questionnaire estimates a population of 10,500 people by the year 2030. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2030 water use for the City of Livingston would be 2,940 acre-feet per year \(\{([250 \text{ gallons per day}] \times [10,500 \text{ persons}]) \times [365 \text{ days per year}]) \div [325,851]\) = 2,940 acre-feet per year. Existing “municipal” water rights for the City of Livingston total 10,083.56 acre-feet. It appears that the City of Livingston has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the city should not rely on the excess claims for growth.
4. In the 38 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.
5. Conditions of the Final Order establishing municipal reservations in the Yellowstone River basin state: “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation”. (page 3, paragraph 13)
In the 38 years since the adoption of the reservation the City of Livingston has applied for and received three provisional permits for a total of 313.35 acre-feet of water which, under the conditions cited above, should count against the total flow and volume awarded through the Final Order.

Department Recommendation:

1. The department recommends that the water reservation for the City of Livingston remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating the need & amount for this reservation.

2. As conditioned in the Final Order establishing municipal reservations on the Yellowstone River the department determines all appropriations whether provisional permits, groundwater certificates, or water reservations are to be counted against the reservation total if they are perfected after December 15, 1978, (the date of adoption of the Yellowstone reservations).

\textit{City of Livingston Water Rights:}

\begin{tabular}{|c|c|c|c|c|c|}
\hline
WR Number & WR Type & Status & Purposes & Source Name & Priority Date & Volume
\hline
43B 194573 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL; FISHERY & YELLOWSTONE RIVER & 1/6/1890 & 1385
\hline
43B 194572 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & YELLOWSTONE RIVER & 1/23/1913 & 3148
\hline
43B 194575 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 5/31/1951 & 76.7
\hline
43B 193768 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 2/28/1955 & 821
\hline
43B 194574 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 2/28/1955 & 798.36
\hline
43B 194579 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 2/28/1955 & 805
\hline
43B 194571 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 10/12/1960 & 159
\hline
43B 193767 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 12/31/1960 & 32.34
\hline
43B 194576 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 12/7/1961 & 50
\hline
43B 193766 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 12/14/1961 & 50
\hline
43B 194578 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 10/10/1963 & 25
\hline
43B 194577 00 & STATEMENT OF CLAIM & ACTV & MUNICIPAL & GROUNDWATER & 7/20/1965 & 1546
\hline
43B 3530 00 & PROVISIONAL PERMIT & ACTV & MUNICIPAL & GROUNDWATER & 9/6/1974 & 485.81
\hline
43B 3531 00 & PROVISIONAL PERMIT & ACTV & MUNICIPAL & GROUNDWATER & 9/6/1974 & 327
\hline
43B 13670 00 & GROUND WATER CERTIFICATE & ACTV & MUNICIPAL & GROUNDWATER & 6/24/1977 & 61
\hline
43B 9940 00 & WATER RESERVATION & ACTV & MUNICIPAL & YELLOWSTONE RIVER & 12/15/1978 & 4510
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43B 58303 00 & PROVISIONAL PERMIT & ACTV & MUNICIPAL & GROUNDWATER & 12/20/1984 & 140.35
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43B 73697 00 & PROVISIONAL PERMIT & ACTV & MUNICIPAL & GROUNDWATER & 2/22/1990 & <Null>
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\end{tabular}
Reservation # 995400

City of Miles City

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 2,889 acre-feet per year
Source: Yellowstone River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Miles City on December 31st, 2015.

Reservant Response:

Required Reporting [36.16.120]
1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

   **Response:** The amount granted/allocated to date is 4 CFS up to 2,889 acre-feet per year for municipal use per year from Jan. to Dec. There is no change in the amount required at this time. The methodology that was originally used was based on population and proposed growth. Miles City’s population has been steady in the past few years, but is steadily increasing due to the Bakken oil field. Miles City is centrally located between the Bakken oil field, proposed wind farms, Natural gas production and coal that could be used for hydrogen fuel cell technology when available technology becomes better available. Miles City could experience rapid growth during any one of these energy booms.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

   **Response:** The purpose has stayed the same for Miles City which is to provide water to the city residents and businesses for beneficial use.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

   **Response:** In our growth policy we are anticipating 18,000 to 20,000 people. We are currently seeing growth as compared to the past years due to energy development. The water reservation is still needed to serve the public and encourage development to the Miles City area.
4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount is still appropriate with the application. This was determined by the original water reservation for the City of Miles City.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** The reservation still remains in the public interest as identified in the original application. The interest of the public is being served as the Montana Water Use Act defines Municipal use of water as a beneficial use. We also need the reservation to fulfill our growth policy which will allow Miles City to attract businesses and residents, which in turn will help with the growth of Miles City.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** Growth policy and supported evidence in the original application. In our current growth policy, we are still anticipating growth in which the water reservation will be needed, as was in the original application.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** Due to the downturn in the economy in the past years, we have not reached the growth that was anticipated. We are currently seeing growth due to the energy boom that is in the Bakken. We are surrounded by other energy sources, wind, natural gas and coal development that any on source could be developed, whereby creating a population boom. The water reservation will be needed if that were to occur.

**Department Review:**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing population. Water remains available for future appropriation through the provisional permit process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. The 2013 census indicates a population of 8,758 people for the City of Miles City. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Miles City would be 2,453 acre-feet per year \([250 \text{ gallons per day}] (8,758 \text{ persons})(365 \text{ days per year}) ÷ [325,851] = 2,453 \text{ acre-feet per year}\). Existing “municipal” water rights for the City of Miles City total 3,661 acre-feet.
It appears that the City of Miles City has sufficient water rights to serve the current population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the City should not rely on the excess claims for growth.

4. In the 38 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

5. Conditions of the Final Order establishing municipal reservations in the Yellowstone River basin state: “The reservation is intended to run concurrently with and overlap rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation”. (page 3, paragraph 13)

In the 38 years since the adoption of the reservation the City of Miles City has not applied for any additional water rights.

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Miles City remain as granted pending a Final Decree for all basins tributary to the Yellowstone River. Upon Final Decree the department recommends re-evaluating the need & amount for this reservation.

2. As conditioned in the Final Order, the department recommends that any future appropriation of water for the City of Miles City be counted against the reservation total.

---

**City of Miles City Water Rights:**

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<tr>
<th>WR #</th>
<th>Type</th>
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<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
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<td>4/1/1896</td>
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<td>11/29/1973</td>
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Appendix B

Lower Missouri Municipal Reservations

DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW
DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW

Reservation # 8449200  Town of Circle Montana

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 78 acre-feet per year
- Source: Groundwater

Summary:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the Town of Circle on May 2nd, 2016.

Reservant Response:
Required Reporting [36.16.120]

1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: There are no changes.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: Has not changed.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: Yes, the need does exist – people need water.

4. Amount: Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

Response: Yes, the amount is still in accordance w/ the application.

5. Public Interest: Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.
Response: Yes, the reservation remains in the public interest.

6. Compliance: Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

Response: We have responded to all compliance letters brought to us.

7. Perfection: If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

Response: All projected levels have been met no changes.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. In addition to this Water Reservation, the Town of Circle has 5 existing water rights associated with town wells. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Additionally water remains available for future appropriation through the provisional permit process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the original application identifies a projected population of 820 persons by the year 2035 for the Town of Circle. The 2013 census identifies a population of 609 for the Town of Circle. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the Town of Circle was 

\[
\frac{(250 \text{ gallons per day})(609 \text{ persons})(365 \text{ days per year})}{325,851} = 170.5 \text{ acre-feet per year.}
\]

Existing “municipal” water rights for the Town of Circle total 1,279 acre-feet. It appears that the Town of Circle has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the Town should not rely on the excess claims for growth. The reservation should be maintained in order to provide the legal right for future water supplies.
4. In the 22 years since the Final Order establishing the reservation none of the reservation has been perfected.

The proposed project as described in the original water reservation application involves drilling one additional 275 GPM well which would be tied to the existing distribution system. On October 9th, 2002 the Town of Circle submitted change application 40P 30003956 to add a new well capable of delivering 270 GPM to the existing distribution system. The flow and volume
associated with the five water rights involved in this change were not increased. Through this change, water provided under existing water rights includes this new well and the Town’s water reservation was left unused.

Department Recommendation:

1. The department recommends that the water reservation for the Town of Circle remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.
2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the Town of Circle.
3. The department recommends that any future appropriation of water for the Town of Circle be counted against the reservation flow and volume.

Town of Circle Water Rights:

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<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
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<th>Volume (AF)</th>
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<td>Statement of Claim</td>
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<td>9/22/1972</td>
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<td>Provisional Permit</td>
<td>Active</td>
<td>1/2/1975</td>
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<td>Groundwater</td>
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<td>40P 41360 00</td>
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<td>40P 41362 00</td>
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<td>Active</td>
<td>7/1/1985</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>277.77 GPM</td>
<td>78.00</td>
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Reservation # 7764600
City of Culbertson Montana

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 365 acre-feet per year
- Source: Missouri River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Culbertson on December 31st, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The amount of water granted is 365 acre-feet per year at a rate of 0.44 million gallons per day (MGD). To date no water from the water reservation has been allocated. There is no change in the amount required to satisfy the purpose and need of the reservation and no changes in the methodology originally used to determine the amount.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose for the water reservation remains the same as identified in the application and order. The purpose is still for future beneficial municipal and industrial use. Municipal and industrial uses are defined as beneficial uses by Montana Water Law. This water reservation allows Culbertson to provide municipal water for future growth in a cost-effective manner.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: The need still exists as identified in the application and order. Water use in the Missouri River Basin continues to grow. This is especially true in the Milk River Basin where there is a closure on issuing new water use permits for direct diversion from the Milk River. This water reservation provides the essential security of a firm water supply needed by Culbertson to allow for water needs associated with future growth. Culbertson has experienced cyclical growth mostly due to oil and gas development.
within the Bakken region. This water reservation allows Culbertson to be prepared when the oil and gas development rebounds and an influx of oil and gas related workers’ water demand exists. The last 5 years have shown significant signs of growth within Culbertson, and the Town recently completed a wastewater treatment system upgrade to accommodate nearly double the size of the Town’s population from the 2010 Census. The influx of workers in both the oil and gas fields, service companies and basic services that support this population continues to have an impact on eastern Montana communities, even with low oil prices. Culbertson continues to see applications for new development within and adjacent to the town, indicating continued growth.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount of water reservation is still appropriate for the Town of Culbertson. The forecasted population growth is still relevant as described in the original application. More importantly Culbertson has recently been going through a cycle of water demand from oil and gas development in the region. The Town has recently seen several new subdivision developments that have added a significant number of available lots, and the available vacant lots within the town have been developed and are currently being utilized. The Town has projected that its 2010 Census population will nearly double over the next 10 years. A Preliminary Engineering Report for the recently completed wastewater treatment system was developed in 2012 that included flow projections. At the time of the report the Town had an existing flow of 96,741 gpd. Approved and future flows were also analyzed to account for future community expansion. Approved flows were classified as proposed new developments with approved development applications either submitted to the Town or approved by the Town. The total approved flows at the time of design were 70,780 gpd. Future flows were classified as potential developments that will allow for the town to approve further development in the future. The total future flows were 30,065 gpd. The design flow used for designing the new wastewater system was 197,586 gpd to accommodate projected flows for the next 20 years. Although it is difficult to forecast growth from oil and gas development due to its dependence on pricing, projections within the Bakken area suggest continued growth throughout the next 20 years. The amount requested will give Culbertson the peace of mind that water availability will not inhibit growth.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** The reservation still remains in the public interest as identified in the application and order. The reservation is in the public interest for two primary reasons. First, there is constitutional and legislative support for the reservation and subsequent development of water. Second, it is essential that the Town of Culbertson secure an adequate, stable water supply if the community is to prosper and continue to develop. The beneficial use of the reservation of water will support activities needed to generate economic growth from increased employment and tax revenues. This water reservation assures that the availability of water will not become a constraint to growth of Culbertson and Montana.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.
Response: Attached to this report is the billing usage summary for the Town of Culbertson for the years 2005 through 2015 as well as the Preliminary Engineering Report for the Town’s recent Wastewater Treatment System Rehabilitation project.

7. Perfection: If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

Response: The use of the reserved water for the Town of Culbertson has not reached the development level projected due to the cyclical nature of water demands for the Town. Development in this part of the State is currently directly related to the oil and gas industry. Because of this it is difficult to predict when the Town will reach the development level projected. Development happens very quickly when the oil and gas industry picks up and the reservation allows the Town to be ready for the influx of development. As the Town’s population and water needs grow, they will work closely with the DNRC to ensure perfection of the water reservation.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. The need for the reservation does not appear to have materialized. Water from the reserved source remains available through the DNRC permitting process. Additionally, the Town of Culbertson is within the service area of the Dry Prairie Rural Water System. This system, when fully developed, will provide municipal water.
3. The applicant appears to be in substantial compliance with the amount granted. Information submitted in the original application identified two existing water rights with a combined total of 2,419 acre-feet per year. During the adjudication process one of these water rights was withdrawn by the applicant and the other was reduced to 258 acre-feet per year by the Water Court to reflect “historic use”, (Masters report 40S-7 filed April 8th, 2008). The original application identifies a daily use of 189 gallons per person within the town of Culbertson and a daily use of 250 gallons per person for communities of a similar demographic makeup. Using 250 gallons per person per day and the 2013 population of 794 individuals the estimated daily use for the town of Culbertson totals 223 acre-feet per year. ([250 gallons per day] / [794 persons] * [365 days per year]) / [325,851] = 223 acre-feet per year. Excluding this reservation, DNRC records indicate one water right for a total of 258 acre-feet per year for the town of Culbertson following adjudication by the Montana Water Court. Unless the Town applied for a new provisional permit, all future growth in the Town of Culbertson would rely on use of the Town’s water reservation. Although the population of Culbertson has experienced a slight decline from the 1980 population, with the proximity to the Bakken oil field this could easily be reversed. Population growth in Culbertson could experience rapid change.
4. In June of 2012 the Town conducted a hydrostatic test of the newly completed public water supply. Through this test the entire flow and volume of all current water rights including the Water Reservation was put to use and thus perfected.
5. The project proposed in the original water reservation application includes providing water to Culbertson and the Roosevelt County Rural Water Users District by modifying the existing water treatment plant. This upgrade was completed in 2015. The City of Culbertson submitted a record of yearly use from January 2005 through November of 2015. The records show an average use of approximately 190 acre-feet per year. During this
period the City completed an up-grade of the municipal water system. In June of 2012 the
system was hydrostatically tested with maximum flow. The volume delivered in June of 2012
was approximately 620 acre-feet of water, which indicates that the city’s statement of claim and
water reservation were used nearly in their entirety. Excluding this test period, the average
yearly use for the 10 year period was 128 acre-feet per year. Current water rights for the City of
Culbertson total 258 acre-feet per year.

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Culbertson remain as
   granted. Water remains available through the permitting process and the need for the
   reservation is not apparent, however, the DNRC sees no compelling reason to revoke this
   reservation.

2. Upon completion of the on-going adjudication and the issuance of a final decree the department
   recommends re-evaluating the need and amount of the reservation for the City of Culbertson.

3. The department recommends that any future appropriation of water for the City of Culbertson
   be counted against the reservation flow and volume.

**City of Culbertson Water Rights:**

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<td>7/1/1985</td>
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<td>Missouri River</td>
<td>305.55 GPM</td>
<td>365</td>
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Reservation # 8448500  Town of Ekalaka Montana

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1989
- Volume: 20 acre-feet per year
- Source: Groundwater

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the town of Ekalaka on December 3rd, 2015.

Reservant Response:

Required Reporting [36.16.120]

1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**Response:** The amount granted/allocated to date is 50 gallons per minute up to 20 acre-feet for municipal use from January through December of each year. No change in the amount required is needed to satisfy the purpose or need of the reservation at this time. The methodology originally used was based on population growth. The population of the Town has dwindled more than anticipated on the original application. However, at this time the population has begun to demonstrate steady growth. In addition, as Ekalaka is located in the proximity of the Bakken Oil Formation, a population boom could occur spontaneously.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** The purpose of the application was to allow for the Town to provide municipal water for future growth in a cost-effective manner. The purpose has not changed. The municipality is currently increasing in population and this growth correlates directly to increased water usage by the residents and businesses.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** Yes, the need still exists as identified in the application. The need of a water reservation, which allows a public entity to secure an early priority date for uses that may not be realized for years or even decades into the future, is a very critical need for a municipality. The need still exists as a municipality, at any moment, may be charged with the duty of providing water to an unknown population. (i.e. Bakken Oil Boom)
4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** Yes, the amount is still appropriate. In the original application and order the amount of water reservation needed was based on the water usage by dividing the average gallons per day usage by the average service area population. An assumption was made that the service area population that would be applicable in 2035 was expected to be 682. Since the date of the reservation application of 1991, the population has dwindled. However, it is still a probability, that as now the population is steadily increasing, that in twenty years (by 2035) that the population will reflect the 682 residents as was estimated in 1991. Thus, it is deemed that the amount is still appropriate as per the original application.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** Yes, the water reservation remains in the public interest. As the 42nd Montana Legislature (1973) passed, and the governor signed into law, the Montana Water Use Act which defines municipal use of water as a beneficial use. Thus, as a municipality serves the public, the interest of the public is being served. In addition, a secure, stable water supply is required if a community is to prosper and develop. The water reservation allows availability of water to the public for its future needs.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** The municipality is not aware of any compliance documentation that was required as part of the board’s original order granting the reservation. With that in mind, the application for the water reservation indicated that the date the reserved water would be applied to beneficial use would be between January 2000 and December 2035. At such time the water reservation is utilized – prior to December of 2035 – appropriate compliance documents will be provided the Montana Department of Natural Resources and Conservation.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** The use of water has not yet reached the development level projected. The decrease of population in prior years was more than anticipated. However, that trend seems to have ended and by December of 2035, if the population growth continues on its upward gain, the water reservation may be perfected.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable.
   Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Water rights associated with the current city wells supply ample water for the current population and should these wells fail the underlying right can be applied to a replacement well. Additionally, water remains available for future appropriation through the provisional permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the original application identifies a projected population of 524 persons by the year 2035 for the town of Ekalaka. The 2013 census identifies a population of 345 for the town of Ekalaka. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the town of Ekalaka was 97 acre-feet per year, \[\frac{(250 \text{ gallons per day}) (345 \text{ persons})(365 \text{ days per year})}{325,851} = 97 \text{ acre-feet per year}\]. Existing “municipal” water rights for the town of Ekalaka total 368 acre-feet. It appears that the town of Ekalaka has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the city should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

4. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. The proposed project in the original water reservation application involved providing a sand separator on well #5 to increase its capacity, construction of a 100,000-gallon storage tank and providing additional distribution pipe. While the DNRC cannot confirm whether or not the proposed improvements have been implemented it does not appear that there has been an expanded use of water.

Department Recommendation:

1. The department recommends that the water reservation for the Town of Ekalaka remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.

2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the Town of Ekalaka.

3. The department recommends that any future appropriation of water for the Town of Ekalaka be counted against the reservation flow and volume.

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Town of Ekalaka Water Rights:

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Reservation # 7774900  Town of Fort Peck

Reservation Description:
Final Order: Lower Missouri River Basin, Issued December 30, 1994
Priority Date: July 1, 1985
Volume: 100 acre-feet per year
Source: Missouri River

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the Town of Fort Peck on December 17th, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The original water right allows the Town of Fort Peck a right of 1,500 Acre Feet with a maximum flow of 930 GPM. The 1991 report states that the amount of the reservation to be 100 Acre Feet, at a maximum flow of 150 GPM. This amount is adequate to satisfy the purpose, and the original methodology is still valid.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: Yes, the purpose remains the same. The purpose of the original reservation was for future beneficial municipal and industrial use. This reservation will allow the Town of Fort Peck to provide municipal water for future growth in a cost-effective manner. Recent subdivisions within the Town of Fort Peck have aided expansion. Currently the Town has approximately 76 vacant lots, with an average of 2 persons per residence, equates to an additional 152 residents once all of the lots are developed.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: Yes, the need still exists. In order to plan for future growth, the water reservation process encourages a comprehensive planning effort that focuses on the future water needs of the community. Population projections for the Town of Fort Peck predict a rise in the number of residences over the next
10 - –5 years. According to the original report, the population of the Town is currently above the projected population for 2035.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount stated in the application is intended to serve a population of 230 people in the year 2035. According to the United States Census Bureau, the current population of the town is 233 people, with projected population trends projected to continue in the upward direction.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** Yes, the reservation remains in the public interest. As stated in the application, there is constitutional and legislative support for the reservation and subsequent development of water. The reservation also allows the DNRC to make loans and grants to political subdivisions of the state to finance renewable resource projects such as water development projects. Secondly it is essential that the town secure adequate water supply if the town is to prosper and develop.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** The water reservation by the Town of Fort Peck is used entirely within the state and within the Missouri River Basin. The Town of Fort Peck has identified a management plan for the design, development, and administration of its water reservation. Currently all of the residences in the Town of Fort Peck are metered, and a revised rate schedule is anticipated to be implemented. Also, the Town of Fort Peck is capable of exercising reasonable diligence towards feasibly financing projects and applying reservation water to beneficial use.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** The Town of Fort Peck has not perfected its reservation at this time. The installation of water meters throughout the Town have reduced water usage to a level more consistent with a community of its size. The continued growth of the Town of Fort Peck and the surrounding area will encourage development, and will help the Town of Fort Peck perfect its water right. As mentioned previously, the Town of Fort Peck’s population has experienced recent growth, and is expected to continue to grow in the future. The current population already exceeds the projected population of the initial report for the year 2035.
Department Review:

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Additionally, water remains available for appropriation through the provisional permit process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the applicant’s response identifies a current population of 233 people for the Town of Fort Peck. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the current water use for the Town of Fort Peck is 65 acre-feet per year, \[ \frac{250 \text{ gallons per day}}{724 \text{ persons}} \times 365 \text{ days per year} = 65 \text{ acre-feet}. \]

   Existing “municipal” water rights for the Town of Fort Peck total 1,500 acre-feet. It appears that the Town of Fort Peck has sufficient water rights to provide for a population much greater than the current population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Additionally, the existing Statement of Claim for the Town of Fort Peck includes an issue remark that brings the claimed volume into question. Resolution of this remark could potentially decrease the claimed volume. Based on these considerations, the city should not rely on the volume expressed in the existing Statement of Claim for growth. The reservation process should be pursued to provide the legal right for future water supplies.

4. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

   The proposed plan in the submitted application for a water reservation included expansion of the existing water treatment plant and distribution system. While the DNRC has no information on the status of these improvements it does not appear that there has been an increased use of water. Additionally, installation of water meters throughout the town has decreased total water usage.

Department Recommendations:

1. The department recommends that the water reservation for the Town of Fort Peck remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.
2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the Town of Fort Peck.
3. The department recommends that any future appropriation of water for the Town of Fort Peck be counted against the reservation flow and volume.
Town of Fort Peck Water Rights:

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<th>WR #</th>
<th>Type</th>
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Reservation # 8448600  
City of Havre Montana

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 475 acre-feet per year
- Source: Groundwater

Summary:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. No response was received from the City of Havre Montana.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose and public interest.
2. Reservant is non-compliant with the terms of the Final Order.
   Senate Bill 330 was passed to mandate a review of all existing reservations as required through the Final Order granting water reservations on the Lower Missouri. No response to the DNRC request for information was received from the Reservant.
3. Need for the reservation appears questionable.
   The City of Havre purchases all municipal water from the Bureau of Reclamation, (Fresno Reservoir). During the recent adjudication review by the Montana Water Court all municipal water rights with a priority date prior to July 1, 1973 except those used for emergency back-up were withdrawn for non-use. In addition to these emergency water rights the City of Havre has two active post 1973 provisional permits for municipal water in the DNRC database. Contract water from the Bureau of Reclamation appears to be more than adequate to serve the existing population. Water from the reserved source, (groundwater), remains available for future appropriation through the provisional permit process.
   Finally, Cut Bank is within the service area of the Rocky Boy North Central Montana Regional Water Project and will rely on the project for future appropriations when the project becomes operational.
4. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
   Information in the original application identifies a projected population of 11,724 persons by the year 2035 for the City of Havre. The 2013 census identifies a population of 9,792 for the City of Havre. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Havre was 2,742 acre-feet per year, [(250 gallons per day) (9,792 persons)(365 days per year)] ÷[325,851]= 2,742 acre-feet per year. As previously stated the City of Havre purchases all municipal water...
from the Bureau of Reclamation. Emergency back-up water rights for the City of Havre total 3,531 acre-feet. All back-up water rights are from existing wells.

It appears that the City of Havre has sufficient water rights to serve the current and projected population even without the purchase of additional water from the Bureau of Reclamation. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the Town should not rely on the excess claims for growth. The reservation should be maintained in order to provide the legal right for future water supplies.

5. In the 22 years since the Final Order establishing the reservation none of the reservation has been perfected.

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Havre remain as granted. In addition to water purchased through the Bureau of Reclamation, water from the reserved source, (groundwater), remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.

2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Havre.

3. The department recommends that any future appropriation of water for the City of Havre be counted against the reservation flow and volume.

**City of Havre Municipal Water Rights:**

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Reservation # 8448300  City of Malta

Reservation Description:
Final Order: Lower Missouri River Basin, Issued December 30, 1994
Priority Date: July 1, 1985
Volume: 137 acre-feet per year
Source: Groundwater

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Malta on December 31st, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The reservation allows the city of Malta a water reservation of 137 AF/year at the rate of .43 gallons per day, (MGD). Malta has not used any of this reserved right. Malta recently stipulated to a modification of its water rights in its four wells which was approved by the Water Court. Malta sees no change in the amount reservation to satisfy the purpose or the need expressed in its original application or any change in the methodology used.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose remains the same as expressed in Malta’s application. Malta needs a water reservation for future beneficial municipal and industrial use. Municipal and industrial use are defined by Montana law. Maintaining this current water reservation will allow Malta to provide municipal water for future growth in a cost-effective manner. The direct beneficiaries of the water reservation will be the residents and businesses served by the municipal water systems.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: The need remains the same as expressed in Malta’s application. The water reservation provides the essential security of a firm water supply needed by Malta to allow for the water needs associated with future growth. Like all eastern Montana communities, Malta faces the possibility of
accelerated growth caused by boom and bust cycles. The reservation allows Malta to accommodate normal growth over a planning period if and when that growth occurs.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

Response: The amount remains the same as expressed in Malta’s application. Malta still requests that the water reservation be maintained for the development of one additional well to provide water for future growth. The maximum rate of the flow requested remains at 0.43 MDG (300 gpm) based on the practical yield of one new well. The volume of reserved water remains requested at 137 AF/year and based on average daily use increasing with an expanding population.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

Response: The public interest remains the same as expressed in Malta’s application. It is essential that Malta secure an adequate, stable water supply if the community is to prosper and develop.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

Response: Malta is in compliance with the Order to the best of its knowledge.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

Response: Malta has not perfected its use of the reserved water right. Since the date of the application, Malta has undertaken efforts to reduce its water use. Malta recently agreed to the amendment of its water rights on its four wells. Malta’s water right was reduced to 150 AF/year for each of its four wells. This reduction was based on a rate of use of 250 gallons per day per capita instead of the 350 gallons per day per capita that existed at the time of the application. This decline in use is due to improvements and repairs to the water storage and distribution system, a finance program for automatic lawn sprinklers, the installation of water meters, and a lower population. Malta is proceeding with new plans for additional multimillion dollar improvements to its water system over the next three years. Those plans include the installation of new trunk lines.

**Department Review:**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. The need for the reservation does not appear to have materialized. In the submitted application the City of Malta forecast a 2035 population of 2,825 people. As it has turned out the City has experienced negative growth. The 2013 population was 1,970, down from a 1980 population of 2,367. Additionally, water from the reserved source remains available through the DNRC permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information submitted in the original application identified five existing water rights with a combined total of 2,110.5 acre-feet per year. During the adjudication process the total volume for these water rights was reduced to 863 acre-feet per year by the Montana Water Court to reflect “historic use”, (Masters Report, Case 40J-179 adopted December 22nd, 2015). The original application identifies a daily use of 360 gallons per person per day within the town of Malta and a daily use of 250 gallons per person for communities of a similar demographic makeup. Since the date of the application, Malta has undertaken efforts to reduce its water use. The reduction in volume through Case 40J-179 cited a current use of 250 gallons per person per day. Using 250 gallons per person and the 2013 population of 1,970 individuals the estimated use for the town of Malta totals 552 acre-feet per year, ([250 gallons per day] (9,792 persons)(365 days per year)) ÷[325,851]= 2,742 acre-feet per year. Even with the reduction in volume done by the Montana Water Court water available through existing water rights appears to be more than adequate to serve the existing and projected population.

4. In the 22 years since the Final Order establishing the reservation none of the reservation has been perfected.

Department Recommendation:
1. The department recommends that the water reservation for the City of Malta remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.
2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Malta.
3. The department recommends that any future appropriation of water for the City of Malta be counted against the reservation flow and volume.

1City of Malta Water Rights:

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<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
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<th>Volume (AF)</th>
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Reservation # 8449100 | City of Plentywood

**Reservation Description:**
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 235 acre-feet per year
- Source: Groundwater

**Project Description:**
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Plentywood on December 31st, 2015.

**Reservant Response:**

**Required Reporting [36.16.120]**

1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**Response:** 235 Acre-Feet Per Year at rate of 0.72 Million Gallons Per Day. None allocated yet. No known change to methodology developed and used by Acquoneering (Roger Perkins), the consultant who prepared Application.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** Yes – purpose is same.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** Need is same based on growth projections that were part of the Application.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** Yes – projections and calculations used in Application were developed by consultant Acquoneering, who prepared the Application. The City doesn’t have reason or expertise to question whether the projected need is no longer the same due to change in calculations or data.
5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** Yes – it remains in the public interest – it would provide water to the City’s water supply system for residences and businesses and other uses within the community.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** No requests for compliance information or reports received by the City since the grant of the application – None in files.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** Per Application, reserved water not scheduled for full use until 2035. City will monitor need and determine means of perfection or allocation of reservation when necessary.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. **Need** for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Water from the reserved source remains available for appropriation through the provisional permit process. Additionally, the City of Plentywood is within the service area of the Dry Prairie Rural Water System. This system, when fully developed, will provide municipal water.
3. The **amount** granted appears to be greater than the demand that has materialized since the reservation was granted. The 2013 census identifies a population of 1,918 for the City of Plentywood. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Plentywood was 537 acre-feet per year, 

\[
\left(\frac{250 \text{ gallons per day} \times 1,918 \text{ persons} \times 365 \text{ days per year}}{325,851}\right) = 537 \text{ acre-feet per year.}
\]

Existing “municipal” water rights for the City of Plentywood total 1,888 acre-feet. It appears that the City of Plentywood has sufficient water rights to provide for a population much greater than the current population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the City should not rely on the volume expressed in the existing water rights for growth. The reservation process should be
pursued to provide the legal right for future water supplies. Lastly, water remains available through the provisional permitting process.

4. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

The proposed plan in the original application for reserved water includes drilling one additional 500 GPM well and expansion of the city’s distribution system. Two additional wells have been added to the City’s water distribution system since the priority date of this water reservation. Both of these wells are authorized under separate water rights.

**Department Recommendations:**

1. The department recommends that the water reservation for the City of Plentywood remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.

2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Plentywood.

3. The department recommends that any future appropriation of water for the City of Plentywood be counted against the reservation flow and volume.

---

1 City of Plentywood Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
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<td>Statement of Claim</td>
<td>Active</td>
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Reservation # 8448800  City of Poplar Montana

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 448 acre-feet per year
- Source: Groundwater

Summary:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. No response was received from the City of Poplar Montana.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose and public interest.
2. Reservant is non-compliant with the terms of the Final Order.
   Senate Bill 330 was passed to mandate a review of all existing reservations as required through the Final Order granting water reservations on the Lower Missouri. No response to the DNRC request for information was received from the Reservant.
3. Need for the reservation appears questionable.
   The City of Poplar currently receives all municipal water from the Dry Prairie Rural Water System. In addition, the City of Poplar has 3 existing water rights, (all provisional permits), associated with town wells. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Finally, water from the reserved source remains available for future appropriation through the provisional permit process.
4. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
   Information in the original application identifies a projected population of 1,213 persons by the year 2035 for the City of Poplar. The 2013 census identifies a population of 876 for the City of Poplar. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Poplar was \[(250 \text{ gallons per day}) \times (876 \text{ persons}) \times (365 \text{ days per year})\] ÷ [325,851] = 245 acre-feet per year. Existing “municipal” water rights for the City of Poplar total 1,881 acre-feet. It appears that the City of Poplar has sufficient water rights to serve the current and projected population. All of the existing municipal water rights were issued after passage of the Montana Water Use Act and are thus beyond the purview of the statewide adjudication review.
5. In the 22 years since the Final Order establishing the reservation none of the reservation has been perfected.
**Department Recommendation:**

1. The department recommends that the water reservation for the City of Poplar remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.

2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Poplar.

3. The department recommends that any future appropriation of water for the City of Poplar be counted against the reservation flow and volume.

**City of Poplar Water Rights:**

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<th>WR #</th>
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<th>Status</th>
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<td>Groundwater</td>
<td>1,000 GPM</td>
<td>448</td>
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Reservation # 7764700

City of Scobey

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 168 acre-feet per year
- Source: Groundwater

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Scobey on December 31st, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The City of Scobey’s water reservation granted 168 acre-feet per year at a rate of 0.72 million gallons per day. A portion of the water provided for in the original reservation has been appropriated. Two new wells were drilled in the early 1990’s (Wells #6 and #7, respectively) to appropriate the reservation water and have been in service since. These two wells now provide much of the water needed in the City of Scobey. Wells #3 and #4 that were referred to in the original application are no longer in use. Total water pumped for the last few years is as follows:
   a) 2011: 214 acre-feet
   b) 2012: 260 acre-feet
   c) 2013: 231 acre-feet
   d) 2014: 182 acre-feet
   e) 2015: Not available as of submission date.

No change in the amount required is expected. Water usage has decreased slightly over the last few years. However, oil and gas leasing boomed in 2010 through 2012, with approximately half of the acres in Daniels County being leased. Most leases provided a 5-year primary term with an option to renew for another 5 years. Although limited development has occurred thus far (with only 5 or so wells being drilled, and none currently in production), there is still a significant prospect of water being needed for oil and gas drilling in the next few years.

Similarly, the City does not feel that a change in methodology is required. The original application was based on the water needs of a historical peak population of 1,726 persons in 1960. The population of Daniels County has stopped its decline, and the City is seeing some population growth going forward. The US Census Bureau estimates growth of 2.4% in Daniels County between 2010 and 2014. Further,
the original application referred to the possibility of future oil and gas development, a prospect that has become quite likely in the last few years.

1http://quickfacts.census.gov/qfd/states/30/30019.html

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** Yes. The purpose of the reservation remains the same. The reservation’s original purpose was to provide municipal water for future growth in a cost-effective manner. The City of Scobey has an ongoing interest in maintaining water rights capable of supporting future growth. The City provides water to homes, businesses, agricultural producers and service providers, and oil and gas companies for exploration. With the recent trend of growth and the prospect of further oil and gas development, the original purpose remains relevant and necessary for the City’s continued growth.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** Yes. The need still exists as identified in the application and order. As noted above, the population decline has reversed itself in the last few years. The City of Scobey and Daniels County are now seeing an increase in population, business activity, and possible oil and gas exploration. The City is still in need of the reservation as a way to ensure water is available to sustain the growth it is now experiencing and the growth that will happen in the future.

The City of Scobey is scheduled to eventually connect with the Dry Prairie Rural Water system. At that point, the extent of the City’s need will be reduced. However, a contract was signed with Dry Prairie in June of 2001 with an approximate connect date within 10 years of that. This did not occur as planned and Dry Prairie has still not reached the City. And while the connection may eventually occur, until it does, the City must rely on its own ability to provide water for residents and businesses in the area. Thus, the City still has a strong interest in maintaining its own water rights separate and apart from any water Dry Prairie might eventually provide. If and when Dry Prairie Rural Water does connect to the City of Scobey the City plans on using our reservation for common public uses such as parks/poo., cemetery, etc... and also for gas and oil drilling needs.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount is still appropriate. With the earlier wells (#2 and #3) out of service due to age, the wells drilled due to the reservation are providing the majority of the City’s water at this time. Well #5 can yield approximately 0.64 mgd while the remainder of any water needed must come from Wells #6 and #7.

With the water scheduled to be fully appropriated by 2035, there still remains 20 years’ worth of City growth to account for. If Scobey maintains a steady growth rate of 2.4% until 2035, the population at that time will reach 1,840, which is more than the peak population used in the original application. This figure does not take into account any additional pressures put on the City’s water supply by oil and gas exploration or increases in agricultural use.
5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** Yes. The reservation remains in the public interest as identified in the application and order. The water was originally reserved for future growth and for municipal uses. The City’s current water system continues to serve city residents, businesses, agricultural producers and services, and is available for future oil and gas development. Further, the City has no other current resources to provide the water needed. As noted above, the Dry Prairie Rural Water system is behind schedule to connect with Scobey. And because Dry Prairie relies on grants and other government funding for its projects, the amount of funding from year to year has varied. And its progress toward the various municipalities for connection has similarly varied from year to year. Until it actually reaches the City of Scobey, which may be quite a few years in the future, the City’s water reservation will be crucial to its continued growth.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** Attached for review are the following:

a) Well Completion Logs for Wells #6 and #7.
b) Usage statistics (total gallons pumped) for years 1979 through 2014;
c) Letter from Mark A. Smith, P.E., concerning abandonment of Wells #2 and #3.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** Only a portion of the reserved water has been put to use to date. The main deterrent of putting all of the reservation to use has been slower growth in the City than anticipated. Until 2010, the population of the City had been on a long, slow decline. Only within the last few years has the population rebounded and now we are seeing slow but significant growth. There are a few different reasons for this, including the oil and gas leasing boom, good agricultural years for producers and servicers, and the general population increase from the oil development in nearby North Dakota, the effects of which are being felt all over eastern Montana. Moreover, the original application called for full appropriation of the water reservation by 2035, a full 20 years away. It is difficult, if not impossible to predict how the City’s water needs may change so far in the future. As the application notes, a water reservation provides some certainty and stability to aid in its growth planning. The City benefits as long as there is additional water to “grow” into. And as a result, the City can confidently grow as long as the reservation remains.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. The need for the reservation does not appear to have materialized. In the submitted application the City of Scobey anticipated a negative growth and forecast a 2035 population of 1,111 people. As it has turned out the City has experienced negative growth. The 2013 population was 1,052, down from a 1980 population of 1,382. Additionally, water from the reserved source remains available through the DNRC permitting process.
Additionally, the City of Scobey is within the service area of the Dry Prairie Rural Water System. This system, when fully developed, will provide municipal water.

3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.

Information submitted in the original application identified three existing water rights with a combined total of 1,023 acre-feet per year. During the adjudication process two of these rights were withdrawn and the volume for the remaining water right was reduced to 324 acre-feet per year by the Montana Water Court to reflect “historic use”, (Masters Report, Case 40Q-28 adopted December 26th, 2007). On February 11th, 1993 the City of Scobey was awarded an additional water right through the provisional permit process for 1,129 acre-feet per year. The current volume available through all existing municipal water rights for the City of Scobey is now 1,453 acre-feet per year.

The 2013 population for the City of Scobey was 1,052 people, down from a 1980 population of 1,382. The original application projected a future daily use of 250 gallons per person per day within the town of Scobey and a projected 2035 population of 1,720 people. Using 250 gallons per person per day the 2013 water use for the City of Scobey was 295 acre-feet per year, \( \frac{(250 \text{ gallons per day}) (1,052 \text{ persons})(365 \text{ days per year})}{325,851} = 295 \text{ acre-feet per year.} \)

Water available through existing water rights appears to be more than adequate to serve the existing and projected population.\(^1\)

4. In the 22 years since the Final Order establishing the reservation none of the reservation has been perfected.

The proposed project as described in the original application for reserved water involves drilling one additional 500 GPM well which would be tied to the distribution system. In the submitted response to the DNRC request for information the applicant indicates that a portion of their reservation has been put to use through wells identified as #6 & #7. These wells are both authorized under Provisional Permit 40Q 84847-00 and are not a part of the City’s reservation.

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Scobey remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.

2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Scobey.

3. The department recommends that any future appropriation of water for the City of Scobey be counted against the reservation flow and volume.

\(^1\)City of Scobey Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
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Reservation # 8448400  City of Wibaux Montana

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 75 acre-feet per year
- Source: Groundwater

Summary:
Senator Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. No response was received from the City of Wibaux Montana.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose and public interest.
2. Reservant is non-compliant with the terms of the Final Order.
   Senate Bill 330 was passed to mandate a review of all existing reservations as required through the Final Order granting water reservations on the Lower Missouri. No response to the DNRC request for information was received from the Reservant.
3. Need for the reservation appears questionable.
   In addition to this Water Reservation, the City of Wibaux has 3 existing water rights associated with town wells. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Additionally, water from the reserved source remains available for future appropriation through the provisional permit process.
4. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
   Information in the original application identifies a projected population of 668 persons by the year 2035 for the city of Wibaux. The 2013 census identifies a population of 655 for the city of Wibaux. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the city of Wibaux was 186 acre-feet per year, [((250 gallons per day) (665 persons)(365 days per year)] ÷[325,851] = 186 acre-feet per year. Existing “municipal” water rights for the city of Wibaux total 535 acre-feet.
   It appears that the city of Wibaux has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the
appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the city should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

5. In the 22 years since the Final Order establishing the reservation none of the reservation has been perfected.

Department Recommendation:

1. The department recommends that the water reservation for the City of Wibaux remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.

2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Wibaux.

3. The department recommends that any future appropriation of water for the City of Wibaux be counted against the reservation flow and volume.

City of Wibaux Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
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Reservation # 8448200     City of Wolf Point Montana

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 504 acre-feet per year
- Source: Groundwater

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the city of Wolf Point on December 9th, 2015.

Reservant Response:

Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.
Response: The amount granted is 504-acre feet per year, at a maximum rate of 1.44 million gallons per day. This water reservation has a priority date of July 1, 2015 as based on the water rights spreadsheet furnished by the NRCS. Over the past two years, 2014 and 2015, the City has used approximately 545-acre feet and 575-acre feet (projected) respectively. Maximum use for these two years occurred in July and August with 0.92 MGD and 0.87 MGD on average over the course of the month. The methodology used to determine the amount of water remains the same. As mentioned, future growth to the City of Wolf Point plays an important role in the success of the City.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.
Response: Yes, the purpose remains the same as the original reservation application dated January 1991. The purpose of the reservation is for future beneficial municipal and industrial use. This water reservation will allow the City of Wolf Point to provide municipal water for future growth in a cost-effective manner.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.
Response: Yes, the need still exists. As stated in the application, the water reservation process encourages a comprehensive planning effort that focuses on the future needs of the community. Recently, the City of Wolf Point has experienced growth in development due to the Bakken Oil Field expansion. While the expansion has currently slowed, it is projected to once again increase in the near future. The City of Wolf Point has also experienced an increase in annexation applications, which is an indicator of projected future growth.
4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount stated in the application is intended to serve a population of 3,730 people by the year 2035. The estimated population in the year 2015 is 3,530. According to the current population data for the City of Wolf Point, the population is 2,621. This however does not account for the residents of the Fort Peck Tribes that reside on lands adjacent to the City. These lands are also served by the City of Wolf Point’s Water and Sewer system. This tribal housing area includes approximately 300 households, with an average occupancy of 4 people per household. This equates to an additional 1,200 people, yielding a total of approximately 3,800 people using the system. Using information from the previous application, a water usage rate of 172 GPCD yields an average usage of 0.65 MGD, which equates to 732.18 Acre Feet per year. An average peaking factor of 3 is used to calculate the maximum projected flow of 1.95 MGD.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** Yes, the reservation remains in the public interest. The indirect benefits to the City include the economic benefit to the community and to the state by expanding both the property and income tax bases due to increased population. With increased tax revenue, the public will benefit through improved infrastructure in the state and local community. The loss of these tax revenues may result in the loss of opportunity for other development and increases in administrative costs.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** The water reservation by the City of Wolf Point is used entirely within the state and within the Missouri River Basin. The City of Wolf Point has also identified a management plan for the design, development, and administration of its water reservation, and is capable of exercising reasonable diligence towards feasibly financing the project, and applying reservation water to beneficial use in accordance with the management plan. The City of Wolf Point’s water reservation will not adversely affect any senior water rights.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** As noted in the application, increases in population are usually gradual, and are difficult to predict. Rapid growth is projected for the City due to recent oil and gas development in the region. While the drilling for oil has slowed considerably, the production of the wells is continuing, which is projected to have an effect on the population of the City of Wolf Point. Regular monitoring of flows is performed throughout the City in order to monitor water usage.

**Department Review:**

1. The reservant appears to be in substantial compliance with the **purpose**, **public interest**, and **compliance**.
2. **Need** for the reservation appears questionable.
Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Water rights associated with the current city wells supply ample water for the current population and should these wells fail the underlying right can be applied to a replacement well. Water from the reserved source remains available for future appropriation through the provisional permit process. Additionally, the City of Wolf Point is within the service area of the Dry Prairie Rural Water System. This system, when fully developed, will provide municipal water.

3. **The amount** granted appears to be greater than the demand that has materialized since the reservation was granted.

Information in the original application identifies a projected population of 3,730 persons by the year 2035 for the City of Wolf Point. The 2013 census identifies a population of 2,835 for the city of Wolf Point. The response received from the city of Wolf Point indicates that an additional 1,200 individuals outside the city are served by the municipal water supply bringing the total number of persons served to 4,035. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the city of Wolf Point was 1,130 acre-feet per year, 

\[(250 \text{ gallons per day}) (4,035 \text{ persons})(365 \text{ days per year}) = 1,130 \text{ acre-feet per year}\]

Existing “municipal” water rights for the city of Wolf Point total 2,804 acre-feet.

It appears that the city of Wolf Point has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the city should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

4. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

In the original application the proposed plan to use reserved water includes drilling two additional 500 GPM wells and expansion of the City’s existing distribution system. The DNRC has no information to confirm the perfection of these wells. Because existing water rights for the City of Wolf Point exceed the current demand it is assumed that none of the reserved water has been put to use.

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Wolf Point remain as granted. Water remains available through the permitting process and the need for the reservation is not apparent, however, the DNRC sees no compelling reason to revoke this reservation.

2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Wolf Point.

3. The department recommends that any future appropriation of water for the City of Wolf Point be counted against the reservation flow and volume.
### City of Wolf Point Water Rights:

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<th>Flow</th>
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Appendix C

Upper Missouri Municipal Reservations

DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW
Reservation # 7011900  

City of Belgrade

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 645 acre-feet per year
- Source: Groundwater
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Belgrade on May 25, 2016.

Reservant Response:

Required Reporting [36.16.120]

1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The City of Belgrade is an incorporated municipality in the State of Montana. The City of Belgrade currently has a water reservation in place to meet future demands by municipal users. The water reservation consists of 645 acre-feet/year (af/yr) of water with a maximum diversion rate of 3.56 cubic feet/second (cfs) for year-round use. The diversion for the water is from groundwater wells drawing from the Gallatin Valley aquifer located within the City of Belgrade. There have been a total of two changes to the original water reservation (41H-M070119-00). The first was a change to utilize two new wells, (submitted October 7, 2003 by Morrison Maierle) and a second application was to change the place of use to include the current city limits (submitted April 17, 2008 by HKM Engineering). These changes to the water reservation are evidence of the growth and needs for existing water reservation (41H-M070119-00). There is no change in the original methodology for the estimated water amount. Enclosed are flow results from the City of Belgrade to document the past and current demands.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose for the original water reservation is unchanged. The original reservation was intended for the City of Belgrade to provide municipal water for future growth in a cost-effective manner. The original reservation was issued as a means of sound planning for providing users with an adequate future water supply.
3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** The need still exists as identified in the order. The City of Belgrade has experienced the largest growth of any city in the State of Montana (per capita). The reservation is the only means to obtain/secure an early priority date for water that will be needed to meet projected municipal growth. It is important that the City of Belgrade have a water reservation to meet future municipal water demands in order for the community to grow and invest in its development. Competing water uses may prevent the City of Belgrade from obtaining or perfecting a water use permit in the future. Without a reservation, the City of Belgrade may have to go through a costly process of buying or condemning existing water rights to meet increasing demands and to provide municipal water for future growth in a cost-effective manner.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The original water reservation amount is still appropriate. The method of determining the amount of water requested for a water reservation by the City of Belgrade was based on a forecast of its future population to the year 2025, along with the estimated amount of water used per person. The methodology used by the City of Belgrade projected an average annualized (compounded population growth rate) of approximately 3.32 percent. The 1990 population of City of Belgrade was 3,411. The City of Belgrade's population forecast for the year 2025 is 10,426 people. The populations recorded in the 1990 census indicate that Belgrade's population has increased from 2,336 to 3,411 persons between 1980 and 1990 (an annualized rate of 3.86 percent). Based on the July 2015 census, the population of Belgrade was 7,798 people.

The City of Belgrade's six existing groundwater wells presently provide up to an average of 2.024 million gallons per day of water to the City of Belgrade (see attached water usage spread sheet). Currently the City of Belgrade is using on average 2,263.32 AF/yr. The reservation water is 645 acre-feet per year (AF) at a flow rate of 3.56 cubic feet per second, (CFS). The City of Belgrade's present use (7.2 cfs peak flow and average 2,263.32 af/yr volume) is less than its projected need in the year 2025 (11.1 cfs peak flow and 3,357 af/yr volume—see original report). Therefore, the water use associated with the reservation for municipal uses by the City of Belgrade is reasonable and appropriate. (ARM 36.16.1078(3)(b).)

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** It is important that the City of Belgrade have a water reservation to meet future municipal water demands in order for the community to grow and invest in its development. Without a reservation, the City of Belgrade may have to go through a costly process of buying existing water rights to meet increasing demands and to provide municipal water for future growth in a cost-effective manner. Recently the City of Belgrade has looked into purchasing existing groundwater rights from a neighboring agricultural user. These rights were valued at approximately 6 million dollars. The value was based on water right purchases that the City of Bozeman had recently
completed. Failure to reserve water for future municipal use by the City of Belgrade is likely to result in an irretrievable loss of the source of water. ARM 36.16.107B(4)(d).

Benefits of the City of Belgrade's water reservation were calculated on a willingness-to-pay basis. Belgrade's base rate is $18.19 for 5,000 gallons = $3.60/1,000 gallons value. The additional water provided by the water reservation will cost approximately $.18/1,000 gallons, taken from the original Water Reservation plan). The direct benefits of the City of Belgrade's water reservation exceed the direct costs. (ARM 36.16.107B(4)(a)) Indirect benefits of the City of Belgrade's reservation may include secondary economic benefits to the community and to the state by expanding both the property and income tax base. Indirect costs of the loss of the reservation may include loss of opportunity for other development and increased administrative costs for securing additional water rights.

Except for the addition of nutrients and possible decreases in groundwater flows to the East Gallatin River, no moderate or major adverse environmental impacts are expected with the use of the City of Belgrade's water reservation.

The City of Belgrade's water reservation will have no significant adverse impact to public health, welfare, or safety. Net benefits of the reservation to the City of Belgrade exceed the net benefits of not granting the water reservation. (ARM 36.16.107B(4)(b); ARM 36.16.102(9)).

6. Compliance: Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

Response: The City of Belgrade has identified a management plan for the design, development, and administration of its water reservation within the original application. The City of Belgrade has shown the need for the reservation by submitting two different Water Reservation change application, (October 7, 2003 by Morrison Maierle and April 17, 2008 by HKM Engineering). The City of Belgrade had, in the past, a noticeable rate of system leakage. However, in recent years the city rehabilitated the water distribution system to reduce the system’s water losses. The city also has 100% of the water users metered to help reduce daily usage. With these implementations, the city has reduced its high daily use rates to an average of 260 gallons per capita daily (please note that the average usage includes the water usage from the airport).

The City of Belgrade has been proactive in the water conservation aspect by metering 100% of the water users and rehabilitating the existing water distribution system. These improvements resulted in the city’s expansion while maximizing water usage. The City of Belgrade has shown it is capable of diligence towards feasibly financing users’ water rates as well as applying the reservation water to beneficial use in accordance with the management plan.

7. Perfection: If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

Response: The allotted reserved water has not been currently met due to water conservation methods as well as the total projected completion time of 2025 to fully develop the water reservation has not arrived. With further increasing growth, the City of Belgrade will continue to use and expand the current water distribution systems and wells associated with the reservation as it has done in recent years.
Please note, since the City of Belgrade is located in a Closed Basin, obtaining any new water right will be difficult and costly. It is critical that the City of Belgrade maintain the current water reservation.

**Department Review:**

1. The City of Belgrade submitted two applications to change their water reservation. Through these changes the City currently utilizes 1,400 gallons per minute up to 565 acre-feet of water within an expanded city limit. The remaining unused portion of the City’s reservation totals 200 gallons per minute up to 80 acre-feet.
2. The reservant appears to be in substantial compliance with the purpose, public interest & compliance.
3. Currently the Need for the reservation has not materialized. Although the City has submitted two change applications to their water reservation and is thus appears to be putting their reserved water to beneficial use, water available through existing water rights appears to be more than adequate to serve the existing population. Additionally, since the issue date for the City’s reservation they have applied for and received one additional provisional permit for 602 acre-feet per year.
4. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. The 2013 census identifies a population of 7,798 people for the City of Belgrade. In their submitted response to the DNRC request for information the City provided an estimated 2025 population of 10,426 people. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using 250 gallons per person per day the 2013 water use for the City of Belgrade was be 2,184 acre-feet per year, 

   \[
   \text{2,184 acre-feet per year} = \frac{250 \text{ gallons per day} \times 7,798 \text{ persons} \times 365 \text{ days per year}}{325,851 \text{ gallons}}
   \]

   Existing “municipal” water rights for the City of Belgrade, (excluding the reservation), total 3,147 acre-feet per year.

   It appears that the City of Belgrade has sufficient water rights to serve the current and projected population. However, these rights cannot be relied upon until a final decree is issued. The Montana Water Use Act (1973) initiated a statewide adjudication of all water rights that existed in the state prior to July 1, 1973. The act identifies historic beneficial use as the measure of a water right. The excess volume may not be deemed as valid as it was never put to use. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the Town should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

5. The City of Belgrade has submitted two applications to change their reservation. Through these changes the City has perfected 1,400 GPM up to 565 acre-feet per year of their reservation. The remaining unused portion of the City’s reservation totals 200 gallons per minute up to 80 acre-feet per year.

**Department Recommendations:**

1. The department recommends that the water reservation for the City of Belgrade remain as granted through the mandated project completion date of December 2025.
2. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Belgrade.
3. The department recommends that all future water rights issued to the City of Belgrade count against the flow and volume granted through the reservation.

**City of Belgrade Municipal Water Rights:**

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Reservation # 7011800                      City of Bozeman

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 1, 1992
Priority Date: July 1, 1985
Volume: 609 acre-feet per year
Source: Sourdough Creek, (AKA Bozeman Creek)
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10 year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Bozeman on December 31, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: Water reservation 7011800 was granted by the Board of Natural Resources and Conservation on June 29, 1992 for 2,857 ac-ft of storage on Sourdough Creek at a maximum diverted flow rate of 47.3 cfs during spring runoff. The reservation was reduced by 2,248 ac-ft when the City of Bozeman and DNRC entered into a water supply contract for the additional water supply created by the Hyalite Reservoir expansion project completed in the fall of 1992. The reduced amount was identified as the City’s expected reliable supply from the expansion project. The current reservation is 609 ac-ft at a maximum flow rate of 10.1 cfs and must be perfected by December 31, 2025. (BNRC, 1992, p. 16)

Water for the reservation has not been currently allocated as a means of storage diversion does not yet exist. However, numerous planning and infrastructure capital improvements projects have been completed to put the necessary diversion, conveyance, and treatment facilities in place to eventually perfect the reservation. Notable planning documents include: 1997 Water Facility Plan, 1999 Sourdough Creek Dam Feasibility Study, 2005 Water Facility Plan, 2011 Sourdough Reservoir Development Plan, and the 2013 Integrated Water Resources Plan, which were completed at a total aggregate cost of $664k. Key capital infrastructure projects include the 2002 sourdough intake and transmission main replacement, built at a capacity of 19.8 MGD at a cost of $465k, and the 2014 Sourdough Water Treatment Plant, built at an initial capacity of 22 MGD at a cost of $36mln. These facilities were designed and constructed to provide sufficient conveyance and treatment capacity to handle the City’s water rights, including the water reservation.
The calculation methodology utilized to determine the reservation amount necessary to meet the City’s future water supply needs remains the same as the methodology employed in the original 1987 water reservation application and the 1991 amended water reservation request. (City of Bozeman, 1987) (City of Bozeman, 1991) The conclusions of law for the reservation recognized the methodology as suitable. (BNRC, 1992, p.15) Updates to population projections, per capita water demand, and reliable supply are made with this report and modify the amount needed for the reservation accordingly.

The City requests that water reservation 41H 70118 00 be modified to provide for a maximum volume of 915 ac-ft at a maximum flow rate of 24.0 cfs during spring runoff and to extend the date the reservation is required to be perfected to December 31, 2039.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** The purpose of the water reservation remains as identified in the application and order. The City requires its water reservation to provide adequate water supply for future municipal uses in a cost-effective manner. Municipal uses are beneficial uses of water. (MCA § 85-2-102(4)(a))

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** The City of Bozeman has perennially been the fastest growing community in the State of Montana since 2000. It was sixth-fastest growing micropolitan area in the nation according to U.S. Census Bureau statistics for 2013-2014. (Bozeman Daily Chronicle, March 2015) In the first four months of 2015 the City alone accounted for 64% of the total number of new gas and utility hookups completed by NorthWestern Energy statewide. (Bozeman Daily Chronicle, April 2015) The City has experienced rapid and sustained population growth and building development since the reservation was granted and relies upon the reservation to meet its future water supply needs. The Upper Missouri Basin in which the City is located is closed to new appropriations of water with limited exceptions contained in MCA § 85-2-343. Hydroelectric water rights in the basin, however, generally limit new appropriations of all types. (DNRC, 2015, p. 57) Preservation of the City’s reservation rights is absolutely critical for the cost-effective development of water storage on Sourdough Creek as it avoids the acquisition of costly mitigation water supplies and eliminates the uncertainty and risk inherent with new appropriations permitting in closed basins.

The City’s 30-year and 50-year future water supply needs were evaluated with the Integrated Water Resources Plan (IWRP). (City of Bozeman, 2013) A water supply deficit is predicted to occur in both the 30-year and 50-year planning horizons under moderate or high population growth scenarios. The predicted 30-year water supply gap ranges from 2,260 ac-ft to 6,660 ac-ft, with the 50-year gap ranging from 6,840 ac-ft to 17,750 ac-ft. (City of Bozeman, 2013, p. 3-8) Moderate growth was defined in the IWRP as a 2% population increase per year for the first 30 years followed by a 1% per year increase per year for the last 20 years. High growth on the other hand was defined as a 3% population increase per year for the first 30 years followed by a 2% per year increase for the last 20 years. (City of Bozeman, 2013, p. 3-6) The moderate growth scenario equates to a composite continuous annual growth rate
(CAGR) of 1.59%, whereas the high growth scenario equates to a composite CAGR of 2.60%.

Figure-1 depicts U.S. Census Bureau historical population data for the period 1930-2014. Figure-2 depicts population projections to the year 2040. The City’s population grew by 84% over the period spanning 1990-2014 equating to a continuous annual growth rate (CAGR) of 2.57%. The CAGR experienced over this 24-year period matches closely the composite CAGR of 2.60% employed in the IWRP to predict the City’s long-range water supply needs. The upper range of the supply deficit predicted in the IWRP is a reasonable value as the population for which it was derived is nearly identical to the population extrapolated from the exponential growth trend occurring from 1990-2014.

To meet the City’s long-range water supply needs, a diverse array of water supply alternatives was analyzed in the IWRP, including various water conservation scenarios. However, even with the implementation of an aggressive and effective water conservation program, the City still faces significant shortfalls in water supplies going forward. (City of Bozeman, 2013, p. 4-2) Meeting future demands will require utilizing all available solutions including conservation and traditional water supply infrastructure projects. Portfolios containing various water supply projects were arranged within the IWRP, with each portfolio containing water conservation savings, as conserved water is recognized as the most readily available and cost-effective source of new supply. The portfolio of supply projects selected to meet the City’s long-range water needs contains a supply contribution of 915 ac-ft for water storage on Sourdough Creek. (City of Bozeman, 2013, Appendix D, p. 16) A storage project of this amount was deemed to be achievable when taking into consideration such contemporary facets as community values, public opinion, political realities, and environmental regulations. It is not the amount necessary to meet the totality of the City’s future water needs, nor does it represent the reliable hydrologic yield of the drainage. The amount should in no way be construed to limit any storage rights that exist separate from the water reservation. The City requests the reservation volume be modified to 915 ac-ft commensurate with the Sourdough Creek storage recommendations of the IWRP.
4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** Table-1 presents the City’s currently available water sources and respective reliable supplies of its water rights. Reliable supplies of the direct flow rights for Lyman Creek, Sourdough Creek, and Hyalite Creek were updated with the Integrated Water Resources Plan. (City of Bozeman, 2013, p. 2-3) Reliable yields were originally evaluated in the 1997 Water Facility Plan. (City of Bozeman, 1997) The Hyalite Reservoir reliable supply accounts for a 20% reduction in the contracted water volume to provide for conveyance losses between the reservoir and the City’s Hyalite water intake. (DNRC, 1992, p. 2) The Hyalite Reservoir is operated by the Middle Creek Water Users Association (MCWUA) and it is the association that has historically applied the 20% conveyance loss to the City’s Hyalite Reservoir water. The previous citation mentions that the City ‘allows 20% losses’, seeming to imply that the loss is a self-imposed measure. This is dubious implication because the City does not regulate the supply of Hyalite Reservoir water as these powers reside with the MCWUA. Thus, the City is accurately properly described as being ‘subject to’ the conveyance loss as opposed to ‘allowing for’ it.

<table>
<thead>
<tr>
<th>Table-1: Current available water sources and total annual reliable supply of water rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lyman Creek</td>
</tr>
<tr>
<td>Sourdough Creek</td>
</tr>
<tr>
<td>Hyalite Creek</td>
</tr>
<tr>
<td>Hyalite Reservoir</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

¹ Water Purchase Contract 91-B-1, less 20% conveyance loss

The reservation findings of fact did not recognize the Hyalite Reservoir conveyance loss as a measure that reduces the City’s total reliable supply. Instead, the contracted supply volume of Hyalite Reservoir water was taken to be the reliable supply (DNRC 1992, p. 4) Table-2 represents the updated reliable supply of water rights consistent with the manner in which the findings of fact (FOF) were laid out for the reservation. The updated total reliable supply of 12,624 ac-ft is used in modifying the reservation.

<table>
<thead>
<tr>
<th>Table-2: Updated available water sources and total annual reliable supply of water rights, per FOF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lyman Creek</td>
</tr>
<tr>
<td>Sourdough Creek</td>
</tr>
<tr>
<td>Hyalite Creek</td>
</tr>
<tr>
<td>Hyalite Reservoir</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

¹ Water Purchase Contract 91-B-1

Table-3 presents the City’s metered water plant yearly demands for raw water influent and finished water effluent over the period spanning 2000-2014. The updated overall average annual influent water
Demand is calculated to be 156 gallons per person per day (gpcd). This rate is 38% less than the 250 gpcd rate that was considered to be reasonable in the reservation findings, a substantial reduction attributable to the City’s water conservation efforts. (BNRC, 1992, p. 13) The updated 156 gpcd value is used in modifying the reservation.

The amended reservation request applied a 1.9% CAGR from the 1990 population to arrive at a 2025 population projection of 43,788. (City of Bozeman, 1991, pp. 1, 6) The reservation findings of fact acknowledge the 43,788 population. (BNRC, 1992, p. 11) Figure-2 depicts how the actual populations for the period 1990-2014 compare to the 1.9% CAGR used in the amended reservation request. Actual populations since 1990 have grown at a CAGR of 2.57%, eclipsing the reservation projections by a significant margin. Extrapolating from the population in 1990, the 2.57% CAGR produces a 2025 population projection of 55,072. The CAGR is updated to 2.57% and is used in modifying the reservation.

The reservation volume contained in the order, notwithstanding additional water supplied by the Hyalite reservoir expansion, is 2,857 ac ft. (BNRC, 1992, p.16) This volume was determined by multiplying the 2025 population (43,788 persons) by per capita water demand (250 gpcd) to calculate the total water need, applying a conversion factor, then subtracting the reliable supply (9,399 ac-ft).

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
<th>Total Raw Water Plant Influent</th>
<th>Total Finished Water Plant Effluent</th>
<th>Avg Daily Raw Influent Demand</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Gallons</td>
<td>ac-ft</td>
<td>Gallons</td>
</tr>
<tr>
<td>2000</td>
<td>27,509</td>
<td>1,786,950,909</td>
<td>5,484</td>
<td>1,699,254,694</td>
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<tr>
<td>2001</td>
<td>28,873</td>
<td>1,870,370,351</td>
<td>5,740</td>
<td>1,774,948,178</td>
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<tr>
<td>2002</td>
<td>29,693</td>
<td>1,760,369,328</td>
<td>5,403</td>
<td>1,696,132,338</td>
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<tr>
<td>2003</td>
<td>30,811</td>
<td>1,967,222,943</td>
<td>6,038</td>
<td>1,904,655,817</td>
</tr>
<tr>
<td>2004</td>
<td>31,926</td>
<td>1,821,788,884</td>
<td>5,591</td>
<td>1,741,724,362</td>
</tr>
<tr>
<td>2005</td>
<td>33,280</td>
<td>1,960,155,701</td>
<td>6,016</td>
<td>1,813,776,045</td>
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<tr>
<td>2006</td>
<td>34,832</td>
<td>2,150,187,082</td>
<td>6,599</td>
<td>1,974,648,229</td>
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<tr>
<td>2007</td>
<td>35,944</td>
<td>2,119,637,493</td>
<td>6,505</td>
<td>1,976,795,031</td>
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<tr>
<td>2008</td>
<td>36,933</td>
<td>2,080,783,819</td>
<td>6,386</td>
<td>1,946,627,398</td>
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<tr>
<td>2009</td>
<td>37,101</td>
<td>1,965,078,586</td>
<td>6,031</td>
<td>1,856,006,335</td>
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<tr>
<td>2010</td>
<td>37,280</td>
<td>1,771,070,649</td>
<td>5,436</td>
<td>1,732,310,164</td>
</tr>
<tr>
<td>2011</td>
<td>38,099</td>
<td>2,066,646,033</td>
<td>6,343</td>
<td>1,824,182,661</td>
</tr>
<tr>
<td>2012</td>
<td>38,701</td>
<td>2,221,872,774</td>
<td>6,819</td>
<td>1,992,793,382</td>
</tr>
<tr>
<td>2013</td>
<td>39,812</td>
<td>2,060,926,224</td>
<td>6,325</td>
<td>1,929,595,390</td>
</tr>
<tr>
<td>2014</td>
<td>41,660</td>
<td>1,910,884,131</td>
<td>5,865</td>
<td>1,845,792,425</td>
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</tbody>
</table>

Table-4 presents the modified water reservation based on the updated values described above for reservation volume, reliable supply, per capita demand, and population growth rate. The italicized
values in the first row of the table reflect values contained in the reservation findings and order. The small difference between the reservation volume calculated in the table (2,864 ac-ft) and the reservation volume contained in the order is believed to be attributable to conversion factor rounding error. Table-4 determines that the modified reservation volume of 915 ac-ft is needed in the year 2039. The City thus requests that the perfection date of the reservation be modified to December 31, 2039.

The reservation order sets forth a flow rate of 47.3 cfs during spring runoff for the 2,857 ac-ft reservation volume and 10.1 cfs for the 609 ac-ft volume. (BNRC, 1992, p. 16) Thirty days of continuous diversion at these respective flow rates are necessary to provide for these respective reservation volumes. The City’s existing diversion and conveyance infrastructure for the Sourdough Creek supply source has a capacity of 19.8 MGD. (City of Bozeman, 2005, Section 3.A, p. 7) This value equates to a maximum flow rate of 30.6 cfs. The City’s existing direct flow water rights for Sourdough Creek total 6.6 cfs, thus there exists 24.0 cfs of capacity for the water reservation in the conveyance system. The City requests the reservation flow rate be modified to 24.0 cfs which allows for the maximal utilization of the significant investment it has made in its Sourdough Creek conveyance infrastructure.

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
<th>CAGR</th>
<th>Water Demand</th>
<th>Total Water Need</th>
<th>Reliable Supply</th>
<th>Reservation Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>2025</td>
<td>43,788</td>
<td>1.90%</td>
<td>250</td>
<td>12,263</td>
<td>9,399</td>
<td>2,864</td>
</tr>
<tr>
<td>2025</td>
<td>55,072</td>
<td>2.57%</td>
<td>156</td>
<td>9,624</td>
<td>12,624</td>
<td>-3,000</td>
</tr>
<tr>
<td>2034</td>
<td>69,199</td>
<td>2.57%</td>
<td>156</td>
<td>12,093</td>
<td>12,624</td>
<td>-531</td>
</tr>
<tr>
<td>2035</td>
<td>70,977</td>
<td>2.57%</td>
<td>156</td>
<td>12,404</td>
<td>12,624</td>
<td>-220</td>
</tr>
<tr>
<td>2036</td>
<td>72,801</td>
<td>2.57%</td>
<td>156</td>
<td>12,722</td>
<td>12,624</td>
<td>98</td>
</tr>
<tr>
<td>2037</td>
<td>74,672</td>
<td>2.57%</td>
<td>156</td>
<td>13,049</td>
<td>12,624</td>
<td>425</td>
</tr>
<tr>
<td>2038</td>
<td>76,591</td>
<td>2.57%</td>
<td>156</td>
<td>13,385</td>
<td>12,624</td>
<td>761</td>
</tr>
<tr>
<td>2039</td>
<td>78,559</td>
<td>2.57%</td>
<td>156</td>
<td>13,729</td>
<td>12,624</td>
<td>1,105</td>
</tr>
</tbody>
</table>

1 Values contained in the City of Bozeman water reservation findings and order (BNRC, 1992)
2 Year in which the calculated reservation need exceeds modified reservation volume of 915 ac-ft

The dry year storable volume for Sourdough Creek, defined as the dry year stream yield less required municipal and agricultural diverted volumes, is 2,500 ac-ft for the month of May. (City of Bozeman, 1987, p. 18) This monthly volume equates to a continuous flow rate of 40.7 cfs. Water is physically available to meet the modified reservation volume and flow amounts of 915 ac-ft and 24.0 cfs since these amounts are less than 2,500 ac-ft and 40.7 cfs respectively.

5. **Public Interest**: Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.
Response: The reservation remains in the public interest more so now than ever before due to two primary reasons: 1) rapid and sustained population growth and development pressures in the City of Bozeman and greater Gallatin Valley; and 2) Legislative basin closure for the appropriation of new water rights in the Upper Missouri. These circumstances, in essence, create an environment in which the value of the reservation water will inevitably continue to escalate as new demands are exerted upon finite supply sources. Failure to reserve water for future municipal use will result in an irretrievable loss of resource development opportunity.

It is essential that a physically adequate and legally certain water supply be secured for future municipal uses if the economy of the City, and that of the greater Gallatin Valley, is to continue prospering. Municipal uses are beneficial uses of water and with these beneficial uses come economic amenity, jobs, and tax revenue that will support not only the growing local community, but the state of Montana as well. Municipal water supply systems are subject to strict treatment regulations and reporting standards which provide the highest level of human health protection for any type of water system in the state. These indirect economic benefits are difficult to quantify, but are nonetheless realized by the modified reservation.

Direct costs for the design and construction of storage on Sourdough Creek are estimated to be $10,580/ac-ft, equating to a $9.7mln overall cost for the 915 ac-ft modified reservation project. (City of Bozeman, 2013, Appendix D, p. 9) Annual operations and maintenance costs are estimated to be $22/ac-ft/yr, or $20k/yr per year (City of Bozeman, Appendix D, p. 10). Annual capital costs are estimated to be $723k/yr for a $9.7mln, 20-year bond, with an interest rate of 4.25%, compounded and paid semi-annually. Total annualized costs for the 915 ac-ft modified reservation amount are therefore estimated to be $743k/yr.

A benefit accrues to municipal water customers on a cost per gallon basis if the City has 915 ac-ft of additional supply available to operate its water utility. Total revenue generated by the City’s water utility in 2014 totaled $7.05mln for 1.7bln gallons of metered water sold. Municipal customers thus paid an effective rate of $4.15/1000 gallons in 2014. Adding the annualized capital cost for the modified reservation to the 2014 revenue generated equals $7.8mln. This is the hypothetical 2014 revenue amount required to operate the utility with the modified reservation in place. Augmenting the 2014 metered sale volume with 915 ac-ft of additional supply totals 2.0bln gallons. This is the hypothetical amount of water sold to customers in 2014 to generate revenue with the modified reservation in place. Municipal customers would thus pay $3.90/1000 gallons under the described 2014 hypothetical scenario, a customer savings of $0.25/1000 gallons with the modified reservation in place.

The indirect environmental costs of the modified reservation are expected to be minimal and sufficiently mitigated by the NEPA compliance process that must be undertaken to construct water storage on Sourdough Creek upon federal lands managed by the USFS.

The net benefits of the granting the modified reservation exceed the net benefits of not granting the modified reservation.
6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** The City’s reservation water is subject to conditions enumerated in Exhibit A and Exhibit B of the reservation order (BNRC, 1992, pp. 360, 361). Conditions imposed in Exhibit B are not applicable as the reservation has not been perfected. The City has remained in compliance with all conditions imposed in Exhibit A. Annual reports have not been submitted by the City because it has not been made aware of any such information the Board requires to be provided in said annual report.

This report is prepared in compliance with ARM 36.16.120 to provide information requested by the Department necessary to perform a ten-year review of the water reservation.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** Over $37mln has been expended to complete numerous planning and infrastructure capital improvements projects necessary to put diversion, conveyance, and treatment facilities in place to eventually perfect the reservation. These projects include: 1997 Water Facility Plan, 1999 Sourdough Creek Dam Feasibility Study, 2002 sourdough intake and transmission main replacement, 2005 Water Facility Plan, 2011 Sourdough Reservoir Development Plan, 2013 Integrated Water Resources Plan, and the 2014 Sourdough Water Treatment Plant.

Feasibility level field investigations, designs, and cost estimates have been completed for two suitable dam sites on Sourdough Creek. (City of Bozeman, 1999) Both dam sites are located on the Gallatin National Forest, thus requiring compliance with the National Environmental Policy Act (NEPA) to permit construction. (City of Bozeman, 2011, Appendix F) A project development framework has been prepared to identify and understand specific elements needed to successfully navigate the NEPA compliance process. An integrated water supply approach was encouraged to define the water storage need and to evaluate alternatives. (City of Bozeman, 2011, Executive Summary) Development of water storage on Sourdough Creek is inherently protracted and complicated by political realities, community values, and public opinion.

The City has clearly demonstrated reasonable and actionable diligence in perfecting its water storage reservation through substantial investments of time and money.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. The Need for the reservation has not yet materialized. The City has been successful in obtaining numerous ground water certificates and water use permits through conventional methods. While it appears that the City will be able to utilize the full extent of the reservation by the mandated perfection date of December 31, 2025 they have requested an extension through
December 31, 2039 for perfection to allow time to expand storage on Sourdough, (Bozeman) Creek. Additionally, the City has requested in increase in the volume of the reservation.

3. The amount granted was far less than the demand that has developed. However, as stated above, Bozeman has been successful in appropriating water through permits and certificates and has thus far kept up with the ever-increasing demand of the fastest growing city in the state. Existing water rights for municipal use currently held by the City of Bozeman total 13,217 acre-feet per year. Additionally, the City holds water rights for irrigation of City parks that total 1,131 acre-feet. In the response received from the City the reliable supply of water for the City of Bozeman totals 12,624 acre-feet per year and includes 5,712 acre-feet per year of contract water purchased from the Middle Creek Water Users Association. Thus, while it becomes apparent that the City is in need of additional water, water rights for the City of Bozeman exceed the existing supply.

   Through their response to the DNRC request for information the City has requested an increase in storage during spring runoff. Currently the reservation for the City of Bozeman is for a maximum flow rate of 10.1 CFS up to 609 acre feet per year. The City requests an expansion of the existing reservation to a maximum flow of 24.0 CFS during spring runoff up to 919 acre feet per year.

4. According to § 85-2-331 (1)(a) MCA, the application deadline for water reservations in the Missouri River and Little Missouri River basin above Fort Peck Dam (Upper Missouri) expired on July 1, 1989. Currently, no new reservations can be granted in the Missouri River or Little Missouri River basin. However, qualified entities may potentially modify or transfer reservations as outlined in § 85-2-316 (11) and (13) MCA.

5. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

Department Recommendations:

1. The department recommends that the water reservation for the City of Bozeman remain as granted through the mandated project completion date of December 2025.

2. The department recommends that all future water rights issued to the City of Bozeman count against the flow and volume granted through the reservation.

3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Bozeman.

4. The current reservation is 609 acre-feet per year at a maximum flow rate of 10.1 CFS and must be perfected by December 31, 2025. The department recommends that the water reservation for the City of Bozeman remain as granted through the mandated project completion date of December 2025. Any extension in the period of perfection is beyond the authority of the department.

5. While the DNRC does not have the authority to expand the flow rate or volume of the reservation it is noted that the City does meet the requirements for appropriation of surface water under the Basin Closure exceptions for the Upper Missouri River:
   a. 85-2-343, (2)(c)(ii) – allows appropriation of surface water by a municipality.
   b. 85-2-343, (2)(d) – allows appropriation of surface water during high spring flows.

   Should there be an increase in flow or volume it is likely that there would be objections from existing downstream water users, specifically those water rights associated with the hydroelectric dams in and around Great Falls. Finally, water rights currently held by the City of Bozeman appear to exceed the available supply making any expansion of existing rights unnecessary without expansion of or addition to existing storage.
### City of Bozeman Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41H 140882 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>9/1/1864</td>
<td>Municipal</td>
<td>Lyman Creek</td>
<td>3.75 CFS</td>
<td>2,740.20</td>
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<tr>
<td>41H 99632 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>9/30/1865</td>
<td>Irrigation</td>
<td>Sourdough Creek</td>
<td>8 CFS</td>
<td></td>
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<tr>
<td>41H 140873 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>7/31/1866</td>
<td>Municipal</td>
<td>Sourdough Creek</td>
<td>81 GPM</td>
<td>127.8</td>
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<td>Active</td>
<td>12/31/1866</td>
<td>Municipal</td>
<td>Sourdough Creek</td>
<td>125 CFS</td>
<td>912.5</td>
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<td>Sourdough Creek</td>
<td>125 CFS</td>
<td>912.5</td>
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<td>41H 140877 00</td>
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<td>912.5</td>
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<td>Sourdough Creek</td>
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<td>35 GPM</td>
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<td>Groundwater</td>
<td>35 GPM</td>
<td></td>
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</table>
Reservation # 7258300  
Town of Chester

**Reservation Description:**

- **Final Order:** Upper Missouri River Basin, Issued July 1, 1992  
- **Priority Date:** July 1, 1985  
- **Volume:** 340 acre-feet per year  
- **Source:** Marias River (Lake Elwell)  
- **Perfection Date:** December 31, 2025

**Project Description:**

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. **No response was received from the Town of Chester.**

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose and public interest.
2. Reservant is non-compliant with the terms of the Final Order. Senate Bill 330 was passed to mandate a review of all existing reservations as required through the Final Order and codified as §85-2-316 (MCA). **No response to the DNRC request for information was received from the Reservant.**
3. Currently the Need for the reservation has not materialized. The Town of Chester currently uses water from the Marias River (Lake Elwell) through contract with the Bureau of Reclamation. Additionally, Chester is within the service area of the Rocky Boy North Central Montana Regional Water Project and will rely on the project for future appropriations.
4. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. All municipal water for the Town of Chester is currently provided through contract with the Bureau of Reclamation.
5. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

**Department Recommendations:**

1. The department recommends that the water reservation for the Town of Chester remain as granted through the mandated project completion date of December 2025.
2. The department recommends that all future water rights issued to the Town of Chester count against the flow and volume granted through the reservation.
3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the Town of Chester.
**Town of Chester Water Rights:**

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41P 72583 00</td>
<td>Water Reservation</td>
<td>Active</td>
<td>7/1/1985</td>
<td>Municipal</td>
<td>Marias River (Lake Elwell)</td>
<td>417.38 GPM</td>
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</tbody>
</table>
Reservation # 7257800

City of Cut Bank

Reservation Description:

Final Order: Upper Missouri River Basin, Issued July 1, 1992
Priority Date: July 1, 1985
Volume: 400 acre-feet per year
Source: Cut Bank Creek
Perfection Date: December 31, 2025

Project Description:

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. No response was received from the City of Cut Bank.

Department Review:

1. The reservant appears to be in substantial compliance with the purpose and public interest.
2. Reservant is non-compliant with the terms of the Final Order. Senate Bill 330 was passed to mandate a review of all existing reservations as required through the Final Order and codified as §85-2-316 (MCA). No response to the DNRC request for information was received from the Reservant.
3. Need for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population within the proposed service area.1 Additionally, water remains available for future appropriation through the provisional permit process. Finally, Cut Bank is within the service area of the Rocky Boy North Central Montana Regional Water Project and will rely on the project for future appropriations when the project becomes operational.
4. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the original application identifies a projected population of 6,069 persons by the year 2025 for the City of Cut Bank. The 2013 census identifies a population of 2,996 for the City of Cut Bank. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Cut Bank was \[\frac{(250 \text{ gallons per day}) \times (2,996 \text{ persons}) \times (365 \text{ days per year})}{325,851} = 839 \text{ acre-feet per year}.\] Existing “municipal” water rights for the City of Cut Bank total 6,757 acre-feet. It appears that the City of Cut Bank has sufficient water rights to serve the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to
an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the City should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

5. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

Department Recommendations:
1. The department recommends that the water reservation for the City of Cut Bank remain as granted through the mandated project completion date of December 2025.
2. The department recommends that all future water rights issued to the City of Cut Bank count against the flow and volume granted through the reservation.
3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Cut Bank.

1 City of Cut Bank Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41L 175886 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>10/23/1914</td>
<td>Municipal</td>
<td>Cut Bank Creek</td>
<td>7.74 CFS</td>
<td>5,610</td>
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<tr>
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<td>Statement of Claim</td>
<td>Active</td>
<td>7/9/1940</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>1.67 CFS</td>
<td>1,122</td>
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<tr>
<td>41L 178252 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>12/31/1942</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>1.89 CFS</td>
<td>25</td>
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<td>41L 72578 00</td>
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<td>7/1/1985</td>
<td>Municipal</td>
<td>Cut Bank Creek</td>
<td>1.42 CFS</td>
<td>400</td>
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</table>
Reservation Description:

Final Order: Upper Missouri River Basin, Issued July 1, 1992
Priority Date: July 1, 1985
Volume: 258 acre-feet per year
Source: Groundwater

Project Description:

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of East Helena on December 23rd, 2015.

Reservant Response:

Required Reporting [36.16.120]

1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**Response:** East Helena was granted a water reservation of 258 acre-feet per year (AF) at a flow rate of 0.93 cubic feet per second (CFS). The source is groundwater for year-round municipal use. The final order sets a perfection date of December 31, 2025.

East Helena expects to fully use the water reservation by 2025. Current environmental cleanup and remediation activities at the Asarco Smelter Plant Site will lead to increased development opportunities. East Helena has built a new wastewater treatment plant and is currently at less than half capacity. The entire amount of the water reservation is still anticipated to be needed to satisfy the projected water demand (flow rate and volume) proposed in the change applications.

No change in the methodology originally used to determine the amount is required. The amount granted is based on population projections and development in the area, which have not changed. A Growth Policy was completed in 2014 (City of East Helena 2014) and supports a projected population growth through 2030. (The current population of East Helena exceeds the projected population identified in the Final Order, indicating East Helena is exceeding the projections estimated in 1990).

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.
Response: Yes. East Helena requested a water reservation to meet future demands by municipal and industrial users. The purpose remains the same as identified in the application and order.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: Yes. East Helena requested a water reservation to meet future demands by municipal and industrial users. The need remains the same as identified in the application and order. Based on population growth projections, attractive new property for development after the Asarco Smelter site is remediated, and proximity to the City of Helena makes East Helena expansion a reality. In addition, the uncertainty associated with the groundwater plume from the smelter extending north into the valley may result in outlying residents needing to be supplied by East Helena water, thereby increasing the demand on the municipal water supply. The population of East Helena listed in the 2010 census was 1,984. Text taken from the 2014 Growth Policy and provided below supports this need:

“With the annexation of the ASARCO lands in 2009, the area within the City of East Helena grew from 550 acres to 2,575 acres. The 2009 Growth Policy indicates that only 1% of the land area within the City of East Helena prior to annexation was vacant and available for development. Currently there is approximately 2,000 acres of vacant developable land within the City of East Helena, or 75% of the land area of East Helena is vacant developable land. This dramatic increase in the land area is unprecedented in most communities and provides East Helena with an excellent opportunity to plan for future land uses and expansion within its boundaries.”

4. Amount: Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

Response: Yes. The water reservation amount is still appropriate. According to the 2014 Growth Policy, East Helena is a high growth community. Text from the Growth Policy states:

“If the current rate of growth were to continue over the next 20 years, as measured by the trend between 2000 and 2010 (Scenario 1) and using linear regression, the city of East Helena could reach a population of more than 3,006 by the year 2030 at an average annual average growth rate of 2.1 percent. Within the currently defined city boundaries, population density at that point would reach 748 people per square mile.”

Additionally, more future growth is projected in the 2014 Growth Policy when compared with the projections used in the water reservation application.

5. Public Interest: Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.
Response: The water reservation remains in East Helena’s public interest as identified in the application and order. Based on the growth and development both within the current East Helena and its expanded boundaries, and uncertainty described above, East Helena is opening discussions on perfecting the water reservation. Use of the reservation is in the public interest of East Helena and potentially adjacent homeowners. East Helena needs the reservation to meet projected future demands identified in the 2014 Growth Policy and used to make this assessment.

6. Compliance: Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

Response: As explained above, the water reservation has not yet been put to use. Thus, East Helena is in compliance of the order with the 2025 perfection year. East Helena is beginning discussion on development of the reservation. No general plans, detailed plans, annual and biennial reports have been prepared specific to the water reservation.

7. Perfection: If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

Response: As described above, East Helena is beginning to discuss development of the water reservation to meet the objectives of the order. The existing water distribution system will be used once the new well is drilled and the water reservation is put on line.

Department Review:

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Currently the need for the reservation has not materialized. Water available through existing water rights appears to be more than adequate to serve the existing and projected population.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the original application identifies a projected population of 2,752 persons by the year 2015 for the City of East Helena. The 2013 census identifies a population of 2,060 for the City of East Helena. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of East Helena was 577 acre-feet per year \( \left( \frac{250 \text{ gallons}}{\text{person}} \right) \left( \frac{365 \text{ days}}{\text{year}} \right) \left( \frac{2,060 \text{ persons}}{\text{year}} \right) \). Existing “municipal” water rights for the City of East Helena total 7,364 acre-feet per year. It appears that the City of East Helena has sufficient water rights to serve the current population. However, these rights cannot be relied upon until a final decree is issued. The Montana Water Use Act (1973) initiated a statewide adjudication of all water rights that existed in the state prior to July 1, 1973. The act identifies historic beneficial use as the measure of a water right. The excess volume may not be deemed a valid as it was never put to use. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the
appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the City should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

4. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. During this 24-year interval the City has applied for and received a total of 1,841 acre-feet of water through Provisional Permits and Groundwater Certificates.

**Department Recommendations:**

1. The department recommends that the water reservation for the City of East Helena remain as granted through the mandated project completion date of December 2025.

2. The department recommends that all future water rights issued to the City of East Helena count against the flow and volume granted through the reservation.

3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of East Helena.

**City of East Helena Water Rights:**

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
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<td>Statement of Claim</td>
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<td>973.33</td>
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<td>Active</td>
<td>7/1/1985</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>417 GPM</td>
<td>258</td>
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<tr>
<td>41I 62231 00</td>
<td>Provisional Permit</td>
<td>Active</td>
<td>5/16/1986</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>450 GPM</td>
<td>160</td>
</tr>
<tr>
<td>41I 70576 00</td>
<td>Provisional Permit</td>
<td>Active</td>
<td>12/12/1988</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>600 GPM</td>
<td>840</td>
</tr>
<tr>
<td>41I 70577 00</td>
<td>Provisional Permit</td>
<td>Active</td>
<td>12/12/1988</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>600 GPM</td>
<td>840</td>
</tr>
</tbody>
</table>
Reservation # 7215400  Town of Fairfield Montana

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 325 acre-feet per year
- Source: Groundwater
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10 year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the town of Fairfield on December 16th, 2015.

Reservant Response:

Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The town of Fairfield water reservation #72154-41K was approved on July 1, 1985, a grant for the following amount and flow of water: 0.43 CFS and 325 AF/Year. As of November 5, 2015, there is no change in the amount required to satisfy the purpose and need of the Town’s reservation, nor has there been any change in the methodology originally used to determine the amount.

2. Purpose: Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

Response: The purpose of the reservation for the Town of Fairfield remains the same as identified in the application and order. The purpose remains to provide an adequate water supply for municipal and industrial use as well as for future growth and development.

3. Need: Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

Response: The need still exists as identified in the application and order.

a) A reservation is the only means to obtain an early priority date for water that will be needed to meet projected municipal and industrial growth. In the future, water may be appropriated by competing agricultural, industrial, and in-stream users.

b) It is important that the Town of Fairfield have a water reservation to meet future municipal and industrial water demands in order for the community to prosper and develop.
c) Competing water uses may prevent the Town of Fairfield from obtaining or perfecting a water use permit in the future. Without a reservation, the Town of Fairfield may have to go through a costly process of buying or condemning existing water rights to meet increasing demands.

Changes in Finding of Fact:

Per the attached General Abstract, the maximum rate of diversion is 193 GPM, which equates to 0.43 CFS, rather than the maximum rate of diversion of 0.34 CFS stated in Paragraph II.A.2 of the attached Application of City of Fairfield Water Reservation No. 72154-41K

Due to water shortages in late winter and early spring, Fairfield drilled an eighth well (Well #1A) in the spring of 2006.

Fairfield now has two elevated water storage tanks with a combined capacity of 210,000 gallons in lieu of the proposed water pond or ice mound storage as stated in the attached application (Paragraph II.A.2). The tanks provide adequate storage, consistent system pressure and greatly reduce water loss through evaporation.

4. Amount: Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

Response: The original reservation amount of 0.43 CFS and 325 AF/Year is still appropriate and in accordance with the application and order.

Determination of Amount Needed: The supplying shallow aquifer along the Fairfield Bench is directly affected by the existing irrigation canal system. When the canals are filled, usually in May, the aquifer supplies are plentiful. When the canal water is shut down, late August, the aquifer begins to drop steadily until the next May. That is the reason the Town drilled an additional well in 2006. The aquifer is extremely susceptible to drought. Such drought started in 1998 continuing until 2004 when, in April, the Town was forced to go to “Emergency Rationing” only. At school, lunch was served on paper plates and high school bathrooms were locked. Students waited in line at outhouses between classes and washed with liquid hand sanitizer. Employees of many businesses used outhouses. Cooking and coffee were made from bottled water. No lawn watering or car washing were allowed, laundry was taken out of town, and residents were asked to flush toilets only once a day. The Town underwent extensive leak detection and repaired them. The Town spent $1,400 on bottled water and $1,500 on outhouse rental. On May 9, 2004, the irrigation canals were filled and, by May 15, aquifer levels were back to normal.

The Town completed an extensive water improvement project in 2014. Sections of old main lines were replaced in order to link the system and provide adequate volume to fire hydrants. Residential and business water supplies were metered and electronic telemetry was installed to monitor pumps, storage tanks, and well houses.

NCI Engineering ran a telemetry report on the pumping of all wells from May 1, 2014 through June 30, 2015:

<table>
<thead>
<tr>
<th>Begin</th>
<th>End</th>
<th>Volume Pumped (gallons)</th>
<th>AF Pumped</th>
<th>Percent of Pumped Water vs. 325 AF/YR Reserve</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1, 2014</td>
<td>April 30, 2015</td>
<td>111,370,000</td>
<td>321.805</td>
<td>105.17%</td>
</tr>
<tr>
<td>June 1, 2014</td>
<td>May 31, 2015</td>
<td>105,440,000</td>
<td>323.605</td>
<td>99.57%</td>
</tr>
<tr>
<td>July 1, 2014</td>
<td>June 30, 2015</td>
<td>89,991,000</td>
<td>276.191</td>
<td>84.98%</td>
</tr>
</tbody>
</table>
The usage reflects high watering periods for lawn irrigation, averaging 96.57% of reservation pumped. For part of the July 1, 2014 thru June 30, 2015 period, Well 4 was not reporting to telemetry. There have been two recent residential annexations into the Town infrastructure. In 1990, the population of Fairfield was 660. In 2010, the population was 708. The Town remains forecasted for a population of 888 by 2025. Documented water usage and expected growth demonstrate the amount of reservation is still appropriate and in accordance with the application and order.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

Response: The reservation remains in the public’s best interest. Failure to reserve water for future municipal and industrial use by the Town of Fairfield is most likely to result in an irretrievable loss of resource development opportunity. The direct benefits of the Town’s water reservation exceed the direct costs. Residential base usage rates were $37.50/month before the Town of Fairfield decided, in 2011, to proceed with a major water improvement project. After all governmental approvals, the Town raised rates twice; the second was upon project completion, which raised rates to $45.00/month. The Town has not had one complaint regarding the increase; however, there have been many commendations about the improved pressure, quality, and quantity of water. Regular water testing proves there is no adverse impact to public health, welfare, or safety. The Town has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose it its reservation.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

Response: There were no orders of compliance listed in the final order of reservation. In DNRC’s report of findings of fact, there is reference to the possible need for one or two additional wells under C.6. Enclosed is a copy of a Montana Well Log Report for Well 1A, which is referenced elsewhere in this report.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

Response: A satisfactory level of perfection of the water reservation has been achieved. Refer to the telemetry report from NCI Engineering on page 2 of this report. The average usage of those three reporting periods is 96.57% of the 325 AF/Year reservation. Again, during a portion of the third period, Well 4 was not reporting to telemetry; therefore, the drop in usage to 84.98% during high use time.

**Department Review:**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. **Need** for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population. Water
rights associated with the current city wells supply ample water for the current population and should these wells fail the underlying right can be applied to a replacement well. It is additionally noted that there appears to be some duplication of information included in the files for the individual water rights.

3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the original application identifies a projected population of 888 persons by the year 2025 for the town of Fairfield. The 2013 census identifies a population of 724 for the town of Fairfield. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the town of Fairfield was 203 acre-feet per year, \[ \frac{(250 \text{ gallons per day}) \times (724 \text{ persons}) \times (365 \text{ days per year})}{325,851 \text{ gallons}} = 203 \text{ acre-feet}. \] Existing “municipal” water rights for the town of Fairfield total 2,246 acre-feet.

It appears that the town of Fairfield has sufficient water rights for a population much greater than the current or projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the city should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

4. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. The town has applied for and received a total of 483 acre-feet of water through Provisional Permits.

**Department Recommendations:**

1. The department recommends that the water reservation for the Town of Fairfield remain as granted through the project completion date of December 2025.
2. The department recommends that any future appropriation of water for the Town of Fairfield be counted against the reservation flow and volume.
3. The department recommends that the individual claim files for the Town of Fairfield be researched to identify and eliminate duplication.
4. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the Town of Fairfield.

**Town of Fairfield Water Rights:**

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41K 1976 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>12/31/1945</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>500 GPM</td>
<td>800</td>
</tr>
<tr>
<td>41K 1977 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>6/1/1951</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>100 GPM</td>
<td>160.00</td>
</tr>
<tr>
<td>41K 1978 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>5/9/1963</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>150 GPM</td>
<td>240</td>
</tr>
<tr>
<td>41K 1979 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>12/13/1977</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>200 GPM</td>
<td>300</td>
</tr>
<tr>
<td>41K 22737 00</td>
<td>Provisional Permit</td>
<td>Active</td>
<td>5/14/1979</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>300 GPM</td>
<td>100</td>
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<tr>
<td>41K 47196 00</td>
<td>Provisional Permit</td>
<td>Active</td>
<td>3/30/1982</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>300 GPM</td>
<td>383</td>
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<tr>
<td>41K 72154 00</td>
<td>Water Reservation</td>
<td>Active</td>
<td>7/1/1985</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>193 GPM</td>
<td>325</td>
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</tbody>
</table>
Reservation # 7188900  City of Fort Benton

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 124 acre-feet per year
- Source: Groundwater
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. No response was received from the City of Fort Benton.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose and public interest.
2. Reservant is non-compliant with the terms of the Final Order. Senate Bill 330 was passed to mandate a review of all existing reservations as required through the Final Order and codified as §85-2-316 (MCA). No response to the DNRC request for information was received from the Reservant.
3. Need for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population within the proposed service area. Additionally, water remains available for future appropriation through the provisional permit process.
4. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the original application identifies a projected population of 2,489 persons by the year 2025 for the City of Fort Benton. The 2013 census identifies a population of 1,490 for the City of Fort Benton. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Fort Benton was [(250 gallons per day)(1,490 persons)(365 days per year)] ÷[325,851] = 417 acre-feet per year. Existing “municipal” water rights for the City of Fort Benton total 913 acre-feet. It appears that the City of Fort Benton has sufficient water rights to serve the current and projected population. Through the adjudication review the City’s only pre 1973 water right was amended to reflect historic use and has been decreed by the Montana Water Court.
5. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.
Department Recommendations:
1. The department recommends that the water reservation for the City of Fort Benton remain as granted through the mandated project completion date of December 2025.
2. The department recommends that all future water rights issued to the City of Fort Benton count against the flow and volume granted through the reservation.
3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Fort Benton.

City of Fort Benton Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
</tr>
</thead>
<tbody>
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<td>41Q 26984 00</td>
<td>Statement of Claim</td>
<td>Active</td>
<td>6/1/1886</td>
<td>Municipal</td>
<td>Missouri River</td>
<td>2.5 CFS</td>
<td>907.20</td>
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<td>41Q 58118 00</td>
<td>Provisional Permit</td>
<td>Active</td>
<td>3/29/1985</td>
<td>Municipal</td>
<td>Missouri River</td>
<td>200 GPM</td>
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<td>41Q 71889 00</td>
<td>Water Reservation</td>
<td>Active</td>
<td>7/1/1985</td>
<td>Municipal</td>
<td>Missouri River</td>
<td>1.43 CFS</td>
<td>124.00</td>
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<td>41Q 30064446</td>
<td>Ground Water Certificate</td>
<td>Active</td>
<td>11/8/2012</td>
<td>Municipal</td>
<td>Groundwater</td>
<td>35 GPM</td>
<td>5.88</td>
</tr>
</tbody>
</table>
DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW

Reservation # 7189000  City of Great Falls

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 1, 1992
Priority Date: July 1, 1985
Volume: 6,022 acre-feet per year for municipal and industrial uses and 467 acre-feet per year for irrigation
Source: Missouri River & Sun River
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Great Falls on December 29th, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The Board’s order approved a water reservation of 6,022 acre-feet per year (AF) at a flow rate of 11.5 cubic feet per second, (CFS) for municipal and industrial uses and 467 AF per year at a flow rate of 8.9 CFS from April 1 to October 1 of each year for parks irrigation.

On August 22, 2008, the DNRC granted change authorization no. 41K-30016816. This change authorized a portion of the reservation to be used through an arrangement with Great Falls for industrial use at the Southern Montana Electrical Generation & Transmission Cooperative, Inc. Highwood Generating Station. To facilitate this use, an additional point of diversion and modification to the authorized place of use was necessary. The Highwood Generating Station originally was proposed as a 250 MW coal-fired plant. Due to matters beyond the City’s control, the Highwood Generating Station was not completed as a coal-fired generating facility, as originally contemplated, which changed the facility’s anticipated water demands.

On November 20, 2010, the DNRC issued a Preliminary Determination to Grant Change for application no. 41K-30047489, (This should read 41-K30047486, DNRC edit). This change authorization reflected the change to the Highwood Generating Station from a coal-fired facility to a gas-fired facility. Great Falls sought to add five wells as additional points of diversion for the existing reservation. As part of this change process, the DNRC found that the purpose and need contemplated by the reservation was met.
Although Great Falls has obtained and received approval to make certain changes to the original reservation, and has been diligent in attempting to put the reserved water right to beneficial use within its originally contemplated purpose and need, the methodology used for the reservation remains largely unchanged. That methodology was based on projections of future population growth, with an expectation that population growth would result in both industrial and general municipal water demands growing commensurately. Although the population of Great Falls has not grown quite as rapidly as projected in the original application, recent information from the Montana Department of Commerce indicates that growth in Cascade County is expected to increase between now and 2025 (http://ceic.mt.gov/Population/PopProjections_AllCountiesPage.aspx); see also Great Falls Growth Policy Update 2013 at (2 (“According to population projections reported by the Montana Department of Commerce, the City is projected to steadily grow through the 2025 planning horizon and beyond”). The City of Great Falls historically has made up more than 70 percent of the Cascade County population, so these trends should remain accurate for the City also. Based on these trends and the efforts made to date, there is no expected change to the purpose and need for the reservation as it currently exists.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** As stated in the original application, the purpose of the water reservation is to allow Great Falls to provide water for future growth in a cost-effective manner. The City’s application to reserve water for irrigation, municipal and industrial use was based primarily on demographic data suggesting that water would be needed to supply an additional 24,000 residents by the year 2025. This purpose recognizes the uncertainties of the availability of water in the Missouri River basin. In the change applications that Great Falls has submitted, the DNRC also has recognized the validity of this purpose. Therefore, the purpose remains the same as set forth in the application and order.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** The application identifies the need as an expectation that competition for available water sources will continue to increase as time goes on. The order adopting the reservation implicitly recognizes this need. The need has manifested itself during the time the reservation has been in place. For example, PPL Montana, the previous owner of the hydropower facilities in Great Falls, objected to the change applications that Great Falls submitted. Great Falls also has had to contend with objections in the adjudication process. In Water Court case no. 41QJ-30, several years of hearings and filings were necessary to resolve objections to Great Fall’s main municipal water rights. In Water Court case no. 41QJ-7, Great Falls is continuing to work to resolve objections to its efforts to obtain a portion of the water rights formerly used at the Anaconda Smelter facility. These objections illustrate the difficulty in locating and obtaining water rights to accommodate the purpose identified in the application, and the likelihood that objections will be raised in future permit or change applications.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount set in the order adopting the reservation remains appropriate. In 2008, Great Falls commissioned a study to identify whether the amount of water rights held by the City is sufficient to meet future needs. This report, titled “A Water Strategy for the Future” (Water Rights Solutions, Inc.,
1/4/2008) evaluated Great Falls’ current portfolio of water rights, including the water reservation, and indicated that the City may need to acquire additional water rights to meet future needs. Whether that ultimately is necessary remains uncertain, but this study shows that the amount designated in the water reservation is a key component of Great Falls’ water supply to meet its anticipated needs.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** The order granting the reservation indicates that the reservation is in the public interest because it will facilitate economic development at little cost to Great Falls and its residents. The application provides support for this public interest determination by analyzing the economics of the reservation in more detail. This public interest finding remains applicable today. As the 2008 report shows, Great Falls will need additional water to meet its reasonably foreseeable water needs. If the reservation is terminated or reduced, fulfilling this need will require either uncertain and costly new permit applications, together with resolution of anticipated objections, or purchasing other water rights at significant cost and seeking change authorizations, which also are costly and uncertain. The economics that support the public interest are likely more applicable today than they were at the time the reservation was granted.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** The order approving the reservation does not contain specific requirements for the reservation. Plans and documents supporting the reservation include:

- Change authorization 41K-30006334 and all file materials;
- Change authorization 41K-30016816 and all file materials;
- Change application no. 41K-30047489 and all file materials;
- Water Rights Valuation, Reserved Water Right 41K-M-071890-00, Water Right Solutions, Inc., (Nov. 15, 2004);
- City of Great Falls 2006 Water Master Plan;
- Analysis of Claims for Objection Purposes, Water Rights Solutions, Inc. (Feb. 28, 2011);
- Growth Policy Update 2013;
- Population data maintained by Montana Department of Commerce;
- Water Court Order, Case 41QJ-30 (June 14, 2013);
- Annual reports maintained by the Great Falls Public Works Department.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** Although Great Falls has not achieved the full level of development anticipated in the application and order, it has been diligent about pursuing application of the water reservation to
beneficial use. These actions have included the arrangements with the malting plant and with the
Highwood Generating Station, along with the corresponding change requests made to and approved by
the DNRC. Although the Highwood facility ultimately was not completed as contemplated, the
arrangements made to supply it with water for a recognized industrial use illustrate steps Great Falls has
taken to perfect the reservation.

Due to factors beyond the City’s control, population increases during the 1990s did not occur at rapidly
as anticipated, but more recent studies cited in this response indicate that population growth has begun
to increase again as contemplated by the reservation. As population increases the water available from
the reservation will become more critical to meet future demands.

Finally, the water rights adjudication process conducted by the Montana Water Court remains an
important factor. The adjudication is not complete and has resulted in certain adjustments to Great
Falls’ historic water rights. For example, the volume of the rights as filed has been adjusted somewhat
to reflect historic use. Those adjustments cause the volume and flow provided by the reservation to be
even more critical to anticipated future uses and demands.

Department Review:

1. The reservant appears to be in substantial compliance with the purpose, public interest, compliance,
   need, amount and perfection for the municipal/industrial portion of its reservation.
   Information in the original application identifies a projected population of 78,723 persons by the
   year 2025 for the City of Great Falls. The 2013 census identifies a population of 59,152 for the
   City of Great Falls. In preparing municipal water reservations 250 gallons per person per day
   was commonly used to estimate volume. Using this estimate the 2013 water use for the City of
   Great Falls was 16,565 acre-feet per year, \((250 \text{ gallons per day} \times 59,152 \text{ persons} \times 365 \text{ days per year}) \div 325,851\) = 16,565 acre-feet per year. Existing “municipal” water rights for the City of
   Great Falls total 20,365 acre-feet.
   To date the City of Great Falls has submitted three change applications for its reservation. Two
   of these applications were issued by the DNRC and the third was withdrawn by the applicant.
   The combined volume of the two change applications that were issued totals 6,418 acre-feet of
   water per year which exceeds the volume granted for municipal/industrial use of 6,022 acre-
   feet per year by 396 acre-feet. The flow/volume granted through the two changes are as
   follows:
   • Change Application 41K 30006334 (Malting Plant)
     o Flow 3.34 cubic feet per second
     o Volume 2,419 acre-feet
   • Change Application 41K 30016816 (Highwood Generating Station)
     o Flow 7.13 cubic feet per second
     o Volume 3,999 acre-feet
   Change Application 41K 30016816, (Highwood Generating Station), was never perfected. The
   proposed electric generating plant was abandoned by the applicant. As issued the project has a
   project completion date of December 31, 2025.
   No information has been provided to determine the extent of development for that portion of
   the reservation that provides for irrigation of the City’s parks.

Department Recommendations:

1. The department recommends that the water reservation for the City of Great Falls remain as
   granted through the mandated project completion date of December 2025.
2. The department recommends that all future water rights issued to the City of Great Falls count against the flow and volume granted through the reservation.

3. The department recommends that the City of Great Falls submit a request to withdraw Change Application 41K 30016816 (Highwood Generating Station). The volume granted through the existing change applications exceeds the volume granted through the reservation. The department further recommends that the flow and volume associated with the project be made available for future use to the City through the existing Water Reservation.

4. The department recommends that the portion of the reservation awarded for irrigation of the City’s parks remain as granted through the mandated project completion date of December 2025. If the irrigation portion has not been perfected by the end of 2025 the department would initiate an additional review.

5. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Great Falls.

### City of Great Falls Water Rights:

<table>
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<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
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<td>9,155.52 GPM</td>
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*Combined shall not exceed 20,140
Reservation # 7258100  
City of Helena

**Reservation Description:**
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 7,071 acre-feet per year
- Source: Groundwater
- Perfection Date: December 31, 2025

**Project Description:**
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Helena on December 31, 2015.

**Reservant Response:**

**Required Reporting [36.16.120]**

1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**Response:** Helena was granted a water reservation of 7,071 acre-feet per year (AF) at a maximum flow rate of 7,361 gallons per minute (gpm). The source is groundwater for year-round municipal use. The final order sets a perfection date of December 31, 2025.

In 1998, Helena completed two deep exploration wells to evaluate the aquifer yield within the defined Water Reservation area. One test hole was drilled to 740 feet below ground surface (bgs). Based on the encouraging hydrogeology and pumping test yields, a second well was installed to a depth of 630 feet bgs, approximately 100 feet to the east of the first well. The pumping test yields for this second well were less than expected. Because of these results, Helena’s Public Works Director decided to delay further drilling and development of the Water Reservation deep aquifer source until a later date.

In 2010, Helena submitted a request to DNRC to allocate 85 gpm and 19.73 acre-feet of this Water Reservation for use to irrigate 7.89 acres at Kindrick Legion Field and Memorial Park from a well at that location. A change application was completed and approved on September 9, 2010 to add a point of diversion.

The following information summarizes the current status of the Water Reservation allocation to date:
The water reservation will be used for municipal and industrial beneficial uses. Helena expects to fully use the water reservation by 2025. Current uncertainty exists regarding the outcome of legal challenges to Helena’s Tenmile Creek water rights. Retaining this water reservation is critical for the community. The entire amount of the water reservation is still anticipated to be needed to satisfy the projected water demand (flow rate and volume).

No change in the methodology originally used to determine the amount is necessary. The amount granted is based on population projections and development in the area, which have not changed. A Growth Policy was completed in 2011 (City of Helena 2011) and supports a projected population growth through 2035. If anything, the projected population from the application of 31,624 in 2035 is low compared to the projected population of 39,268 in 2030 based on data provided in Helena’s 2011 Growth Policy.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** Yes. Helena requested a water reservation to meet future demands by municipal and industrial users. The purpose remains the same as identified in the application and order.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** Yes, the need still exists as identified in the application and order. Helena requested a water reservation to meet future demands by municipal and industrial users. The need remains the same. Based on population growth projections, Helena and the adjacent area are likely to expand. In addition, the uncertainty associated with the legal challenges to Helena’s Tenmile Creek water rights and the future expansion of Helena’s city limits will increase the demand on the municipal water supply. The population of Helena listed in the 2010 census was 28,212. The population in 2014 was 29,943. As projected in the 2011 Growth Policy, the population of Helena will increase to 39,268. This projection
does not account for the increase in legislators and associated legislative support that occurs every two years in Helena and increases the demand on water supplies. The increase in demand due to visitors during the summer tourist season is also not included in water use projections.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The water reservation amount is still appropriate, although more water than provided in the Water Reservation may be needed to accommodate revised population projections. More future growth is projected in the 2011 Growth Policy when compared with the projections used in the water reservation application submitted in 1989.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** The water reservation continues to remain in Helena’s public interest as identified in the application and order. Based on the growth and development both within Helena and the adjacent Helena Valley, and with the uncertainty described above, Helena Public Works is discussing how best to perfect the water reservation. Use of the reservation is in the public interest of Helena and adjacent Helena Valley residents. Helena needs the reservation to meet projected future demands identified in the 2011 Growth Policy and used to make this assessment.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** As explained above, the Helena has allocated a small volume and flow rate of the water reservation for use at Kindrick Legion Field and Memorial Park. The project completion notice for this portion of the Water Reservation was submitted on December 8, 2011. Helena is continuing to internally discuss and plan for additional development of the reservation. No general plans, detailed plans, annual or biennial reports have been prepared specific to the water reservation above the current use at Kindrick Legion Field and Memorial Park.

The applicable documents located in the DNRC data base referencing the allocated amount include the following:

1) File: Change Authorization 41I 30049152 a. Permit Authorization
2) Update to File: Change Authorization 41I 30049152 a. Verification and Certification

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** As described above, Helena Public Works is discussing continuing development of the water reservation to meet the objectives of the order. The uncertainty in regards to the ongoing legal action
brought against Helena’s Tenmile Creek water rights, along with expansion of Helena city limits and
growth in the Helena Valley, are requiring Helena to consider additional groundwater exploration and
further development of the Water Reservation. Helena intends to develop the Water Reservation in the
future to its full volume and flow rate.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and
compliance.
2. Need for the reservation appears questionable. Water available through existing water rights
appears to be more than adequate to serve the existing and projected population¹. However,
uncertainty associated with the legal challenges to Helena’s Tenmile Creek water rights and the
future expansion of the Helena city limits are cited in the City’s response. Finally, Helena is
within the Upper Missouri River Basin Closure making it difficult for the City to obtain additional
municipal water rights.
3. The amount granted appears to be greater than the demand that has materialized since the
reservation was granted. Application materials cite a 1987 population of 24,700 and a projected
2035 population of 31,624 for the City of Helena. In their response to the DNRC questionnaire
the reservant claims a 2014 population of 29,943 and projects a population of 39,268 people
sometime in the future. In preparing municipal water reservations 250 gallons per person per
day was commonly used to estimate volume. Using this estimate the 2014 water use for the
City of Helena was 8,385 acre-feet per year, [(250 gallons per day) (29,943 persons)(365 days
per year)] ÷[325,851]= 8,385 acre-feet per year. Existing “municipal” water rights for the City of
Helena total 17,392 acre-feet.
It appears that the City of Helena has sufficient water rights to serve the current and projected
population. However, this margin may not be deemed a valid water right unless used. The City
of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect
future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based
on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to
an amount of water in excess of the beneficial use to which it is applied, and when the
appropriator or his successor ceases to use the water for such beneficial purpose, the right
ceases.” Currently, the City of Helena’s Tenmile Creek water rights are under legal challenge is
district court. Based on these considerations, the City should not rely on the excess claims for
growth. The reservation process should be pursued to provide the legal right for future water
supplies.
4. In the 24 years since the Final Order establishing the reservation was issued 19.73-acre feet of
the reservation has been perfected.

Department Recommendations:
1. The department recommends that the water reservation for the City of Helena remain as
granted through the mandated project completion date of December 2025.
2. The department recommends that any future appropriation of water for the City of Helena be
counted against the reservation flow and volume.
3. Upon completion of the on-going adjudication and the issuance of a final decree the department
recommends re-evaluating the need and amount of the reservation for the City of Helena.
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<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
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Reservation # 7258400  City of Lewistown

**Reservation Description:**
- **Final Order:** Upper Missouri River Basin, Issued July 1, 1992
- **Priority Date:** July 1, 1985
- **Volume:** 1,247 acre-feet per year
- **Source:** Groundwater
- **Perfection Date:** December 31, 2025

**Project Description:**
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Lewistown on December 31st, 2015.

**Reservant Response:**
**Required Reporting [36.16.120]**
1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**Response:** The City of Lewistown currently has water rights totaling 14 CFS and a water reservation of 1.1 CFS. This reservation was granted on June 29, 1992.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** The purpose was to allow for growth of the community by provided adequate water in a cost-effective manner. Beneficial use by municipal and industrial user continues to be the purpose of this reservation.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** The need for a reliable and high-quality source of water that allows for the growth of our community continues. This reservation allows the community to focus on improving the existing system and preserving the source rather than spending time and money on obtaining water rights. The City of Lewistown spent over 10 years working to accurately measure to production of Big Springs and has also done testing to analyze the composition of the water. This information may be used in the future as a baseline for the quality of the water in the aquifer.
4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The original application went into great depths to project the population, and the board decreased the projection to more accurately reflect the population trends statewide. The 2010 showed the population of Lewistown 5901, which is a decrease from 6051 in 1990. While the population has not increased, the community changes and grows. Lewistown is a hub for several smaller communities and many people commute to Lewistown for work, shopping and doctoring. There is also several thousand additional people living within 5 miles of Lewistown that utilize City services.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** This reservation allows the community to focus on improving the existing system and preserving the source rather than exploring other sources of clean and reliable water or obtaining more costly water rights. The City of Lewistown had explored two alternative sources of water for future development and neither of these alternatives would provide a greater benefit than the water reservation. Not having this reservation would prevent future municipal and industrial growth and would result lost economic development opportunities. The City’s water reservation had no significant adverse impact to public health, welfare or safety.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** At the time the board granted this reservation there was no additional plans or reporting required. As part of the management plan the City of Lewistown did identify several items that needed addressed. First, a leaking transmission line. This line was replaced in 1996 and a 1.5-million-gallon water tank was installed. This project installed a 24-inch transmission line from the spring to Lewistown and also upsized the replaced or upgraded the booster pumps and several distribution lines. Also by 2002 The City had completed its metering project and now the entire system is metered.

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** The population of Lewistown does not accurately reflect growth of the community. Lewistown is a hub for smaller Central Montana communities. It offers people from all over the area a place to work, shop and receive medical care. The hospital continues to grow and add additional services, Lewistown is now home to a MSU northern campus. The 1996 improvements to our system allowed the City to service approximately 60 additional properties to the south of town. The City is now
in the process of annexing many of these properties. Also in the late 1990's another 20 lot subdivision was developed and continues to fill in. In the last 10 years 2 correctional facilities have opened and provide good jobs for local people. Our town continues to change, while businesses close on Main Street new one build on the outskirts. In fact, in 2014 construction inside the City Limits, were the highest on record. In the original application there were five areas that were identified as areas for potential growth. These are the areas that have grown and where additional projects are planned. These areas are also where the City has extended services too. Over the last 20 years the City of Lewistown has improved or extended service to the Airport. There is also a group that hopes to develop an industrial park in this area. The City has also extended water and sewer east and west of town. These services allow the continued use of the area for numerous community events and improved public health and safety to the area. The City of Lewistown realizes what a valuable resource our water is and we are committed to protecting it and preserving it for the generations to come.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Currently the need for the reservation has not materialized. Water available through existing water rights appears to be more than adequate to serve the existing population\(^1\). Since the reservation was issued the population of Lewistown has seen a decline. Information provided through the City of Lewistown response identifies several factors that may contribute to an increase in municipal water use. In the event that this projected increase materializes reserved water would be needed.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the original application identifies a projected population of 9,618 persons by the year 2025 for the City of Lewistown. The 2013 census identifies a population of 5,867 for the City of Lewistown. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Lewistown was 1,643 acre-feet per year, \[\frac{(250 \text{ gallons per day}) (5,867 \text{ persons})(365 \text{ days per year})}{325,851 \text{ gallons}}\] = 1,643 acre-feet. Existing "municipal" water rights for the City of Lewistown total 2,221 acre-feet. It appears that the City of Lewistown has sufficient water rights for a population much greater than the current population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy's claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the city should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.
4. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

Department Recommendations:
1. The department recommends that the water reservation for the City of Lewistown remain as granted through the project completion date of December 2035.
2. The department recommends that any future appropriation of water for the City of Lewistown be counted against the reservation flow and volume.
3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Lewistown.

1 *Lewistown Water Rights:*

<table>
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<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
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<td>12/31/1962</td>
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<td>Spring, Big Springs</td>
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</tr>
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<td>Statement of Claim</td>
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<td>6/30/1973</td>
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<td>2 CFS</td>
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<td>Provisional Permit</td>
<td>Active</td>
<td>3/27/1980</td>
<td>Municipal</td>
<td>Spring, Big Springs</td>
<td>1.6 CFS</td>
<td>250</td>
</tr>
<tr>
<td>41S 55893 00</td>
<td>Ground Water Certificate</td>
<td>Active</td>
<td>5/23/1984</td>
<td>Commercial</td>
<td>Groundwater</td>
<td>30 GPM</td>
<td>1</td>
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<td>41S 72584 00</td>
<td>Water Reservation</td>
<td>Active</td>
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<td>Municipal</td>
<td>Big Spring Creek</td>
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<td>41S 68100 00</td>
<td>Provisional Permit</td>
<td>Active</td>
<td>2/26/1988</td>
<td>Recreation</td>
<td>Big Spring Creek, East Fork</td>
<td>13.8 CFS</td>
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<td>Provisional Permit</td>
<td>Active</td>
<td>2/26/1988</td>
<td>Recreation</td>
<td>Hanson Creek</td>
<td>5.6 CFS</td>
<td>180</td>
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</table>
Reservation # 7189100    Town of Shelby Montana

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 1, 1992
Priority Date: July 1, 1985
Volume: 161 acre-feet per year
Source: Groundwater

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the town of Shelby on December 7th, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The City of Shelby was granted a water reservation of 161 acre-feet per year (AF) at a flow rate of 0.23 cubic feet per second (CFS). The source is groundwater for year-round municipal use. The final order sets a perfection date of December 31, 2025. Shelby has taken action to put their full water reservation (flow rate and volume) to beneficial use in the near-future through the City’s existing public water supply well field. The City submitted two water right change applications (application numbers 41P 30072725 and 41P 30072726) to change each of the City’s municipal water rights. The City is requesting to change the place of use and point of diversion for each of the water rights. The applications are currently being reviewed by DNRC-Havre Regional Office. Change application 41P 30072725 includes the change of Shelby’s water reservation. The change application proposes to change the City’s water reservation’s (and all other municipal water rights) place of use from the pre-1973 City boundaries to current City limits and to also include outlying communities. The change would be completed without increasing the overall historic water use plus the entire water reservation volume. The point of diversion on each water right is being changed so that all wells are identified as multiple points of diversion on each water right. The water reservation would draw from excess capacity from existing wells within the well field.

The City requested the water right changes in order to meet current municipal demands from portions of the City that have grown outside of its historic boundaries. Additionally, the City has obtained multiple water use agreements to distribute water to outlying communities including Cut Bank, Ethridge, Big Rose Colony, and Devon and Dunkirk. The water right and water reservation changes are
part of an interim solution to provide reliable potable water to local communities prior to completion of the North Central Montana Regional Water Authority pipeline project. The entire amount of the water reservation is needed to satisfy the projected water demand (flow rate and volume) proposed in the change applications. Based on beneficial water use proposed in the applications, the entire water reservation would be allocated over about the next 5 to 13 years. Water use to all locations within Shelby's water service area would be metered so that use of the water reservation could be verified. No change in the methodology originally used to determine the amount is required. The amount granted is based on population projections and development in the area, which have not changed.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** Yes. Shelby requested a water reservation to meet future demands by municipal and industrial users. The purpose remains the same as identified in the application and order.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** Yes. Shelby requested a water reservation to meet future demands by municipal and industrial users. The need remains the same as identified in the application and order. Shelby will perfect the reservation by putting the full water reservation of 161 (AF) at a flow rate of 0.23 cubic feet per second (CFS) to use through the existing public water supply well field. A change application is currently under review by DNRC-Havre Regional Office to change the place of use for all Shelby's municipal water rights and the water reservation.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** Yes. The water reservation amount is still appropriate. A change application was submitted by Shelby to initiate use of its water reservation as part of its current water needs and near-future plans. Because of the planned expansion of Shelby's water service area since granting of this water reservation, the change application addressed the change in place of use from the place of use identified in original water reservation. In addition, Shelby does not plan to drill new wells to perfect this reservation. The wells within Shelby's existing well field have sufficient capacity to meet existing demands and the reservation's full flow rate and volume. The change application was submitted to request this change.

The total amount of water needed for the requested change would come from both the historic use of existing water rights plus the water reservation. The beneficial use estimated with approval of the change application would require all the historic water use from existing water rights and all but about 57-acre feet of the water reservation. The entire water reservation is expected to be needed within the next five to thirteen years based on expected growth. Actual water use varies with economic and climatic factors and will be metered to verify use. Historic and expected water use is provided in the change application documents.
The amount needed was determined as part of the submitted change applications. The following table, which was provided in the change application currently under DNRC review, identifies the total estimated water use by service area for all historic water rights plus the additional use needed from the water reservation contribution.

<table>
<thead>
<tr>
<th>Total Estimated Water Use Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>City of Shelby</td>
</tr>
<tr>
<td>Current Population</td>
</tr>
<tr>
<td>Average Day Demand (gpd)</td>
</tr>
<tr>
<td>Average Day Demand (gpm)</td>
</tr>
<tr>
<td>Annual Demand (ac-ft)</td>
</tr>
<tr>
<td>Peak Day Demand (gpd)</td>
</tr>
<tr>
<td>Peak Day Demand (gpm)</td>
</tr>
</tbody>
</table>

5. Public Interest: Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

Response: The water reservation remains in Shelby's public interest as identified in the application and order. Shelby is currently perfecting this reservation as a result of proposed water right changes in place of use due to growth and development both within the City, its expanded boundaries, and outlying communities. The water right changes and use of the water reservation are part of an interim solution to provide reliable potable water to local communities prior to completion of the North Central Montana Regional Water Authority pipeline project. Use of the reservation is in the public interest of both Shelby and outlying communities within its water service area. The City of Shelby needs the reservation to meet current and near-future demands. In the best interest of Shelby residents, actual water use will continue to be metered to ensure the historic volume plus the water reservation is not exceeded.

Apart from the requested change application, the water reservation has not yet been put to use, so the historic diverted flow rate or volume of the reservation will not be exceeded. No changes to the operational function of the existing points of diversion will be made. The water reservation volume will
be distributed among the 13 wells and will increase the amount of water pumped from each well by approximately 8 gallons per minute.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** Apart from the requested change application, the water reservation has not yet been put to use, as explained in the change application submitted to DNRC in March 2015. DNRC found no deficiencies with the change application. The change application has been determined correct and complete, and is currently under consideration for preliminary determination to grant or deny. No general plans, detailed plans, annual and biennial reports have been prepared specific to the water reservation. The change application can be found on file with DNRC-Havre Regional office. Supporting water use, current and proposed needs, well field and water treatment system summaries, and other engineering reports associated with Shelby’s water system are included in the change application package.

The reference for the change application is as follows:

City of Shelby, Change Application Number 1. Application to Change Seven Existing Non-Irrigation Water Rights and One Water Reservation.
Change in Place of Use and Change in Point of Diversion for Municipal Water Rights 41P 192878 00, 41P 192880 00, 41P 192881 00, 41P 192882 00, 41P 4489 00, 41P 4490 00, and 41P 58129 00; and Water Reservation 41P 71891 00; Marias River- Basin 41P
Submitted March 20, 2015

7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** As described above, Shelby has a change application under review with the DNRC to allow a change in place of use in order to put the water reservation into the existing public water supply system. The water reservation is expected to be perfected within five to thirteen years after the change is granted and required infrastructure is in place. Shelby anticipates that the change application to be granted within the year. Much of the required infrastructure is already in place or is under construction.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. **Need** for the reservation appears questionable. Water available through existing water rights appears to be more than adequate to serve the existing and projected population within the proposed service area. Water rights associated with the current City wells supply ample water for the current population and should these wells fail the underlying right can be applied to a replacement well. Additionally, water remains available for future appropriation through the provisional permit process. Finally, Shelby is within the service area of the Rocky Boy North Central
Montana Regional Water Project and will rely on the project for future appropriations when the project becomes operational.

3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information in the original application identifies a projected population of 4,387 persons by the year 2025 for the City of Shelby. The 2013 census identifies a population of 3,301 for the City of Shelby. Information received from the City of Shelby indicates an expanded service area that includes a current population of 7,397 people. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the City of Shelby was \[\frac{(250 \text{ gallons per day}) \times (3,301 \text{ persons}) \times (365 \text{ days per year})}{325,851} = 924 \text{ acre-feet per year.} \]

Existing “municipal” water rights for the City of Shelby total 3,292 acre-feet.

The city of Shelby has applied for a change authorization that would substantially increase the service area for municipal water. Under this change, the service area would be expanded to serve 7,397 people. Again, using an average daily use of 250 gallons per person per day, the total volume through the proposed change would be 2,071 acre-feet per year.

It appears that the City of Shelby has sufficient water rights to serve the current and projected population including the population within the service area proposed through the pending change application. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the City should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

4. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. However, through a pending change the City intends to utilize a portion of the reservation and anticipates full use by the mandated perfection date of 2025. During the 25 years since the Final Order granted the reservation the City has applied for and received a total of 1,466 acre-feet of water through Provisional Permits.

**Department Recommendation:**

1. The department recommends that the water reservation for the City of Shelby remain as granted through the mandated project completion date of December 2025.

2. The department recommends that any future appropriation of water for the City of Shelby be counted against the reservation flow and volume.

3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Shelby.
### City of Shelby Water Rights:

<table>
<thead>
<tr>
<th>WR #</th>
<th>Type</th>
<th>Status</th>
<th>Priority Date</th>
<th>Purpose</th>
<th>Source</th>
<th>Flow</th>
<th>Volume (AF)</th>
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<tbody>
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Reservation # 7011700                   City of Three Forks

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 1, 1992
Priority Date: July 1, 1985
Volume: 81 acre-feet per year
Source: Groundwater
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the City of Three Forks on December 31st, 2015.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: AMOUNTS GRANTED: The reservation allows the City of Three Forks, Montana a water reservation of 81 acre-feet per year at a flow rate of 0.25 cubic feet per second (CFS). The source is groundwater.

Three Forks is currently running on 5 wells with a capacity of 464 gallons per minute (gpm). Prior estimates of future water needs reported that 670 gpm would be required by year 2025 based upon predicted growth. Although times have changed since the water rights reservation was granted, the fact is Three Forks’ water system is still in need of an additional water source. The Department of Environmental Quality (DEQ) requires that public water systems have enough flow rates in water sources to meet max day demand with the largest well out of service. Even without the estimated growth, the City of Three Forks needs additional water source to supply water if the one well goes out. The highest demand is during the irrigation season of June, July, and August. If a well goes out in these months, the water system may not be able to supply peak demand.

Previously projected estimates of growth have already been exceeded. In the year 2010, the Census Bureau reported Three Forks, Montana population as 1,869. In the application for reservation of water submitted in 1988 the estimated population of Three Forks for year 2025 was 1,860. Therefore, the total quantity of additional water granted in reservation is still needed for growth. A new estimate for growth in Three Forks as reported in the 2013 Preliminary Engineers Report (PER) prepared by Great
West Engineering, is 3,218 for year 2032. This increase is equivalent to approximately 1,350 people, which at an average day demand per capita of 84 gallons per capita per day (gpcd) is greater than 81-acre feet i.e.; (1,350x84gpd = 127 AF per year).

Although Three Forks water system has changed, the amount of water consumed by people has also changed. Based upon flow measurements recorded by meter reading from year 2009 – 2011 average day consumption per capita is estimated at 84 gpcd (less than the amount reported in 1988). Between the addition of another well in 1986 (WR# 41G 60815 00), reduced water demand by consumers, and greater growth than originally predicted, the overall affect is that Three Forks has the need more than ever for water right reservation.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** The purpose essentially remains the same as the order, which is to reserve water for municipal uses. Municipal purposes are defined as a beneficial use. The beneficiaries of such use shall be all residents and enterprises of the community that are served by the municipal water supply system. This purpose has not changed from the original application.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** There was and still is a definite and urgent need for the City to reserve water based on (1) the threat to future water availability from potential competing users, (2) a desire to improve long-range planning efforts, and (3) present economic and demand constraints to near-term development.

Additionally, groundwater from wells in the Three Forks area have problems with water quality such as arsenic, TDS, sulfates, sodium and now alpha radiation, depending on the drainage that the wells draw from. The City’s system has been blending water to keep the levels within DEQ minimum requirements. As these requirements change, it’s becoming apparent that water treatment will be necessary to increase the capacity of the system and keep under the minimum contaminate levels. Additional parameters that are not typically analyzed in other public water systems such as alpha radiation have recently been found in deeper water.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** The amount of water requested was and is still based upon a forecast of its future population, along with the estimated amount of water used per person. Previous forecasts utilized trends of existing growth rates and projections into the future. Census data from year 2010 reported a population of 1,869 in the City of Three Forks. New estimates project future growth to Three Forks in year 2032 to be 3,218 (PER, Great West Engineering, 2013).
5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response:** It is important that the City of Three Forks has a water reservation to meet future municipal water demands in order for the community to grow and develop. Infrastructure improvements are based upon growth including payback of the improvement costs. It is in the public’s interest to maintain these water right reservations.

Additionally, the City has now identified that water treatment is necessary to increase capacity. The need for water treatment means a municipality is the most likely source of water for new development. With the added burden of water treatment, the cost of water supply has increased; grants from State and Federal funding require that the cost of water to users be reconciled to pay back loans. The fees for water use have risen accordingly.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response:** Unfortunately, the City of Three Forks does not have record of reports submitted to the DNRC. The City does have the ability to produce these reports and will do so as ordered or at the request of DNRC. Additionally, the City has had extensive engineering analysis prepared in order to obtain funding from DEQ, Montana State Revolving Fund (SRF), DNRC and others in order to maintain and continually provide clean water to its customers.

**Water**

The PER for the water project was completed in February 2013. This project consisted of two phases. Phase 1: replacing approximately 2500 linear feet of 8-inch PVC water main, 2980 linear feet of 6-inch PVC water and 1 cased jack and bore railroad crossing (and all associated valves, fittings, connections, etc.); drilling a new water supply well, including installing 10-inch casing and screening, pump testing and associated valves, fittings, etc. The City elected not to complete the 8-inch water main installation and railroad crossing as part of Phase 1 and will look to complete this work in the future. Phase 1 also included upgrades to the telemetry system. Phase 2: Repaint the 1-million-gallon steel water tank; repairs to the old underground concrete water tank in order to hold the water during the repainting of the current tank. Everything but phase 2 is complete on this project.

Funding for this project is secured with a SRF loan in the amount of $1,281,000. $500,000 of that was forgiven through various refinancing/funding sources. The City was also awarded $250,000 in WRDA funds from the Army Corps of Engineers, and $40,000 of City reserves were utilized.
7. **Perfection:** If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response:** As discussed above, the City of Three Forks is in progress of improvements to the water and sewer systems which will add to system capacity and bring the system into compliance with DEQ standards. Water supply continues to be problematic in that the new well produces 200 gpm, but is high in gross alpha. To meet minimum contaminate levels (MCL), the City has to blend it with other wells. The blending rate is limited to 54 gpm. The total capacity of Three Forks wells including the new well at 54 gpm is 464 gpm. In the 1988 water reservation application, the system reported delivery of 470 gpm with a future growth demand of 670 gpm. Therefore, the reserve water right request of 200 gpm has not changed. Flow rates of existing wells and new wells have changed due to replacements of pumps, decreased capacity of wells and requirements of blending. The point is that Three Forks is at the same state of need for reservation as was presented in the 1988 application.

Future plans for Three Forks Water system will likely include water treatment so that water sources don’t have to be blended. Three Forks water system sources exceed MCL’s of arsenic in the Madison drainage, TDS, sulfates and sodium in the Jefferson drainage, and now Gross alpha in deep formations. Again, the need for water reservation has not changed. The circumstances for perfection have changed. Three Forks wants to continue pursuing these reservations as improvements to the system continue and the town plans on future growth.

**Department Review:**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Currently the need for the reservation has not materialized. Although previous population estimates have been exceeded, water available through existing water rights appears to be more than adequate to serve the existing and projected population.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. Information provided in the City’s response to the DNRC request for information identifies an estimated population of 3,218 people for the year 2032. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2032 water use for the City of Three Forks would be 901 acre-feet per year, $[(250 \text{ gallons per day})(3,218 \text{ persons})(365 \text{ days per year})] \div [325,851 \text{ gallons}] = 901 \text{ acre-feet}$. Existing “municipal” water rights for the City of Three Forks total 1,090 acre-feet. It appears that the City of Three Forks has sufficient water rights for the current and projected population. However, this margin may not be deemed a valid water right unless used. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the city should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.
4. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.
Department Recommendations:
1. The department recommends that the water reservation for the City of Three Forks remain as granted through the project completion date of December 2035.
2. The department recommends that any future appropriation of water for the City of Three Forks be counted against the reservation flow and volume.
3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Three Forks.

City of Three Forks Water Rights:

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Reservation # 7011500  Town of West Yellowstone

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 1,922 acre-feet per year
- Source: Whiskey Springs
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. Due to an out dated address the Town did not respond to the initial request for information. The following response was received from the Town of West Yellowstone on March 15th, 2016.

Reservant Response:
Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

Response: The Town was granted a water reservation of 1,922 acre-feet per year (AF) at a flow rate of 2.65 cubic feet per second (CFS) for use January 1 to December 31 annually. The source is groundwater from Whiskey Springs, which is located in the NE¼ SE¼ of Section 17, Township 14 South, Range 5 East. The perfection date for the reservation is December 31, 2025. Long term average flows from Whiskey Springs are reported to be about 6 cubic feet per second (DFS), although flows as low as 1.5 CFS were reported during the dry year of 1988 in a study by Braun Intertec conducted for the Town.

From the time the reservation was granted, Whiskey Springs and the water reservation has provided the Town with its primary source of municipal water. The total amount of metered water delivered to Town customers in 2015 was 202,114,807 million gallons (MG; Table 1). During peak tourist season in the summer months, water from Whiskey Springs is supplemented by one of the Town’s wells (referred to as the Railroad Well), because over the last approximately 10 years the spring alone has not met peak summer demands. In recent years, the Town Engineer estimates that the Railroad Well provided approximately 11 MG (33.8 AF) per year of water, with the rest sourced from Whiskey Springs. Based on this approximation, the Town depends on the Whiskey Springs water reservation for about 95 percent of its municipal water supply.
The amount of water requested for the reservation was based on peak daily water use at that time of the application, projected to the year 2025 based on forecasts of population and visitation. This methodology was deemed appropriate in the DNRC Final Order, but population predictions and the reservation rate and volume were modified by DNRC at the time. This methodology is still applicable for forecasting future water needs. A discussion of these trends based on more recent data is presented in the response to Question 3.

Based on recent records, a summary of municipal water use in the Town during 2014 and 2015 is presented on Table 1. The yearly totals reflect water used from Whiskey Springs plus approximately 33.8 AF from the Railroad Well, provided during peak summer months. In 2015, these records show that 620.3 AF of water was used by meter connections in the Town. The Town Engineer estimates system losses to be approximately 10 percent of the delivered volume, thus the actual volume diverted for 2015 is estimated at 682 AF, with an estimated 649 AF sourced from Whiskey Springs and the remainder from the Railroad Well.

Furthermore, in accordance with an access agreement to the spring site between the Town and the U.S. Forest Service, the Town is required to allow a continuous 0.5 CFS of Whiskey Springs flow to discharge into Whiskey Creek. This requirement is in place except during emergencies or short-term demand spikes. This 0.5 CFS flow amounts to approximately 362 AF per year in addition to the volume used for municipal uses.

**Table 1. Summary of recent West Yellowstone water usage in gallons. Includes diversions from Whiskey Springs and Railroad Well. See text for details**
2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** Yes. West Yellowstone requested a water reservation to meet ongoing and future demands by municipal users. The purpose remains the same as identified in the application and order.

However, it should be noted that under the Town’s agreement with the U.S. Forest Service for access to the Whiskey Springs site, the Town is required to allow a continuous 0.5 CFS of flow to discharge into Whiskey Creek. This requirement is in place except during emergencies or short-term demand spikes. This 0.5 CFS flow amounts to approximately 362 AF per year.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** Yes, this continuing need is supported by continued population growth, plans to expand the area served by the West Yellowstone municipal water system, and the fact that Whiskey Springs remains the highest quality water source available to the Town. Specifically:

- Based on estimates from the Town Engineer, the 2015 peak equivalent population (permanent residents plus occupied hotels and motels) is estimated to be 9,270 persons, with an annual growth rate between 1 and 1.5 percent. Assuming the 1.5 percent growth rate, the 2015 equivalent population of 9,270 is projected to grow to about 10,800 by 2025, which is near but slightly below the 11,972-person peak equivalent population predicted in the Town’s application for the water reservation.
- The Town has recently purchased 80 acres to the west of the Town from the U.S. Forest Service. It is anticipated that this new addition to the Town will be slated for commercial and residential development, which will increase the Town’s demand for municipal water. Importantly, this expansion could lead to an increased growth rate that is not reflected in past trends, leading to higher than predicted populations in the future.
- The utility of other local groundwater sources, including the Railroad Well, is marginal due to fluoride concentrations that exceed Montana drinking water standards. Well water requires mixing with Whiskey Springs water (or construction and operation of a treatment plant) to meet drinking water standards. In fact, the Town shifted to reliance of Whiskey Springs due to the elevated fluoride naturally occurring in the groundwater beneath the Town.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.

**Response:** Yes, the water reservation amount is still appropriate. The amount needed is substantiated by records that demonstrate ongoing utilization of the reservation (Table 1), updated projections of growth in equivalent population, and previously unanticipated growth on 80 acres that the Town has recently purchased.

Based on a projected peak 2025 equivalent population of 10,800 persons using 120 gallons per capita per day (gpcd)\(^1\) over 365 days, 2025 maximum annual volume is estimated at 1,453 AF. This is similar to the quantification approach used in the Town’s original application and validated by DNRC in the Final
Order. Alternatively, Mr. Winston R. Dyer P.E., Town Engineer, completed a utility study for the Town in 2007. This study predicted an annual average daily flow of 0.7 million gallons per day (MGD; 2.25 AF) and a maximum peak daily flow of 1.6 MGD (4.91 AF) for the year 2027. Annual municipal water use in 2027 (two years after perfection) using each of these daily rates is thus projected at 784 AF or 1,792 AF, respectively.

However, two additional demands on the Town’s water reservation exist that are not incorporated into the above projections. First, the Town’s agreement for 0.5 CFS of flow to Whiskey Creek will remain in effect, resulting in the use of up to approximately 362 additional AF annually. Second, the addition of 80 acres of land to the Town has recently been finalized. A preliminary estimate prepared by the Town Engineer suggests an additional municipal demand of 297 AF per year could be required to supply water to new commercial and residential development in this area. Thus, up to 659 AF per year of water may be needed in addition to the demands outlined above.

5. **Public Interest**: Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

**Response**: The water reservation remains in the Town’s public interest as identified in the application and Final Order. Based on the growth and development both within the current Town limits and its soon to be expanded boundaries, and the unequaled quality of the Whiskey Springs source water, the reservation has been and will continue to be critical to the Town’s residents, businesses, and guests. As one of the principal gateway communities to Yellowstone National Park, the reservation supplies water relied upon by millions of visitors to the Park from around the world. Therefore, use of the reservation continues to be in the public interest.

6. **Compliance**: Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**Response**: The Town has answered previous DNRC questionnaires about the reservation and as a matter of standard practice would have responded to any other inquiries from DNRC. No other specific reporting requirements are known to exist. If requested, the Town can provide engineering plans and drawings documenting the diversion and delivery works from Whiskey Springs.

7. **Perfection**: If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

**Response**: The reservation was quantified based on population estimates and peak water use in 2025. The higher of the revised estimates for maximum annual municipal usage (Question 4) are 7 to 25 percent below the reservation volume of 1,922 AF.

However, as outlined in Question 4, there are two additional water demands that increase the projected utilization of the reservation. Specifically, the Town has an obligation to the U.S. Forest Service to
provide up to 362 AF per year to maintain flow in Whiskey Creek, and an estimated 297 AF per year of additional water may be needed to supply development of the Town’s 80-acre expansion. Therefore, it is conceivable that the full reservation volume could be utilized in 2025, and it is likely that the Town will utilize its reservation to the extent that the water for this growth is reliably available from Whiskey Springs. If demand were to exceed the reservation volume or the capacity of Whiskey Springs, the Town would rely on other permitted water sources or seek new supplemental sources.

A hydrogeological study of Whiskey Springs, conducted for the Town in 1990 (Braun Intertec), found that Whiskey Springs does not always maintain a flow of 2.65 CFS or more. In dry periods, such as the fall of 1988, the total flow of the spring was 1.5 CFS. Since 0.5 CFS of the total flow must be returned to the Whiskey Springs stream channel in accordance with the Town’s agreement with the U>S> Forest Service, only 1.0 CFS would be available to the Town. This amount, equivalent to 1.98 AF per day, would actually fall slightly short of current peak demand. Thus, while the Town plans to utilize its full right under the reservation, it must do so knowing that all available water is already appropriated in critical low flow periods.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.

2. The need for the reservation has not materialized. The City has been successful in obtaining water use permits through conventional methods. On November 14th, 1986 the Town submitted an application for a flow of 2.67 CFS up to 1,935 acre-feet per year of the waters of Whiskey Spring, (provisional permit 41F 63730-00). In the submitted response to the DNRC request for information the Town reported a 2015 total use of 649 acre-feet per year from Whiskey Springs. It does not appear that the City will utilize any portion of their reservation by the mandated perfection date of December 31, 2025.

   In the Final Order, (issued July 1, 1992), the Town of West Yellowstone was granted a reservation of 2.65 CFS up to 1,922 acre-feet per year from Whiskey Springs. Long term average flows from Whiskey Springs are reported to be about 6 CFS, (applicant response). Through an access agreement with the Forest Service the Town is required to allow a continuous flow of 0.5 CFS to Whiskey Spring Creek, leaving a flow of 5.5 CFS available for appropriation. 2.67 CFS has been appropriated through provisional permit 41F 63730-00. Sufficient flow to satisfy the reserved claim for 2.65 CFS appears to remain available.

3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. In the submitted response to the DNRC request for information the Town reported a 2015 total use of 649 acre-feet per year from Whiskey Springs and a combined total volume of 682 acre-feet from all water rights that serve the Town. It appears that the Town of West Yellowstone has sufficient water rights to serve the current population. However, these rights cannot be relied upon until a final decree is issued. The Montana Water Use Act (1973) initiated a statewide adjudication of all water rights that existed in the state prior to July 1, 1973. The act identifies historic beneficial use as the measure of a water right. The excess volume may not be deemed as valid as it was never put to use. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the
appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the Town should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.

4. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

Department Recommendations:

1. The department recommends that the water reservation for the Town of West Yellowstone remain as granted through the mandated project completion date of December 2025.
2. The department recommends that all future water rights issued to the Town of West Yellowstone count against the flow and volume granted through the reservation.
3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Three Forks.

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Reservation # 7199800  
**Town of Winifred**

**Reservation Description:**
- **Final Order:** Upper Missouri River Basin, Issued July 1, 1992
- **Priority Date:** July 1, 1985
- **Volume:** 161 acre-feet per year
- **Source:** Groundwater
- **Perfection Date:** December 31, 2025

**Project Description:**
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the ARM criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The following response was received from the Town of Winifred on December 29th, 2015.

**Reservant Response:**
**Required Reporting [36.16.120]**
1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**Response:** The amount granted in the application is 100 gal per minute, and a volume of 161 (cf). The amount allocated to date is 0 gallons. There is no change in the methodology originally used to determine the amount.

2. **Purpose:** Does the purpose remain the same as identified in the application and order? Please explain whether the purpose has or has not changed since the reservation was granted.

**Response:** The purpose of the water reservation does remain the same as identified in the application and Order. This water reservation would be utilized in the event of improving water quality and or assisting with the demand of the Town of Winifred. Currently the Town of Winifred continues to grow at a rate of approximately 2% per 10 years.

3. **Need:** Does the need still exist as identified in the application and order? Please explain why the need does or does not still exist.

**Response:** Yes, the need does still exist. As stated previously the town continues to grow. The need for additional or a newer well site could be a consideration in the future.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order? Please explain how you determine the amount needed and how this relates to the original application and order.
Response: The amount requested in the application is still appropriate. This amount was determined by the engineer that the town was using at the time and growth and demand was taken into consideration when the application was completed.

5. Public Interest: Does the reservation remain in the public interest as identified in the application and order? Please explain how the reservation remains in the public interest and what evidence you relied upon to make this determination.

Response: The reservation does still remain in the public interest. This determination was made in the interest in fire protection.

6. Compliance: Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

Response: To the best of my knowledge the Town of Winifred has complied with all of the requests and reports needed in the past. Due to staff changes I do not have details on any follow up reports sent in on behalf of the town of Winifred. At this time the water reservation has not been perfected. The need for the reservation has not changed since the initial application was completed. Please find the original application enclosed. As the Town of Winifred has seen steady growth over the last 10 years, and has explained in its grant applications for the sewer rehabilitation projects and the applications for grants for water system improvements we estimate our growth to continue at about 2% per ten years. Due to the opportunities for growth in the future and the limited availabilities to water in the Winifred area, the town is not wanting to release the water reservation either. The Town is wanting to continue with the current water reservation to be able to meet the future water demands for the interest and safety of the citizens of the Town of Winifred.

7. Perfection: If your use of reserved water has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will you take to ensure perfection of the reservation?

Response: The factors that will determine the perfection of the water reservation will be the continued growth and water demands of the town. As the town grows and demand increases the Town would like to continue to be able to have the availability to the water reservation for municipal water and fire protection. The needs for the reservation remain the same as they were in the original reservation application. In the original application in the interview part there was reference to businesses in town. The Town of Winifred since that interview has added at least two additional businesses. The total established business fronts in the Town of Winifred now totals 11. There is a post office, Ehlers Garage, Winifred Tire, The Winifred Café and Tavern, Down De Low Bar, CHS Big Sky, The Kut-n-Hut, The Winifred Grocery, Central Montana Insulation, Mid-State Signs, and The A’s Building which houses a steak house, 4 lane bowling alley, and an 8 room hotel. There is also a large building that will house 3 apartments in the process of being built. With these additions and the continued growth of the Town there is a sure need to continue the water reservation located in the Judith Basin.
Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. The need for the reservation has not yet materialized. The Town has been successful in obtaining water use permits through conventional methods. It does not appear that the Town will utilize any portion of their reservation by the mandated perfection date of December 31, 2025.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted. The 2013 census identifies a population of 208 people for the Town of Winifred. In preparing municipal water reservations 250 gallons per person per day was commonly used to estimate volume. Using this estimate the 2013 water use for the Town of Winifred was 58 acre-feet per year \( \frac{(250 \text{ gallons per day})(208 \text{ persons})(365 \text{ days per year})}{325,851 \text{ gallons}} = 58 \text{ acre-feet per year} \). Existing “municipal” water rights for the Town of Winifred total 159 acre-feet per year.
It appears that the Town of Winifred has sufficient water rights to serve the current population. However, these rights cannot be relied upon until a final decree is issued. The Montana Water Use Act (1973) initiated a statewide adjudication of all water rights that existed in the state prior to July 1, 1973. The act identifies historic beneficial use as the measure of a water right. The excess volume may not be deemed a valid as it was never put to use. The City of Troy case (DNRC, 1983) exemplifies why existing permits should not be relied upon to protect future use. In the Water Court Decision, the City of Troy’s claim was significantly reduced based on historic use. As stated in the ruling, “Appropriators of water cannot maintain a valid claim to an amount of water in excess of the beneficial use to which it is applied, and when the appropriator or his successor ceases to use the water for such beneficial purpose, the right ceases.” Based on this consideration, the Town should not rely on the excess claims for growth. The reservation process should be pursued to provide the legal right for future water supplies.
4. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.

Department Recommendations:
1. The department recommends that the water reservation for the Town of Winifred remain as granted through the mandated project completion date of December 2025.
2. The department recommends that all future water rights issued to the Town of Winifred count against the flow and volume granted through the reservation.
3. Upon completion of the on-going adjudication and the issuance of a final decree the department recommends re-evaluating the need and amount of the reservation for the City of Three Forks.

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Appendix D

Yellowstone Conservation District Reservations

________________________________________________________

DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW
Reservation # 995200  Big Horn Conservation District

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 20,185 acre-feet per year (AF/YR)
Source: Big Horn River
Acres of Irrigation: 9,175

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.
The Big Horn Conservation District responded on November 10th, 2015 with additional information. Information from Conservation District response, the 2008 10 Year Review, and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:
The District has issued 35 reserved water use authorizations and allocated 14,133.65 acre-feet (70 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response: Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 35 reserved water use authorizations and developed approximately 70% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
• Depressed agricultural economy has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
• In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation continues to exist. In most of the county water is unavailable for appropriation through the DNRC Provisional Permitting process due to the Crow – Montana Compact Closure. Because the Yellowstone Final Order that established this reservation pre-dates the compact, all projects as approved in the Final Order may be processed.
3. The amount granted appears to be commensurate with demand and thus in compliance.
4. The reservant reports that 70% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 35 Conservation District Records have been issued for a total volume of 14,133.65 acre-feet per year.
DNRC records confirm 35 Conservation District Records have been issued however the total volume in the DNRC record is 14,206.65 acre-feet per year. Additionally, discrepancy exists between the reported flow rate and DNRC records.
The Crow – Montana compact closure contains language that prohibits the DNRC from processing or granting an application for an appropriation of water within the Big Horn River watershed, the Little Big Horn River watershed, the Pryor Creek watershed, and that portion of the Rosebud Creek watershed above the reservation boundary. All projects approved through the Big Horn County Conservation District reservation are within these drainages. Because these projects were approved through the 1978 Final Order which pre-dates the closure, the DNRC maintains that they can proceed. If any changes are made to the approved projects a change application would have to be processed by the DNRC.
In the 38 years since the reservation was issued 30 provisional permits have been issued for irrigation within Big Horn County for a total volume of 9,573.04 acre-feet per year.  
   a. 20 of the provisional permits issued were on the reserved source, (Big Horn River) for a total volume of 7,276.54 acre-feet per year.

**Department Recommendations:**

1. The department recommends that the district continue working with the Regional staff to resolve any discrepancy in flow and volume between the District and DNRC records.
2. The department adopts the position that all future development of the reservation within the Big Horn River drainage, the Little Big Horn River drainage, the Prior Creek drainage, and that portion of the Rosebud Creek drainage above the boundary of the Crow Reservation can be developed as approved through the Yellowstone Final Order.
3. The department recommends that any new appropriation of water for irrigation from any of the approved sources, (Big Horn River), be counted against the reservation flow and volume.

See next page for list of all water rights issued in Big Horn County since the reservation was established.
### Big Horn County Irrigation Rights

- **Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)**

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Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 22,676 acre-feet per year (AF/YR)
Source: Yellowstone River, Clarks Fork of the Yellowstone, Rock Creek, Red Lodge Creek
Acres of Irrigation: 10,034

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Carbon County Conservation District responded on November 10th, 2015 with additional information. Information from the Carbon County Conservation District response, 2015 10 Year Review, and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response: The District has issued 5 reserved water use authorizations and allocated 1,424.3 acre-feet (6.3 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response: Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response: Remains the same as identified in the original district application and BNRC Order.
**Amount:** Is the amount still appropriate and in accordance with the application and board order?

*Response:*
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

*Response:*
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

*Response:*
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

*Response:*
District has granted 5 reserved water use authorizations and developed approximately 6.3% of their reservation. The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process except in the Rock Creek drainage and that portion of the county that is drained by the Big Horn River. The Rock Creek drainage is closed to all new appropriations of surface water during most of the irrigation season. Because the Yellowstone Final Order that established this reservation pre-dates these closures the DNRC determines that all projects as approved in the Final Order may be processed.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 6.3% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 5 Conservation District Records have been issued for a total of 1,424.3 acre-feet per year. DNRC records confirm the Districts reporting.
5. Irrigation Rights issued post December 15, 19781, (Date of Yellowstone Reservation):
   - In the 38 years since the reservation was issued 35 provisional permits have been issued for irrigation within Carbon County. One provisional permit remains pending.
   - 6 of the provisional permits issued were on a source available for development through the Carbon County Conservation District water reservation. The total volume of these permits is 4,696 acre-feet per year.
**Department Recommendations:**

1. The Department recommends that any new appropriation of water for irrigation from any of the reserved sources, (Yellowstone River, Clarks Fork of the Yellowstone River, Rock Creek, & Red Rock Creek), be counted against the reservation flow and volume.
2. The department recommends re-evaluating both the need and amount for this reservation.

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1Carbon County Irrigation Rights

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Reservation # 994700  Custer County Conservation District

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 28,478 acre-feet per year (AF/YR)
Source: Yellowstone River – 18,301 AF/YR
Powder River & tributaries – 10,177 AF/YR
Acres of Irrigation: Yellowstone River – 7,440
Powder River – 4,200

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.
The Custer County Conservation District responded on October 28th, 2015, with additional information. Information submitted by the reservant, information from the 2008 10 Year Review, and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:
The District has issued 19 reserved water use authorizations and allocated 9,623.3 AF/YR from the Yellowstone River and 3,106.7 AF/YR from the Powder River (44.7 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.
Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response:
Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response:
Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response:
District has granted 19 reserved water use authorizations and developed approximately 44.7% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.
  The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 44.7% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 19 Conservation District Records have been issued for a total of 12,730 acre-feet per year.
   DNRC records confirm the perfected total reported by the district.
5. Irrigation Rights issued post December 15, 1978: 
   In the 38 years since the reservation was issued 32 provisional permits have been issued for irrigation within Custer County for a total volume of 10,056.12 acre-feet per year. 
   - 15 of the provisional permits issued were on the reserved source, (Yellowstone River, Powder River & tributaries) for a total volume of 7,375.5 acre-feet per year.
   - One additional provisional permit for a volume of 914 acre-feet per year from the Powder River is pending.
1. **Department Recommendations:** The department recommends that the district continue working with the Regional staff to resolve any discrepancy in flow and volume between the District and DNRC records.

2. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River, Powder River & tributaries), be counted against the reservation flow and volume.

3. The department recommends re-evaluating both the need and amount for this reservation.

---

**Custer County Irrigation Rights**

**Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)**

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The department recommends that the district continue working with the Regional staff to resolve any discrepancy in flow and volume between the District and DNRC records.

The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River, Powder River & tributaries), be counted against the reservation flow and volume.

The department recommends re-evaluating both the need and amount for this reservation.
Reservation # 995100    Dawson County Conservation District

Reservation Description:
Final Order:   Yellowstone River Basin, Issued December 15, 1978
Priority Date:  December 15, 1978
Volume:  45,855 acre-feet per year (AF/YR)
Source:  Yellowstone River
Acres of Irrigation:  18,127

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.
The Prairie County Conservation District responded on December 21st, 2015, indicating that the 2008 10 Year Review, (with minor edits submitted by the District), was sufficient. Information from the 2008 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary:  Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:  The District has issued 14 reserved water use authorizations and allocated 5,525AF/YR (12 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.
Purpose:  Does the purpose remain the same as identified in the district application and BNRC order?
Response:  Remains the same as identified in the original district application and BNRC Order.
Need:  Does the need still exist as identified in the district application and the BNRC board order?
Response:  Remains the same as identified in the original district application and BNRC Order.
Amount:  Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response:
Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response:
Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response:
District has granted 14 reserved water use authorizations and developed approximately 12% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.
- The District has taken the following actions toward perfecting this reservation:
  In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 12% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 14 Conservation District Records have been issued for a total of 5,525 acre-feet per year. DNRC records confirm the numbers provided by the Conservation District.
   - Conservation District Record 42M2770-00 needs to have the Dawson County CD added as an owner in DNRC records.
5. Irrigation Rights issued post December 15, 1978:
   In the 38 years since the reservation was issued 16 provisional permits have been issued for irrigation within Dawson County for a total volume of 1,625.75 acre-feet per year.
   - 2 of the provisional permits issued were on the reserved source, (Yellowstone River) for a total volume of 10 acre-feet per year.

Department Recommendations:
1. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
2. The department recommends re-evaluating both the need and amount for this reservation.
Dawson County Irrigation Rights

- Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)

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Reservation # 1134900  Little Beaver Conservation District

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 12,733 acre-feet per year (AF/YR)
- Source: O’Fallon Creek, Pennell Creek, Cabin Creek and their tributaries
- Purpose: This reservation is unique in that it includes irrigation, stock ponds, and recreational ponds

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Little Beaver Conservation District responded on November 10th, 2015, indicating that the 2015 10 Year Review was sufficient. Information from the 2015 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response: The District has issued 39 reserved water use authorizations and allocated 1,322.4 AF/YR (10.4 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?

Response: Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?

Response: Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response:
Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response:
Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response:
District has granted 39 reserved water use authorizations and developed approximately 10.4% of their reservation.
- The following factors have deterred progress toward perfecting this reservation: The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

Department Review:
- The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
- Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
- The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
- The reservant reports that 10.4% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 39 Conservation District Records have been issued for a total of 1,322.4 acre-feet per year. DNRC records confirm 39 Conservation District Records issued, however the DNRC total volume is 1,311.6 acre-feet per year.
- Provisional Permits issued post December 15, 1978, (date of issue for Yellowstone Reservations), within the Little Beaver Conservation District:
  In the 38 years since the reservation was issued 24 provisional permits have been issued from drainages tributary to the Yellowstone River for purposes authorized through the Final Order for a total volume of 1,004.5 acre-feet per year. None of these appropriations were from a reserved source, however, conservation districts routinely submit change applications to the DNRC that seek to develop reserved water on an alternate source.
Department Recommendations:
1. The Department recommends that any new appropriation of water for irrigation, stock ponds,
and/or recreation ponds from a reserved source be counted against the reservation flow and
volume.
2. The department recommends re-evaluating both the need and amount for this reservation.
3. The DNRC recommends that the Little Beaver Conservation District contact the Billings Regional
Office of the DNRC to resolve the discrepancy in total volume.
Little Beaver Conservation District Water Rights, (Yellowstone River Drainage)
• Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)

1

WR Number *
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42M 24481 00
42L 24768 00
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42L 32729 00
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42L 32724 00
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Purposes
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STOCK; WILDLIFE/WATERFOWL
STOCK
FISH AND WILDLIFE; STOCK
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162

Source Name
UT SOUTH FORK SANDSTONE CREEK
UT MIDDLE FORK CABIN CREEK
UT MIDDLE FORK CABIN CREEK
UT PENNEL CREEK
UT SANDSTONE CREEK
UT PINE CREEK
SANDSTONE CREEK
UT HAY CREEK
UT COTTONWOOD CREEK
UT SANDSTONE CREEK
UT SANDSTONE CREEK
UT SOUTH FORK SANDSTONE CREEK
UT SANDSTONE CREEK
UT ASH CREEK
UT PENNEL CREEK
UT LAME JONES CREEK
UT HAY CREEK
UT SANDSTONE CREEK
CREEK, DRY FORK
UT SANDSTONE CREEK
SANDSTONE CREEK
UT ASH CREEK
UT PINE CREEK
UT RED BUTTE CREEK
UT SANDSTONE CREEK
UT SANDSTONE CREEK
UT PENNEL CREEK
UT MIDDLE FORK CABIN CREEK
HAY CREEK
UT COTTONWOOD CREEK
UT SOUTH FORK SANDSTONE CREEK
UT PENNEL CREEK
SANDSTONE CREEK
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UT SOUTH FORK SANDSTONE CREEK
UT SOUTH FORK SANDSTONE CREEK
UT SOUTH FORK SANDSTONE CREEK
LAME JONES CREEK
COTTONWOOD CREEK, NORTH FORK
UT SOUTH FORK SANDSTONE CREEK
UT O'FALLON CREEK
UT PENNEL CREEK
UT PENNEL CREEK
UT PENNEL CREEK
PENNEL CREEK
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UT CABIN CREEK
CABIN CREEK
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CABIN CREEK
CABIN CREEK, NORTH FORK
CABIN CREEK
UT CABIN CREEK
SANDSTONE CREEK, SOUTH FORK
CABIN CREEK, MIDDLE FORK
CABIN CREEK, MIDDLE FORK
SANDSTONE CREEK
UT SANDSTONE CREEK
CABIN CREEK
PENNEL CREEK
UT PENNEL CREEK
PENNEL CREEK

Priority Date
Date Issued
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11/3/1981
3/17/1982
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8/3/1981
3/26/1982
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79.5
3/2/1982
8/13/1982
1.2
4/16/1982
10/1/1982
9
3/15/1982
10/8/1982
50
9/22/1982
2/28/1983
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12/15/1978
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3/11/1983
8/1/1983
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8/19/1983
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2/24/1992
7/15/1994
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12/15/1978
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3/1/2000
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1/7/2004
24
12/15/1978
1/7/2004
3
12/15/1978
11/7/2012
46


Reservation # 1000400

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 64,125 acre-feet per year (AF/YR)
Source: Yellowstone River & Shields River
Acres of Irrigation: 21,664

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Park Conservation District. Information from the 2008 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:
The District has issued 6 reserved water use authorizations and allocated 1,586.4 acre-feet (2.4%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

**Response:**
District has granted 6 reserved water use authorizations and developed approximately 2.4% of their reservation.
The following factors have deterred progress toward perfecting this reservation:

- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:

- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 2015 Annual Progress Report the District reports that 1,586.4 acre-feet per year (2.4%) of the allocated volume has been perfected. DNRC records indicate a volume of 1,122 acre-feet per year allocated, (1.7%) of the allocated volume has been perfected. All Conservation District rights issued were on the reserved source, (Yellowstone River).
5. Irrigation Rights issued post December 15, 1978:
   In the 38 years since the reservation was issued 70 provisional permits have been issued for irrigation within Park County for a total volume of 4,984.64 acre-feet per year\(^1\).
   - 16 of the provisional permits issued were on the reserved source, (Yellowstone River) for a total volume of 58.11 acre-feet per year.
   - One additional provisional permit for a volume of 198.5 acre-feet per year from the Yellowstone River has remained pending since 2009.

**Department Recommendations:**

1. The department recommends that the district continue working with the Regional staff to resolve any discrepancy in flow and volume between the District and DNRC records.
2. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
<table>
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<th>WR Number</th>
<th>WR Type</th>
<th>Purpose</th>
<th>Source Name</th>
<th>Priority Date</th>
<th>Date Issued</th>
<th>Volume</th>
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3. The department recommends re-evaluating both the need and amount for this reservation.
Reservation # 994300    Powder River Conservation District

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 13,680 acre-feet per year (AF/YR)
- Source: Powder River
- Acres of Irrigation: 9,120

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Powder River Conservation District responded on December 30th, 2015, indicating that the 2015 10 Year Review was sufficient. Information from the 2015 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 28 reserved water use authorizations and allocated 8,158.5 AF/YR (59.6 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 28 reserved water use authorizations and developed approximately 59.6 % of their reservation.
The following factors have deterred progress toward perfecting this reservation:
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
• Depressed agricultural economy has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
• In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 59.6 % of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 28 Conservation District Records have been issued for a total of 8,158.5 acre-feet per year.
   DNRC records confirm the numbers reported by the District.
5. Irrigation Rights issued post December 15, 1978:
   In the 38 years since the reservation was issued 47 provisional permits have been issued for irrigation within Powder River County for a total volume of 4,763 acre-feet per year.¹
   • 10 of the provisional permits issued were on the reserved source, (Powder River) for a total volume of 2,568 acre-feet per year.

Department Recommendations:
1. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
2. The department recommends re-evaluating both the need and amount for this reservation.

¹
### Powder River County Irrigation Rights

**Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)**

<table>
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<tr>
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1. The document contains a table listing various irrigation permits issued by Powder River County with specific details such as the permit number, issue date, expiration date, and the type of irrigation and volume associated with each permit. The permits are listed in a tabular format with columns for the permit number, date issued, date of expiration, description of irrigation, and the volume of irrigation water.

2. The permits listed are for various types of irrigation, including stock, active irrigation, and conservation district records, covering different streams and areas within the county.

3. The table includes a column for the volume of irrigation water, which indicates the amount of water allowed for each permit.

4. The data pertains to the post-1978 issuance period, as noted by the date range (December 15, 1978, to the final order date).

5. The document serves as a reference for irrigators and officials regarding the permits issued for irrigation activities in Powder River County.
Reservation Description:

Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 68,467 acre-feet per year (AF/YR)
Source: Yellowstone River & Powder River
Acres of Irrigation
- 22,241 – Yellowstone River
- 295 – Powder River

Project Description:

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Prairie County Conservation District responded on December 30th, 2015, indicating that the 2015 10 Year Review was sufficient. Information from the 2015 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 14 reserved water use authorizations and allocated 8,285 AF/YR (12.1 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 14 reserved water use authorizations and developed approximately 12.1% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 12.1% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 14 Conservation District Records have been issued for a total of 8,348 acre-feet per year. DNRC records indicate 14 Conservation District Records have been issued for a total of 8,285 acre-feet per year.
5. Irrigation Rights issued post December 15, 1978: In the 38 years since the reservation was issued 34 provisional permits have been issued for irrigation within Prairie County for a total volume of 3,593.97 acre-feet per year¹.
   - 2 of the provisional permits issued were on the reserved source, (Yellowstone River) for a total volume of 965 acre-feet per year.

Department Recommendations:
1. The department recommends that the district continue working with the Regional staff to resolve any discrepancy in flow and volume between the District and DNRC records.
2. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
3. The department recommends re-evaluating both the need and amount for this reservation.

1Prairie County Irrigation Rights

**Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)**

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Reservation # 994500  Richland County Conservation District

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 45,620 acre-feet per year (AF/YR)
Source: Yellowstone River
Acres of Irrigation: 21,710

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.
The Richland County Conservation District responded on November 10th, 2015, indicating that the 2015 10 Year Review was sufficient. Information from the 2015 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:
The District has issued 8 reserved water use authorizations and allocated 4,923 AF/YR (10.8 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

*Response:* Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

*Response:* Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

*Response:* District has granted 8 reserved water use authorizations and developed approximately 10.8 % of their reservation.

The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 10.8 % of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 8 Conservation District Records have been issued for a total of 4,923 acre-feet per year. DNRC records indicate 9 Conservation District Records have been issued for a total of 5,435 acre-feet per year.
5. Irrigation Rights issued post December 15, 1978:
   In the 38 years since the reservation was issued 16 provisional permits have been issued for irrigation within Richland County for a total volume of 3,950.45 acre-feet per year:
   - 3 of the provisional permits issued were on the reserved source, (Yellowstone River) for a total volume of 1,002.55 acre-feet per year.

**Department Recommendations:**
1. The department recommends that the district continue working with the Regional staff to resolve any discrepancy in flow and volume between the District and DNRC records.
2. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
3. The department recommends re-evaluating both the need and amount for this reservation.
Richland County Irrigation Rights

Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)

<table>
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Reservation # 1000500  Rosebud Conservation District

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 87,003 acre-feet per year (AF/YR)
Source: Yellowstone River
Acres of Irrigation: 34,525

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Rosebud Conservation District responded on December 15th, 2015 indicating that the 2015 10 Year Review was adequate. Information from the 2015 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 14 reserved water use authorizations and allocated 3,753.6 acre-feet (4.3 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response: Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:
**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?
**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
**Response:**
District has granted 14 reserved water use authorizations and developed approximately 4.3 % of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process from the reserved source, (Yellowstone River).
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 4.3 % of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 14 Conservation District Records have been issued for a total of 3,753.6 acre-feet per year.
   DNRC records confirm the figures submitted by the Rosebud Conservation District.
5. Irrigation Rights issued post December 15, 1978:
   In the 38 years since the reservation was issued 28 provisional permits have been issued for irrigation within Rosebud County for a total volume of 1,843 acre-feet per year¹.
   - 5 of the provisional permits issued were on the reserved source, (Yellowstone River) for a total volume of 287 acre-feet per year.
   - One additional provisional permit for a volume of 198.5 acre-feet per year from the Yellowstone River has remained pending since 2009.

**Department Recommendations:**
1. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
2. The department recommends re-evaluating both the need and amount for this reservation.
### 1Rosebud County Irrigation Rights

**Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)**

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Reservation # 993500

Stillwater Conservation District

**Reservation Description:**
- **Final Order:** Yellowstone River Basin, Issued December 15, 1978
- **Priority Date:** December 15, 1978
- **Volume:** 16,755 acre-feet per year (AF/YR)
- **Source:** Stillwater River, Yellowstone River, Rosebud Creek, West Rosebud Creek
- **Acres of Irrigation:** 5,290

**Project Description:**
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Stillwater Conservation District responded on November 10th, 2015 and indicated that the 2015 10-year report was adequate. Information from the 2015 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

**District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]**

**Summary:** Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

**Response:**
The District has issued 10 reserved water use authorizations and allocated 1,214.8 acre-feet (7.25%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

**Purpose:** Does the purpose remain the same as identified in the district application and BNRC order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Need:** Does the need still exist as identified in the district application and the BNRC board order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Amount:** Is the amount still appropriate and in accordance with the application and board order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

**Response:**
District has granted 10 reserved water use authorizations and developed approximately 7.25% of their reservation.

The following factors have deterred progress toward perfecting this reservation:

- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:

- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 7.25% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 10 Conservation District Records have been issued for a total of 1,214.8 acre-feet per year. DNRC records indicate 11 Conservation District Records issued for a volume of 1,456.8 acre-feet per year. Additionally, one conservation district record remains pending since February 2nd, 2015.
5. Irrigation Rights issued post December 15, 1978:
   In the 38 years since the reservation was issued 34 provisional permits have been issued for irrigation within Stillwater County for a total volume of 2,776.27 acre-feet per year.
   - 16 of the provisional permits issued were on a reserved source for a total volume of 1,743 acre-feet per year.

**Department Recommendations:**

1. The department recommends that the district continue working with the Regional staff to resolve any discrepancy in flow and volume between the District and DNRC records.
2. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
3. The department recommends re-evaluating both the need and amount for this reservation.

### Stillwater County Irrigation Rights
- Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)

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Reservation # 994800  
Sweet Grass Conservation District

**Reservation Description:**
- **Final Order:** Yellowstone River Basin, Issued December 15, 1978
- **Priority Date:** December 15, 1978
- **Volume:** 46,245 acre-feet per year (AF/YR)
- **Source:** Yellowstone River, Boulder River, Upper Deer Creek, Lower Deer Creek & Bridger Creek
- **Acres of Irrigation:** 15,313

**Project Description:**
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Sweet Grass Conservation District responded with additional information on December 4, 2015. Information from the response, the 2008 10 Year Review, and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

**District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]**

**Summary:** Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

**Response:**
The District has issued 8 reserved water use authorizations and allocated 5,609.5 acre-feet (12.1%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

**Purpose:** Does the purpose remain the same as identified in the district application and BNRC order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Need:** Does the need still exist as identified in the district application and the BNRC board order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Amount:** Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response:
District has granted 8 reserved water use authorizations and developed approximately 12.1% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
• Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
• In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water from reserved sources remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 2015 Annual Progress Report the District reports that 8 conservation district applications totaling 5,609.5 acre-feet per year, (12.1% of the allocated volume), have been perfected. DNRC records indicate that 9 conservation district applications totaling 5,733.5 acre-feet per year, (12.4% of the allocated volume), have been perfected. Additionally, one conservation district application for a volume of 364 acre-feet per year remains pending since August 28, 2015. One conservation district application is on an un-named tributary of the Yellowstone River, the rest were on the reserved source, (Yellowstone River).
5. Irrigation Rights issued post December 15, 1978:
In the 38 years since the reservation was issued 18 provisional permits have been issued for irrigation within Sweet Grass County for a total volume of 3,462.5 acre-feet per year¹.
• 1 of the provisional permits was from the reserved source, (Boulder River) for a total volume of 3 acre-feet per year.
Department Recommendations:

1. The department recommends that the district continue working with the Regional staff to resolve any discrepancy in flow and volume between the District and DNRC records.
2. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
3. The department recommends re-evaluating both the need and amount for this reservation.

1Sweetgrass County Irrigation Rights

- Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)

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Reservation # 1000300    Treasure Conservation District

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 18,361 acre-feet per year (AF/YR)
- Source: Yellowstone River & Big Horn River
- Acres of Irrigation: 7,035

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Treasure Conservation District responded on December 30th, 2015 indicating that the 2015 10 Year Review was adequate. Information from the 2015 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 6 reserved water use authorizations and allocated 2,077 acre-feet (11.3 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 6 reserved water use authorizations and developed approximately 11.3% of their reservation. The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process in all but that area drained by the Big Horn River which is closed to new appropriations through the Crow – Montana Compact Closure. Because the Yellowstone Final Order that established this reservation pre-dates the compact, the DNRC determines that all projects as approved in the Final Order may be processed.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 11.3% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 6 Conservation District Records have been issued for a total of 2,077 acre-feet per year. DNRC records confirm the figures reported by the Conservation District.
5. Irrigation Rights issued post December 15, 1978:
   In the 38 years since the reservation was issued 5 provisional permits have been issued for irrigation within Treasure County for a total volume of 1,588 acre-feet per year. 2 of the provisional permits issued were on the reserved source, (Yellowstone River) for a total volume of 1,515 acre-feet per year.

Department Recommendations:
1. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
2. The department recommends re-evaluating both the need and amount for this reservation.

*Treasure County Irrigation Rights

- Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)

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Reservation # 994900  Yellowstone Conservation District

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 57,963 acre-feet per year (AF/YR)
- Source: Yellowstone River & tributaries
- Acres of Irrigation: 24,835

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Yellowstone Conservation district. Information from the 2008 10 Year Review and the 2015 Annual Progress Report is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 15 reserved water use authorizations and allocated 5,998.7 acre-feet (10.3 %) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 15 reserved water use authorizations and developed approximately 10.3% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
• Depressed agricultural economy has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
• In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process in most of the county. Within Yellowstone County the Pryor Creek drainage and a small area near the mouth of the Big Horn River are closed to new appropriations through the Crow – Montana Compact Closure. Because the Yellowstone Final Order establishing the reservation pre-dates this closure, the DNRC determines that all projects approved through the Final Order may be processed.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The reservant reports that 10.3% of the allocated volume has been perfected. In the 2015 Annual Progress Report the District states that 15 Conservation District Records have been issued for a total of 5,998.7 acre-feet per year. DNRC records confirm the District's reporting.
5. Irrigation Rights issued post December 15, 1978:
In the 38 years since the reservation was issued 86 provisional permits have been issued for irrigation within Yellowstone County for a total volume of 10,502.37 acre-feet per year.4
• 4 of the provisional permits issued were on the reserved source, (Yellowstone River) for a total volume of 1,252 acre-feet per year.

Department Recommendations:
1. The Department recommends that any new appropriation of water for irrigation from the reserved source, (Yellowstone River), be counted against the reservation flow and volume.
2. The department recommends re-evaluating both the need and amount for this reservation.
# Yellowstone County Irrigation Rights

- **Issued Post December 15, 1978 (date of issue, Yellowstone Final Order)**

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Appendix E

Lower Missouri Conservation District Reservations

DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW
Reservation # 8449300    Blaine County Conservation District

Reservation Description:
Final Order: Lower Missouri River Basin, Issued December 30, 1994
Priority Date: July 1, 1985
Volume: 10,936 acre-feet per year from three reservoirs that will store up to 18,934 acre-feet.
Source: Battle Creek, Link Coulee, and an unnamed tributary of Black Coulee
Acres of Irrigation: 6,141 acres

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Blaine County Conservation District. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response: The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) and 0 CFS of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response: Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response: Remains the same as identified in the original district application and BNRC Order.
Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response:
Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response:
Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response:
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
• Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
• In 2002 an information/promotion brochure was produced and distributed.

DNRC Review – ARM Reporting Requirements [36.16.120]

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation continues to exist. In most of the county, including the areas where the reserved water sources are located, water is unavailable for appropriation through the DNRC Provisional Permitting process due to the Fort Belknap – Montana compact closure. While the Lower Missouri Final Order that established this reservation pre-dates the compact, it states that the reservation is subject to all prior Indian reserved water rights of the Fort Belknap tribes.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. The Fort Belknap – Montana compact closure contains language that prohibits the DNRC from processing or granting an application for an appropriation of water within the Milk River watershed. The Blaine County Conservation District reservation includes three projects within this drainage. Because these three projects were approved through the 1994 Final Order which pre-dates the closure the DNRC maintains that they could proceed.
Department Recommendations:

1. The department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Fort Belknap – Montana compact closure includes an exception for development of new storage off the reservation, §85-20-1001(l)(1)(h), MCA. The Department recommends exploring this option for development of the reserved sources.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.
Reservation # 8449600  Carter County Conservation District

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1989
- Volume: 4,684 acre-feet per year (AF/YR)
- Source: Little Missouri & tributaries, Little Beaver & tributaries, Boxelder Creek and tributaries, & one groundwater well
- Acres of Irrigation: 2,367 acres

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.
The Carter County Conservation District responded that the 2014 10-year report was adequate. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) and 0 CFS of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.
Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:  
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:  
Response:  
Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?  
Response:  
Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?  
Response:  
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.  
The following factors have deterred progress toward perfecting this reservation:  
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.  
• Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.  
The District has taken the following actions toward perfecting this reservation:  
• In 2002 an information/promotion brochure was produced and distributed.

DNRC Review – ARM Reporting Requirements [36.16.120]

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.  
2. Need for the reservation appears questionable. No applications have been received for use of the reserved water. Water from the reserved sources remains available for appropriation through the DNRC Provisional Permitting process.  
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.  
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected.  

Since the date of the reservation, (December 30, 1994), one provisional permit for irrigation has been issued in the Little Missouri drainage for 94-acre feet and one provisional permit for irrigation is pending for 267 acre-feet*.  

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Department Recommendations:
1. The Department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water from the reserved sources for irrigation be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.

* Post December 30, 1994 irrigation from the Little Missouri River Basin in Carter County:

<table>
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<tr>
<th>WR Number</th>
<th>WR Type</th>
<th>Status</th>
<th>Purposes</th>
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Reservation # 8449700    Daniels County Conservation District

Reservation Description:
Final Order: Lower Missouri River Basin, Issued December 30, 1994
Priority Date: July 1, 1985
Volume: 3,047 acre-feet per year
Source: Various surface and groundwater sources within the district
Acres of Irrigation: 1,439 acres

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Daniels County Conservation District. The following is an abbreviated compilation of the specific criteria addressed through the 2014 report followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) and 0 CFS of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response:
Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response:
Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response:
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

DNRC Review – ARM Reporting Requirements [36.16.120]

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. No applications have been received for use of the reserved water. Water from the reserved sources remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. Since the date of Issue for the Lower Missouri River Reservations, (December 30, 1994), one provisional permit for 178 acre-feet of water has been issued within the district from a reserved source. It does not appear that any of the irrigation projects proposed in the application have been completed using reserved water.

Department Recommendations:
1. The department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water from the reserved sources for irrigation be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.

*Post December 30, 1994 irrigation from the Poplar River Basin in Daniels County:*

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<th>WR Number *</th>
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<th>Status</th>
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Reservation # 8449400  Liberty County Conservation District

**Reservation Description:**
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 122 acre-feet per year
- Source: Lost Coulee
- Acres of Irrigation: 50 acres

**Project Description:**
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.

The Liberty County Conservation District responded with additional information on December 16th, 2015. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review and the District response followed by DNRC review & recommendations.

**District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]**

**Summary:** Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

**Response:**
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) and 0 CFS of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

**Purpose:** Does the purpose remain the same as identified in the district application and BNRC order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Need:** Does the need still exist as identified in the district application and the BNRC board order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Amount:** Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

DNRC Review – ARM Reporting Requirements [36.16.120]

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation continues to exist. Lost Coulee, (the reserved source), is located in the Milk River watershed which is closed to new appropriations of water through the Fort Belknap – Montana compact closure. While the Lower Missouri Final Order pre-dates and can thus proceed, the compact states that the reservation is subject to all prior Indian reserved water rights of the Fort Belknap tribes.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. The Fort Belknap – Montana compact closure contains language that prohibits the DNRC from processing or granting an application for an appropriation of water within the Milk River watershed. The Liberty County Conservation District reservation includes one project within this drainage. Because this project was approved through the 1994 Final Order which pre-dates the closure the DNRC maintains that it could proceed.
The greater portion of the Liberty County Conservation District is located outside the Fort Belknap – Montana compact closure. While it is common for the conservation districts to submit a change that seeks to develop an alternate source the Liberty County Conservation District also has reserved water from the Upper Missouri Final Order issued on July 1, 1992. The
Upper Missouri Water Reservation serves all acres within the Liberty County Conservation District outside the closure. In the 24 years since the Final Order establishing the Upper Missouri River Water Reservation was issued none of that reservation has been perfected.

**Department Recommendations:**

1. The Department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Fort Belknap – Montana compact closure includes an exception for development of new storage off the reservation, §85-20-1001(I)(1)(h), MCA. The Department recommends exploring this option for development of the reserved source.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.
Reservation # 8449800    Little Beaver Conservation District

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1989
- Volume: 1,548 acre-feet per year
- Source: Numerous sources
- Acres of Irrigation: 1,030 acres

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.

The Little Beaver Conservation District responded on November 3, 2015. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review and the submitted response to the DNRC questionnaire followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) and 0 CFS of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?

Response:
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

**Response:**
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**DNRC Review – ARM Reporting Requirements [36.16.120]**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. No applications have been received for use of the reserved water. Water from the reserved sources remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. It does not appear that any of the irrigation projects proposed in the application have been completed using reserved water. Since the date the Lower Missouri Water Reservation was issued, (December 30, 1994), no provisional permits have been issued within the Little Beaver Conservation District on a source tributary to the Little Missouri River.

**Department Recommendations:**
1. The Department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water from the reserved sources for irrigation be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.
Reservation # 8449900    Mc Cone County Conservation District

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 14,299 acre-feet per year
- Source: Missouri River
- Acres of Irrigation: 6,122 acres

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address. Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.

A response was received from the Mc Cone County Conservation District on December 28, 2015. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review and the District response followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 8 reserved water use authorizations and allocated 3,793 acre-feet (26%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 7 reserved water use authorizations and developed approximately 26% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

DNRC Review – ARM Reporting Requirements [36.16.120]

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water from the reserved source remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In their response to the DNRC request for information the District reports that 3,793.3 acre-feet or 26% of the allocated volume has been perfected.
DNRC records confirm the perfected volume reported by the district. DNRC records indicate that one additional conservation district record for 2,005 AF has remained pending since 2010. No provisional permits have been issued in McCone County for irrigation since the reserved water became available on December 30, 1994*.

Department Recommendations:

1. The Department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.

4. The Department recommends that action be taken to determine the status of the application that has remained pending since 2010.

*Post December 30, 1994 irrigation from the Missouri River Basin in McCone County:*

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<th>WR Number</th>
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5798.5
Reservation # 8450000  Richland County Conservation District

Reservation Description:
Final Order: Lower Missouri River Basin, Issued December 30, 1994
Priority Date: July 1, 1985
Volume: 25,349 acre-feet per year
Source: Missouri River
Acres of Irrigation: 11,141 acres

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by § 85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.

Richland County responded that the 2014 Ten Year Review was adequate. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 23 reserved water use authorizations and allocated 9,392 acre-feet (37.05%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 23 reserved water use authorizations and developed approximately 37.05% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

DNRC Review – ARM Reporting Requirements [36.16.120]

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water from the reserved source remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In their response the District reports that 9,392 acre-feet or 37.05% of the allocated volume has been perfected.
DNRC records indicate that 10,299.95-acre feet or 40.63% of the reserved volume has been perfected. In the 22 years since the reservation was issued four provisional permits were issued from the Missouri River, (reserved source), and one provisional permit was issued from a non-reserved source for a total of 1,862.9 acre-feet of water. One Conservation District record remain pending for a total of 182 acre-feet of water*.

Department Recommendations:

1. The Department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.

4. Finally, there appears to be a slight discrepancy between the DNRC record and the reported perfected flow and volume. The DNRC recommends that the Richland County Conservation district contact the DNRC to resolve this discrepancy.

* Post December 30, 1994 irrigation from the Missouri River Basin in Richland County:

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* 12344.85
Reservation # 8450100  Roosevelt County Conservation District

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 73,115 acre-feet per year (AF/YR)
- Source: Missouri River
- Acres of Irrigation: 24,979 acres

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.

The Roosevelt County Conservation District responded that the 2014 10-year report was adequate. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:
The District has issued 22 reserved water use authorizations and allocated 9,475.6 acre-feet (13%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response:
Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response:
Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response:
District has granted 22 reserved water use authorizations and developed approximately 13% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
• Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
• In 2002 an information/promotion brochure was produced and distributed.

DNRC Review – ARM Reporting Requirements [36.16.120]
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water from the reserved source remains available for appropriation from the reserved source through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In their response the District reports that 9,475.6 acre-feet or 13% of the allocated volume has been perfected.
   DNRC records indicate that 12,431.35 acre-feet or 17% of the reserved volume has been perfected.
   In the 22 years since the reservation was issued twelve provisional permits were issued from the Missouri River, (reserved source), and nine provisional permits were issued from a non-reserved source for a total of 5,874.9 acre-feet of water*.

Department Recommendations:
1. The Department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.

4. Finally, there appears to be a slight discrepancy between the DNRC record and the reported perfected flow and volume. The DNRC recommends that the Roosevelt County Conservation district contact the DNRC to resolve this discrepancy.

* Post December 30, 1994 irrigation from the Missouri River Basin in Roosevelt County:*

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Reservation # 8450200  Sheridan County Conservation District

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 15,479 acre-feet per year
- Source: Groundwater

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response was received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Sheridan County Conservation District. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 21 reserved water use authorizations and allocated 5,648 acre-feet (36.49%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 21 reserved water use authorizations and developed 36.49% of their reservation. The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

DNRC Review – ARM Reporting Requirements [36.16.120]

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water from the reserved source remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In their response the District reports that 5,648 acre-feet or 36.49% of the allocated volume has been perfected. DNRC records indicate that 4,840 acre-feet or 31.27% of the reserved volume has been perfected. Three Conservation District Records remain pending for a total of 808 acres feet or an additional 5.2% of the allocated volume. Assuming the Conservation District Records are granted, DNRC records and Sheridan County Conservation District records will show an equal amount of perfection. In the 22 years since the reservation was issued twelve provisional permits were issued which appropriate groundwater, (reserved source), and four provisional permits were issued from a non-reserved source for a total of 3,348.23 acre-feet of water*.

Department Recommendations:

1. The Department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.

*Post December 30, 1994 irrigation in Sheridan County:*

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Reservation # 8449500    Valley County Conservation District

Reservation Description:
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1985
- Volume: 7,668 acre-feet per year
- Source: Missouri River, Milk River, Groundwater
- Acres of Irrigation: 3,249 acres

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Valley County Conservation District. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review followed by DNRC review & recommendations.

District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) and 0 CFS of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?

Response:
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

**Response:**
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**DNRC Review – ARM Reporting Requirements [36.16.120]**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation continues to exist for that portion of the reservation within the Milk River drainage. Water is unavailable for appropriation within the Milk River drainage through the DNRC provisional permitting process due to the Fort Belknap – Montana compact closure. Outside the Milk River drainage, the need for the reservation appears questionable as water from the reserved sources remains available through provisional permits.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. During this same 22-year time period there were two provisional permits issued for groundwater and one provisional permit issued for water from the Missouri River, (both reserved sources), for a total of 1,156 acre-feet per year*. It does not appear that any of the irrigation projects proposed in the application have been completed using reserved water.
The Fort Belknap – Montana compact closure contains language that prohibits the DNRC from processing or granting an application for an appropriation of water within the Milk River watershed. The Valley County Conservation District reservation includes five projects three of which are within the Milk River drainage. Because these three projects were approved through the 1994 Final Order which pre-dates the closure the DNRC maintains that they could proceed.
Department Recommendations:

1. The department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Fort Belknap – Montana compact closure includes an exception for development of new storage off the reservation, §85-20-1001(l)(1)(h), MCA. The Department recommends exploring this option for development of the reserved sources that lie within the Milk River drainage.
3. The Department recommends that any new appropriation of water from the reserved sources that is used for irrigation be counted against the reservation flow and volume.
4. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.

* Post December 30, 1994 irrigation in Valley County below Fort Peck Dam, (reserved sources only):

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Reservation # 8450300    Wibaux County Conservation District

**Reservation Description:**
- Final Order: Lower Missouri River Basin, Issued December 30, 1994
- Priority Date: July 1, 1989
- Volume: 1,509 acre-feet per year
- Source: Beaver Creek & named tributaries
- Acres of Irrigation: 1,006 acres

**Project Description:**
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

Wibaux County Conservation District responded that the 2014 Ten Year Review was adequate. The following is an abbreviated compilation of the specific criteria addressed through the 2014 Ten Year Review followed by DNRC review & recommendations.

**District Response, (2014 Ten Year Review) – ARM Reporting Requirements [36.16.120]**

**Summary:** Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

**Response:**
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) and 0 CFS of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

**Purpose:** Does the purpose remain the same as identified in the district application and BNRC order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Need:** Does the need still exist as identified in the district application and the BNRC board order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Amount:** Is the amount still appropriate and in accordance with the application and board order?

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

*Response:* Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

*Response:* Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

*Response:* District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.

The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**DNRC Review – ARM Reporting Requirements [36.16.120]**

1. The reservant appears to be in substantial compliance with the **purpose**, **public interest**, and **compliance**.
2. **Need** for the reservation appears questionable. Water from the reserved source remains available for appropriation through the DNRC Provisional Permitting process.
3. The **amount** granted appears to be greater than the demand that has materialized since the reservation was granted.
4. The original application received by the DNRC on June 27th, 1991 states that all reserved water will be put to use by the end of calendar year 2020. In the 22 years since the Final Order establishing the reservation was issued none of the reservation has been **perfected**. It does not appear that any of the irrigation projects proposed in the application have been completed using reserved water.

**Department Recommendations:**

1. The Department recommends that the reservation remain in place until December 2020, (the proposed date of perfection listed on the application).
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Lower Missouri Conservation District Reservations.
Appendix F

Upper Missouri Conservation District Reservations

DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW
Reservation # 7189400    Broadwater Conservation District

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 606 acre-feet per year (AF/YR)
- Flow: 4.4 cubic feet per second (CFS)
- Source: Missouri River
- Acres of Irrigation: 330 acres
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Broadwater Conservation District.

DNRC Review:
The Broadwater Conservation District is located entirely within the legislatively mandated Upper Missouri River Basin Closure. This area is closed to the issuance of any new Provisional Permits. As issued in the July 1, 1992 Final Order all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. Because the district is unable to use their reservation they have not submitted any 10-year reviews.
To date no water has been appropriated through this reservation.

Department Recommendations:
1. Because the district lies entirely within the Upper Missouri River Basin Closure it is not possible to utilize any portion of the reserved water. The Upper Missouri River Basin Closure was initiated to protect existing hydropower water rights on the Missouri River until final decree by the Montana Water Court. Currently all drainages in the Upper Missouri Basin have been entered into preliminary decree and the hydropower rights have been affirmed by the Montana Water Court. The DNRC requests that the Broadwater Conservation District voluntarily withdraw this water reservation. In the event that this withdrawal request is not received, the DNRC recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
Reservation Description:  
Final Order: Upper Missouri River Basin, Issued July 2, 1992  
Priority Date: July 1, 1985  
Volume: 9,314 acre-feet per year (AF/YR)  
Source: Missouri River, Sun River, Smith River, Hound Creek, Belt Creek  
Acres of Irrigation: 3,910 acres  
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Cascade County Conservation District.

Information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.

The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. In the majority of the district the need for the reservation appears questionable. As authorized in the Final Order establishing the reservation all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. In most of the county permit applications are precluded due to the Upper Missouri Legislative Closure. Outside the closure water remains available through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 24 years since the Final Order establishing the reservation none of the total reserved volume has been perfected.

All water reservations in the Upper Missouri River Basin were conditioned such that no water could be appropriated for any use in an area where a permit application was precluded. The Upper Missouri Legislative Closure established on April 16, 1993 precludes submission of permit applications in all waters up-stream of Morony Dam on the Missouri River and thus nullifies the “force and effect” of the reservation above the dam. Between the date of the Final Order establishing water reservations in the Upper Missouri River (July 1, 1992) and the Upper Missouri Legislative Closure (April 16, 1993), no “development plans” were submitted or approved that would allow development of the Conservation District water reservations within the closed area. This leaves the lower 9.5 miles of the Missouri River and all of the Belt Creek drainage open for appropriation through the Cascade County Conservation District’s
reservation. Additionally, Muddy Creek is open to new appropriations of water if it can be shown that the proposed appropriation will assist in bank stabilization.

5. Irrigation Rights issued post July 1, 1992:
   In the 24 years since the reservation was issued sixteen provisional permits have been issued within Cascade County for a total volume of 2,340.5 acre-feet per year. Two provisional permits remain pending for an additional 521 acre-feet per year.
   a. Only one permit was issued from the reserved source, (Missouri River), prior to the Upper Missouri River Closure, (April 16, 1993), and thus could have been issued as a Conservation District water right.
   b. Two active permits were issued on sources that remain open to appropriation by the Conservation District.
   c. One provisional permit is pending on a source that remains open to appropriation by the Conservation District.

Department Recommendations:
  1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
  2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
  3. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.

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   • Issued Post July 1, 1992 (date of issue, Upper Missouri Final Order)

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Reservation # 7230700    Choteau County Conservation District

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 2, 1992
Priority Date: July 1, 1985
Volume: 33,123 acre-feet per year (AF/YR)
Source: Missouri River, Shonkin Creek, Highwood Creek, Big Sag Spring, Marias River, Teton River
Acres of Irrigation: 2,314 acres
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by § 85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Choteau County Conservation District. Information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response: The District has issued 2 reserved water use authorizations and allocated 2,481 acre-feet (7.49%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response: Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 2 reserved water use authorizations and developed approximately 7.49% of their reservation.

The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. As authorized in the Final Order establishing the reservation all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. Part of the district has been closed to new appropriations of water through the Chippewa Cree – Montana Compact closure and the Teton River Basin Legislative Closure. Outside the closures water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 2012 Ten Rear Review the District reports that 2,481 acre-feet per year or 7.49% of the allocated volume has been perfected.
   - Both Conservation District rights issued are on a reserved source.
   - Irrigation Rights issued post July 1, 1992:
     In the 24 years since the reservation was issued six provisional permits have been issued for irrigation within Choteau County for a total volume of 3,513.44 acre-feet per year. All of the provisional permits issued were on a reserved source.

Department Recommendations:
1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.

¹Choteau County Irrigation Rights
- **Priority Date Post July 1, 1895 (Priority Date of Upper Missouri Final Order)**
- **Issued Post July 1, 1992 (Date of Issue, Upper Missouri Final Order)**

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Reservation # 7319900   Fergus County Conservation District

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 2, 1992
- Priority Date: July 1, 1985
- Volume: 3,914 acre-feet per year (AF/YR)
- Source: Missouri River, Wolverine Creek, Lincoln Ditch, E Fork Big Spring Creek, Little Casino Creek, Olsen Creek UT of Olsen Creek, UT Ross Fork Creek, Warm Springs
- Acres of Irrigation: 2,314 acres
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Fergus County Conservation District responded on December 21, 2015. The District’s response with information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:
The District has issued 1 reserved water use authorizations and allocated 237 acre-feet (6.06%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.
**Amount:** Is the amount still appropriate and in accordance with the application and board order?

*Response:*
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

*Response:*
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

*Response:*
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

*Response:*
District has granted 1 reserved water use authorizations and developed approximately 6.06% of their reservation.

The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In their response the District reports that 237 acre-feet per year (6.06%) of the allocated volume has been perfected. Another 64 acre-feet per year or 1.6% of the allocated volume remains pending.
   - All Conservation District rights, (both issued and pending), are on a reserved source.
   - Irrigation Rights issued post July 1, 1992: In the 24 years since the reservation was issued seven provisional permits have been issued within Fergus County for a total volume of 2,013.8 acre-feet per year. Another provisional permit remains pending for an additional 151.4 acre-feet per year.
   - None of the provisional permits issued were on a reserved source.

**Department Recommendations:**

1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.

3. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.

\[1\text{ Ferguson County Irrigation Rights}\]

- Priority Date Post July 1, 1895 (Priority Date of Upper Missouri Final Order)
- Issued Post July 1, 1992 (date of issue, Upper Missouri Final Order)

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Reservation # 7258700    Gallatin County Conservation District

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 1, 1992
Priority Date: July 1, 1985
Volume: 2,006 acre-feet per year (AF/YR)
Flow: 20.34 cubic feet per second (CFS)
Source: Groundwater, (wells), & Jefferson River
Acres of Irrigation: 1,764 acres
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Gallatin County Conservation District.

DNRC Review:
The Gallatin County Conservation District is located entirely within the legislatively mandated Upper Missouri River Basin Closure. This area is closed to the issuance of any new Provisional Permits. As issued in the July 1, 1992 Final Order all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. Because the district is unable to use their reservation they have not submitted any 10-year reviews.
To date no water has been appropriated through this reservation.

Department Recommendations:
1. Because the district lies entirely within the Upper Missouri River Basin Closure it is not possible to utilize any portion of the reserved water. The Upper Missouri River Basin Closure was initiated to protect existing hydropower water rights on the Missouri River until final decree by the Montana Water Court. Currently all drainages in the Upper Missouri Basin have been entered into preliminary decree and the hydropower rights have been affirmed by the Montana Water Court. The DNRC requests that the Gallatin County Conservation District voluntarily withdraw this water reservation. In the event that this withdrawal request is not received, the DNRC recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
Reservation # 7168800  Glacier County Conservation District

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 2, 1992
Priority Date: July 1, 1985
Volume: 1,271 acre-feet per year (AF/YR)
Source: Cut Bank Creek, Whitetail Creek
Acres of Irrigation: 703 acres
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.
The Glacier County Conservation District responded with additional information on December 24, 2015. The District’s response with information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response: The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response: Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

**Response:**
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation. The following factors have deterred progress toward perfecting this reservation:

- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:

- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. As authorized in the Final Order establishing the reservation all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. In most of the county, including the areas where the reserved water sources are located, permit applications are precluded due to the Blackfeet – Montana Compact Closure and the Fort Belknap – Montana Compact Closure. Outside the closures water remains available through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 24 years since the Final Order establishing the reservation none of the total reserved volume has been perfected.

All water reservations in the Upper Missouri River Basin were conditioned such that no water could be appropriated for any use in an area where a permit application was precluded. Two closures are in effect within the Glacier County Conservation District that precludes submission of permit applications. In 2001 the State of Montana and the Fort Belknap tribes entered into a compact whereby the entire Milk River drainage was closed to any new permit applications. In 2009 the State of Montana and the Blackfeet Tribe entered into a compact whereby the entire Blackfeet reservation, (including borderer streams), was closed to any new permit applications. Both of the sources approved through the Glacier County Water Reservation lie within the area closed to any new appropriations. Between the date of the Final Order establishing water reservations in the Upper Missouri River (July 1, 1992) and the compact closures cited above, no
“development plans” were submitted or approved that would allow development of the Conservation District water reservations within the closed areas. The condition clearly nullifies the force and effect of this reservation within the majority of the Glacier County Conservation District and effectively precludes future development of this water reservation within those areas identified for development through the original application. Outside the closures there are no perennial streams that would be open for development.

**Department Recommendations:**
1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline or until such time that the District volunteers to withdraw the reservation.
2. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.
Reservation # 7189200  Jefferson Valley Conservation District

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 14,515 acre-feet per year (AF/YR)
- Flow: 109.9 cubic feet per second (CFS)
- Source: Groundwater, (wells), & Jefferson River
- Acres of Irrigation: 5,905 acres
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Jefferson Valley Conservation District.

DNRC Review:
The Jefferson Valley Conservation District is located entirely within the legislatively mandated Upper Missouri River Basin Closure. This area is closed to the issuance of any new Provisional Permits. As issued in the July 1, 1992 Final Order all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. Because the district is unable to use their reservation they have not submitted any 10-year reviews.
To date no water has been appropriated through this reservation.

Department Recommendations:
1. Because the district lies entirely within the Upper Missouri River Basin Closure it is not possible to utilize any portion of the reserved water. The Upper Missouri River Basin Closure was initiated to protect existing hydropower water rights on the Missouri River until final decree by the Montana Water Court. Currently all drainages in the Upper Missouri Basin have been entered into preliminary decree and the hydropower rights have been affirmed by the Montana Water Court. The DNRC requests that the Jefferson Valley Conservation District voluntarily withdraw this water reservation. In the event that this withdrawal request is not received, the DNRC recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
Reservation # 7196600    Judith Basin Conservation District

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 2, 1992
- Priority Date: July 1, 1985
- Volume: 731 acre-feet per year (AF/YR)
- Source: Louse Creek, Otter Creek, Little Otter Creek, Wolf Creek
- Acres of Irrigation: 402 acres
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Judith Basin Conservation District responded with additional information on December 17, 2015. The District’s response with information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:
**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?
**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
**Response:**
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 24 years since the Final Order establishing the reservation none of the total reserved volume has been perfected.
5. Irrigation Rights issued post July 1, 1992:
   In the 24 years since the reservation was issued two provisional permits have been issued within Judith Basin County for a total volume of 443.75 acre-feet per year. Another provisional permit remains pending for an additional 160 acre-feet per year¹.
   - None of the provisional permits issued were on a reserved source.

**Department Recommendations:**
1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.
1Judith Basin County Irrigation Rights

- **Priority Date Post July 1, 1895** (Priority Date of Upper Missouri Final Order)
- **Issued Post July 1, 1992** (date of issue, Upper Missouri Final Order)

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Reservation # 7189200    Lewis & Clark Conservation District

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 654 acre-feet per year (AF/YR)
- Flow: 4.8 cubic feet per second (CFS)
- Source: Missouri River, Dearborn River, Elk Creek
- Acres of Irrigation: 295 acres
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Lewis & Clark Conservation District.

DNRC Review:
The Lewis & Clark Conservation District is located entirely within the legislatively mandated Upper Missouri River Basin Closure. This area is closed to the issuance of any new Provisional Permits. As issued in the July 1, 1992 Final Order all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. Because the district is unable to use their reservation they have not submitted any 10-year reviews.

To date no water has been appropriated through this reservation.

Department Recommendations:
1. Because the district lies entirely within the Upper Missouri River Basin Closure it is not possible to utilize any portion of the reserved water. The Upper Missouri River Basin Closure was initiated to protect existing hydropower water rights on the Missouri River until final decree by the Montana Water Court. Currently all drainages in the Upper Missouri Basin have been entered into preliminary decree and the hydropower rights have been affirmed by the Montana Water Court. The DNRC requests that the Lewis & Clark Conservation District voluntarily withdraw this water reservation. In the event that this withdrawal request is not received, the DNRC recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
Reservation # 7215300    Liberty County Conservation District

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 2, 1992
Priority Date: July 1, 1985
Volume: 2,002 acre-feet per year (AF/YR)
Source: Marias River
Acres of Irrigation: 882 acres
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.
No response was received from the Liberty County Conservation District. Information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?

**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

**Response:**
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.

The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. As authorized in the Final Order establishing the reservation all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. Part of the district has been closed to new appropriations of water through the Fort Belknap – Montana Compact closure. Outside the closure water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 24 years since the Final Order establishing the reservation none of the total reserved volume has been perfected.
5. Irrigation Rights issued post July 1, 1992:
   In the 24 years since the reservation was issued one provisional permit has been issued for irrigation within Liberty County for a total volume of 243 acre-feet per year:
   - The provisional permit issued was on a reserved source.

**Department Recommendations:**
1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.
1Liberty County Irrigation Rights
   - Priority Date Post July 1, 1895 (Priority Date of Upper Missouri Final Order)
   - Issued Post July 1, 1992 (date of issue, Upper Missouri Final Order)

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Reservation # 7258800    Lower Musselshell Conservation District

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 2, 1992
Priority Date: July 1, 1985
Volume: 600 acre-feet per year (AF/YR)
Source: Groundwater from abandoned coal mine
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Lower Musselshell Conservation District. Information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.
Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order?

Response:
Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?

Response:
Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?

Response:
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.
The following factors have deterred progress toward perfecting this reservation:

- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.

The District has taken the following actions toward perfecting this reservation:

- In 2002 an information/promotion brochure was produced and distributed.

Department Review:

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. As authorized in the Final Order establishing the reservation all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. Part of the district has been closed to new appropriations of water through the Musselshell River Administrative Closure. Outside the closure water remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 24 years since the Final Order establishing the reservation none of the total reserved volume has been perfected.
5. Irrigation Rights issued post July 1, 1992:
   In the 24 years since the reservation was issued fourteen provisional permits has been issued for irrigation within the Lower Musselshell Conservation District for a total volume of 2,513.48 acre-feet per year¹. Additionally, one provisional permit is pending for 200 acre-feet per year. Of note is the fact that the Musselshell River Administrative Closure prohibits irrigation from the Musselshell River only during the period of July 1 through August 30 annually. Additionally, irrigation in September is limited to supplementing existing irrigation. All of the issued provisional permits for irrigation from the Musselshell River are for use during the spring months.
   - None of the provisional permits issued were on the reserved source, (abandoned coal mine).
Department Recommendations:
1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
2. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.

1Lower Musselshell Irrigation Rights
- Priority Date Post July 1, 1895 (Priority Date of Upper Missouri Final Order)
- Issued Post July 1, 1992 (date of issue, Upper Missouri Final Order)

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Reservation # 7258500  Pondera County Conservation District

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 2, 1992
- Priority Date: July 1, 1985
- Volume: 1,975 acre-feet per year (AF/YR)
- Source: Birch Creek, Two Medicine River, Dry Fork Marias River, UT Bullhead Creek
- Acres of Irrigation: 1,006 acres
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

The Pondera County Conservation District responded on December 21, 2015 with additional information. The following response to the DNRC questionnaire is taken from the submitted 2012 10-year report.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 2 reserved water use authorizations and allocated 494 acre-feet (25.01%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.
Amount: Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 2 reserved water use authorizations and developed approximately 25.01% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
• Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
• In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. As authorized in the Final Order establishing the reservation all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. On April 21, 1993 the Teton River Basin was closed to new appropriations of water. The entire Blackfeet Reservation has a closure that is currently pending ratification. Two of the four reserved sources are located within the Blackfeet Compact Closure. Although most of the available sources have limited water available, outside the two closures water remains available through the provisional permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In their response the District reports that 494 acre-feet per year (25.01%) of the allocated volume has been perfected.
   • Both of the Conservation District rights issued were on a reserved source.
   • Irrigation Rights issued post July 1, 1992:
     Since the issuance of the Upper Missouri Water Reservations no provisional permits have been issued for irrigation within Pondera County.

Department Recommendations:
1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.

1Pondera County Irrigation Rights
- **Priority Date Post July 1, 1985 (Priority Date of Upper Missouri Final Order)**
- **Issued Post July 1, 1992 (date of issue, Upper Missouri Final Order)**

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Reservation # 7257400    Teton County Conservation District

Reservation Description:
Final Order: Upper Missouri River Basin, Issued July 2, 1992
Priority Date: July 1, 1985
Volume: 3,253 acre-feet per year (AF/YR)
Source: Muddy Creek, Sun River, Groundwater (well), Teton River
Acres of Irrigation: 1,505 acres
Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.
Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.
The Teton County Conservation District responded with additional information on November 12, 2015. The District’s response with information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]
Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.
Response: The District has issued 3 reserved water use authorizations and allocated 1,140 acre-feet (35.05%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response: Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response: Remains the same as identified in the original district application and BNRC Order.

Public Interest: Is the reservation still in the public interest as identified in the application and BNRC Order:
Response: Remains the same as identified in the original district application and BNRC Order.

Compliance: Has reservant provided all required compliance documents?
Response: Yes, all required documents have been submitted.

Perfection: What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
Response: District has granted 3 reserved water use authorizations and developed approximately 35.04% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
• The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
• Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
• In 2002 an information/promotion brochure was produced and distributed.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. As authorized in the Final Order establishing the reservation all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. In most of the county, including the areas where the reserved water sources are located, permit applications are precluded due to the Upper Missouri Legislative Closure, the Teton River Legislative Closure, and the U.S Fish & Wildlife Service Benton Lake Wildlife Refuge Compact Closure. Outside the closures water remains available through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 24 years since the Final Order establishing the reservation 35.04% of the total reserved volume has been perfected.
All water reservations in the Upper Missouri River Basin were conditioned such that no water could be appropriated for any use in an area where a permit application was precluded. Three closures are in effect within the Teton County Conservation District that precludes submission of permit applications. In 1993 the Upper Missouri River Closure and the Teton River Closure effectively precluded use of the reserved water on the majority of the district. One exception to the Upper Missouri River Closure allows development of water on Muddy Creek to mitigate erosion caused by return flows from the Fairfield Bench. Additionally, in 1991 the U.S. Fish and Wildlife Service Benton Lake Compact Closure affects a small area within the District. Between the date of the Final Order establishing water reservations in the Upper Missouri River (July 1,
1992) and the compact closures cited above, no “development plans” were submitted or approved that would allow development of the Conservation District water reservations within the closed areas with the exception of Muddy Creek. The condition clearly nullifies the force and effect of this reservation within the majority of the Teton County Conservation District and effectively precludes future development of this water reservation within those areas. Along the northern boundary of the county water remains available in the Marias River drainage.

**Department Recommendations:**
1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline or until such time that the District volunteers to withdraw the reservation.
2. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.

**Teton County Irrigation Rights**
- **Priority Date Post July 1, 1985 (Priority Date of Upper Missouri Final Order)**
- **Issued Post July 1, 1992 (date of issue, Upper Missouri Final Order)**

<table>
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<tr>
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Reservation # 7258600    Toole County Conservation District

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 2, 1992
- Priority Date: July 1, 1985
- Volume: 641 acre-feet per year (AF/YR)
- Source: Marias River, Tiber Reservoir
- Acres of Irrigation: 309 acres
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Toole County Conservation District. Information from the 2012 10 Year Review is given below followed by the DNRC review and recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Amount: Is the amount still appropriate and in accordance with the application and board order?
Response:
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order:

*Response:*  
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?  
*Response:*  
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?  
*Response:*  
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.  
The following factors have deterred progress toward perfecting this reservation:  
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.  
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.  
The District has taken the following actions toward perfecting this reservation:  
- In 2002 an information/promotion brochure was produced and distributed.

**Department Review:**  
1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.  
2. Need for the reservation appears questionable. As authorized in the Final Order establishing the reservation all Conservation District reservations have no “force and effect” in any basin where permit applications are precluded. Part of the district has been closed to new appropriations of water through the Fort Belknap – Montana Compact closure. Outside the closure water remains available for appropriation through the DNRC Provisional Permitting process.  
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.  
4. In the 24 years since the Final Order establishing the reservation none of the total reserved volume has been perfected.  
5. Irrigation Rights issued post July 1, 1992:  
   In the 24 years since the reservation was issued four provisional permits have been issued for irrigation within Toole County for a total volume of 4,314.94 acre-feet per year\(^1\). Additionally, two provisional permits are currently pending.  
   - Two of the provisional permits were issued on a reserved source.

**Department Recommendations:**  
1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.  
2. The Department recommends that any new appropriation of water for irrigation from the reserved sources be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.

Toole County Irrigation Rights

- **Priority Date Post July 1, 1895 (Priority Date of Upper Missouri Final Order)**
- **Issued Post July 1, 1992 (date of issue, Upper Missouri Final Order)**

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Reservation # 7257600    Valley County Conservation District

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1 1992
- Priority Date: July 1, 1985
- Volume: 92,000 acre-feet per year
- Source: Missouri River (Fort Peck Reservoir)
- Acres of Irrigation: 25,020 acres
- Perfection Date: December 31, 2025

Project Description:
Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that have not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). The Administrative Rules of Montana (ARM) 36.16.120 outline the criteria that each 10-year report shall address.

Ten-year reports have been routinely submitted by all active Conservation Districts and compiled by the Conservation and Resource Development Division of the DNRC. However, the Water Rights Division of the DNRC determined that these reports were not reviewed as required by statute. A questionnaire was sent to each reservant on October 14th, 2015 asking whether the district wished to provide additional information regarding the MCA criteria for the mandated 10-year report. A letter accompanying the questionnaire identified December 31, 2015 as the deadline to submit a response. The letter stated that if no response were received the DNRC would consider the previously submitted ten-year review as adequate.

No response was received from the Valley County Conservation District. The following is an abbreviated compilation of the specific criteria addressed through the 2012 Ten Year Review followed by DNRC review & recommendations.

District Response, (2012 Ten Year Review) – ARM Reporting Requirements [36.16.120]

Summary: Please provide the amount granted, amount allocated to date, any change in amount required or methodology used to determine amount needed.

Response:
The District has issued 0 reserved water use authorizations and allocated 0 acre-feet (0%) and 0 CFS of their reservation. There has been no change in the amount required. Methodology used to determine amount needed is still applicable.

Purpose: Does the purpose remain the same as identified in the district application and BNRC order?
Response:
Remains the same as identified in the original district application and BNRC Order.

Need: Does the need still exist as identified in the district application and the BNRC board order?
Response:
Remains the same as identified in the original district application and BNRC Order.
**Amount:** Is the amount still appropriate and in accordance with the application and board order?
**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Public Interest:** Is the reservation still in the public interest as identified in the application and BNRC Order?
**Response:**
Remains the same as identified in the original district application and BNRC Order.

**Compliance:** Has reservant provided all required compliance documents?
**Response:**
Yes, all required documents have been submitted.

**Perfection:** What factors have deterred the progress toward perfecting this reservation and what actions has the District taken toward perfecting this reservation?
**Response:**
District has granted 0 reserved water use authorizations and developed approximately 0% of their reservation.
The following factors have deterred progress toward perfecting this reservation:
- The District general plan was not finalized until 1996 because assistance from DNRC was not previously available.
- Depressed agricultural economy for the past 22 years has been a significant deterrent to full development of the reservation.
The District has taken the following actions toward perfecting this reservation:
- In 2002 an information/promotion brochure was produced and distributed.

**DNRC Review – ARM Reporting Requirements [36.16.120]**

1. The reservant appears to be in substantial compliance with the purpose, public interest, and compliance.
2. Need for the reservation appears questionable. Water from the reserved source remains available for appropriation through the DNRC Provisional Permitting process.
3. The amount granted appears to be greater than the demand that has materialized since the reservation was granted.
4. In the 24 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. Water from the reserved sources remains available and is being appropriated through the provisional permit process.
5. Irrigation Rights issued post July 1, 1992:
   In the 24 years since the reservation was issued one provisional permit for a total volume of 250 acre-feet per year has been issued for irrigation use within Valley County above Fort Peck Dam.
   - Issued right was from the reserved source, (Fort Peck Lake).

**Department Recommendations:**

1. The department recommends that the reservation remain in place until the December 31, 2025 perfection deadline.
2. The Department recommends that any new appropriation of water from the reserved sources for irrigation be counted against the reservation flow and volume.
3. The Department recommends re-evaluating the need and amount of all Upper Missouri Conservation District Reservations.

Valley County Irrigation Rights above Fort Peck Dam
- **Priority Date Post July 1, 1895 (Priority Date of Upper Missouri Final Order)**
- **Issued Post July 1, 1992 (date of issue, Upper Missouri Final Order)**

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</table>
Appendix G

State and Federal Reservations

DNRC SUMMARY REPORT
SB330 WATER RESERVATION TEN YEAR REVIEW
Reservation # 993100 Montana Department of State Lands

Reservation Description:
- **Final Order:** Yellowstone River Basin, Issued December 15, 1978
- **Priority Date:** December 15, 1978
- **Volume:** 12,858 acre-feet per year
- **Source:** Yellowstone River, Big Horn River, Rock Creek, Daisy Dean Creek, Alkali Creek, Big Timber Creek, Red Lodge Creek
- **Perfection Deadline:** December 31st, 2000

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The Montana Department of State Lands submitted a response on December 3rd, 2015.

**General Information:**
In the 1990 Annual Progress Report the Montana Department of State Lands presented information indicating one project had been developed. As issued, this reservation had an expiration date of December 31, 2000.

**Montana Department of State Lands Response:**
The Montana Department of State Lands response indicated that none of the reservation had been perfected. The project reported as having been developed in the 1990 review appears to have been accomplished with water from Rosebud Creek under provisional permit 42A 59014-00. The Department of State Lands acknowledges that this reservation is expired and is no longer available for future development.

**Department Recommendation:**
This reservation has **expired** without any development.
Reservation # 993300    Montana Department of State Lands

**Reservation Description:**
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 25,889.78 acre-feet per year
- Source: Yellowstone River
- Perfection Deadline: December 31st, 2000

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The Montana Department of State Lands submitted a response on December 3rd, 2015.

**General Information:**
In the 1990 Annual Progress Report the Montana Department of State Lands indicated that none of the reservation had been developed. As issued, this reservation had an expiration date of December 31, 2000.

**Montana Department of State Lands Response:**
The Montana Department of State Lands response indicated that none of the reservation had been perfected. The Department of State Lands acknowledges that this reservation is expired and is no longer available for future development.

**Department Recommendation:**
This reservation has expired without any development.
Reservation # 993400    Montana Department of State Lands

**Reservation Description:**
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 15,078 acre-feet per year
- Source: Yellowstone River
- Perfection Deadline: December 31st, 2000

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The Montana Department of State Lands submitted a response on December 3rd, 2015.

**General Information:**
In the 1990 Annual Progress Report the Montana Department of State Lands indicated that none of the reservation had been developed. As issued, this reservation had an expiration date of December 31, 2000.

**Montana Department of State Lands Response:**
The Montana Department of State Lands response indicated that none of the reservation had been perfected. The Department of State Lands acknowledges that this reservation is expired and is no longer available for future development.

**Department Recommendation:**
This reservation has expired without any development.
Reservation # 994200  Montana Department of Natural Resources and Conservation (DNRC)

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 383,000 acre-feet per year for all beneficial purposes allowed by Montana law. Not more than 450,000 acre-feet per year to be stored in an enlarged Tongue River Reservoir.
- Source: Tongue River

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The Montana Department Natural Resources and Conservation (DNRC) submitted a response on December 28, 2015.

Required Reporting [36.16.120]

1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**DNRC response:**
The reservation remains as granted in the December 15, 1979 Final Order. 383,000 acre-feet of water per year allowing the total appropriation of not more than 450,000 acre-feet of water per year from, the Tongue River, to be stored in an enlarged Tongue River Reservoir.

2. **Purpose:** Does the purpose remain the same as identified in the application and order?

**DNRC response:**
The purpose remains as authorized by the Board of Natural Resources and Conservation with the following exception. The purpose is to ensure that the water supply of the Tongue River Basin will be available for future needs, uses and purposes.
The following change in purpose has occurred.
- 1,821 acre-feet of water will no longer be supplied to the Department of State Lands under Reservations 993100 & 993300. Both of these reservations expired in the year 2000 and no development as proposed in the application and final order occurred.

3. **Need:** Does the need still exist as identified in the application and order?

**DNRC response:** The need still exists as identified in the application and order.
4. **Amount:** Is the amount still appropriate and in accordance with the application and order?

DNRC response:
The amount is still appropriate in accordance with the application and Board Order. The amount of reserved water granted by the board is 383,000 acre-feet of water per year. Of this, 13,000 acre-feet as been allocated, with 370,000 acre-feet remaining.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order?

DNRC response:
The Tongue River Reservation continues to provide important agricultural, economic, fisheries and recreational related benefits to the people of Montana. Maintaining this reservation continues to remain a high priority and is in the best interest of the public.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

DNRC response:
Applicant has submitted all required compliance documents. Additionally, the applicant cites completion of the Tongue River Basin Project Final EIS, March 1996 – This major study was written to fulfill the requirements of both the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA), for the Tongue River Basin Project. The project, which involved the rehabilitation of the Tongue River Dam, was implemented to alleviate dam safety concerns, to protect downstream lives and property, to protect all existing water rights, and to provide up to an additional 20,000 acre-feet of water to the Northern Cheyenne Tribe, as stated in the 1992 Settlement Act.

7. **Perfection:** If a diversionary reservation has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will the reservant take to insure perfection of the reservation?

DNRC response:
- **Amount of reserved water use to date:**
  - 13,000 acre-feet annually
- **Amount of reserved water use anticipated in the original reservation:**
  - 383,000 acre-feet annually

Discussion:
Decker Coal Company operates three large coal mines adjacent to the upper end of Tongue River Reservoir. DNRC would have to totally inundate these coal mines in order to construct a reservoir large enough to store the balance of the currently reserved water right. Currently, increased groundwater seepage into the mines resulting from the recently completed enlargement of the reservoir is complicating storage and use of the initial portion of reserved water, now begin put to beneficial use. Only after the coal mines have ceased operations and have been reclaimed could DNRC potentially construct a project large enough to store all the reserved water in one location. Decker Coal currently projects end of mine life to be in the year 2020. After reclamation, DNRC could enlarge Tongue River Reservoir again in approximately 2025.
Department Review:

1. The reservant appears to be in substantial compliance with the need, amount, purpose, public interest, and compliance.
2. In the 38 years since the Final Order establishing the reservation was issued 13,000 acre-feet per year of the reservation has been perfected. Construction of the enlarged reservoir will require inundating three large existing coal mines. Applicant states that the expected end of the mining life for these coal mines is 2020. After reclamation, construction of the enlarged reservoir could begin as early as 2025. No expiration date was assigned in the Final Order.

Department Recommendation:

1. The department recommends that the water reservation for the State of Montana Department of Natural Resources and Conservation (DNRC) remain as granted.
Reservation # 1233000    USA Bureau of Reclamation (BOR)

Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 121,800 acre-feet per year to be stored in the proposed Cedar Ridge
Reservoir.
Source: Yellowstone River

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of
existing state water reservations that had not received a 10-year review as required by §85-2-316,
Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015
asking for information regarding the MCA criteria for the mandated ten-year review. A letter
accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response.
The Bureau of Reclamation submitted the following response on December 23, 2015.

Required Reporting [36.16.120]
1. Summary: Please provide a summary of the amount granted, allocated to date, any change in the
amount required to satisfy the purpose and need of the reservation, and any change in the
methodology originally used to determine the amount.

BOR Response:
121,800 acre-feet; none allocated to date. Methodology remains consistent as applied for in original
application.

2. Purpose: Does the purpose remain the same as identified in the application and order?

BOR Response:
Purpose remains consistent as identified in the original application with the addition that this may also
provide an avenue for the development of non-consumptive clean energy (Industrial).

3. Need: Does the need still exist as identified in the application and order?

BOR Response:
The need remains the same as identified in the original application. The need for additional storage is
especially prevalent as identified in the Montana State Water Plan. In addition, the impending
uncertainty of the remaining Compacts throughout the state exemplifies the need for future storage of
the waters of and within the State of Montana not only for new development but also to protect
existing uses.

4. Amount: Is the amount still appropriate and in accordance with the application and order?

BOR Response:
The amount of water applied for and granted is still appropriate and necessary to provide for the purposes intended. The methodology used to determine the amount is still applicable.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order?

**BOR Response:**
Please refer to #3 above.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**BOR response:**
BOR has no additional documentation beyond that submitted with original application. Any future documents relating to development will be submitted to DNRC upon completion.

7. **Perfection:** If a diversionary reservation has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will the reservant take to insure perfection of the reservation?

**BOR Response:**
Funding is the primary factor deterring progress toward perfecting the water reservation. Recent statewide actions pertaining to water resources (Reserved Compacts, Montana State Water Plan, Adjudication) may initiate additional interest toward funding/perfection of this water reservation.

**Department Review:**
1. The reservant appears to be in substantial compliance with the need, amount, purpose, public interest, and compliance.
2. In the 38 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. Reservant cites a lack of funding as the primary reason for not proceeding with this reservation. No expiration date was assigned in the Final Order.

**Department Recommendation:**
1. The department recommends that the water reservation for the Bureau of Reclamation (BOR) remain as granted.
Reservation Description:
- **Final Order:** Yellowstone River Basin, Issued December 15, 1978
- **Priority Date:** December 15, 1978
- **Volume:** 68,700 acre-feet per year to be stored in the proposed Buffalo Creek Reservoir.
- **Source:** Yellowstone River

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The Bureau of Reclamation submitted the following response on December 23, 2015.

**Required Reporting [36.16.120]**

1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**BOR Response:**
68,000 acre-feet; none allocated to date. Methodology remains consistent as applied for in original application.

2. **Purpose:** Does the purpose remain the same as identified in the application and order?

**BOR Response:**
Purpose remains consistent as identified in the original application with the addition that this may also provide an avenue for the development of non-consumptive clean energy (Industrial).

3. **Need:** Does the need still exist as identified in the application and order?

**BOR Response:**
The need remains the same as identified in the original application. The need for additional storage is especially prevalent as identified in the Montana State Water Plan. In addition, the impending uncertainty of the remaining Compacts throughout the state exemplifies the need for future storage of the waters of and within the State of Montana not only for new development but also to protect existing uses.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order?

**BOR Response:**
The amount of water applied for and granted is still appropriate and necessary to provide for the purposes intended. The methodology used to determine the amount is still applicable.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order?

**BOR Response:**
Please refer to #3 above.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**BOR response:**
BOR has no additional documentation beyond that submitted with original application. Any future documents relating to development will be submitted to DNRC upon completion.

7. **Perfection:** If a diversionary reservation has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will the reservant take to insure perfection of the reservation?

**BOR Response:**
Funding is the primary factor deterring progress toward perfecting the water reservation. Recent statewide actions pertaining to water resources (Reserved Compacts, Montana State Water Plan, Adjudication) may initiate additional interest toward funding/perfection of this water reservation.

**Department Review:**
1. The reservant appears to be in substantial compliance with the need, amount, purpose, public interest, and compliance.
2. In the 38 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. Reservant cites a lack of funding as the primary reason for not proceeding with this reservation. No expiration date was assigned in the Final Order.

**Department Recommendation:**
1. The department recommends that the water reservation for the Bureau of Reclamation (BOR) remain as granted.
Reservation Description:
Final Order: Yellowstone River Basin, Issued December 15, 1978
Priority Date: December 15, 1978
Volume: 539,000 acre-feet per year to be stored in the proposed Sunday Creek Reservoir.
Source: Yellowstone River

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The Bureau of Reclamation submitted the following response on December 23, 2015.

Required Reporting [36.16.120]
1. **Summary:** Please provide a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount.

**BOR Response:**
539,000 acre-feet; none allocated to date. Methodology remains consistent as applied for in original application.

2. **Purpose:** Does the purpose remain the same as identified in the application and order?

**BOR Response:**
Purpose remains consistent as identified in the original application with the addition that this may also provide an avenue for the development of non-consumptive clean energy (Industrial).

3. **Need:** Does the need still exist as identified in the application and order?

**BOR Response:**
The need remains the same as identified in the original application. The need for additional storage is especially prevalent as identified in the Montana State Water Plan. In addition, the impending uncertainty of the remaining Compacts throughout the state exemplifies the need for future storage of the waters of and within the State of Montana not only for new development but also to protect existing uses.

4. **Amount:** Is the amount still appropriate and in accordance with the application and order?

**BOR Response:**
The amount of water applied for and granted is still appropriate and necessary to provide for the purposes intended. The methodology used to determine the amount is still applicable.

5. **Public Interest:** Does the reservation remain in the public interest as identified in the application and order?

**BOR Response:**
Please refer to #3 above.

6. **Compliance:** Please provide information evidencing compliance with the board’s order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

**BOR response:**
BOR has no additional documentation beyond that submitted with original application. Any future documents relating to development will be submitted to DNRC upon completion.

7. **Perfection:** If a diversionary reservation has not reached the development level projected, what factors have deterred the progress toward perfecting the water reservation and what actions will the reservant take to insure perfection of the reservation?

**BOR Response:**
Funding is the primary factor deterring progress toward perfecting the water reservation. Recent statewide actions pertaining to water resources (Reserved Compacts, Montana State Water Plan, Adjudication) may initiate additional interest toward funding/perfection of this water reservation.

**Department Review:**
1. The reservant appears to be in substantial compliance with the need, amount, purpose, public interest, and compliance.
2. In the 38 years since the Final Order establishing the reservation was issued none of the reservation has been perfected. Reservant cites a lack of funding as the primary reason for not proceeding with this reservation. No expiration date was assigned in the Final Order.

**Department Recommendation:**
1. The department recommends that the water reservation for the Bureau of Reclamation (BOR) remain as granted.
Reservation # 1233401 USA Bureau of Land Management (BLM)  
Montana Department of State Lands (DSL)

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 2,924 acre-feet per year to irrigate 1,992 acres
- Source: O’Fallon Creek

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The Montana Department of State Lands submitted a response on December 4, 2015. No response was received from the Bureau of Land Management.

Department Review:
Yellowstone Final Order granted the Bureau of Land Management two reservations for irrigation. After a period of prolonged non-use, the BLM ceded half of these two reservations to the DSL. To date none of the reserved water has been put to use. Both of these reservations were to be perfected by the year 2000. In their response to the DNRC request for information DSL acknowledged the fact that these reservations had expired. No response was received from the BLM.

Department Recommendation:
Both Bureau of Land Management (BLM) & State of Montana Trust Lands (DSL) reservations are expired.
Reservation # 1233402  USA Bureau of Land Management (BLM)
Montana Department of State Lands (DSL)

Reservation Description:
- Final Order: Yellowstone River Basin, Issued December 15, 1978
- Priority Date: December 15, 1978
- Volume: 17,476 acre-feet per year to irrigate 8,738 acres
- Source: Yellowstone River

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. The Montana Department of State Lands submitted a response on December 4, 2015. No response was received from the Bureau of Land Management.

Department Review:
Yellowstone Final Order granted the Bureau of Land Management two reservations for irrigation. After a period of prolonged non-use, the BLM ceded half of these two reservations to the DSL. To date none of the reserved water has been put to use. Both of these reservations were to be perfected by the year 2000. In their response to the DNRC request for information DSL acknowledged the fact that these reservations had expired. No response was received from the BLM.

Department Recommendation:
Both Bureau of Land Management (BLM) & State of Montana Trust Lands (DSL) reservations are expired.
Reservation # 7257900  USA Bureau of Reclamation (BOR)

Reservation Description:
- Final Order: Upper Missouri River Basin, Issued July 1, 1992
- Priority Date: July 1, 1985
- Volume: 68,000 acre-feet per year for irrigation in the Milk River Basin
- Source: Missouri River
- Perfection Date: December 31, 2025

Senate Bill 330, passed by the 64th Montana Legislature, required the DNRC to initiate a review of existing state water reservations that had not received a 10-year review as required by §85-2-316, Montana Code Annotated (MCA). A questionnaire was sent to each reservant on October 14th, 2015 asking for information regarding the MCA criteria for the mandated ten-year review. A letter accompanying the questionnaire identified December 31, 2015 as the deadline for receiving a response. No response was received from the Bureau of Land Management.

Department Review:
1. The reservant appears to be in substantial compliance with the purpose and public interest.
2. Reservant is non-compliant with the terms of the Final Order. Senate Bill 300 was passed to mandate a review of all existing reservations as required through the Final Order and codified as §85-2-316 (MCA). No response to the DNRC request for information was received from the Reservant.
3. The need for the reservation continues to exist. Water for irrigation is in short supply in the Milk River Basin.
4. The amount granted may exceed the available supply unless storage is incorporated. The combined flow for two of the instream flow reservations granted through this Final Order exceed the amount physically available from August through October.

Department Recommendation:
1. The department recommends that the water reservation for the Bureau of Reclamation (BOR) remain as granted until the perfection date of December 31, 2025.
2. The department recommends further study on water availability prior to implementing any portion of this reservation.