

Montana Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau

ENVIRONMENTAL ASSESSMENT
For Routine Actions with Limited Environmental Impact

Part I. Proposed Action Description

1. Applicant/Contact name and address:

Applicants:

Norton Properties LLC
63020 Lower Meadow Dr.
Bend, OR 97701

Norton Ranch Homes LLC
63278 Powell Butte Hwy
Bend, OR 97701-9429

J&D Family LP
270 Automotive Ave
Bozeman, MT 59718

Consultant:

DMS Natural Resources LLC
2233 W Kagy Blvd, Suite 1
Bozeman, MT 59718-5938

2. Type of action: Application to Change an Existing Irrigation Water Right No. 41H 30102910. The Applicant proposes to permanently retire 26.4 acres of historically irrigated land to provide mitigation water.
3. Water source name: West Gallatin River, tributary to the Gallatin River. Water is conveyed to the place of use via the Farmer's Canal and the E. Minder Lateral. The acreage to be retired ranges from 100 – 500 ft away from Aajker and Baxter Creeks. Aajker Creek is tributary to Baxter Creek, and Baxter Creek is tributary to Hyalite Creek, tributary to the East Gallatin River and then the Gallatin River.
4. Location affected by project: Section 9, T02 S, R05 E, Gallatin County

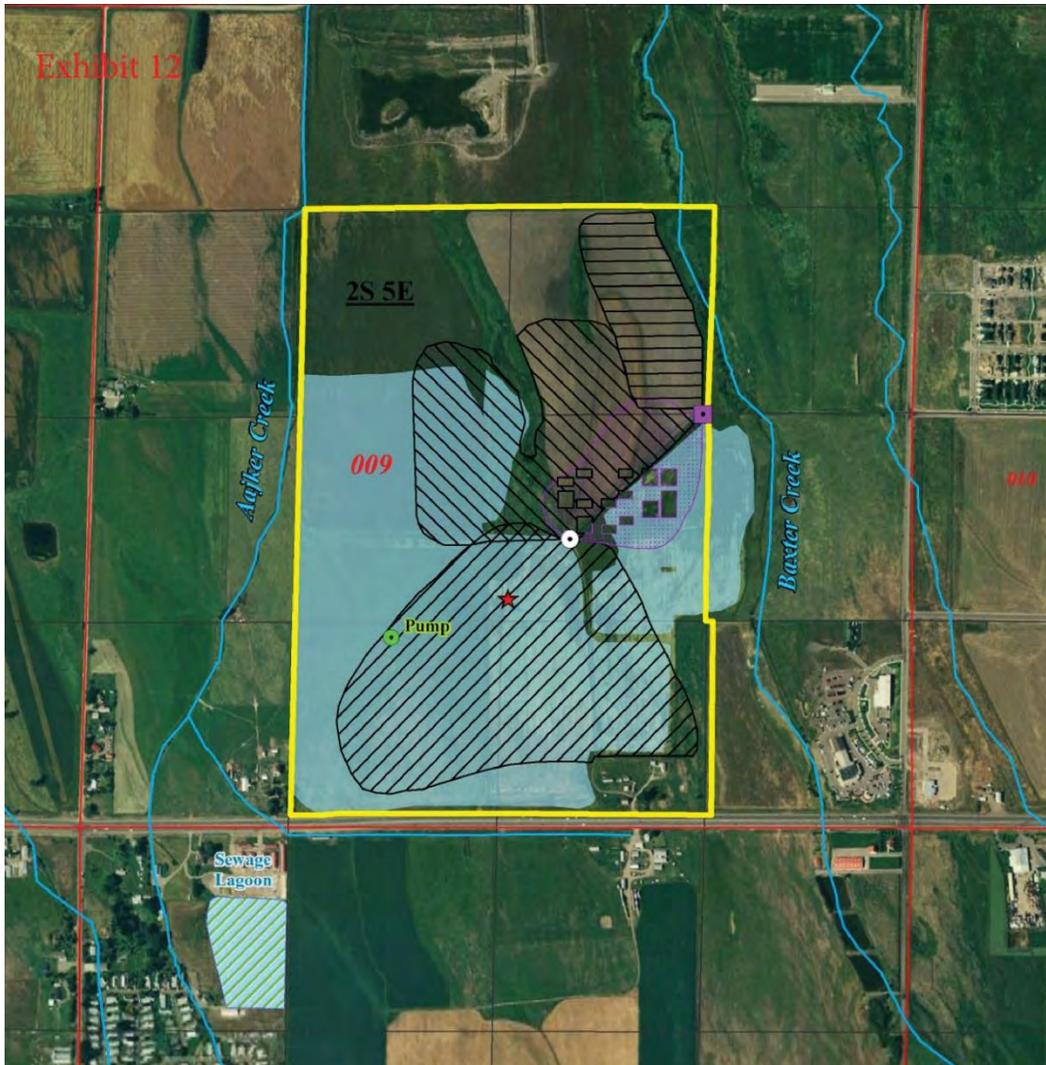


Figure 1: Map of location affected by project. Exhibit 12 of the application materials.

5. Narrative summary of the proposed project, purpose, action to be taken, and benefits:

The Applicant proposes to permanently retire 26.4 acres that were historically irrigated on the Norton Ranch in Section 9, T02 S, R05 E, Gallatin County. Instead of being diverted into the Farmer’s Canal, water will be left instream in the West Gallatin River for the purpose of mitigating depletions associated with permit 41H 30025398 owned by Bostwick Properties Inc. for Big Sky-area developments. The POD will remain the Farmer’s Canal headgate in the SWNWNW of Section 11, T03 S, R04 E. The POU is proposed to be changed to the reach from the Farmer’s Canal headgate along the Gallatin River to its confluence with the Missouri River and then along a reach of the Missouri until reaching Canyon Ferry Reservoir in Section 18, T07 N, R01 E, Broadwater County.

The Department shall issue a change authorization if the Applicant proves the criteria in §85-2-402, MCA, are met.

6. Agencies consulted during preparation of the Environmental Assessment:
- Montana Department of Fish, Wildlife & Parks (FWP) – Montana Fisheries Information System (MFISH)
 - <http://fwp.mt.gov/fishing/mFish/>
 - Montana Department of Environmental Quality (DEQ) – Clean Water Act Information Center (CWAIC)
 - <http://deq.mt.gov/wqinfo/CWAIC/default.mcpX>
 - Montana National Heritage Program (MTNHP) – Species of Concern:
 - <http://mtnhp.org/SpeciesOfConcern>
 - U.S. Fish & Wildlife Service (USFWS) – National Wetlands Inventory Wetlands Mapper
 - <http://www.fws.gov/wetlands/Data/Mapper.html>
 - Natural Resource Conservation Service (NRCS) – Web Soil Survey (WSS)
 - <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

Part II. Environmental Review

1. Environmental Impact Checklist:

PHYSICAL ENVIRONMENT

WATER QUANTITY, QUALITY AND DISTRIBUTION

Water quantity - *Assess whether the source of supply is identified as a chronically or periodically dewatered stream by DFWP. Assess whether the proposed use will worsen the already dewatered condition.*

Determination: No significant impact identified. As determined by a search of MFISH conducted on January 14, 2016, the West Fork of the Gallatin River is not listed as chronically or periodically dewatered by DFWP. This change will not significantly impact conditions because water will be allowed to flow instream to mitigate depletions from permit 41H 30025398. In fact, leaving additional water instream would have a positive effect on any dewatering concerns.

As determined by a search of MFISH conducted on January 20, 2016, neither Aajker nor Baxter Creek is listed as chronically or periodically dewatered by DFWP. The retirement of 26.4 acres of historically irrigated land should not significantly affect these conditions.

Water quality - *Assess whether the stream is listed as water quality impaired or threatened by DEQ, and whether the proposed project will affect water quality.*

Determination: No significant impact identified. According to a search of the DEQ CWAIC website conducted on January 14, 2016, the West Fork of the Gallatin River is listed as fully supporting agricultural and drinking water uses. It is listed as not supporting primary contact recreation or aquatic life due to concerns about chlorophyll-a, sedimentation/siltation, nitrate/nitrite (nitrite + nitrate as N), total nitrogen, and total phosphorous from site clearance, on-site treatment systems, and silviculture activities. This change will not have a significant impact on the water quality because additional water will be left instream in order to mitigate future depletions. In fact, additional water instream may be beneficial for water quality concerns.

According to a search of the DEQ CWAIC website conducted on January 20, 2016, neither Aajker nor Baxter Creek has been evaluated by DEQ.

Groundwater - *Assess if the proposed project impacts ground water quality or supply. If this is a groundwater appropriation, assess if it could impact adjacent surface water flows.*

Determination: No significant impact identified. The rights being changed are from surface water. Instead of being used consumptively to grow crops, the rights will now be left instream to mitigate depletions, so any alteration to groundwater supply or quality will not be significant, as the surface water will still interact with underlying alluvial aquifers and groundwater.

DIVERSION WORKS - *Assess whether the means of diversion, construction and operation of the appropriation works of the proposed project will impact any of the following: channel impacts, flow modifications, barriers, riparian areas, dams, well construction.*

Determination: No impact identified. Pursuant to §85-2-402(2)(b)(iii), MCA, the proposed change is for mitigation, so no diversion works are required. Water will be left instream to mitigate future depletions. This change will not cause channel impacts or flow modifications, except for leaving additional water instream.

UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES

Endangered and threatened species - *Assess whether the proposed project will impact any threatened or endangered fish, wildlife, plants or aquatic species or any "species of special concern," or create a barrier to the migration or movement of fish or wildlife. For groundwater, assess whether the proposed project, including impacts on adjacent surface flows, would impact any threatened or endangered species or "species of special concern."*

Determination: No significant impact identified. The Montana National Heritage Program's website was queried on January 14, 2016. Results are summarized below.

- Animal Species of Concern: Hoary Bat, Little Brown Myotis, Great Blue Heron, Evening Grosbeak, Bobolink, Cassin's Finch, and Hooked Snowfly. Seven total species.
- Animal Potential Species of Concern: None.
- Animal Special Status Species: None.

The MTNHP website identified the following plant species

- Plant Species of Concern: Rocky Mountain Twinpod, Small Dropseed. Two total species.
- Plant Potential Species of Concern: Slender Wedgegrass. One total species.
- Plant Special Status Species: None.

The proposed project is to leave water that was historically diverted instream in order to mitigate depletions, so the proposed changes would not have a significant impact on any wildlife in the area and may in fact benefit the ecosystem.

Wetlands - Consult and assess whether the apparent wetland is a functional wetland (according to COE definitions), and whether the wetland resource would be impacted.

Determination: No significant impact. According to a January 14, 2016, search of the USFWS Wetlands Mapper, there are some freshwater emergent wetlands located within the project area. However, some wetlands are mapped on acreage that was historically irrigated, so those wetlands may exist only because of artificial irrigation water. Furthermore, some wetlands are mapped on areas that are currently being subdivided and developed – these areas will never be irrigated again, per the application materials. The effects of this project – no longer irrigating 26.4 acres that were historically irrigated – will not be significant.

Ponds - For ponds, consult and assess whether existing wildlife, waterfowl, or fisheries resources would be impacted.

Determination: Not applicable. No ponds are involved in this project.

GEOLOGY/SOIL QUALITY, STABILITY AND MOISTURE - Assess whether there will be degradation of soil quality, alteration of soil stability, or moisture content. Assess whether the soils are heavy in salts that could cause saline seep.

Determination: No significant impact identified. Leaving historically diverted water instream for the mitigating future depletions should not affect soil characteristics significantly. A January 14, 2016, search of the NRCS WSS site did not identify any saline seeps in the area.

VEGETATION COVER, QUANTITY AND QUALITY/NOXIOUS WEEDS - Assess impacts to existing vegetative cover. Assess whether the proposed project would result in the establishment or spread of noxious weeds.

Determination: No significant impact identified. Leaving historically diverted water instream to mitigate future depletions may improve vegetative characteristics along the riparian corridor.

AIR QUALITY - Assess whether there will be a deterioration of air quality or adverse effects on vegetation due to increased air pollutants.

Determination: No impact identified. This project will not impact air quality.

HISTORICAL AND ARCHEOLOGICAL SITES - Assess whether there will be degradation of unique archeological or historical sites in the vicinity of the proposed project if it is on State or Federal Lands. If it is not on State or Federal Lands simply state NA-project not located on State or Federal Lands.

Determination: Not applicable. The project is not located on State or Federal Lands. Furthermore, the Applicant made no mention of significant historical or archeological sites on the property.

DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AND ENERGY - *Assess any other impacts on environmental resources of land, water and energy not already addressed.*

Determination: No impact identified. No other demands on environmental resources of land, water, and energy have been identified.

HUMAN ENVIRONMENT

LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS - *Assess whether the proposed project is inconsistent with any locally adopted environmental plans and goals.*

Determination: No significant impact identified. The Applicant's goals are to sell a portion of their existing water rights in order to mitigate depletions related to permit 41H 30025398. Mitigation is a recognized beneficial use of water in the State of Montana. These rights are located within a basin closed to new appropriations of water, so new uses of water will need to mitigate future depletions. This proposal is consistent with the goal of protecting current water users from adverse effects due to development and new water uses.

ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES - *Assess whether the proposed project will impact access to or the quality of recreational and wilderness activities.*

Determination: No impact identified. This change is located on private property and will not affect access to recreational activities or the quality of recreational and wilderness activities.

HUMAN HEALTH - *Assess whether the proposed project impacts on human health.*

Determination: No impact identified. Leaving historically diverted water instream to mitigate future consumptive uses will not impact human health.

PRIVATE PROPERTY - *Assess whether there are any government regulatory impacts on private property rights.*

Yes ___ No X *If yes, analyze any alternatives considered that could reduce, minimize, or eliminate the regulation of private property rights.*

Determination: No impact identified. The project does not impact government regulations on private property rights.

OTHER HUMAN ENVIRONMENTAL ISSUES - *For routine actions of limited environmental impact, the following may be addressed in a checklist fashion.*

Impacts on:

(a) Cultural uniqueness and diversity? No impacts identified.

(b) Local and state tax base and tax revenues? No significant impacts identified.

- (c) Existing land uses? No significant impacts identified.
- (d) Quantity and distribution of employment? No impacts identified.
- (e) Distribution and density of population and housing? No significant impacts identified.
- (f) Demands for government services? No significant impacts identified.
- (g) Industrial and commercial activity? No impacts identified.
- (h) Utilities? No impacts identified.
- (i) Transportation? No impacts identified.
- (j) Safety? No impacts identified.
- (k) Other appropriate social and economic circumstances? No impacts identified.

2. Secondary and cumulative impacts on the physical environment and human population:

Secondary Impacts: No secondary impacts have been identified.

Cumulative Impacts: No cumulative impacts have been identified.

3. Describe any mitigation/stipulation measures: None.

4. Description and analysis of reasonable alternatives to the proposed action, including the no action alternative, if an alternative is reasonably available and prudent to consider: No reasonable alternatives have been identified. The watershed basins through which the Gallatin River and the Missouri River upstream of Canyon Ferry flow are closed to new appropriations of water. Under Montana law, the only way to allow new consumptive uses is through mitigating the consumed volume.

PART III. Conclusion

1. Preferred Alternative: The preferred alternative is to grant the change application if the Applicant can prove that the criteria in §85-2-402, MCA, are met.

2. Comments and Responses: None.

3. Finding:

Yes ___ No X Based on the significance criteria evaluated in this EA, is an EIS required?

If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action: The EA is the appropriate level of analysis because the proposed project is to change water rights to mitigate surface water depletions. None of the identified impacts for any of the alternatives is significant as defined in ARM 36.2.524. No significant adverse effects are anticipated.

Name of person(s) responsible for preparation of EA:

Name: Brent Zundel

Title: Water Resource Specialist

Date: February 3, 2016