Part I. Proposed Action Description

1. Applicant/Contact name and address: Marks Ranch Inc
   30 Lump Gulch Rd
   Clancy, MT 59634-9781

2. Type of action: Application to Change an Existing Irrigation Water Right

3. Water source name: Clancy Creek/Prickly Pear Creek

4. Location affected by project: S3 T8N R3W, Jefferson County
   S4 T8N R3W, Jefferson County
   S9 T8N R3W, Jefferson County

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

   The Applicant proposes to change the points of diversion (POD) and place of use (POU) of Claim No. 41I 30069692. The historical points of diversion are located on Clancy Creek in the SWNW and the NENW both in Sec 9, T8N, R3W; in Jefferson County. If this change is authorized water will continue down Clancy Creek to Prickly Pear Creek, Prickly Pear Creek will be used as a natural carrier to the proposed points of diversion located in the SENW, SESW, NWSW, and the SENW of Section 4, T8N, R3W, Jefferson County (4 diversions), and the NWNW of Section 3, T8N, R3W, Jefferson County (1 diversion). Water will supplement 29.0 acres of the place of use of Marks Ranch historic water rights from Lump Gulch Creek (41I 89633), and Prickly Pear Creek (41I 89636) located in the W2NWNW of Section 3 and the NENE, SENWNE, W2SENE of Section 4, T8N, R3W, Jefferson County. The proposed place of use will also supplement 8.9 acres located in the E2SWNE, and 8.2 acres in the W2SE both of Section 4, T8N, R3W with Claim No. 41I 118281, which is proposed to be changed in Application to Change No. 41I 30149922, which was submitted concurrently with this change. This application as well as Change No. 41I 30149922 were submitted together as Claim No. 41I 30069692 is a child right of Claim No. 41I 118281. The Claims will be associated because they will share the same proposed POD’s and supplement a total of 46.1 acres.

   The DNRC shall issue a change authorization if an applicant proves the criteria in 85-2-402 MCA are met.

6. Agencies consulted during preparation of the Environmental Assessment:
(include agencies with overlapping jurisdiction)

Montana Department of Environmental Quality (MDEQ)  TMDL Information
Montana Natural Heritage Program  Endangered-Threatened Species
Montana Department of Fish Wildlife & Parks  Dewatered Stream Information

Part II. Environmental Review

1. Environmental Impact Checklist:

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**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 Impact

Clancy Creek and Prickly Pear Creek (from Spring Creek to Lump Gulch, and Lump Gulch to Wylie Drive) is on DFWP list of chronically dewatered streams. There will be no increase in water use or diversion following this proposed change.

**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 Impact

Clancy Creek and Prickly Pear Creek (from Spring Creek to Lump Gulch, and Lump Gulch to Wylie Drive) is listed as Category 4A in DEQ’s water quality assessment. The proposed water right change is unlikely to have any impact on water quality conditions.

**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 Impact

The change involves surface water of Clancy Creek and Prickly Pear Creek as a natural carrier to the proposed points of diversion on Prickly Pear Creek.

**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

For Change Application No. 41I 30149735 (Claim No. 41I 30069692), and associated Change Application No. 41I 330149922 (Claim No. 118281) the Applicant proposes to add 5 POD’s
located in the SENWSE (pump #1), the SESWNE (pump #2), the NWSENE (pump #3), Government Lot L1 (pump #4), and Government Lot L4 (pump #5), all of Section 4, T8N, R3W, Jefferson County. The Applicant proposes a rotating method of diversion using two permanent pumps (pumps 3 & 5), and a portable pump (pumps 1, 2, and 4). The Applicant may eventually utilize individual portable pumps at POD’s 1, 2, and 4, or install permanent pumps at all sites in the future. The Applicant claimed a total flow rate of 597.4 GPM which is the sum of the flow rate from Claim No. 41I 30069692 (227.5 GPM), Supplemental Claim No. 41I 89636 (179.52 GPM), and a proportional split of Claim No. 41I 118281 total flow rate (445.66 GPM x 8.2 acres/19.2 acres= 190.3 GPM). Once Change No. 41I 30149735 and associated Change No. 41I 30069692 are issued, this flow rate can only be used at POD #1 if a 40 HP pump is utilized. The 597.4 GPM flow rate can only be used at POD #1 because it is the only diversion authorized for supplemental Claim No. 41I 89636, the historical headgate utilized for Claim No. 89636 has been replaced with Pump #1.

Under this change and associated Change # 30149922 diversion #’s 2, 3, 4, and 5 can pump a maximum of 417 GPM which is the sum of Claim Nos. 41I 118281 and 41I 30069692.

Supplemental Claim No. 41I 89633 uses diversions from Lump Gulch located in Government Lot L3 and the NESWNE of Section 4, T8N, R3W, Jefferson County

**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 Impact

The Montana Natural Heritage Program identified the following species of concern within the project area: Evening Grosbeak, Hoary Bat, Pileated Woodpecker, Clark’s Nutcracker, Grizzly Bear, Great Gray Owl, Veery, Cassin’s Finch, Bald Eagle, Great Blue Heron, Western Toad, Golden Eagle, Green-tailed Towhee, Brown Creeper, Northern Goshawk, Peregrine Falcon, Ferruginous Hawk, Pacific Wren, Grey-crowned Rosy-Finch, American White Pelican, Westslope Cutthroat Trout. Moving the POD and POU downstream and northeast should not adversely impact any of the species of concern within this project area.

For other potential species of concern, please request the complete species summary.

**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 Impact

Montana Natural Heritage Program identifies the points of diversion as falling within Riparian Lotic Scrub-Shrub Wetland. Moving the POD and POU downstream and northeast should not adversely impact the identified wetlands within this project area.
**Ponds** - For ponds, consult and assess whether existing wildlife, waterfowl, or fisheries resources would be impacted.

*Determination: No Impact*

This project does not involve any ponds.

**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 Impact*

The use of water from Prickly Pear Creek as a natural carrier from Clancy Creek for existing irrigation will not cause degradation of soil quality or stability. The soils at Clancy Creek and Prickly Pear Creek in the project area are not susceptible to saline seep.

**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 Impact*

Existing vegetative cover may be disturbed during installation of the pipeline, water from this project will supplement a POU that has been historically irrigated. The project is located on private property, and the applicants will be responsible for controlling noxious weeds.

**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*

There should be no deterioration of air quality due to increased air pollutants from this proposed project.

**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: N/A*

The project is not located on State or Federal land. This section is not applicable.
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

There should be no significant impacts on other environmental resources of land, energy, or water from this proposed use.

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 Impact

The proposed project is not inconsistent with any locally adopted environmental plans and goals for Jefferson County

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

This project should have no impact on recreational or wilderness activities.

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

Determination: No Impact

There should be no significant impact on human health from the proposed use.

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

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 impact

(b) Local and state tax base and tax revenues? No impact
(c) *Existing land uses?* No impact

(d) *Quantity and distribution of employment?* No impact

(e) *Distribution and density of population and housing?* No impact

(f) *Demands for government services?* No impact

(g) *Industrial and commercial activity?* No impact

(h) *Utilities?* No impact

(i) *Transportation?* No impact

(j) *Safety?* No impact

(k) *Other appropriate social and economic circumstances?* No impact

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

   Secondary Impacts None identified

   Cumulative Impacts None identified

3. **Describe any mitigation/stipulation measures:** The applicant would be required to cease diverting water if a call is made by a senior water user.

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:** The proposed activity is reasonable, and is within accepted practices for irrigation. A no action alternative would mean that the applicant could not move the POD downstream and northeast to the proposed POD and POU.

**PART III. Conclusion**

1. **Preferred Alternative** N/A

2. **Comments and Responses** N/A

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:
This project has little, to no negative environmental impact, therefore there is no substantial change in management related to this water right.

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

Name: Kristeen Wofford
Title: Water Resource Specialist
Date: April 29, 2022