

**Office of Administrative Hearings
Department of Natural Resources and Conservation
1539 Eleventh Avenue
P.O. Box 201601
Helena, MT 59620-1601
Phone: (406) 444-6615
DNRCOAH@mt.gov**

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

IN THE MATTER OF CHANGE APPLICATION NOS. 76H-30159803, 76H-30159804, AND 76H-30159805 BY CITY OF HAMILTON	}	ORDER GRANTING APPLICANT’S MOTION TO AMEND COMPLETION PERIOD AND MOTION FOR SUMMARY JUDGMENT, DENYING ALL OTHER OUTSTANDING MOTIONS, AND FINAL ORDER
--	---	---

On January 23, 2025, I conducted an evidentiary hearing on Applicant City of Hamilton’s (“Applicant”) pending motions to amend the completion periods of the above-captioned change applications (“Applications”) and for summary judgment, both of which relate directly to the only legal issue before me in this contested case proceeding – whether Applicant has proven by a preponderance of the evidence that it has satisfied the beneficial use criterion set forth in § 85-2-402(2)(c). As I explained in my Order of December 23, 2024:

“I view this evidentiary hearing as the parties’ remaining opportunity to ensure that the record contains all relevant information necessary for me to rule on the summary judgment motion as well as to issue a ruling on the merits should I deny the summary judgment motion. I do not currently contemplate holding an additional hearing or to receive further evidence into the record after the conclusion of the evidentiary hearing irrespective of how I rule on the summary judgment motion.”
Order of December 23, 2024, at 3.

I have now evaluated the evidence I admitted into the record at that January 23 hearing in conjunction with the other record evidence. As discussed further below, I am satisfied that Applicant’s motion to amend the completion periods set forth in the Applications (to shorten that deadline from 2070 to 2044) is well taken, and that, even drawing all appropriate evidentiary inferences in favor of Objectors Chris and Tamara Ritchson (“Objectors” or “the Ritchsons”), there

are no genuine issues of material fact that Applicant has proven by the requisite standard that the uses of water proposed in the Applications are for beneficial purposes. Consequently, I hereby **GRANT** Applicant's motion to amend the completion period and also **GRANT** Applicant's motion for summary judgment and consequently overrule Objectors' objections to the Applications. The Montana Department of Natural Resources and Conservation ("DNRC") concluded in its preliminary determinations to grant ("PDGs") the Applications that Applicant had satisfied the remainder of the application criteria set forth in § 85-2-402(2), MCA, and there is nothing in the record that would cause me to disturb those conclusions. I therefore **GRANT** each of the Applications on the terms and conditions set forth in the respective PDGs, which DNRC issued on February 8, 2024, with the exception that the notice of completion deadlines for the Applications are now those as amended by Applicant. This Order must be read in conjunction with those PDGs, which are incorporated herein by reference.

BACKGROUND AND PROCEDURAL HISTORY

On February 8, 2024, DNRC issued PDGs for the Applications. Each of the Applications sought to amend (and enlarge) both the place of use and the period for completion for the underlying water rights,¹ each of those water rights being post-1973 provisional permits, which Applicant has yet to put fully to use. Applicant's underlying goal in the Applications was to harmonize the places of use of all its municipal water rights, and to extend the completion periods of the three permits at issue from their pre-existing deadlines (of either 2030 or 2032) out to the year 2070. PDGs at ¶¶ 3-4, 6.² The Ritchsons objected to the Applications, and on July 19, 2024, DNRC determined that the Ritchsons had alleged valid objections to each of the Applications related exclusively to the criterion of beneficial use, and specifically as to whether Applicant would perfect its proposed water uses within a reasonable period of time or whether the lengthy perfection period and the fact that Applicant had yet to fully develop the volumes of water provided in the underlying provisional permits meant that Applicant was engaged in improper speculation.

1. Water right permit numbers 76H 21-00, 76H 57745-00, and 76H 107696-00. There is some backstory to each of these water rights that is both factually intensive and not relevant to this Order. For reference, however, I note that the PDGs each contain a thumbnail recitation of that history in ¶¶ 4-5.

2. As the numbered paragraphs in each of the PDGs address the same subject matter and are substantially similar in content (other than for permit-specific details), I will cite to the numbered paragraphs in the three PDGs jointly rather than cluttering this order with cumbersome parallel citations, except where a citation to an individual PDG is appropriate.

This contested case proceeding ensued, with DNRC appointing me to serve as the Hearing Examiner.

Consistent with deadlines I set in a series of scheduling orders, the parties conducted discovery and filed various pre-hearing motions. Orally at a pre-hearing conference I conducted on December 19, 2024, and then reduced to writing in an Order of December 23, 2024, I granted Applicant's motions in limine regarding certain topics and categories of evidence Objectors sought to pursue and introduce that I found fell outside the scope of the issues properly before me in this case.³ I then held an evidentiary hearing on January 23, 2025 (after denying, by Order of January 21, 2025, Objectors' motion for continuance which they filed five days before the scheduled hearing date). Applicant appeared at that hearing through counsel of record Ross Miller, as well as City Director of Public Works Donald Ramer, and City Attorney Karen Mahar. Objectors Chris and Tamara Ritchson appeared *pro se*. I received testimony from Applicant's witnesses Mr. Ramer, who I qualified as an expert witness without objection, and Ms. Mahar. The Ritchsons chose not to testify or call any other witnesses of their own but did cross examine Applicant's witnesses. I also admitted into the record exhibits labeled as exhibits A-1 through A-21 and O-9. The Ritchsons also sought to introduce exhibits labeled O-4 through O-8, but I refused them on the ground that these exhibits were precluded by my prior grant of Applicant's motions in limine and that Objectors failed to articulate any other relevance grounds. See Hearing Video at 22:36-24:45.

DISCUSSION

1. Motion to Amend Completion Period

In its motion to amend the Applications' completion period, from the originally proposed

3. As I explained in my Order of December 23, 2024, Objectors' pending motions to enter certain evidence into the record, dated October 23, 2024, and to review a prior DNRC decision involving a separate water right not at issue in this case, dated October 28, 2024, were functionally denied by my grant of Applicant's motions in limine in my Order of December 23, 2024. Order of December 23, 2024, at 3 n.2. But I deferred issuing formal rulings on those motions to afford Objectors the opportunity to argue in favor of the relevance of specific pieces of evidence at the evidentiary hearing. *Id.* Nothing that transpired at the evidentiary hearing has caused me to revisit the validity of those motions, so I now formally DENY them both. My evidentiary rulings as well as my substantive disposition of this matter have also obviated the gravamen of Applicant's motion to supplement the record, which was appended to its motion to amend the completion periods. For the good of the record, I hereby DENY that motion as moot. I also DENY both of Applicant's motions for attorney fees, the first filed on October 31, 2025, in connection with Applicant's opposition to Objectors' motions of October 23 and October 28, 2024, and the second filed on January 21, 2025, in connection with Applicant's opposition to Objectors extension motion of January 17, 2025. While I found none of Objectors' motions at issue in the fee requests to have merit, I do not find Objectors' conduct in connection with any of those motions to have been so egregious as to warrant an award of attorney fees.

date of 2070 to 2044, Applicant explained that the amendment was requested because DNRC had indicated to Applicant, in connection with a separate application for a change in use authorization that is not at issue in this case but that had also sought a 2070 completion deadline,⁴ that a 46-year completion period “is too far out there for a Project Completion Notice due date” and that DNRC proposed a 20-year completion period instead. Motion to Amend, August 16, 2024, at 2 and Exhibit A.⁵ In its motion to amend the Applications, Applicant also explained its view of why it believed the proposed 20-year completion period was reasonable and non-speculative, relying heavily on demographic and water use information contained in a 2020 Water Rights Needs Assessment (“WRNA”) that indicated that the City of Hamilton’s population was anticipated to grow such that the City’s daily water needs would likely exceed the cumulative volume at issue in the Applications by 2030, let alone 2044. *Id.* at 3-5.⁶

As the amended completion period reduced rather than expanded the original completion period proposed in the Applications and approved by DNRC in the PDGs, I saw no immediate legal impediment to granting the motion. However, in their brief in opposition to the motion, Objectors asserted it should be denied on the same ground that underpins their beneficial use objections to the Applications, namely that Applicant’s population and water use needs projections are improperly speculative. Ritchsons’ Objection to Hamilton’s Motion to Amend Project Completion Date, August 26, 2024, at 1-2, 4. I therefore deferred ruling on the motion to amend because I believed that granting it would have had the practical effect of overruling the objection itself, and I wanted to ensure that Objectors had a fair opportunity to build a full record to support their objection. Now that Objectors have had that opportunity, however, I find that they have presented no admissible evidence, nor do I independently see any in the record, to cause me to question the reasonableness of the projections contained in the WRNA.

At the evidentiary hearing of January 23, 2025, City of Hamilton Public Works Director Donald Ramer, who I qualified as an expert witness, testified that in his opinion the population

4. Change Authorization 76H 30159806.

5. In response to DNRC’s feedback, Applicant modified its proposed completion period accordingly. After determining that no valid objections had been filed to its PDG it issued for that change, DNRC issued a final order granting change authorization Change Authorization 76H 30159806 on August 5, 2024, with a completion deadline of December 31, 2044. Motion to Amend, August 16, 2024, at Exhibit B.

6. The Water Rights Needs Assessment was attached to the Applications when Applicant originally filed them with the DNRC and are thus part of the record of this case. But at Applicant’s request, I also separately admitted that document into the record at the evidentiary hearing of January 23, 2025, as Exhibit A-9.

and water use projections in the WNRA were reasonable, that in the five years that have elapsed between the completion of the WNRA and the date of the evidentiary hearing both the population and water use trends projected by the WRNA have been fairly accurate, and that Applicant is likely to need all the water subject to the Applications prior to 2044. Evidentiary Hearing Testimony of Donald Ramer, Hearing Video at 34:13-35:56; 1:13:44-1:14:25. I find this testimony to be credible. Applicant's motion to amend the completion period of the Applications is well taken.

2. Motion for Summary Judgment

"Summary judgment is only appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." *Cremer Rodeo Land & Livestock Co. v. McMullen*, 2023 MT 117, ¶ 11, 412 Mont. 471, 478, 531 P.3d 566, 571 "In evaluating a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences that might be drawn from the offered evidence should be drawn in favor of the party opposing summary judgment." *Hughes v. Lynch*, 2007 MT 177, ¶7, 338 Mont. 214, 164 P.3d 913 (internal citations omitted). However, "Unsupported conclusory or speculative statements do not raise a genuine issue of material fact." *Abraham v. Nelson*, 2002 MT 94, ¶ 26, 309 Mont. 366, 46 P.3d 628 (citations omitted).

The use of water for municipal purposes is explicitly recognized as beneficial under the Montana Water Use Act. § 85-2-102(5), MCA. The Montana Supreme Court has also made clear that municipalities are entitled to assert rights to water "to plan for future needs and use." *Town of Kevin v. Montana Dep't of Nat. Res. & Conservation*, 2024 MT 210, ¶ 30, 418 Mont. 131, 140, 557 P.3d 913, 918, *reh'g denied* (Nov. 7, 2024). With the amended completion period of December 31, 2044, Applicant has reduced its future development window from the Applications' original 46-year period to a 20-year timespan, a length of time DNRC has previously found reasonable for municipal water rights change applications. See, e.g., Change Authorizations 76H 30155253, 76H 30155255, 76H 30155256, and 76H 30153269 (Town of Lolo). Irrespective of the calendar, however, the touchstone of the inquiry remains whether an appropriator's expression of intent (i.e. projection) regarding future use is reasonable. See Order Regarding Volume and Closing Case, Case 40E-69B, at 14 (Mont. Water Ct., Oct. 25, 2018), 2018 WL 7574158 at *9, *aff'd sub nom. United States Army Corps of Engineers*, 2019 MT 174, 396 Mont. 433, 445 P.3d 828.⁷ In this case, therefore, Objectors can only present a genuine issue of material fact on the

7. Because the water rights underlying the Applications are post-1973 provisional permits issued by DNRC whose completion periods have not yet run, rather than pre-1973 water rights claimed in the

beneficial use criterion if they adduce sufficient evidence to give rise to a credible inference that Applicant's future population and water use projections are unreasonable or unduly speculative. My discussion regarding Applicant's motion to amend resolves the summary judgment question as well, namely that Objectors have failed to meet their burden. A grant of summary judgment in favor of Applicant is therefore warranted on the question of whether it has proven the applicable beneficial use criterion by a preponderance of the evidence. While the Ritchsons position is sincerely held, there is simply no *evidence* in the record capable of compelling an alternate conclusion.⁸

3. Final Order

Under Montana law, an applicant for a change in use authorization has the burden of proof to show by a preponderance of the evidence that the applicable criteria of § 85-2-402(2), MCA, are satisfied. *In re Royston*, 249 Mont. 425, 429, 816 P.2d 1054, 1057 (1991).⁹ Consequently, in connection with the Change Applications, Applicant must show that:

- 1) the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued;
- 2) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
- 3) the proposed use of water is a beneficial use; and
- 4) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

Section 85-2-402(2)(a)-(d), MCA. Pursuant to § 85-2-307(2)(a)(ii), MCA, DNRC's PDG of the

Montana General Stream Adjudication (such as were at issue in Water Court case 40E-69B), the presumption of municipal non-abandonment set forth in § 85-2-227(4), MCA, is not implicated by this case. Analytically, however, the same policy considerations that underpin that statute would seem to apply with equal force to good faith efforts to fully develop the volumes of water for municipal use covered by provisional permits. See, e.g., *City of Helena v. Cmty. of Rimini*, 2017 MT 145, ¶¶ 37, 388 Mont. 1, 14, 397 P.3d 1, 11.

8. For this reason, and consistent with the notice I provided the parties regarding my path forward in my Order of December 23, 2024, even if I were to deny the summary judgment motion, I would simply turn around and rule in Applicant's favor on the merits.

9. A change applicant need only demonstrate that the criteria of § 85-2-402(2)(f)-(g), MCA, are satisfied if a valid objection raising those grounds is filed. § 85-2-402(3), MCA. No such valid objections were filed in connection with the Applications.

Change Applications reflects DNRC's preliminary determination that Applicant has proven those criteria by the requisite standard.

The issuance of DNRC's PDGs proposing to grant the three applications does not relieve Applicant of its obligation to prove that the applicable criteria are satisfied. Having established that it has met the necessary statutory criteria for the change authorization in the PDG, however, the Applicant is not required to re-prove the factual elements of its case a second time during the administrative contested case process. *Montana Environmental Information Center v. Westmoreland Rosebud Mining* 2023 MT 224, ¶18, 414 Mont 80, 545 P.3d 623., Rather, an objector bears the burden of proof to show that the PDG was improperly issued. *Id.* ¶21. See also *Montana Environmental Info. C'tr v. Montana Department of Environmental Quality*, 2005 MT 96, ¶ 2, 112 P.3d 964 (2005) ("the party asserting a claim for relief bears the burden of producing evidence in support of that claim"); § 26-1-401, MCA ("[t]he initial burden of producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side"). Thereafter, the burden of producing evidence is on the party who would suffer a finding against him in the absence of further evidence."); § 26-1-402, MCA ("[e]xcept as otherwise provided by law, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting.")).

Because no valid objections were filed as to: 1) any alleged adverse effect the changes proposed in the Applications might have on existing water rights; 2) the adequacy of Applicant's means of diversion; or 3) Applicant's possessory interest in the proposed places of use; and because there is no evidence in the record that would cause me to revisit DNRC's PDGs as to those three criteria, I find that Applicant has met its burden in regard to those three criteria for the reasons set forth in the PDGs, whose relevant terms are incorporated herein by reference. PDGs at ¶¶ 29-41, 46-49. And because the Applications do not involve salvaged water, and because no valid objections were filed alleging adverse effects to either water quality or the ability of a discharge permit holder to comply with effluent limitations, the criteria set forth in § 85-2-402(2)(e)-(g), MCA, are not at issue in this case either. And with my grant of summary judgment in Applicant's favor on the beneficial use criterion, Applicant has now fully satisfied its burden and is entitled to the change authorizations it seeks in the Applications.

FINAL ORDER

Change Application No. 76H-30159803 is GRANTED as proposed in the PDG for that application except that the notice of completion deadline is amended to December 31, 2044.

Change Application No. 76H-30159804 is GRANTED as proposed in the PDG for that application except that the notice of completion deadline is amended to December 31, 2044.

Change Application No. 76H-30159805 is GRANTED as proposed in the PDG for that application except that the notice of completion deadline is amended to December 31, 2044.

NOTICE

This *Final Order* is the Department's final decision in this matter. A Final Order may be appealed by a party who has exhausted all administrative remedies before the Department in accordance with the Montana Administrative Procedure Act (Title 2, Chapter 4, Mont. Code Ann.) by filing a petition in the appropriate court within 30 days after service of the order.

Dated this 7th day of February 2025.

/Original signed by Jay D. Weiner/
Jay D. Weiner, Hearing Examiner
Department of Natural Resources
and Conservation
Office of Administrative Hearings
P.O. Box 201601
Helena, Montana 59620-1601
(406) 444-6615

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing was served upon all parties listed below on this 7th day February 2025 by first class United States mail and/or by electronic mail (e-mail).

ROSS D MILLER - ATTORNEY
MILLER LAW, PLLC
708 LOLO ST
MISSOULA, MT 59802-3501
ross@millerlawmontana.com
Attorney for Applicant City of Hamilton

CHRIS RITCHSON
TAMARA RITCHSON
227 WERTH LN
HAMILTON, MT 59840-3232
castleahh@yahoo.com

Cc:
DONNY RAMER, PUBLIC WORKS DIRECTOR
KAREN MAHAR, CITY ATTORNEY
CITY OF HAMILTON
dpw@cityofhamilton.net
hmltnatty@cityofhamilton.net

/Original signed by Jamie Price/
Jamie Price, OAH Hearings Assistant
(406) 444-6615; jsprice@mt.gov