

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

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<b>APPLICATION TO CHANGE WATER RIGHT NO. 40S 30165293 by RICHLAND COUNTY ) CONSERVATION DISTRICT (NEIL, AMY, ) CONNIE, &amp; RICHARD IVERSON, ) PRODUCER)</b>	<b>DRAFT PRELIMINARY DETERMINATION TO GRANT CHANGE</b>
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On April 3, 2025, Richland County Conservation District (Applicant) submitted Application to Change Water Right No. 40S 30165293 to change Conservation District Water Right 40S 30164956 to the Havre Regional Office of the Department of Natural Resources and Conservation (Department or DNRC). The Department published receipt of the application on its website. A preapplication meeting was held between the Department and the Applicant on December 10, 2024, in which the Applicant designated that the technical analyses for this application would be completed by the Department. The Applicant returned the completed Preapplication Meeting Form on February 3, 2025. The Department delivered the Department - completed technical analyses on March 18, 2025. The Application was determined to be correct and complete as of April 21, 2025. An Environmental Assessment for this application was completed on May 7, 2025.

**INFORMATION**

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

**Application as filed:**

- Form 606-CD, Conservation District Application to Change Water Reservation
- Attachments:
  - Copy of the Conservation District Application from the Producer, Dated September 24, 2024.
  - Signed Copy of the Reserved Water Use Authorization from the Conservation District, Dated November 14, 2024.
  - Copy of the Conservation Public Notice from the Conservation District, Dated October 9, 2024.
  - Affidavit of Publication from the Conservation District, Dated October 9, 2024.
  - Copy of the public notice Certificate of Service from the Conservation District, Dated October 7, 2024.

- 40S 30164956 Conservation District Record General Abstract, Dated March 24, 2025.
- 33.3 AC & 49.5 AC Half Pivots, Hoop House Pump Curve
- 67.7 AC Flood Irrigation Pump Data Sheet – Cornell
- 144.4 AC Half Pivot Pump Data Sheet – Cornell
- 33.3 AC Half Pivot Valley V-Chart
- 49.6 AC Half Pivot Valley V-Chart
- 144.4 AC Large NE Half Pivot Valley V-Chart

Maps:

- Richland County Conservation District Detailed Development Plan Map (Undated)
- Richland County Conservation District Associated Water Rights Map (Undated)
- Richland County Conservation District Operations Diagram (Undated)
- Department- completed technical analyses based on information provided in the Preapplication Checklist, dated March 18<sup>th</sup>, 2025.

Information Received after Application Filed

- None

Information within the Department's Possession/Knowledge

- DNRC Water Rights Database Records
- Lower Missouri River Basin Final Order of the Board of Natural Resources & Conservation, December 30, 1994.
- USGS Gaging Station #06185500 data for the Missouri River near Culbertson (Period of Record: April 1958 – September 2024)

The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, part 4, MCA).

For the purposes of this document, Department or DNRC means the Department of Natural Resources & Conservation; CFS means cubic feet per second; GPM means gallons per minute; AF means acre-feet; AC means acres; and AF/YR means acre-feet per year. CD means Conservation District; and Producer means the applicant who applied to the CD to use a portion of the CD water reservation water right.

## **WATER RIGHTS TO BE CHANGED**

### **FINDINGS OF FACT**

1. The Applicant seeks to add points of diversion and places of use to the Richland County Conservation District water reservation (40S 84500-00) that were not included in the original water reservation public notice.

**Table 1: Water Rights Proposed for Change**

WR TYPE	WR NUMBER	WR PRIORITY DATE	WR SOURCE
Water Reservation	40S 84500-00	7/1/1985 8:00 AM	Missouri River
Conservation District Record	40S 30164956 (RI-037M)	09/24/2024 9:00 AM (internal CD priority date)	Missouri River

2. Provisional Permit 40S 74355-00 shares a point of diversion and place of use with one of the proposed points of diversion (SESESE, Section 34, Lot 10, T28N, R55E, Richland County). The Applicant will withdraw Provisional Permit 40S 74355-00 prior to issuance of this change authorization. Therefore, there will be no supplemental relationship or overlapping places of use.

## **CHANGE PROPOSAL**

### **FINDINGS OF FACT**

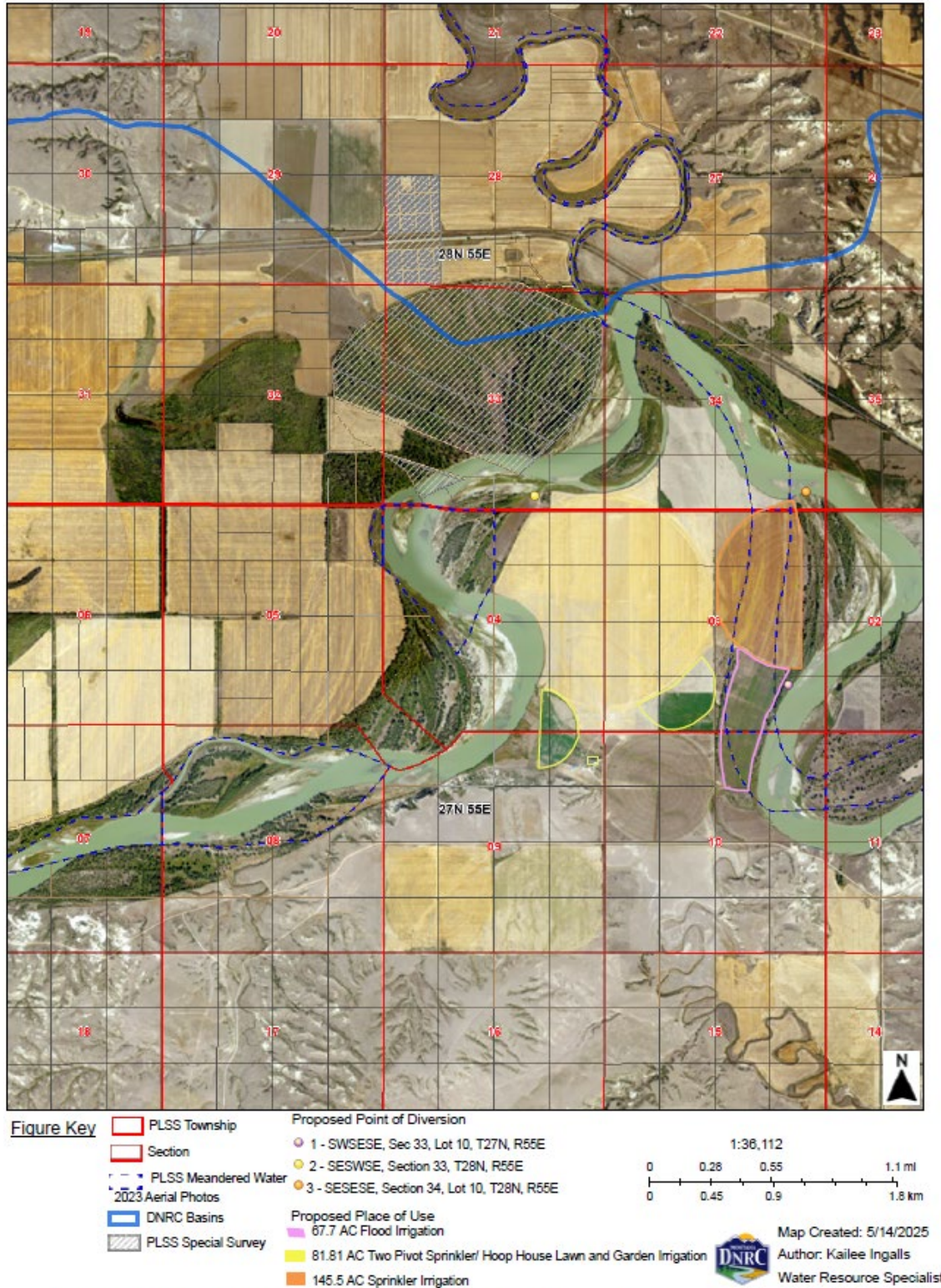
3. The Applicant proposes to divert water from the Missouri River, by means of three pumps, from April 1 to November 1 at 8.7 CFS up to 590.25 AF. The water will be diverted from three pumps located in the following locations: Point of Diversion 1: SWSESE, Section 03, Lot 10, T27N, R55E, Point of Diversion 2: SESWSE, Section 33, T28N, R55E, and Point of Diversion 3: SESESE, Section 34, Lot 10, T28N, R55E, Richland County. Point of Diversion 1 is for Flood Irrigation, Point of Diversion 2 is for Sprinkler Irrigation as well as Lawn and Garden Irrigation, and Point of Diversion 3 is for Sprinkler Irrigation use. The period of use is April 1 to November 1. A total of 295.01 AC will be irrigated. The proposed place of use is located in the following locations (Table 2):

<b>Table 2: Proposed Place of Use</b>							
Irrigation Type	POD ID #	Total AC	QTR	SECTION	TWN	RGE	COUNTY
Sprinkler	3	2.6	S2S2SE	34	28N	55E	RICHLAND
	3	48.2	N2NE	3	27N	55E	RICHLAND
	3	58.8	S2NE	3	27N	55E	RICHLAND
Sprinkler	3	35.9	SE	3	27N	55E	RICHLAND
Flood	1	44.4					
Flood	1	23.3	W2NE	10	27N	55E	RICHLAND
Sprinkler	2	8.2	S2NESW	3	27N	55E	RICHLAND
	2	40.3	S2SW	3	27N	55E	RICHLAND
	2	18.4	S2SE	4	27N	55E	RICHLAND
	2	14.9	N2NE	9	27N	55E	RICHLAND
Lawn and Garden	2	0.01	E2E2NENE	9	27N	55E	RICHLAND

4. According to the 2025 Water Reservation Record, the Richland County CD had 69.75 CFS and 15,208.40 AF remaining in their water reservation prior to the submission of this application.
5. The CD granted the producer (Neil, Amy, Connie, & Richard Iverson) the right to use a portion of the CD water reservation on November 14, 2024. The CD granted approval subject to the installation of a water measuring device. As such, the DNRC will add the following conditions:

**WATER MEASUREMENT-MEETS CONSERVATION DISTRICT REQUIREMENT**

THIS RIGHT IS SUBJECT TO THE TYPE OF WATER USE MEASURING DEVICE OR WATER USE ESTIMATION TECHNIQUE REQUIRED BY THE CONSERVATION DISTRICT. THE APPROPRIATOR SHALL KEEP WRITTEN RECORDS OF THE FLOW RATE AND VOLUME OF WATER USED. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE WATER USER SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.



**Figure 1: 2023 Aerial Map of Proposed Point of Diversion and Place of Use for CD Change Application No. 40S 30165293**

## **CHANGE CRITERIA**

6. The Department is authorized to approve a change if the Applicant meets its burden to prove the applicable § 85-2-402, MCA, criteria by a preponderance of the evidence. *Matter of Royston*, 249 Mont. 425, 429, 816 P.2d 1054, 1057 (1991); *Hohenlohe v. DNRC*, 2010 MT 203, ¶¶ 33, 35, and 75, 357 Mont. 438, 240 P.3d 628 (an Applicant's burden to prove change criteria by a preponderance of evidence is "more probable than not."); *Town of Manhattan v. DNRC*, 2012 MT 81, ¶ 8, 364 Mont. 450, 276 P.3d 920. Under this Preliminary Determination, the relevant change criteria in § 85-2-402(2), MCA, are:

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) 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 under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The Applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the Applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

7. The evaluation of a proposed change in appropriation does not adjudicate the underlying right(s). The Department's change process only addresses the water right holder's ability to make a different use of that existing right. *E.g.*, *Hohenlohe*, ¶¶ 29-31; *Town of Manhattan*, ¶ 8; *In the Matter of Application to Change Appropriation Water Right No. 41F-31227 by T-L Irrigation Company* (DNRC Final Order 1991).

## **WATER RESERVATION CRITERIA**

### **FINDINGS OF FACT**

8. An authorization for change is required in § 85-2-316(12), MCA, because the producer's proposed point of diversion and place of use are outside the project areas identified in the original Water Reservation application's public notice.
9. The purpose for the Water Reservation was established by the Board of Natural Resources and Conservation and the conclusions are contained in the Lower Missouri River Basin Final Order dated December 30, 1994.
10. The need for the Water Reservation was established by the Board of Natural Resources and Conservation and the conclusions are contained in the Lower Missouri River Basin Final Order dated December 30, 1994.
11. The amount of water necessary for the purposes of the Water Reservation was established by the Board of Natural Resources and Conservation and the conclusions are contained in the Lower Missouri River Basin Final Order dated December 30, 1994.
12. That the water reservation was in the public interest was established by the Board of Natural Resources and the conclusions are contained in the Lower Missouri River Basin Final Order dated December 30, 1994.
13. This change authorization proposal is consistent with the purpose, need, amount, and public interest established by the Board of Natural Resources.

## **HISTORICAL USE AND ADVERSE EFFECT**

### **FINDINGS OF FACT - Historical Use**

14. The Board of Natural Resources and Conservation granted the Richland County Conservation District a water reservation (40S 84500-00) for 186.9 CFS up to 25,349 AF for use on 11,141 acres for future irrigation development out of the Missouri River. The water reservation was granted in the Lower Missouri River Basin Final Order dated December 30, 1994, with a priority date of July 1, 1985.
15. This application is to change a portion of the water reservation not yet put to use and therefore no historical use for the amount of water being changed exists.



## **ADVERSE EFFECT**

### **FINDINGS OF FACT**

16. Richland County CD is proposing to add Sprinkler, Flood, and Lawn and Garden Irrigation to its water reservation. The proposed period of diversion and period of use is April 1 to November 1.
17. Water is physically and legally available in the amount the Applicant seeks to appropriate under the Richland County CD water reservation.
18. The CD published notice of this proposed project on October 9, 2024, in the Roundup and set a November 12, 2024, deadline for objections.
19. The CD sent individual public notices to water users downstream of the proposed point of diversion and to the entities on the DNRC standardized list of entities to notice.
20. No objections were received by the CD to this project.
21. The Richland County CD requires the water user to keep written records of the flow rate and volume of all water diverted and to submit the report to the Conservation District annually by November 15. The method of water flow measurement will be by recording electricity reports (run time) and system information from the pump provider.
22. The Applicant is seeking to divert 590.25 AF to irrigate 295.01 AC. Consumptive volume was calculated by assigning a field application of 2 AF/AC, as authorized by the Richland County CD for 295.01 AC. Lawn and Garden use was calculated by rounding the hoop house dimensions to the nearest 1/10<sup>th</sup> AC and multiplying by 2.5AF.
23. A full-service irrigation Consumptive Volume was calculated by the Department using the Culbertson, MT weather station. This station was chosen because it is closest to the proposed irrigated acres. Using a management factor of 74.6% per ARM 36.12.1902. Sprinkler Irrigation will consume  $23.73 \text{ in} / 12 \text{ in/ft} \times 74.6 \times 227.3 \text{ AC} = 335.32 \text{ AF}$  per year. Adding 10% of the diverted volume (479.02 AF) as irrecoverable losses from pivot operation, the total consumptive use is  $335.32 + 47.9 \text{ AF} = 383.22 \text{ AF}$ . Flood Irrigation will consume  $20.84 \text{ in} / 12 \text{ in/ft} \times 74.6 \times 67.7 \text{ AC} = 87.71 \text{ AF}$  per year. Adding 5% of the diverted volume (7.31 AF) as irrecoverable losses from flood operation, the total consumptive use is  $87.71 \text{ AF} + 7.31 \text{ AF} = 95.02 \text{ AF}$ . The total Consumed Volume for both methods is 478.24 AF. Lawn and Garden Irrigation was calculated based upon the standard in ARM 36.12.115.:  $20' \times 30' = 0.0137 \text{ AC} \times 2.5 \text{ AF/AC} = .03 \text{ AF}$ .
24. The Applicants proposed diverted volume is 590.25 AF and the Department diverted volume necessary for a full-service irrigation is 625.23 AF.
25. There is no historical return flow because the water has not yet been put to use.



26. This application represents a non-perfected portion of the Richland County CD water reservation. Therefore, water rights both senior and junior to Water Reservation No. 40S 84500-00 must be considered in order to determine whether this proposed application would have adverse effect. USGS Gaging Station #06185500, Missouri River near Culbertson, was used to calculate flow rate and volume physically available during the proposed period of diversion. The Culbertson gaging station is approximately 11 river miles downstream of the POD and has a period of record from April 1958 to September 2024. Water physically available was calculated by taking the median of the mean monthly flows (CFS) and adding in all water rights between the requested POD and the gaging station. Table 3 lists the existing water rights between the POD and the gaging station:

<b>Table 3: Existing Water Rights between Uppermost Proposed POD and Gaging Station</b>				
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>WR NUMBER</b>	<b>PERIOD OF DIVERSION</b>	<b>WR TYPE</b>	<b>FLOW RATE (CFS)</b>	<b>VOLUME (AF)</b>
40S 184965 00*	01/01 to 12/31	Statement of Claim	0.1	7.1
40S 30142616*	01/01 to 12/31	Statement of Claim	0.1	1.5
40S 30073870	01/01 to 12/31	Reserved Claim	0.0	0.6
40S 30142619*	01/01 to 12/31	Statement of Claim	0.1	0.5
40S 1549 00	01/01 to 12/31	Statement of Claim	1.8	257.4
40S 30073871	01/01 to 12/31	Reserved Claim	0.0	304.0
40S 142790 00	01/01 to 12/31	Statement of Claim	0.5	135.0
40S 30142621*	01/01 to 12/31	Statement of Claim	0.1	0.03
40S 1508 00**	03/01 to 12/04	Statement of Claim	3.8	348.0
40S 30046592**	03/01 to 12/04	Statement of Claim	7.4	685.0
40S 101303 00**	04/01 to 09/30	Statement of Claim	1.2	80.0
40S 30150186	04/01 to 10/15	Conservation District Record	0.8	69.0
40S 30012791	04/01 to 10/15	Conservation District Record	6.0	413.6
40S 30027588	04/01 to 10/15	Conservation District Record	3.9	272.8
40S 30044041	04/01 to 10/15	Conservation District Record	1.8	176.9
40S 30030883	04/01 to 10/31	Provisional Permit	6.2	0.0
40S 178507 00**	04/01 to 10/31	Statement of Claim	1.1	70.3
40S 163084 00**	04/01 to 10/31	Statement of Claim	1.9	103.5
40S 30030881	04/01 to 10/31	Provisional Permit	2.7	0.0
40S 78203 00	04/01 to 10/31	Provisional Permit	4.5	1202.0
40S 178504 00**	04/01 to 11/01	Statement of Claim	1.8	400.0
40S 101074 00	04/15 to 10/15	Conservation District Record	5.8	927.0
40S 106990 00	04/15 to 10/15	Conservation District Record	4.2	636.0
40S 103671 00	04/15 to 10/15	Conservation District Record	2.5	360.0
40S 42905 00**	04/15 to 10/19	Statement of Claim	1.0	67.5
40S 42906 00**	04/15 to 10/19	Statement of Claim	11.1	237.5
40S 96357 00	04/15 to 10/31	Provisional Permit	5.6	795.0
40S 11957 00**	05/01 to 09/19	Statement of Claim	1.0	100.0
40S 5134 00**	05/01 to 09/30	Statement of Claim	1.4	150.0
40S 101292 00**	05/01 to 10/19	Statement of Claim	6.2	1737.5
40S 17844 00	06/01 to 08/15	Provisional Permit	1.3	216.0
40S 30022924	06/01 to 09/01	Provisional Permit	1.3	232.0

40S 4947 00	06/01 to 09/01	Provisional Permit	1.9	350.0
40S 30022935	06/01 to 09/01	Provisional Permit	1.3	240.0

\* Flow rate and volume assigned per department standards

\*\*Volume calculated per department standard water use for irrigation in climatic area 2 (2.5AF/AC)

**Table 4: Physical Availability of Flow Rate and Volume**

A	B	C	D	E	F	G
Month	Median of the Mean Monthly Flow at Gage 06185500 (CFS)	Median of the Mean Monthly Volume at Gage 06185500 (AF)*	Existing Rights from Gage 06185500 to POD (CFS)	Existing Rights from the POD to Gage 06185500 (AF)	Physically Available Water at POD (CFS)	Physically Available Water at POD (AF)
April	8,000	475,200	75.80	1,245.78	8,075.80	476,445.78
May	8,656	531,305	84.50	1,573.72	8,740.50	532,879.00
June	9,547	567,092	90.30	1,744.99	9,637.30	568,836.79
July	9,371	575,192	90.30	1,744.99	9,461.30	576,936.97
August	8,973	550,763	90.30	1,744.99	9,063.30	552,507.73
September	7,836	465,458	88.90	1,709.35	7,924.90	467,167.75
October	6,976	428,187	80.80	1,519.27	7,056.80	429,706.15

\*Median of the mean monthly volume was calculated by multiplying the median of the mean monthly flow rates in CFS by the number of days in the month by 1.98 AF/CFS/day.

27. The Department determined that the area of potential impact for this application is from the uppermost POD approximately 11 river miles downstream to the Culbertson gaging station. Table 5 lists the existing downstream users within the area of potential impact:

**Table 5: Existing Downstream Users in the Area of Impact**

A	B	C	D	E
WR NUMBER	PERIOD OF DIVERSION	WR TYPE	FLOW RATE (CFS)	VOLUME (AF)
MCA 85-20-201	01/01 to 12/31	Reserved Claim	See Table 6	See Table 6
40S 30017671	01/01 to 12/31	Water Reservation	5178	3,748,500
40S 184965 00*	01/01 to 12/31	Statement of Claim	0.1	7.1
40S 30142616*	01/01 to 12/31	Statement of Claim	0.1	1.5
40S 30073870	01/01 to 12/31	Reserved Claim	0.0	0.6
40S 30142619*	01/01 to 12/31	Statement of Claim	0.1	0.5
40S 1549 00	01/01 to 12/31	Statement of Claim	1.8	257.4
40S 30073871	01/01 to 12/31	Reserved Claim	0.0	304.0
40S 142790 00	01/01 to 12/31	Statement of Claim	0.5	135.0
40S 30142621*	01/01 to 12/31	Statement of Claim	0.1	0.03
40S 1508 00**	03/01 to 12/04	Statement of Claim	3.8	348.0
40S 30046592**	03/01 to 12/04	Statement of Claim	7.4	685.0
40S 101303 00**	04/01 to 09/30	Statement of Claim	1.2	80.0
40S 30150186	04/01 to 10/15	Conservation District Record	0.8	69.0
40S 30012791	04/01 to 10/15	Conservation District Record	6.0	413.6
40S 30027588	04/01 to 10/15	Conservation District Record	3.9	272.8
40S 30044041	04/01 to 10/15	Conservation District Record	1.8	176.9
40S 30030883	04/01 to 10/31	Provisional Permit	6.2	0.0
40S 178507 00**	04/01 to 10/31	Statement of Claim	1.1	70.3

40S 163084 00**	04/01 to 10/31	Statement of Claim	1.9	103.5
40S 30030881	04/01 to 10/31	Provisional Permit	2.7	0.0
40S 78203 00	04/01 to 10/31	Provisional Permit	4.5	1202.0
40S 178504 00**	04/01 to 11/01	Statement of Claim	1.8	400.0
40S 101074 00	04/15 to 10/15	Conservation District Record	5.8	927.0
40S 106990 00	04/15 to 10/15	Conservation District Record	4.2	636.0
40S 103671 00	04/15 to 10/15	Conservation District Record	2.5	360.0
40S 42905 00**	04/15 to 10/19	Statement of Claim	1.0	67.5
40S 42906 00**	04/15 to 10/19	Statement of Claim	11.1	237.5
40S 96357 00	04/15 to 10/31	Provisional Permit	5.6	795.0
40S 11957 00**	05/01 to 09/19	Statement of Claim	1.0	100.0
40S 5134 00**	05/01 to 09/30	Statement of Claim	1.4	150.0
40S 101292 00**	05/01 to 10/19	Statement of Claim	6.2	1737.5
40S 17844 00	06/01 to 08/15	Provisional Permit	1.3	216.0
40S 30022924	06/01 to 09/01	Provisional Permit	1.3	232.0
40S 4947 00	06/01 to 09/01	Provisional Permit	1.9	350.0
40S 30022935	06/01 to 09/01	Provisional Permit	1.3	240.0

\* Flow rate and volume assigned per department standards

\*\*Volume calculated per department standard water use for irrigation in climatic area 2 (2.5AF/AC)

<b>Table 6: Fort Peck-Montana Compact, MCA §85-20-201, Article III F.1 Volumes</b>		
<b>Month</b>	<b>Fort Peck Tribal Right (AF)</b>	<b>Fort Peck Tribal Right (CFS)**</b>
April	50,000	840
May	105,000	1708
June	145,000	2437
July	215,000	3497
August	180,000	2927
September	105,000	1765
October	50,000	813

\*\* Flow rate in CFS is calculated by dividing monthly volume in AF by the number of days in the month by 1.98 AF/day.

28. Water legally available was calculated by subtracting the existing legal demands, the MT Department of Fish, Wildlife and Parks (FWP) instream flow reservation (Water Reservation 40S 30017671), and the Fort Peck Tribal right (assuming full development of Fort Peck-Montana Compact, MCA §85-20-201, Article III F.1) from the flow and volume physically available within the identified area of potential impact. Tables 7 and 8 summarize the legal availability of flow and volume on the source within the area of potential impact. The monthly volume of downstream water rights was calculated by dividing the claimed volumes by the number of months in the claimed period of use.

Table 7: Legal Availability of Flow Rate					
A	B	C	D	E	F
Month	Flow Rate Physically Available (CFS)	Existing Legal Demands (CFS)	FWP Instream Flow Reservation (CFS)	Fort Peck Tribal Right (CFS)**	Flow Rate Legally Available Water (CFS)
April	8,075.8	75.8	5,178.00	840	1982.00
May	8,740.5	84.5	5,178.00	1708	1770.00
June	9,637.3	90.3	5,178.00	2437	1932.00
July	9,461.3	90.3	5,178.00	3497	696.00
August	9,063.3	90.3	5,178.00	2927	868.00
September	7,924.9	88.9	5,178.00	1765	893.00
October	7,056.8	80.8	5,178.00	813	985.00

\*\* Flow rate in CFS is calculated by dividing monthly volume in AF by the number of days in the month by 1.98 AF/day.

Table 8: Legal Availability of Volume					
A	B	C	D	E	F
Month	Volume Physically Available (AF)	Existing Legal Demands (AF)	FWP Instream Flow Reservation (AF)	Fort Peck Tribal Right (AF)	Volume Legally Available Water (AF)
April	476,445.78	1,245.78	307,573.20	50,000	117,626.8
May	532,879.00	1,573.72	317,825.64	105,000	108,479.6
June	568,836.79	1,744.99	307,573.20	145,000	114,518.6
July	576,936.97	1,744.99	317,825.64	215,000	42,366.3
August	552,507.73	1,744.99	317,825.64	180,000	52,937.1
September	467,167.75	1,709.35	307,573.20	105,000	52,885.2
October	429,706.15	1,519.27	317,825.64	50,000	60,361.2

29. The least amount of flow legally available in any month during the period of diversion is 696 CFS in July and the Applicant is applying for 8.7 CFS. The least amount of volume legally available in any month during the period of diversion is 42,366.3 AF in July and the Applicant is requesting 220 AF for the entire annual use. The Department finds the proposed change will not have an adverse effect on other users.

## **BENEFICIAL USE**

### **FINDINGS OF FACT**

30. This change will allow the Richland County Conservation District to authorize the use of a portion of their water reservation. The Conservation District must authorize projects to fulfill the purpose of the reservation.

31. The Applicant proposes to use water for Flood, Sprinkler, and Lawn and Garden Irrigation on 295.01 AC. Irrigation is recognized as beneficial use under the Montana Water Use Act. § 85-2-102 (5), MCA. Applicant proposes to use 8.7 CFS up to 590.25 AF. The volume and flow rate were agreed upon by the Conservation District and the producer. The Department finds the proposed use of water to be beneficial.

## **ADEQUATE DIVERSION**

### **FINDINGS OF FACT**

32. The water will be diverted under Richland County's water reservation from the Missouri River at one existing and two new points of diversion.
33. The first Point of Diversion is located in the SWSESE, Section 03, Lot 10, T27N, R55E, Richland County. The diversion method is a Cornell 6YB - 1800 rpm pump. A 6.7 CFS flow rate is being proposed. This pump will convey water from the into 12" gated pipe for the purpose of Flood Irrigation. Gates are to be opened and closed manually, one section at a time, based on the location where water is needed. The flood irrigation is scheduled for eight days on and a couple weeks off based on crop demands.
34. The second Point of Diversion is located in the SESWSE, Section 33, T28N, R55E, Richland County. The diversion method is a Cornell 5HH – 1800 rpm pump and is shared with an existing system utilized by water right Nos.: Provisional Permit No. 40S 4947 00, Provisional Permit No. 40S 30022924, Conservation District Record No. 40S 30027588, and Conservation District Record 40S 30012791. No new flow rate is being proposed. A variable flow drive panel (VFD) is used to manage water flow and pressure based on system demand. The pump will convey water into 12" pipe extending to the center of an existing center pivot the N2 of the pivot is served by Provisional Permit No. 40S 30022924 and Conservation District Record No. 40S 30027588 while the S2 is served by Provisional Permit No. 40S 4947 00 and Conservation District Record 40S 30012791. From there, a 10" pipe will then run south. The 10" pipe will then split off and convey water in three separate directions. A section of 2" HDPE pipe will run south to the Hoop House (20'x 30'). The hoop house water can be turned on and off at the place of use as needed for gardening purposes. A section of 8" pipe will run west to the 33.3 AC Agri Industries Sprinkler Pivot and section of 8" pipe will run east to the 49.6 AC Agri Industries Sprinkler Pivot. The east section of pipe will then extend further south to an existing pivot (also served by Provisional Permit No. 40S 4947-00 and Conservation District Record No. 40S 30012791). The proposed 33.3 AC and 49.9 AC half pivots will

operate one at a time while also irrigating the existing large center pivot (served by Provisional Permit No. 40S 4947 00, Provisional Permit No. 40S 30022924, Conservation District Record No. 40S 30027588, and Conservation District Record 40S 30012791.)

35. The third Point of Diversion is located in the SESESE, Section 34, Lot 10, T28N, R55E, Richland County. The diversion method is a Cornell 4RB - 1800 rpm pump. A 2 CFS flow rate is being proposed. This pump will convey water into 10" aluminum pipe extending to the center of a 144.4 AC Agri Industries Sprinkler Pivot. This pivot is run independently based on water and crop needs.
36. The diversion and conveyance are typical of those used for sprinkler and flood irrigation on this source in this region.
37. Measurements will be taken by recording electricity reports (run time) and system information from the pump provider to measure the total amount of water diverted from the Missouri River.
38. The Department finds the means of diversion and conveyance to the places of use to be adequate.

## **POSSESSORY INTEREST**

### **FINDINGS OF FACT**

39. The submission of the Conservation District Application for Reserved Water Use Authorization (Form 101) was signed by the producer, Neil, Amy, Connie, & Richard Iverson, and implies written consent. The affidavit on the Conservation District Reserved Water Use Authorization (Form 102) was signed by Shawn Conradsen, Conservation District Chairman and Julie Goss, District Administrator.

## **CONCLUSIONS OF LAW**

### **WATER RESERVATION CRITERIA**

40. The Applicant has proven by a preponderance of the evidence that the purpose, need, amount, and public interest are consistent with the 1978 Order of Board of Natural Resources Establishing Water Reservations. §§ 85-2-316(12), 85-2-402(2)(d), MCA. (FOF Nos. 8-13)

### **HISTORICAL USE AND ADVERSE EFFECT**

41. Montana's change statute codifies the fundamental principles of the Prior Appropriation Doctrine. Sections 85-2-401 and -402(1)(a), MCA, authorize changes to existing water

rights, permits, and water reservations subject to the fundamental tenet of Montana water law that one may change only that to which he or she has the right based upon beneficial use. A change to an existing water right may not expand the consumptive use of the underlying right or remove the well-established limit of the appropriator's right to water actually taken and beneficially used. An increase in consumptive use constitutes a new appropriation and is subject to the new water use permit requirements of the MWUA. *McDonald v. State*, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986) (beneficial use constitutes the basis, measure, and limit of a water right); *Featherman v. Hennessy*, 43 Mont. 310, 316-17, 115 P. 983, 986 (1911) (increased consumption associated with expanded use of underlying right amounted to new appropriation rather than change in use); *Quigley v. McIntosh*, 110 Mont. 495, 103 P.2d 1067, 1072-74 (1940) (appropriator may not expand a water right through the guise of a change – expanded use constitutes a new use with a new priority date junior to intervening water uses); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924) (“quantity of water which may be claimed lawfully under a prior appropriation is limited to that quantity within the amount claimed which the appropriator has needed, and which within a reasonable time he has actually and economically applied to a beneficial use. . . . it may be said that the principle of beneficial use is the one of paramount importance . . . The appropriator does not own the water. He has a right of ownership in its use only”); *Town of Manhattan*, ¶ 10 (an appropriator's right only attaches to the amount of water actually taken and beneficially applied).<sup>1</sup>

42. Sections 85-2-401(1) and -402(2)(a), MCA, codify the prior appropriation principles that Montana appropriators have a vested right to maintain surface and ground water conditions substantially as they existed at the time of their appropriation; subsequent appropriators may insist that prior appropriators confine their use to what was actually appropriated or necessary for their originally intended purpose of use; and, an appropriator may not change or alter its use in a manner that adversely affects another water user. *Spokane Ranch & Water Co. v. Beatty*, 37 Mont. 342, 96 P. 727, 731 (1908); *Quigley*, 110 Mont. at 505-11, 103 P.2d at 1072-74; *Matter of Royston*, 249 Mont. at 429, 816 P.2d at

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<sup>1</sup> DNRC decisions are available at: <https://dnrc.mt.gov/Directors-Office/HearingOrders>



1057; *Hohenlohe*, ¶¶ 43-45.<sup>2</sup>

43. The cornerstone of evaluating potential adverse effect to other appropriators is the determination of the “historic use” of the water right being changed. *Town of Manhattan*, ¶10 (recognizing that the Department’s obligation to ensure that change will not adversely affect other water rights requires analysis of the actual historic amount, pattern, and means of water use). A change Applicant must prove the extent and pattern of use for the underlying right proposed for change through evidence of the historic diverted amount, consumed amount, place of use, pattern of use, and return flow because a statement of claim, permit, or decree may not include the beneficial use information necessary to evaluate the amount of water available for change or potential for adverse effect.<sup>3</sup> A comparative analysis of the historic use of the water right to the proposed change in use is necessary to prove the change will not result in expansion of the original right, or adversely affect water users who are entitled to rely upon maintenance of conditions on the source of supply for their water rights. *Quigley*, 103 P.2d at 1072-75 (it is necessary to ascertain historic use of a decreed water right to determine whether a change in use expands the underlying right to the detriment of other water user because a decree only provides a limited description of the right); *Royston*, 249 Mont. at 431-32, 816 P.2d at 1059-60 (record could not sustain a conclusion of no adverse effect because the Applicant failed to provide the Department with evidence of the historic diverted volume, consumption, and return flow); *Hohenlohe*, ¶ 44-45; *Town of Manhattan v. DNRC*, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, *Order Re Petition for Judicial Review*, Pgs. 11-12 (proof of historic use is required even when the right has been decreed because the decreed flow rate or volume establishes the maximum appropriation that may be diverted, and may exceed the historical pattern of use, amount diverted or amount consumed through actual use); Matter of Application For Beneficial Water Use Permit By

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<sup>2</sup> See also *Holmstrom Land Co., Inc., v. Newlan Creek Water District*, 185 Mont. 409, 605 P.2d 1060 (1979); *Lokowich v. Helena*, 46 Mont. 575, 129 P. 1063 (1913); *Thompson v. Harvey*, 164 Mont. 133, 519 P.2d 963 (1974) (plaintiff could not change his diversion to a point upstream of the defendants because of the injury resulting to the defendants); *McIntosh v. Graveley*, 159 Mont. 72, 495 P.2d 186 (1972) (appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909) (successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes); and, *Gassett v. Noyes*, 18 Mont. 216, 44 P. 959 (1896) (change in place of use was unlawful where reduced the amount of water in the source of supply available which was subject to plaintiff’s subsequent right).

<sup>3</sup>A claim only constitutes *prima facie* evidence for the purposes of the adjudication under § 85-2-221, MCA. The claim does not constitute *prima facie* evidence of historical use in a change proceeding under § 85-2-402, MCA. For example, most water rights decreed for irrigation are not decreed with a volume and provide limited evidence of actual historic beneficial use. Section 85-2-234, MCA

City of Bozeman, *Memorandum*, Pgs. 8-22 (Adopted by DNRC *Final Order* January 9, 1985)(evidence of historic use must be compared to the proposed change in use to give effect to the implied limitations read into every decreed right that an appropriator has no right to expand his appropriation or change his use to the detriment of juniors).<sup>4</sup>

44. An Applicant must also analyze the extent to which a proposed change may alter historic return flows for purposes of establishing that the proposed change will not result in adverse effect. The requisite return flow analysis reflects the fundamental tenant of Montana water law that once water leaves the control of the original appropriator, the original appropriator has no right to its use and the water is subject to appropriation by others. *E.g.*, *Hohenlohe*, ¶ 44; *Rock Creek Ditch & Flume Co. v. Miller*, 93 Mont. 248, 17 P.2d 1074, 1077 (1933); *Newton v. Weiler*, 87 Mont. 164, 286 P. 133 (1930); *Popham v. Holloron*, 84 Mont. 442, 275 P. 1099, 1102 (1929); *Galiger v. McNulty*, 80 Mont. 339, 260 P. 401 (1927); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909); *Spokane Ranch & Water Co.*, 37 Mont. at 351-52, 96 P. at 731; *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185; ARM 36.12.101(56) (Return flow - that part of a diverted flow which is not consumed by the appropriator and returns underground to its original source or another source of water

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<sup>4</sup> Other western states likewise rely upon the doctrine of historic use as a critical component in evaluating changes in appropriation rights for expansion and adverse effect: Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy District, 717 P.2d 955, 959 (Colo. 1986)("[O]nce an appropriator exercises his or her privilege to change a water right ... the appropriator runs a real risk of requantification of the water right based on actual historical consumptive use. In such a change proceeding a junior water right ... which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historic use of the right."); Santa Fe Trail Ranches Property Owners Ass'n v. Simpson, 990 P.2d 46, 55 -57 (Colo., 1999); Farmers Reservoir and Irr. Co. v. City of Golden, 44 P.3d 241, 245 (Colo. 2002)("We [Colorado Supreme Court] have stated time and again that the need for security and predictability in the prior appropriation system dictates that holders of vested water rights are entitled to the continuation of stream conditions as they existed at the time they first made their appropriation"); Application for Water Rights in Rio Grande County, 53 P.3d 1165, 1170 (Colo. 2002); Wyo. Stat. § 41-3-104 (When an owner of a water right wishes to change a water right ... he shall file a petition requesting permission to make such a change .... The change ... may be allowed provided that the quantity of water transferred ... shall not exceed the amount of water historically diverted under the existing use, nor increase the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators.); Basin Elec. Power Co-op. v. State Bd. of Control, 578 P.2d 557, 564 -566 (Wyo, 1978) (a water right holder may not effect a change of use transferring more water than he had historically consumptively used; regardless of the lack of injury to other appropriators, the amount of water historically diverted under the existing use, the historic rate of diversion under the existing use, the historic amount consumptively used under the existing use, and the historic amount of return flow must be considered.)

- is not part of a water right and is subject to appropriation by subsequent water users).<sup>5</sup>

45. Although the level of analysis may vary, analysis of the extent to which a proposed change may alter the amount, location, or timing return flows is critical in order to prove that the proposed change will not adversely affect other appropriators who rely on those return flows as part of the source of supply for their water rights. *Royston*, 249 Mont. at 431, 816 P.2d at 1059-60; *Hohenlohe*, at ¶¶ 45-46 and 55-6; *Spokane Ranch & Water Co.*, 37 Mont. at 351-52, 96 P. at 731.

46. In *Royston*, the Montana Supreme Court confirmed that an Applicant is required to prove lack of adverse effect through comparison of the proposed change to the historic use, historic consumption, and historic return flows of the original right. 249 Mont. at 431, 816 P.2d at 1059-60. More recently, the Montana Supreme Court explained the relationship between the fundamental principles of historic beneficial use, return flow, and the rights of subsequent appropriators as they relate to the adverse effect analysis in a change proceeding in the following manner:

The question of adverse effect under §§ 85-2-402(2) and -408(3), MCA, implicates return flows. A change in the amount of return flow, or to the hydrogeologic pattern of return flow, has the potential to affect adversely downstream water rights. There consequently exists an inextricable link between the “amount historically consumed” and the water that re-enters the stream as return flow. . . .

An appropriator historically has been entitled to the greatest quantity of water he can put to use. The requirement that the use be both beneficial and reasonable, however, proscribes this tenet. This limitation springs from a fundamental tenet of western water law—that an appropriator has a right only to that amount of water historically put to beneficial use—developed in concert with the rationale that each subsequent appropriator “is entitled to have the water flow in the same manner as when he located,” and the appropriator may insist that prior appropriators do not affect adversely his rights.

This fundamental rule of Montana water law has dictated the Department’s determinations in numerous prior change proceedings. The Department claims that historic consumptive use, as quantified in part by return flow analysis, represents a key element of proving historic beneficial use.

We do not dispute this interrelationship between historic consumptive use, return flow, and the amount of water to which an appropriator is entitled as limited by his past beneficial use.

*Hohenlohe*, at ¶¶ 42-45 (internal citations omitted).

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<sup>5</sup> The Montana Supreme Court recently recognized the fundamental nature of return flows to Montana’s water sources in addressing whether the Mitchell Slough was a perennial flowing stream, given the large amount of irrigation return flow which feeds the stream. The Court acknowledged that the Mitchell’s flows are fed by irrigation return flows available for appropriation. *Bitterroot River Protective Ass’n, Inc. v. Bitterroot Conservation Dist.*, 2008 MT 377, ¶¶ 22, 31, 43, 346 Mont. 508, 198 P.3d 219, (citing *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185).

47. The Department's rules reflect the above fundamental principles of Montana water law and are designed to itemize the type evidence and analysis required for an Applicant to meet its burden of proof. ARM 36.12.1901 through 1903. These rules forth specific evidence and analysis required to establish the parameters of historic use of the water right being changed. ARM 36.12.1901 and 1902. The rules also outline the analysis required to establish a lack of adverse effect based upon a comparison of historic use of the water rights being changed to the proposed use under the changed conditions along with evaluation of the potential impacts of the change on other water users caused by changes in the amount, timing, or location of historic diversions and return flows. ARM 36.12.1901 and 1903.
48. There is no historic use because the water being changed in this application is for future irrigation development pursuant to § 85-2-316, MCA. (FOF Nos. 14-15)
49. The Applicant has proven by a preponderance of the evidence that the proposed change in appropriation 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. § 85-2-402(2)(b), MCA. (FOF Nos. 16-29)

#### BENEFICIAL USE

50. A change Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. Sections 85-2-102(4) and -402(2)(c), MCA. Beneficial use is and has always been the hallmark of a valid Montana water right: "[T]he amount actually needed for beneficial use within the appropriation will be the basis, measure, and the limit of all water rights in Montana . . ." McDonald, 220 Mont. at 532, 722 P.2d at 606. The analysis of the beneficial use criterion is the same for change authorizations under §85-2-402, MCA, and new beneficial permits under §85-2-311, MCA. ARM 36.12.1801. The amount of water that may be authorized for change is limited to the amount of water necessary to sustain the beneficial use. *E.g., Bitterroot River Protective Association v. Siebel, Order on Petition for Judicial Review*, Cause No. BDV-2002-519 (Mont. 1st Jud. Dist. Ct.) (2003) (*affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518); *Worden v. Alexander*, 108 Mont. 208, 90 P.2d 160 (1939); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924); *Sitz Ranch v. DNRC*, DV-10-13390,, *Order Affirming DNRC Decision*, Pg. 3 (Mont. 5th Jud. Dist. Ct.) (2011) (citing *BRPA v. Siebel*, 2005 MT 60, and rejecting

Applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet); *Toohey v. Campbell*, 24 Mont. 13, 60 P. 396 (1900) ("The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses. He is restricted in the amount that he can appropriate to the quantity needed for such beneficial purposes."); § 85-2-312(1)(a), MCA (DNRC is statutorily prohibited from issuing a permit for more water than can be beneficially used).

51. Applicant proposes to use water for Irrigation which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence Irrigation is a beneficial use and that 590.25 AF of diverted volume and 8.7 CFS flow rate of water requested is the amount needed to sustain the beneficial use on 295.01 AC. Section 85-2-402(2)(c), MCA (FOF Nos. 30-31).

#### ADEQUATE MEANS OF DIVERSION

52. Pursuant to § 85-2-402 (2)(b), MCA, the Applicant must prove by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. This codifies the prior appropriation principle that the means of diversion must be reasonably effective for the contemplated use and may not result in a waste of the resource. *Crowley v. 6th Judicial District Court*, 108 Mont. 89, 88 P.2d 23 (1939); *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002) (information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies based upon project complexity; design by licensed engineer adequate).
53. Pursuant to § 85-2-402 (2)(b), MCA, Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. (FOF Nos. 32—38)

#### POSSESSORY INTEREST

54. Pursuant to § 85-2-402(2)(d), MCA, the Applicant must prove by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the

possessory interest, in the property where the water is to be put to beneficial use. See also ARM 36.12.1802.

55. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. (FOF No. 39).

### **PRELIMINARY DETERMINATION**

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right No. 40S 30165293 should be GRANTED subject to the following.

The Applicant proposes to divert water from the Missouri River, by means of a pump, from April 1 to November 1 at 8.7 CFS up to 590.25 AF, from the following locations: SESESE, Section 34, Lot 10, T28N, R55E, Richland County, SWSESE, Section 03, Lot 10, T27N, R55E, Richland County, and the SESWSE, Section 33, T28N, R55E, Richland County, for Sprinkler, Flood, and Lawn and Garden Irrigation use from April 1 to November 1.

The Applicant is authorized to add the proposed points of diversion and place of use. A flow rate of 8.7 CFS up to 590.25 AF shall be diverted from the Missouri River from the following locations: SESESE, Section 34, Lot 10, T28N, R55E, Richland County, SWSESE, Section 03, Lot 10, T27N, R55E, Richland County, and the SESWSE, Section 33, T28N, R55E, Richland County to 295.01 AC of place of use (see Table 2). The period of diversion and period of use are from April 1 to November 1. This change authorization will be subject to the following conditions, limitations, or restrictions:

### **WATER MEASUREMENT-MEETS CONSERVATION DISTRICT REQUIREMENT**

THIS RIGHT IS SUBJECT TO THE TYPE OF WATER USE MEASURING DEVICE OR WATER USE ESTIMATION TECHNIQUE REQUIRED BY THE CONSERVATION DISTRICT. THE APPROPRIATOR SHALL KEEP WRITTEN RECORDS OF THE FLOW RATE AND VOLUME OF WATER USED. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE WATER USER SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

## **NOTICE**

The Department will provide a notice of opportunity for public comment on this Application and the Department's Draft Preliminary Determination to Grant pursuant to § 85-2-307, MCA. The Department will set a deadline for public comments to this Application pursuant to §§ 85-2-307, and -308, MCA. If this Application receives public comment, the Department shall consider the public comments, respond to the public comments, and issue a preliminary determination to grant the application, grant the application in modified form, or deny the application. If no public comments are received pursuant to § 85-2-307(4), MCA, the Department's preliminary determination will be adopted as the final determination.

DATED this 22<sup>nd</sup> day of May 2025.

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Matt Miles, Manager  
Havre Regional Office  
Montana Department of Natural Resources and Conservation



**CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of the DRAFT PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 22<sup>nd</sup> day of May, 2025, by first class United States mail.

Richland County Conservation District  
2745 West Holly St.  
Sidney, MT 59270

Teresa Olson  
2612 7th Ave. N.  
Billings, MT 59101  
[tolson@hydrosi.com](mailto:tolson@hydrosi.com)

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