

# THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

GOVERNOR GREG GIANFORTE



DNRC DIRECTOR AMANDA KASTER

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May 29, 2026

Prairie Elk Hutterian Brethren, Inc.  
1436 MT HWY 528  
Wolf Point, MT 59201

Subject: Draft Preliminary Determination to Grant Water Right Change Application No. 40S 30171258

Dear Applicant,

The Department of Natural Resources and Conservation (Department or DNRC) has completed a preliminary review of your application. This review consists of an evaluation of the criteria for issuance of a change authorization found in §85-2-402, MCA. The Department has preliminarily determined that the criteria are met, and this application should be granted. A copy of the Draft Preliminary Determination to Grant your application is attached.

You have the opportunity to request an extension of time to submit additional information for the Department to consider in the decision, within 15 business days of the date of this letter. If no written request for an extension is received by June 19, 2026, the Department will prepare a notice of opportunity to provide public comment per §85-2-307(4), MCA.

Please note that if you are granted an extension of time to submit additional information to the Department, additional information may be considered an amendment to your application, which may reset application timelines pursuant to ARM 36.12.1401.



[DNRC.MT.GOV](http://DNRC.MT.GOV)

Please let me know if you have any questions.

Best,



Ashley Kemmis  
Water Conservation Specialist  
Water Rights Bureau  
Water Resources Division

CC: Cole Peebles of WGM group via email

McCone Conservation District  
c/o Diane Black  
PO Box 276  
Circle, MT 59215



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

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**APPLICATION TO CHANGE WATER RIGHT )  
NO. 40S 30171258 BY MCCONE COUNTY ) DRAFT PRELIMINARY DETERMINATION  
CONSERVATION DISTRICT ) TO GRANT CHANGE**

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On March 12, 2026, McCone County Conservation District (Applicant) submitted Application to Change Water Right No. 40S 30171258 to change Water Reservation Number 40S 84499-00 (CD Record Number 40S 30171248) to the Glasgow 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 June 30, 2025, in which the Applicant designated that the technical analyses for this application would be completed by the Department. The Applicant returned the completed Preapplication Checklist on August 19, 2025. The Department delivered the Department- completed technical analyses on October 2, 2025. The Application was determined to be correct and complete as of March 30, 2026. An Environmental Assessment for this application was completed on May 28, 2026.

**INFORMATION**

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

**Application as filed:**

- Conservation District Application to Change Water Reservation, Form 606-CD
- Attachments:
  - Items 5. Sage Grouse Habitat Project Review
  - B.1. Signed Copy of Conservation District Application from Producer to McCone Conservation District
  - B.2. Signed Copy of Reserved Water Use Authorization
  - B.3. Copy of CD Public Notice from the Conservation District
  - B.4 Copy of the Affidavit of Publication from the Conservation District
  - B.5. Copy of the Public Notice Certificate of Service from the Conservation District
  - C.2. Place of Use Acres Irrigated

- Maps:
  - E.1. Undated Aerial Map of Proposed Reserved POU created May 23, 2025
- Department- completed technical analyses based on information provided in the Preapplication Checklist, dated October 2, 2025

Information Received after Application Filed

- Right of Way Grant/Temporary Use Permit for 24” Irrigation Pipeline, Pump Site, and Access Road from the United States Department of the Interior Bureau of Land Management, dated March 13, 2026
- Right of Way Grant/Temporary Use Permit for Additional Workspace for 24” Irrigation Pipeline, Pump Site, and Access Road from the United States Department of the Interior Bureau of Land Management, dated March 13, 2026

Information within the Department’s Possession/Knowledge

- Application for Reservation of Water Diversionary Uses by McCone County Conservation District, dated June 27, 1991
- Lower Missouri River Basin Final Order of the Board of Natural Resources and Conservation Establishing Water Reservations on the Lower Missouri River, the Little Missouri River, and their Tributaries, dated December 30, 1994
- USGS Gage 06177000 Missouri River near Wolf Point, MT, period of record from October 1942, through March 2025
- DNRC Water Right Information System (WRIS)
- The Department also routinely considers the following information. The following information is not included in the administrative file for this Application but is available upon request. Please contact the Glasgow Regional Office at 406-228-2561 to request copies of the following documents.
  - Technical Memorandum: Physical Availability of Surface Water with Gage Data, dated November 1, 2019
- Surface Water Change Technical Analyses Report – Notice of Errata, dated May 29, 2026, by Ashley Kemmis, DNRC Water Resource Specialist

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;  
 DRAFT Preliminary Determination to GRANT  
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 Application to Change Water Right No. 40S 30171258

AF means acre-feet; AC means acres; POD means point of diversion, POU means place of use, MCCD means McCone County Conservation District; CD means Conservation District; and AF/YR means acre-feet per year.

**WATER RIGHTS TO BE CHANGED**

**FINDINGS OF FACT**

1. The Applicant seeks to add a point of diversion and place of use to Water Reservation (40S 84499-00) that were not included in the original water reservation public notice. The MCCD authorized the producer, Prairie Elk Hutterian Brethren, Inc., to use an unperfected portion of their water reservation. The portion authorized is shown in CD Record 40S 30171248, and is for 16 CFS up to 2,304 AF from the Missouri River by means of a pump for sprinkler irrigation covering up to 1,152 AC. The period of diversion and period of use are from April 1 to October 15 each year. The proposed POD is located in NENWSW, Section 15, Township 26N, Range, 45E, McCone County, and water is conveyed to the place of use by a pipeline. The proposed POU is shown in Table 1.

| <b>Table 1: Proposed Places of Use</b> |                        |                |                 |              |               |                         |
|--|------------------------|----------------|-----------------|--------------|---------------|-------------------------|
| <b>Acres</b>                           | <b>Quarter-Section</b> | <b>Section</b> | <b>Township</b> | <b>Range</b> | <b>County</b> | <b>New/Supplemental</b> |
| 22.1                                   | NWSE                   | 15             | 26N             | 45E          | McCone        | New                     |
| 21.7                                   | NESE                   | 15             | 26N             | 45E          | McCone        | New                     |
| 38.4                                   | SWSE                   | 15             | 26N             | 45E          | McCone        | New                     |
| 35.9                                   | SESE                   | 15             | 26N             | 45E          | McCone        | New                     |
| 28.9                                   | NWNE                   | 22             | 26N             | 45E          | McCone        | New                     |
| 32.1                                   | NENE                   | 22             | 26N             | 45E          | McCone        | New                     |
| 17.1                                   | NENW                   | 22             | 26N             | 45E          | McCone        | New                     |
| 2.0                                    | NWNW                   | 22             | 26N             | 45E          | McCone        | New                     |
| 0.5                                    | SWNW                   | 22             | 26N             | 45E          | McCone        | New                     |
| 29.2                                   | SENW                   | 22             | 26N             | 45E          | McCone        | New                     |
| 39.5                                   | SWNE                   | 22             | 26N             | 45E          | McCone        | New                     |
| 22.1                                   | SENE                   | 22             | 26N             | 45E          | McCone        | New                     |
| 18.1                                   | NESW                   | 22             | 26N             | 45E          | McCone        | New                     |
| 30.7                                   | NWSE                   | 22             | 26N             | 45E          | McCone        | New                     |
| 13.5                                   | NESE                   | 22             | 26N             | 45E          | McCone        | New                     |
| 39.3                                   | SESW                   | 22             | 26N             | 45E          | McCone        | New                     |
| 1.4                                    | SWSW                   | 22             | 26N             | 45E          | McCone        | New                     |
| 40.0                                   | SWSE                   | 22             | 26N             | 45E          | McCone        | New                     |
| 33.6                                   | SESE                   | 22             | 26N             | 45E          | McCone        | New                     |
| 30.9                                   | NWNW                   | 23             | 26N             | 45E          | McCone        | New                     |
| 29.7                                   | NENW                   | 23             | 26N             | 45E          | McCone        | New                     |

|      |      |    |     |     |        |     |
|------|------|----|-----|-----|--------|-----|
| 32.6 | SWNW | 23 | 26N | 45E | McCone | New |
| 30.5 | SENW | 23 | 26N | 45E | McCone | New |
| 14.5 | NWSW | 23 | 26N | 45E | McCone | New |
| 33.8 | SWSW | 23 | 26N | 45E | McCone | New |
| 28.0 | SESW | 23 | 26N | 45E | McCone | New |
| 9.9  | NESW | 23 | 26N | 45E | McCone | New |
| 18.9 | NWSE | 23 | 26N | 45E | McCone | New |
| 30.7 | SWSE | 23 | 26N | 45E | McCone | New |
| 38.0 | NWNW | 26 | 26N | 45E | McCone | New |
| 11.5 | SWNW | 26 | 26N | 45E | McCone | New |
| 19.7 | SENW | 26 | 26N | 45E | McCone | New |
| 34.8 | NENW | 26 | 26N | 45E | McCone | New |
| 13.0 | SWNE | 26 | 26N | 45E | McCone | New |
| 32.4 | NESW | 26 | 26N | 45E | McCone | New |
| 37.5 | NWSE | 26 | 26N | 45E | McCone | New |
| 7.9  | SWSE | 26 | 26N | 45E | McCone | New |
| 15.1 | SESW | 26 | 26N | 45E | McCone | New |
| 3.2  | NWSW | 26 | 26N | 45E | McCone | New |
| 39.5 | SWSW | 26 | 26N | 45E | McCone | New |
| 28.9 | NENW | 27 | 26N | 45E | McCone | New |
| 40.0 | NWNE | 27 | 26N | 45E | McCone | New |
| 22.5 | NENE | 27 | 26N | 45E | McCone | New |
| 3.5  | SWNE | 27 | 26N | 45E | McCone | New |
| 20.0 | SESE | 27 | 26N | 45E | McCone | New |
| 0.1  | SENW | 27 | 26N | 45E | McCone | New |
| 0.1  | NESE | 27 | 26N | 45E | McCone | New |
| 16.8 | NENE | 34 | 26N | 45E | McCone | New |
| 35.0 | NWNW | 35 | 26N | 45E | McCone | New |
| 6.9  | NENW | 35 | 26N | 45E | McCone | New |

2. Table 2 shows the water reservation and CD record proposed for change:

| Table 2: Water Right(S) Proposed for Change |             |           |            |               |  |   |               |
|---|-------------|-----------|------------|---------------|--|---|---------------|
| Water Right Number                          | Flow Rate   | Volume    | Purpose    | Period Of Use | Place Of Use   | Point(S) Of Diversion                                       | Priority Date |
| Water Reservation<br>40S 84499 00           | 99.5<br>CFS | 14,299 AF | Irrigation | Not Assigned  | Various (T2N and 27N; R41E, 43E, 44E, 45E, 46E, 47E, 48E, 50E) | Various (T2N and 27N; R41E, 43E, 44E, 45E, 46E, 47E, 50E)   | 07/01/1985    |
| CD Record<br>40S 30171248                   | 16<br>CFS   | 2,304 AF  | Irrigation | 04/01 – 10/15 | See Table 1  | NENWSW, Section 15, Township 26N, Range, 45E, McCone County | 07/01/1985    |

3. There is no historical use for CD Record 40S 30171248, therefore there are no water rights that were historically supplemental.
4. No previous changes have been authorized for this portion of the MCCD Water Reservation.

### **CHANGE PROPOSAL**

#### **FINDINGS OF FACT**

5. The Applicant proposes to change the POD and POU for a portion of the MCCD Water Reservation 40S 84499 00 as authorized by the MCCD and as shown on CD Record 40S 30171248. The change will result in an additional POD in the NENWSW, Section 15, Township 26N, Range 45E, McCone County, and additional POUs consisting of 1,152 AC of sprinkler irrigation in the locations described in Table 1. No change in purpose or place of storage is proposed. If the change is authorized, the Applicant's producer will appropriate up to 2,304 AF at a flow rate of 16 CFS from the Missouri River. The proposed period of diversion and period of use are from April 1 to October 15 annually. Figure 1 shows the elements of the proposed change.

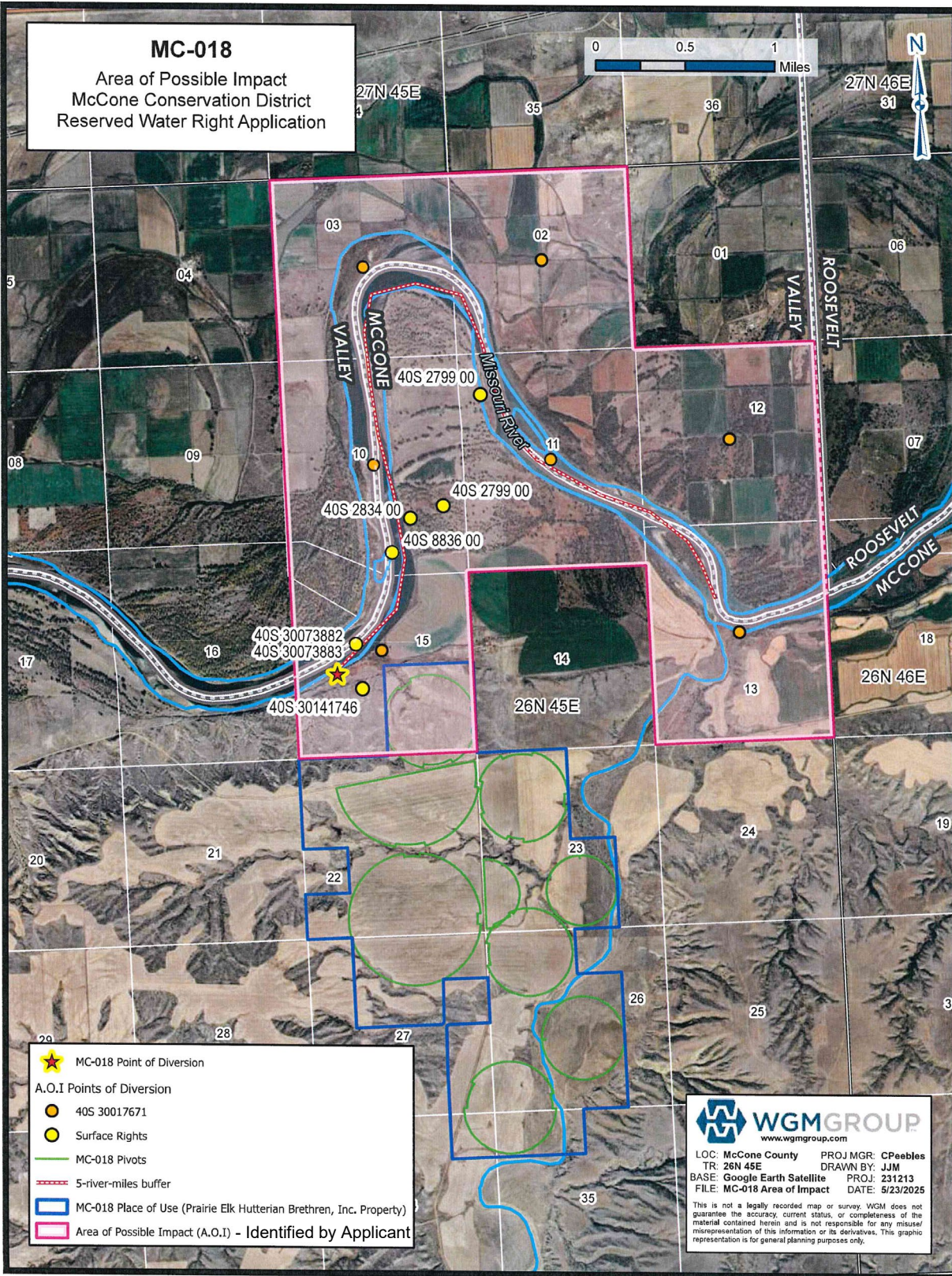


Figure 1: Applicant Provided Map Showing POD and POU. The area of possible impact on this map was identified by the Applicant for the CD application public notice and differs from the Department's AOPI.

6. The POD and approximately 0.3 miles of the proposed pipeline are located on land owned by the United States Department of the Interior (USDI) Bureau of Land Management (BLM). A Right-of-Way Grant/Temporary Use Permit was provided by the Applicant's producer from USDI BLM providing access for the POD and pipeline.
7. The proposed project is located within the BLM designated General Habitat Management Area for sage grouse. The Applicant consulted with the Montana Sage Grouse Habitat Conservation Program on February 21, 2025. Approximately 152 acres of the 1,152 acres proposed for irrigation are not exempt from stipulations per Executive Order 12-2015, and a mitigation plan was provided (see Items 5. Sage Grouse Habitat Project Review in the attachments provided by the Applicant).
8. The MCCD Water Reservation was set aside for future irrigation by the *Lower Missouri River Basin Final Order of the Board of Natural Resources and Conservation Establishing Water Reservations on the Lower Missouri River, the Little Missouri River, and their Tributaries* dated December 30, 1994. If the proposed change is authorized, the CD will have 9.80 CFS flow rate and 8,076.7 AF volume remaining in the water reservation
9. The CD granted this producer, Prairie Elk Hutterian Brethren, Inc. the right to use a portion of the CD water reservation on May 12, 2025, under application number MC-018 (CD Record 40S 30171248). The CD granted the authorization subject to the installation of a water measuring device and annual reporting. As such, the Department will add the following conditions if the change is granted.

THIS RIGHT IS SUBJECT TO THE TYPE OF WATER USE MEASURING DEVICE OR WATER USE ESTIMATION TECHNIQUE REQUIRED BY THE CONSERVATION DISTRICT. THE WATER USER SHALL MAINTAIN THE MEASURING DEVICE, SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY. THE WATER USER SHALL KEEP WRITTEN RECORDS OF THE FLOW RATE AND VOLUME OF THE WATER USED. RECORDS SHALL BE SUBMITTED BY NOVEMBER 15 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT THE WATER USE ANNUAL STATUS REPORT FORM MAY BE CAUSE FOR REVOCATION OF THIS AUTHORIZATION. THE RECORDS MUST BE SENT TO THE CONSERVATION DISTRICT OFFICE AND WATER RESOURCES REGIONAL OFFICE.

## **CHANGE CRITERIA**

10. 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.

11. 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**

12. 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.

13. The purpose for the water reservation was established by the Board of Natural Resources and the conclusions are contained in the *Order of Board of Natural Resources Establishing Water Reservations* dated December 30, 1994.

14. The need for the water reservation was established by the Board of Natural Resources and the conclusions are contained in the *Order of Board of Natural Resources Establishing Water Reservations* dated December 30, 1994.

15. The amount of water necessary for the purposes of the water reservation was established by the Board of Natural Resources and the conclusions are contained in the *Order of Board of Natural Resources Establishing Water Reservations* dated December 30, 1994.

16. That the water reservation was in the public interest was established by the Board of Natural Resources and the conclusions are contained in the *Order of Board of Natural Resources Establishing Water Reservations* dated December 30, 1994.

17. 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**

18. The Board of Natural Resources granted the MCCD a water reservation, number 40S 84499-00, for 99.50 CFS and 14,299.00 AF for use on approximately 6,122 acres for future irrigation development out of the Missouri River. The Board Chairman signed the Order of the Board of Natural Resources Establishing Water Reservations and granted a priority date of July 1, 1985, for approved water reservations on the Missouri River.

19. This application is to change a portion of the water reservation not yet put to use, and therefore, there is no historical use.

## **ADVERSE EFFECT**

### **FINDINGS OF FACT**

20. MCCD is proposing to add a point of diversion and a place of use to its water reservation. The proposed appropriation will use a portion of the MCCD water reservation from the Missouri River to supply water for center pivot irrigation for 1,152 acres in the places of use listed in Table 1. The producer, Prairie Elk Hutterian Brethren, Inc., proposes to divert up to 16 CFS and 2,304 AF.
21. Water is available for appropriation under the MCCD water reservation.
22. The CD published notice of the Conservation District Record (40S 30171248) on March 19, 2025.
23. The CD sent individual public notices to water users downstream of the proposed point of diversion and to entities on the DNRC standard public notice list. No objections were received. DNRC will also provide public notice of this change application.
24. The MCCD authorization 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 CD annually by November 15.
25. The application proposes to use a non-perfected portion of the MCCD water reservation granted by the *Order of Board of Natural Resources Establishing Water Reservations*.
26. No historical use exists for this portion of the water reservation, so no comparison of historical and proposed consumptive use or return flows can be made.
27. The producer, Prairie Elk Hutterian Brethren, Inc., proposes to irrigate using a center pivot irrigation system. If a valid call is made, Prairie Elk Hutterian Brethren, Inc., will be required to shut down the center pivot irrigation system.

### **Physical and Legal Availability**

28. For the purpose of assessing adverse effect, the Department analyzed the physical and legal availability of water for this application because the POD and POU are not within the original public notice area identified in the *Order of Board of Natural Resources Establishing Water Reservations* proceedings in December 30, 1994.
29. The Applicant proposes to change the POD and POU of a non-perfected portion of the MCCD Water Reservation No. 40S 84499-00 (CD Record 40S 30171248). The proposed POD and POU were not part of the original public notice area identified in the MCCD Missouri River water reservation. All existing water rights must be considered in order to determine whether this

proposed project would adversely affect other water right holders. The Department used USGS Gage 06177000, Missouri River near Wolf Point to find the physical availability of the Missouri River. USGS Gage 06177000, Missouri River near Wolf Point, is the nearest gage to the proposed POD and is approximately 26 river miles downstream of the POD. The period of record used was October 1942 to March 2025.

30. Physical availability of the Missouri River water at the POD was quantified monthly. Department practice for physical availability analyses where the gage used is downstream of the POD is to add the monthly flow rates and volumes of existing water rights between the gage and the POD to the median of the mean monthly flows and volumes at the gage. The DNRC used the method below to quantify physically available monthly flows and volumes at the POD during the proposed period of diversion.

a. The Department calculated the median of the mean monthly flow rates in cubic feet per second (CFS) for the Missouri River using USGS Gage 06177000 records for each month of the proposed period of diversion (Table 4, column B). Those flows were converted to monthly volumes in AF (Table 4, column C) using the following equation found on DNRC Water Calculation Guide: median of the mean monthly flow (CFS  $\times$  1.98 AF/day/1 CFS  $\times$  days per month = AF/month).

b. The Department calculated the monthly flows appropriated by existing users between the gage and the POD on the source (Table 4, column D) by:

1. Generating a list of existing water rights from the point of diversion to USGS Gage 06177000 (see Table 3);
2. Designating irrigation and lawn and garden uses with no period of diversion as occurring from April 1 to October 31;
3. Designating all other water uses with no period of diversion as year-round;
4. Calculating a flow rate for all livestock direct from source rights without a designated flow rate by assigning either 30 GPD/AU for Statements of Claim or 15 GPD/AU, multiplying by the number of Animal Units (AU), and adding that to 35 GPM.
5. Calculating a volume for all livestock direct from source rights without a designated volume by multiplying the number of AU by 30 GPD/AU for Statements of Claim or 15 GPD/AU.

6. The monthly volume for the existing rights between the gage and point of diversion were calculated by dividing the annual volume by the number of months in the period of diversion.

| <b>Table 3: Existing Water Rights between the Gage and the Start of Surface Water Depletion</b> |   |                        |                    |                            |
|---|---|------------------------|--------------------|----------------------------|
| <b>A</b>  | <b>B</b>  | <b>C</b>               | <b>D</b>           | <b>E</b>                   |
| <b>Water Right Number</b>   | <b>Water Right Owner</b>  | <b>Flow Rate (CFS)</b> | <b>Volume (AF)</b> | <b>Period of Diversion</b> |
| 40S 184738 00   | LINDSEY NYGAARD   | 0.22                   | 2.00               | 01/01 to 12/31             |
| 40S 35714 00  | BARBARA FARNHAM   | 1.11                   | 270.00             | 04/15 to 10/15             |
| 40S 30006333  | MCCONE COUNTY CONSERVATION DISTRICT; PRAIRIE ELK HUTTERIAN BROTHERS INC | 1.50                   | 182.00             | 04/01 to 10/15             |
| 40S 77523 00  | CUSKER INC  | 4.46                   | 999.00             | 04/01 to 10/31             |
| 40S 30148181  | FNB LAND & LIVESTOCK INC; ROOSEVELT COUNTY CONSERVATION DISTRICT        | 5.30                   | 35.75              | 04/01 to 10/15             |
| 40S 170287 00   | FNB LAND & LIVESTOCK INC  | 5.30                   | 222.65             | 05/01 to 09/30             |
| 40S 20289 00  | BARBARA FARNHAM   | 5.57                   | 222.00             | 04/15 to 10/15             |
| 40S 30004260  | FNB LAND & LIVESTOCK INC; ROOSEVELT COUNTY CONSERVATION DISTRICT        | 6.00                   | 421.25             | 04/01 to 10/15             |
| 40S 84881 00  | FNB LAND & LIVESTOCK INC  | 6.02                   | 300.80             | 04/15 to 10/15             |
| 40S 17179 00  | JANICE M HOLEN; ROBERT L HOLEN  | 6.24                   | 331.00             | 05/01 to 11/01             |
| 40S 11975 00  | COURTNEY BERGLEE; JORDAN BERGLEE  | 6.68                   | 162.00             | 05/01 to 10/15             |
| 40S 42322 00  | LEROY L SANSAVER  | 6.68                   | 270.00             | 05/01 to 09/30             |
| 40S 2799 00   | CODY J STEPPLER; VERLIN R STEPPLER                                      | 6.91                   | 233.00             | 05/15 to 10/15             |
| 40S 30050269  | CUSKER INC; MCCONE COUNTY CONSERVATION DISTRICT                         | 9.13                   | 966.00             | 04/01 to 10/15             |
| 40S 30064200  | DRY PRAIRIE RURAL WATER AUTHORITY                                       | 9.33                   | 2,843.00           | 01/01 to 12/31             |
| 40S 2448 00   | HARDY RANCH HOLDINGS LLC  | 10.00                  | 500.00             | 05/10 to 10/31             |
| 40S 53280 00  | CLINT CASTERLINE  | 11.14                  | 216.00             | 04/01 to 10/31             |
| 40S 31900 00  | JAMES S DEWITT  | 11.14                  | 674.00             | 03/15 to 10/31             |
| 40S 30050326  | MCCONE COUNTY CONSERVATION DISTRICT; STEVEN R PETERS                    | 11.60                  | 119.80             | 04/01 to 10/15             |
| 40S 30124770  | MCCONE COUNTY CONSERVATION DISTRICT; STEVEN R PETERS                    | 11.60                  | 125.00             | 04/01 to 11/01             |
| 40S 30002538  | MCCONE COUNTY CONSERVATION DISTRICT; PRAIRIE ELK HUTTERIAN BROTHERS INC | 18.00                  | 712.00             | 04/01 to 10/15             |
| 40S 30073882 <sup>1</sup>   | USA (DEPT OF INTERIOR BUREAU OF INDIAN AFF)                             |                        | 0.62               | 01/01 to 12/31             |
| 40S 30073883 <sup>2</sup>   | USA (DEPT OF INTERIOR BUREAU OF INDIAN AFF)                             |                        | 50.00              | 01/01 to 12/31             |
| 40S 30048141 <sup>3</sup>   | MCCONE COUNTY CONSERVATION DISTRICT; PRAIRIE ELK HUTTERIAN BROTHERS INC |                        | 2,005.20           | 04/01 to 10/15             |
| 40S 1511 00 <sup>4</sup>  | JENNIFER GAROUTTE; THOMAS GAROUTTE                                      | 5.35                   | 125.00             | 02/01 to 10/31             |
| 40S 16376 00 <sup>4</sup>   | CUSKER INC  | 4.46                   | 220.00             | 04/01 to 10/04             |
| 40S 172353 00 <sup>4</sup>  | HUSEBY FARMS INC  | 9.13                   | 402.00             | 04/01 to 10/31             |
| 40S 46354 00 <sup>4</sup>   | HARDY RANCH HOLDINGS LLC  | 10.03                  | 450.00             | 04/10 to 11/14             |
| 40S 2834 00 <sup>4</sup>  | YF CORP   | 5.11                   | 500.00             | 05/01 to 09/30             |

|                            |   |       |          |                |
|----------------------------|---|-------|----------|----------------|
| 40S 36976 00 <sup>4</sup>  | ALLAN R PIPAL; SANDRA J PIPAL                                     | 10.69 | 594.00   | 04/01 to 11/04 |
| 40S 10026 00 <sup>4</sup>  | LYLE E HANSEN; DARLEEN M HUBER;<br>DONALD HUBER                   | 12.25 | 637.50   | 04/01 to 10/04 |
| 40S 46368 00 <sup>4</sup>  | HAYDEN N HANKS; JES T HANKS; JAMES E<br>KOLDEN                    | 11.14 | 660.00   | 05/01 to 11/04 |
| 40S 130527 00 <sup>4</sup> | VIC R SHEFELBINE  | 17.82 | 711.00   | 03/21 to 12/21 |
| 40S 4249 00 <sup>4</sup>   | JOAN E PETERS; STEVEN R PETERS                                    | 11.58 | 746.00   | 03/01 to 11/19 |
| 40S 30108456 <sup>4</sup>  | PRAIRIE ELK HUTTERIAN BRETHERN INC                                | 9.85  | 756.00   | 05/01 to 10/19 |
| 40S 214922 00 <sup>5</sup> | PRAIRIE ELK HUTTERIAN BRETHERN INC                                | 26.74 | 1,694.70 | 03/01 to 10/31 |
| 40S 214921 00 <sup>5</sup> | PRAIRIE ELK HUTTERIAN BRETHERN INC                                | 19.38 | 341.63   | 03/15 to 10/31 |
| 40S 170296 00 <sup>5</sup> | ELIZABETH RANDALL   | 0.70  | 50.03    | 03/01 to 11/19 |
| 40S 178482 00 <sup>5</sup> | AIRPORT GOLF CLUB   | 1.12  | 94.15    | 04/15 to 10/19 |
| 40S 15087 00 <sup>5</sup>  | MARLENE L TOAVS; VIRGIL L TOAVS; HELEN<br>R TOEWS; LESLIE A TOEWS | 20.00 | 351.58   | 05/01 to 11/04 |
| 40S 14674 00 <sup>5</sup>  | TRENTON BERGLEE   | 8.91  | 216.55   | 04/10 to 10/31 |
| 40S 8744 00 <sup>5</sup>   | PRAIRIE ELK HUTTERIAN BRETHERN INC                                | 19.38 | 228.65   | 03/15 to 10/31 |
| 40S 8745 00 <sup>5</sup>   | NEUBAUER, SCOTT & TERESA TRUST                                    | 19.38 | 309.35   | 03/15 to 10/31 |
| 40S 121994 00 <sup>5</sup> | JANICE M HOLEN; ROBERT L HOLEN                                    | 6.44  | 457.30   | 04/10 to 11/30 |
| 40S 46346 00 <sup>5</sup>  | CHRIS HOLEN; LATOYA HOLEN   | 9.85  | 40.35    | 05/01 to 10/19 |
| 40S 8836 00 <sup>5</sup>   | CODY J STEPLER; VERLIN R STEPLER                                  | 10.69 | 387.36   | 05/01 to 07/31 |
| 40S 166052 00 <sup>6</sup> | LARRY E GRIMSRUD; SHARON L GRIMSRUD                               | 0.12  | 44.03    | 01/01 to 12/31 |
| 40S 166053 00 <sup>6</sup> | LARRY E GRIMSRUD; SHARON L GRIMSRUD                               |       | 44.03    | 01/01 to 12/31 |
| 40S 30141741 <sup>6</sup>  | USA (DEPT OF INTERIOR BUREAU OF LAND<br>MGMT)                     |       | 0.17     | 01/01 to 12/31 |
| 40S 30141740 <sup>6</sup>  | USA (DEPT OF INTERIOR BUREAU OF LAND<br>MGMT)                     |       | 0.20     | 01/01 to 12/31 |
| 40S 30141743 <sup>6</sup>  | USA (DEPT OF INTERIOR BUREAU OF LAND<br>MGMT)                     |       | 0.31     | 01/01 to 12/31 |
| 40S 30141742 <sup>6</sup>  | USA (DEPT OF INTERIOR BUREAU OF LAND<br>MGMT)                     |       | 0.34     | 01/01 to 12/31 |

<sup>1</sup> Unable to assign a flow rate per Department standards due to unknown animal units

<sup>2</sup> No flow rate assigned to water spreading irrigation

<sup>3</sup> Terminated per the MCCD

<sup>4</sup> Volume assigned as claimed in the original filing

<sup>5</sup> Volume calculated by multiplying the claimed acreage by the Department standard irrigation for climatic area 2

<sup>6</sup> Livestock Direct - Flow rate and volume assigned per department standards (see FOF 29, b)

31. Since the gage used is downstream of the POD, the Department added the flow rates and volumes of the existing rights between USGS Gage 06177000 and the POD (Table 4, column D and E) to the median of the mean monthly gage values (Table 4, column B and C) to determine physical availability (CFS and AF) at the POD (Table 4, column F and G).

**Table 4: Physical Availability at the Point of Diversion on Missouri River**

| A     | B  | C   | D   | E  | F                                       | G                                      |
|-------|--|---|---|--|---|--|
| Month | Median of the Mean Monthly Flow at Gage 06177000 (CFS) | Median of the Mean Monthly Volume at Gage 06177000 (AF) | Existing Rights from POD to Gage 06177000 (CFS) | Existing Rights from POD to Gage 06177000 (AF) | Physically Available Water at POD (CFS) | Physically Available Water at POD (AF) |
| April | 7,597.00   | 451,261.80  | 295.63  | 1,924.00                                       | 7,892.63                                | 453,185.80                             |
| May   | 8,495.00   | 521,423.10  | 404.07  | 2,757.31                                       | 8,899.07                                | 524,180.41                             |

|      |          |            |        |          |          |            |
|------|----------|------------|--------|----------|----------|------------|
| June | 9,056.00 | 537,926.40 | 404.07 | 2,757.31 | 9,460.07 | 540,683.71 |
| July | 9,239.50 | 567,120.51 | 404.07 | 2,757.31 | 9,643.57 | 569,877.82 |
| Aug. | 9,511.50 | 583,815.87 | 393.38 | 2,628.19 | 9,904.88 | 586,444.06 |
| Sep. | 8,221.50 | 488,357.10 | 393.38 | 2,628.19 | 8,614.88 | 490,985.29 |
| Oct. | 7,985.00 | 490,119.30 | 359.58 | 2,286.74 | 8,344.58 | 492,406.04 |

32. The Applicant identified an “area of possible impact” as shown in figure 1, which differs from the Department identified AOPI, for the Conservation District Reserved Water Use Authorization form 102 public notice. The Department analyzed the legal availability of water in an area of potential impact that spans from the proposed point of diversion in NENWSW, Section 15, Township 26N, Range, 45E, McCone County to the confluence of the Missouri River with Sand Creek (SW, Section 01, T26N, R46E). The confluence of the Missouri River and Sand Creek is a significant hydrologic boundary, and it adds approximately 710.2 square miles of drainage basin.

33. A total of 22 surface water rights exist within this reach. The list of rights can be found in Table 5. In addition to the water rights listed in Table 5 are the Roosevelt County CD Reservation (Table 6), The Valley County CD Reservation (Table 6), the Montana Department of Fish, Wildlife and Parks Reservation 40S 30017671 (Table 7), and the Fort Peck Tribal Compact (Table 8). The Valley County CD Reservation was not identified as a water right within the area of potential adverse effect in the Surface Water Change Technical Analyses Report, dated October 2, 2025. A notice of errata to include the Valley County CD Reservation as a water right within the area of potential adverse effect was sent on May 29, 2026. The Valley County CD encompasses multiple sources. The flow and volume apportionment as shown in Table 6 is for the Missouri River only.

**Table 5: Water Rights Within the Area of Potential Adverse Effect**

| <b>A</b>                  | <b>B</b>                     | <b>C</b>               | <b>D</b>           | <b>E</b>                   | <b>F</b>  |
|---------------------------|------------------------------|------------------------|--------------------|----------------------------|---|
| <b>Water Right</b>        | <b>Water Right Type</b>      | <b>Flow Rate (CFS)</b> | <b>Volume (AF)</b> | <b>Period of Diversion</b> | <b>Owner</b>  |
| 40S 30073882 <sup>1</sup> | RESERVED CLAIM               | -                      | 0.62               | 01/01 to 12/31             | USA (DEPT OF INTERIOR BUREAU OF INDIAN AFF)                             |
| 40S 184738 00             | STATEMENT OF CLAIM           | 0.22                   | 2.00               | 01/01 to 12/31             | LINDSEY NYGAARD   |
| 40S 30073883 <sup>2</sup> | RESERVED CLAIM               | -                      | 50.00              | 01/01 to 12/31             | USA (DEPT OF INTERIOR BUREAU OF INDIAN AFF)                             |
| 40S 30006333              | CONSERVATION DISTRICT RECORD | 1.50                   | 182.00             | 04/01 to 10/15             | MCCONE COUNTY CONSERVATION DISTRICT; PRAIRIE ELK HUTTERIAN BRETHERN INC |
| 40S 2799 00               | PROVISIONAL PERMIT           | 6.91                   | 233.00             | 05/15 to 10/15             | CODY J STEPPLER; VERLIN R STEPPLER                                      |
| 40S 2448 00               | PROVISIONAL PERMIT           | 10.00                  | 500.00             | 05/10 to 10/31             | HARDY RANCH HOLDINGS LLC  |

|                            |                              |       |          |                |   |
|----------------------------|------------------------------|-------|----------|----------------|---|
| 40S 30002538               | CONSERVATION DISTRICT RECORD | 18.00 | 712.00   | 04/01 to 10/15 | MCCONE COUNTY CONSERVATION DISTRICT; PRAIRIE ELK HUTTERIAN BRETHERN INC |
| 40S 30050269               | CONSERVATION DISTRICT RECORD | 9.13  | 966.00   | 04/01 to 10/15 | CUSKER INC; MCCONE COUNTY CONSERVATION DISTRICT                         |
| 40S 77523 00               | PROVISIONAL PERMIT           | 4.46  | 999.00   | 04/01 to 10/31 | CUSKER INC  |
| 40S 16376 00 <sup>3</sup>  | STATEMENT OF CLAIM           | 4.46  | 220.00   | 04/01 to 10/04 | CUSKER INC  |
| 40S 46354 00 <sup>3</sup>  | STATEMENT OF CLAIM           | 10.03 | 450.00   | 04/10 to 11/14 | HARDY RANCH HOLDINGS LLC  |
| 40S 2834 00 <sup>3</sup>   | STATEMENT OF CLAIM           | 5.11  | 500.00   | 05/01 to 09/30 | YF CORP   |
| 40S 214922 00 <sup>4</sup> | STATEMENT OF CLAIM           | 26.74 | 1,694.70 | 03/01 to 10/31 | PRAIRIE ELK HUTTERIAN BRETHERN INC                                      |
| 40S 214921 00 <sup>4</sup> | STATEMENT OF CLAIM           | 19.38 | 341.63   | 03/15 to 10/31 | PRAIRIE ELK HUTTERIAN BRETHERN INC                                      |
| 40S 8744 00 <sup>4</sup>   | STATEMENT OF CLAIM           | 19.38 | 228.65   | 03/15 to 10/31 | PRAIRIE ELK HUTTERIAN BRETHERN INC                                      |
| 40S 8836 00 <sup>4</sup>   | STATEMENT OF CLAIM           | 10.69 | 387.36   | 05/01 to 07/31 | CODY J STEPLER; VERLIN R STEPLER  |
| 40S 166052 00 <sup>5</sup> | STATEMENT OF CLAIM           | 0.12  | 44.03    | 01/01 to 12/31 | LARRY E GRIMSRUD; SHARON L GRIMSRUD                                     |
| 40S 166053 00 <sup>5</sup> | STATEMENT OF CLAIM           |       | 44.03    | 01/01 to 12/31 | LARRY E GRIMSRUD; SHARON L GRIMSRUD                                     |
| 40S 30141746 <sup>5</sup>  | STATEMENT OF CLAIM           |       | 0.95     | 01/01 to 12/31 | USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)                              |
| 40S 30141743 <sup>5</sup>  | STATEMENT OF CLAIM           |       | 0.31     | 01/01 to 12/31 | USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)                              |
| 40S 30141742 <sup>5</sup>  | STATEMENT OF CLAIM           |       | 0.34     | 01/01 to 12/31 | USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)                              |

<sup>1</sup>Unable to assign a flow rate per Department standards due to unknown animal units

<sup>2</sup>No flow rate assigned to water spreading irrigation

<sup>3</sup>Volume assigned as claimed in the original application

<sup>4</sup>Volume calculated by multiplying the claimed acreage by the Department standard irrigation for climatic area 2

<sup>5</sup>Livestock Direct - Flow rate and volume assigned per department standards

| Table 6: Conservation Districts Water Reservation Within the Area of Potential Impact |                             |                          |                          |                        |
|---|-----------------------------|--------------------------|--------------------------|------------------------|
| Month   | Roosevelt CD Flowrate (CFS) | Roosevelt CD Volume (AF) | Valley CD Flowrate (CFS) | Valley CD Volume (CFS) |
| April   | 558.8                       | 10,445 <sup>1</sup>      | 37.8 <sup>2</sup>        | 778 <sup>1,2</sup>     |
| May   | 558.8                       | 10,445 <sup>1</sup>      | 37.8 <sup>2</sup>        | 778 <sup>1,2</sup>     |
| June  | 558.8                       | 10,445 <sup>1</sup>      | 37.8 <sup>2</sup>        | 778 <sup>1,2</sup>     |
| July  | 558.8                       | 10,445 <sup>1</sup>      | 37.8 <sup>2</sup>        | 778 <sup>1,2</sup>     |
| August  | 558.8                       | 10,445 <sup>1</sup>      | 37.8 <sup>2</sup>        | 778 <sup>1,2</sup>     |
| September   | 558.8                       | 10,445 <sup>1</sup>      | 37.8 <sup>2</sup>        | 778 <sup>1,2</sup>     |
| October   | 558.8                       | 10,445 <sup>1</sup>      | 37.8 <sup>2</sup>        | 778 <sup>1,2</sup>     |

<sup>1</sup>Monthly volume was calculated by dividing the annual volume by the number of months in the period of use granted to each conservation district in accordance with the Lower Missouri Basin Final Order of the Board of Natural Resources and Conservation dated December 30, 1994.

<sup>2</sup>Flow Rate and volume apportionment for the Missouri River source of the Valley County CD.

| <b>Table 7: Montana Department of Fish, Wildlife &amp; Parks<br/>Water Reservation 40S 30017671</b> |                       |                    |
|---|-----------------------|--------------------|
| <b>Month</b>  | <b>Flowrate (CFS)</b> | <b>Volume (AF)</b> |
| April   | 5,178                 | 307,573            |
| May   | 5,178                 | 317,826            |
| June  | 5,178                 | 307,573            |
| July  | 5,178                 | 317,826            |
| August  | 5,178                 | 317,826            |
| September   | 5,178                 | 307,573            |
| October   | 5,178                 | 317,826            |

| <b>Table 8: Fort Peck Tribal Compact</b> |                       |                    |
|--|-----------------------|--------------------|
| <b>Month</b>                             | <b>Flowrate (CFS)</b> | <b>Volume (AF)</b> |
| April                                    | 842                   | 50,000             |
| May                                      | 1,711                 | 105,000            |
| June                                     | 2,441                 | 145,000            |
| July                                     | 3,503                 | 215,000            |
| August                                   | 2,933                 | 180,000            |
| September                                | 1,768                 | 105,000            |
| October                                  | 815                   | 50,000             |

\*Flow rate in CFS calculated by dividing the monthly volume in AF by the numbers of days in the month by 1.98

34. To find legal availability, the legal demands of the downstream water users were subtracted from the physical availability of the source at the proposed POD. The legal availability analysis is shown in tables 9 and 10. Tables 9 and 10 show that water is legally available for the requested amount throughout the proposed period of diversion at the proposed source of supply.

| <b>Table 9: Legal Availability at the Point of Diversion on Missouri River (Flow Rate)</b> |  |                                 |                                    |   |                                       |                                 |  |  |
|--|--|---------------------------------|------------------------------------|---|---------------------------------------|---------------------------------|--|--|
| <b>A</b>   | <b>B</b>                                       | <b>C</b>                        | <b>D</b>                           | <b>E</b>                                | <b>F</b>                              | <b>G</b>                        | <b>H</b>                                     | <b>I</b>                                   |
| <b>Month</b>   | <b>Physically Available Water at POD (CFS)</b> | <b>Valley CD Flowrate (CFS)</b> | <b>Roosevelt CD Flowrate (CFS)</b> | <b>Fort Peck Compact Flowrate (CFS)</b> | <b>Individual Water Rights (CFS)*</b> | <b>FWP Instream Right (CFS)</b> | <b>Remaining Portion of the MCCD (CFS)**</b> | <b>Legally Remaining Flowrate (CFS)***</b> |
| April  | 7,892.63                                       | 37.80                           | 558.80                             | 842.00                                  | 113.42                                | 5,178.00                        | 70.87  | 1,091.73                                   |
| May  | 8,899.07                                       | 37.80                           | 558.80                             | 1,711.00                                | 146.13                                | 5,178.00                        | 70.87  | 1,196.47                                   |
| June   | 9,460.07                                       | 37.80                           | 558.80                             | 2,441.00                                | 146.13                                | 5,178.00                        | 70.87  | 1,027.47                                   |
| July   | 9,643.57                                       | 37.80                           | 558.80                             | 3,503.00                                | 146.13                                | 5,178.00                        | 70.87  | 148.97                                     |
| August   | 9,904.88                                       | 37.80                           | 558.80                             | 2,933.00                                | 135.44                                | 5,178.00                        | 70.87  | 990.97                                     |
| September  | 8,614.88                                       | 37.80                           | 558.80                             | 1,768.00                                | 135.44                                | 5,178.00                        | 70.87  | 865.97                                     |
| October  | 8,344.58                                       | 37.80                           | 558.80                             | 815.00                                  | 130.33                                | 5,178.00                        | 70.87  | 1,553.78                                   |

\*See table 5

\*\* Remaining portion is the amount of the MCCD not accounted for in the AOPI. It was determined by subtracting the flows of active CD records within the AOPI from the full MCCD reservation.

\*\*\*Determined by subtracting the legal demands of downstream water users (columns C-H) from the physically available water at the POD (column B).

**Table 10: Legal Availability at the Point of Diversion on Missouri River (Volume)**

| A         | B                                      | C                     | D                        | E                             | F                             | G                       | H                                    | I                                |
|-----------|--|-----------------------|--------------------------|-------------------------------|-------------------------------|-------------------------|--------------------------------------|----------------------------------|
| Month     | Physically Available Water at POD (AF) | Valley CD Volume (AF) | Roosevelt CD Volume (AF) | Fort Peck Compact Volume (AF) | Individual Water Rights (AF)* | FWP Instream Right (AF) | Remaining Portion of the MCCD (AF)** | Legally Available Volume (AF)*** |
| April     | 453,185.80                             | 778.43                | 10,445.00                | 50,000.00                     | 1,077.54                      | 312,375.00              | 1,777.28                             | 76,732.55                        |
| May       | 524,180.41                             | 778.00                | 10,445.00                | 105,000.00                    | 1,428.83                      | 312,375.00              | 1,777.28                             | 92,376.29                        |
| June      | 540,683.71                             | 778.00                | 10,445.00                | 145,000.00                    | 1,428.83                      | 312,375.00              | 1,777.28                             | 68,879.59                        |
| July      | 569,877.82                             | 778.00                | 10,445.00                | 215,000.00                    | 1,428.83                      | 312,375.00              | 1,777.28                             | 28,073.70                        |
| August    | 586,444.06                             | 778.00                | 10,445.00                | 180,000.00                    | 1,299.71                      | 312,375.00              | 1,777.28                             | 79,769.06                        |
| September | 490,985.29                             | 778.00                | 10,445.00                | 105,000.00                    | 1,299.71                      | 312,375.00              | 1,777.28                             | 59,310.29                        |
| October   | 492,406.04                             | 778.00                | 10,445.00                | 50,000.00                     | 1,199.71                      | 312,375.00              | 1,777.28                             | 115,831.05                       |

\*See table 5

\*\* Remaining portion is the amount of the MCCD not accounted for in the AOPI. It was determined by subtracting the volumes of active CD records within the AOPI from the full MCCD reservation.

\*\*\*Determined by subtracting the legal demands of downstream water users (columns C-H) from the physically available water at the POD (column B).

35. The CD granted the authorization subject to the installation of a water measuring device and annual reporting. As such, the Department will add the following conditions if the change is granted.

THIS RIGHT IS SUBJECT TO THE TYPE OF WATER USE MEASURING DEVICE OR WATER USE ESTIMATION TECHNIQUE REQUIRED BY THE CONSERVATION DISTRICT. THE WATER USER SHALL MAINTAIN THE MEASURING DEVICE, SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY. THE WATER USER SHALL KEEP WRITTEN RECORDS OF THE FLOW RATE AND VOLUME OF THE WATER USED. RECORDS SHALL BE SUBMITTED BY NOVEMBER 15 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT THE WATER USE ANNUAL STATUS REPORT FORM MAY BE CAUSE FOR REVOCATION OF THIS AUTHORIZATION. THE RECORDS MUST BE SENT TO THE CONSERVATION DISTRICT OFFICE AND WATER RESOURCES REGIONAL OFFICE.

36. The Department has considered water rights with senior and junior status for adverse effect in the area of potential impact. Water right permit 40S 77523-00 was granted in 1991 with a priority date of October 2, 1991. It would now be subject to a valid call made by the holder of this Conservation District Record with a July 1, 1985 priority date. All other water rights in the area of potential impact have seniority over or equal to Conservation District Record 40S 30171248. The legal availability analysis includes water right permit 40S 77523-00 as a legal demand and shows that water is available for the proposed change.

37. The Department finds that water is legally available in the months of the requested period of diversion.

38. The Department finds that the proposed change to the unperfected portion of the MCCD Water Reservation No. 40S 84499-00 will not create adverse effect.

### **BENEFICIAL USE**

#### **FINDINGS OF FACT**

39. The Applicant proposes to use up to 16 CFS and 2,304 AF for Irrigation of 1,152 AC. Irrigation is recognized as a beneficial use under the Montana Water Use Act §85-2-102, MCA. The flow rate and volume were agreed upon by the CD and the producer.

40. The requested flow rate was determined based on the capabilities of the center pivot irrigation systems, compared to the water needs of the crop intended for growing. The applicant's irrigation contractor designed the pumping plant, pressure mains, booster pumps, and pivot nozzle packages to accommodate anticipated crop and production schedule.

41. The Applicant requested a volume of 2,304 AF based on 2 FT/AC over 1,152 AC. The requested volume is under the DNRC standard of 2.30-2.69 AF/AC for sprinkler irrigation at 70% efficiency in climatic area II, per ARM 36.12.115. The Applicant confirmed the amount requested is sufficient for the proposed use due to the mixed crop type and rotation.

42. The Department finds the proposed change in POD and POU for a portion of the Water reservation 40S 84499-00 is a beneficial use of water.

### **ADEQUATE DIVERSION**

#### **FINDINGS OF FACT**

43. The Applicant's producer proposes to divert water from the Missouri River by means of two electricity driven Cornell 10 RC centrifugal close-coupled pumps with a combined 275 HP and a total design supply flow rate of 7,200 GPM. The pump intake will be positioned on floating screens, and two Cornell 8H booster pumps will maintain pressure in the main supply pipe.

44. The pumping plant and booster system is capable of running up to 7 of the 9 total pivots simultaneously, while supplying at least 50 psi of pressure. The delivery force main system will consist of a buried PVC PIP pipe network ranging between 10-24 inches in diameter. Center irrigation pivots will be Valley brand (full and partial swing). The pivot coverages will range from 36 AC to 273 AC. The irrigation system was designed by Agri Industries, Inc.

45. The Applicant will install flow meters in the system to satisfy the measurement conditions resulting from this application.

46. The POD and approximately 0.3 miles of the proposed pipeline are located on land owned by the United States Department of the Interior (USDI) Bureau of Land Management (BLM). A Right-of-Way Grant/Temporary Use Permit was provided by the Applicant's producer from USDI BLM allowing access for the POD and pipeline until December 31, 2056.

47. The Department finds that the diversion and conveyance infrastructure is adequate for the proposed change in POD and POU of Water Reservation 40S 84499-00.

## **POSSESSORY INTEREST**

### **FINDINGS OF FACT**

48. The affidavit on the Conservation District Application to Change Water Reservation form was signed by Jana Haynie, Conservation District Board Chair, for the McCone County Conservation District and producer, Bill Walter, for the Prairie Elk Hutterian Brethren, Inc. The submission of the Application for Reserved Water Use Authorization (Form 102) was signed by the producer, Joe Walter, for the Prairie Elk Hutterian Brethren, Inc., and is evidence of written consent of possessory interest in the property where the water is to be put to beneficial use.

## **CONCLUSIONS OF LAW**

### **WATER RESERVATION CRITERIA**

49. The Applicant has proven by a preponderance of the evidence that the purpose, need, amount, and public interest are consistent with the 1994 *Order of Board of Natural Resources Establishing Water Reservations*. Sections 85-2-316(12), 85-2-402(2)(d), MCA (FOF 12-17).

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

50. 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.*

*Hennessey*, 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> 51. 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 1057; *Hohenlohe*, ¶¶ 43-45.<sup>2</sup>

52. 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

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

<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, *Gassert 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).

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 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>

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<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

<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

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

54. 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.

55. 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

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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.)

<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).

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).

56. 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.

57. 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 18-19)

58. Based upon the Applicant’s comparative analysis of historic water use and return flows to water use and return flows under the proposed change, the Applicant has proven that 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. Section 85-2-402(2)(a), MCA. (FOF Nos. 20-38)

### BENEFICIAL USE

59. 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).

60. 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 2,304 acre-feet of diverted volume and 16 CFS flow rate of water requested is the amount needed to sustain the beneficial use and is within the standards set by DNRC Rule/other standard. Section 85-2-402(2)(c), MCA (FOF Nos. 39-42).

### ADEQUATE MEANS OF DIVERSION

61. 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*

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*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).

62. 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. 43-47)

*POSSESSORY INTEREST*

63. 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.

64. 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 Nos. 48).

## **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 30171258 should be GRANTED subject to the following.

The Department determines the Applicant may add a point of diversion and place of use to Water Reservation (40S 84499-00). A flow rate of 16 CFS up to 2,304 AF shall be diverted from the Missouri River from the NENWSW, Section 15, Township 26N, Range, 45E, McCone County, to 1,152 AC of place of use as listed in Table 1. The period of diversion and period of use are from April 1 to October 15 each year. This change authorization will be subject to the following conditions, limitations, or restrictions.

THIS RIGHT IS SUBJECT TO THE TYPE OF WATER USE MEASURING DEVICE OR WATER USE ESTIMATION TECHNIQUE REQUIRED BY THE CONSERVATION DISTRICT. THE WATER USER SHALL MAINTAIN THE MEASURING DEVICE, SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY. THE WATER USER SHALL KEEP WRITTEN RECORDS OF THE FLOW RATE AND VOLUME OF THE WATER USED. RECORDS SHALL BE SUBMITTED BY NOVEMBER 15 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT THE WATER USE ANNUAL STATUS REPORT FORM MAY BE CAUSE FOR REVOCATION OF THIS AUTHORIZATION. THE RECORDS MUST BE SENT TO THE CONSERVATION DISTRICT OFFICE AND WATER RESOURCES REGIONAL OFFICE.

**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 29<sup>th</sup> day of May, 2026.



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Lin-An Yang, Manager  
Glasgow 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 29<sup>th</sup> day of May, 2026, by first class United States mail or electronic email.

MCCONE COUNTY CONSERVATION DISTRICT  
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CIRCLE, MT 59215

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