

THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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HELENA, MONTANA 59620-1601

GOVERNOR GREG GIANFORTE

DNRC DIRECTOR AMANDA KASTER

July 23, 2026

MEMORANDUM TO FILE: Conservation District Water Reservation Based Change No. 40S 30173545

FROM: Matt Miles, Regional Manager

Matt Miles

Digitally signed by
Matt Miles
Date: 2026.07.23
11:47:30 -0600

This memorandum serves to provide an explanation as to why additional applications were created mid-way through processing the original application and why Application #30173545 is referenced throughout the application file and not Application #30175909 which is the only application that will be publicly noticed.

The Department identified errors in the preliminary determination (PD) to grant. This change authorization includes three temporary change authorization versions because two proposed POUs are located on Montana State Board of Land Commissioners land and are subject to lease terms described in Agricultural & Grazing Lease of State Lands Leases AG-10540 and AG-10576, which expire at different times. Both Leases were signed by the lessee, F&M Ranch, LLC, and Montana State Board of Land Commissioners. If State Lease Ag-10540 expires or is terminated, then Change Version 5, represented by Application No. 40S 30175909, will revert to Change Authorization Version 3, represented by Application No. 40S 30175907. If State Lease Ag-10576 expires or is terminated, then Change Version 5, represented by Application No. 40S 30175909, will revert to Change Authorization Version 4, represented by Application No. 40S 30175908. If both State Lease Ag-10540 and State Lease Ag-10576 expire or are terminated, the Change Version will revert to Change Authorization Version 2, represented by Application No. 40S 30173545, which would leave only the permanent portion of this change.

In summary, Change Application Nos. 40S 30175907, 40S 30175908, and 40S 30175909 were created for the temporary portions, while 40S 30173545 was created for the permanent portions of the change application. Pursuant to ARM 36.12.1305(4), water right changes with temporary and permanent components may be submitted on a single application form.



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

* * * * *

APPLICATION TO CHANGE WATER RIGHT NOS.

**40S 30173545, 40S 30175907, 40S 30175908,)
40S 30175909, BY RICHLAND COUNTY)
CONSERVATION DISTRICT (F&M RANCH LLC,)
PRODUCER)**

NOTICE OF ERRATA

**DRAFT PRELIMINARY DETERMINATION TO
GRANT CHANGE**

* * * * *

The following errors have been found in the DRAFT PRELIMINARY DETERMINATION TO GRANT CHANGE:

1. In the DRAFT PRELIMINARY DETERMINATION TO GRANT CHANGE, on page 1, the Introduction states:

On April 23, 2026, Richland County Conservation District (Applicant) submitted Conservation District Application to Change Water Reservation No. 40S 30173545 to change Water Reservation Record 40S 84500-00 (Conservation District Record 40S 30172430) 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 January 14, 2026, 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 January 26, 2026. The Department delivered the Department-completed technical analyses on March 4, 2026. The Application was determined to be correct and complete as of May 4, 2025. An Environmental Assessment for this application was completed on June 12, 2026.

This should read:

On April 23, 2026, Richland County Conservation District (Applicant) submitted Conservation District Application to Change Water Reservation No. 40S 30173545 to change Water Reservation Record 40S 84500-00 (Conservation District Record 40S 30172430) to the Havre Regional Office of the Department of Natural Resources and Conservation (Department or DNRC). **Change Application Nos. 40S 30175907, 40S 30175908, and 40S 30175909 were created for the temporary portions, while 40S 30173545 was created for the permanent portions of the change application.** The Department published receipt of the application on its website. A preapplication meeting was held between the Department and the Applicant on January 14, 2026, 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 January 26, 2026. The Department delivered the Department-completed technical analyses on March 4, 2026. The Application was determined to be correct and complete as of May 4, 2025. An Environmental Assessment for this application was completed on June 12, 2026.

2. In the DRAFT PRELIMINARY DETERMINATION TO GRANT CHANGE, on page 6, Finding of Fact 8 states:

This change authorization includes **two** temporary change authorizations because two proposed POUs are located on Montana State Board of Land Commissioners land and are subject to lease terms described in Agricultural & Grazing Lease of State Lands Leases AG-10540 and AG-**10579**. Both Leases were signed by the lessee, F&M Ranch, LLC, and Montana State Board of Land Commissioners.

This should read:

This change authorization includes **three** temporary change authorization **versions** because two proposed POUs are located on Montana State Board of Land Commissioners land and are subject to lease terms described in Agricultural & Grazing

Lease of State Lands Leases AG-10540 and AG-10576, which expire at different times. Both Leases were signed by the lessee, F&M Ranch, LLC, and Montana State Board of Land Commissioners. If State Lease Ag-10540 expires or is terminated, then Change Version 5, represented by Application No. 40S 30175909, will revert to Change Authorization Version 3, represented by Application No. 40S 30175907. If State Lease Ag-10576 expires or is terminated, then Change Version 5, represented by Application No. 40S 30175909, will revert to Change Authorization Version 4, represented by Application No. 40S 30175908. If both State Lease Ag-10540 and State Lease Ag-10576 expire or are terminated, the Change Version will revert to Change Authorization Version 2, represented by Application No. 40S 30173545, which would leave only the permanent portion of this change.

3. In the DRAFT PRELIMINARY DETERMINATION TO GRANT CHANGE, on pages 17 & 18, Finding of Fact 53 states:
The Temporary Change in Appropriation Right Consent form is approved for the Lessee to utilize water on State Trust Land for the duration of time described in Agricultural & Grazing Lease of State Lands Leases AG-10540 and AG-10579.
 - a. State Lease AG-10540
 - i. POU: SWSE Section 29 T27N R57E Richland County
 - ii. Proposed AC: 32 AC
 - iii. Duration: March 1, 2024, to February 28, 2034.
 - b. State Lease AG-10579:
 - i. POU: SWSWSW Section 21 T27N R57E Richland County
 - ii. Proposed AC: 2.5 AC
 - iii. Duration: March 1, 2025, to February 28, 2035.

This should read:

The Temporary Change in Appropriation Right Consent form is approved for the Lessee to utilize water on State Trust Land for the duration of time described in Agricultural & Grazing Lease of State Lands Leases AG-10540 and AG-10576.

a. State Lease AG-10540

i. POU: SWSE Section 29 T27N R57E Richland County

ii. Proposed AC: 32 AC

iii. Duration: March 1, 2024, to February 28, 2034.

b. State Lease AG-10576:

i. POU: SWSWSW Section 21 T27N R57E Richland County

ii. Proposed AC: 2.5 AC

iii. Duration: March 1, 2025, to February 28, 2035.

4. In the DRAFT PRELIMINARY DETERMINATION TO GRANT CHANGE, on page 25, the Preliminary Determination states:

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right No. 40S 30173545 should be GRANTED subject to the following.

The Applicant proposes to divert water from the Missouri River, by means of two pumps, from April 1 through October 19 for 124.45 AF, from a point in the NWSESE (POD No. 4) and a point in the NESESE (POD No. 2), Section 20, T27N, R57E, Richland County, for Sprinkler Irrigation use from April 1 through October 19. No additional flow rate is proposed as a part of this change application, as the 124.45 AF of additional volume will be used in combination with SOC 40S 171255-00. The total combined appropriation of SOC 40S 171255-00 and CD Record 40S 30172430 will not exceed 7,000 GPM up to 1,529.09 AF.

The Applicant is authorized to add the proposed points of diversion and places of use. A volume of 124.45 AF shall be diverted from the Missouri River from the following locations: NWSESE and NESESE, Section 20, T27N, R57E, Richland County, to irrigate a total of 65.5 AC located in

Notice of Errata

DRAFT Preliminary Determination to GRANT

the SWSWSW, Section 21, 27N, R57E, SWSE, Section 29, T27N, R57E, and NWNW, Section 33, T27N, R57E. The period of diversion and the period of use are from April 1 to October 19.

The Applicant obtained written consent from the DNRC Trust Land Management Division to temporarily irrigate AC on the State Trust Land for the duration of the Agricultural & Grazing Lease of State Lands Agreement Nos. 10540 and 10579. Expiration or Termination of the Agricultural & Grazing Lease of State Lands Agreement Nos. 10540 and 10579 will result in the revocation of temporary change authorization in the following places of use:

a. State Lease AG-10540

- i. POU: SWSE Section 29 T27N R57E Richland County
- ii. Proposed AC: 32 AC
- iii. Revocation Date: February 28, 2034.

b. State Lease AG-10579:

- i. POU: SWSWSW Section 21 T27N R57E Richland County
- ii. Proposed AC: 2.5 AC
- iii. Revocation Date: February 28, 2035.

This should read:

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right Nos. 40S 30173545, 40S 30175907, 40S 30175908, and 40S 30175909 should be GRANTED subject to the following.

The Applicant proposes to divert water from the Missouri River, by means of two pumps, from April 1 through October 19 for 124.45 AF, from a point in the NWSESE (POD No. 4) and a point in the NESESE (POD No. 2), Section 20, T27N, R57E, Richland County, for Sprinkler Irrigation use from April 1 through October 19. No additional flow rate is proposed as a part of this change application, as the 124.45 AF of additional volume will be used in combination with SOC 40S 171255-00. The total combined appropriation of SOC 40S 171255-00 and CD Record 40S 30172430 will not exceed 7,000 GPM up to 1,529.09 AF.

The Applicant is authorized to add the proposed points of diversion and places of use. A volume of 124.45 AF shall be diverted from the Missouri River from the following locations: NWSESE and NESESE, Section 20, T27N, R57E, Richland County, to irrigate a total of 65.5 AC located in the SWSWSW, Section 21, T27N, R57E, SWSE, Section 29, T27N, R57E, and NWNW, Section 33, T27N, R57E. The period of diversion and the period of use are from April 1 to October 19.

The Applicant obtained written consent from the DNRC Trust Land Management Division to temporarily irrigate AC on the State Trust Land for the duration of the Agricultural & Grazing Lease of State Lands Agreement Nos. 10540 and 10576. Expiration or Termination of the Agricultural & Grazing Lease of State Lands Agreement Nos. 10540 and 10576 will result in the revocation of the applicable temporary change authorization in the following places of use:

a. State Lease AG-10540

- i. POU: SWSE Section 29 T27N R57E Richland County
- ii. Proposed AC: 32 AC
- iii. Revocation Date: February 28, 2034.

b. State Lease AG-10576:

- i. POU: SWSWSW Section 21 T27N R57E Richland County
- ii. Proposed AC: 2.5 AC
- iii. Revocation Date: February 28, 2035.

Please make these corrections to your copy.

DATED 15th day of July 2026.

Matt Miles Digitally signed by Matt Miles
Date: 2026.07.15 08:33:46 -06'00'

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

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- Montana Department of Natural Resources and Conservation Trust Lands Management Division: Authorization for Temporary Change in Appropriation Right Consent Form, Dated October 1, 2025.
- Copy of the Conservation District Application from the Producer (Form 102), Dated March 7, 2018.
 - F&M Ranch LLC Change Map, Dated July 19, 2017.
 - 40S 215560-00 General Abstract, Dated March 7, 2018.
 - 40S 171255-00 General Abstract, Dated March 7, 2018.
 - 5RB 1800 RP& 5RB 1200 RPM Pump Curve
 - L Clark, Sample Training Soils Information
 - F&M Ranch LLC WRS (7/12/1967) Map, Dated March 28, 2017.
 - 27.3 AC Web Soil Survey Map, Dated March 7, 2018.
 - Map Unit Legend
 - 17.4 AC Web Soil Survey Map, Dated March 7, 2018.
 - Map Unit Legend
 - Explanation of Project
 - Richland County Conservation District Invoice, Dated March 8, 2018.
 - Updated Application map from Terril Raaum, Dated September 2025.
- Conservation District Detailed Development Plan Review Checklist, Dated July 1, 2025.
 - F&M Ranch LLC Operations Description, Dated November 12, 2025.
 - Data Sheet 4RB-CC Pump Curve
 - Data Sheet 4RB-CC Pump Specs
 - 5RB – 1800 RMP Pump Curve
- Copy of the Conservation Public Notice from the Conservation District, Dated October 1, 2025.
- Affidavit of Publication from the Conservation District, Dated October 1, 2025.
- Copy of the Certificate of Service - Missouri from the Conservation District, Dated September 29, 2025.

- Copy of The Conservation District Criteria Assessment Review Checklist, Dated November 4, 2025.
- Signed Copy of the Conservation District Reserved Water Use Authorization from the Conservation District (Form 102), Dated November 21, 2025.

Additional Maps:

- Richland County Conservation District F&M Ranch Reserved Water Application RI-029 Proposed Places of Use Map, Dated August 2025.
- Richland County Conservation District F&M Ranch Reserved Water Application RI-029 Soils Map, Dated September 2025.
- Richland County Conservation District F&M Ranch Reserved Water Application RI-029 Supplemental Water Rights Map, Undated.

Information Received after Application Filed

- Meeting with HydroSolutions Consultants Mark Elison and Christine Kangas DNRC Staff, June 3, 2026.

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.
- United States Geological Survey (USGS) Gaging Station #06185500 data for the Missouri River near Culbertson; Period of Record: April 1958 – September 2024
- Application File for Change Authorization 40S 30110688 (Change to add second POD "POD No. 2" on SOC 40S 171255-00, Issued 2017)
- Application File for Change Authorization 40S 30116313 (Change to add third POD "POD No. 3" on SOC 40S 171255-00, Issued 2018)
- Application File for Change Authorization 40S 30154495 (Change to add fourth POD "POD No. 4" on SOC 40S 171255-00, Issued 2022)
- Application File for Statement of Claim 40S 171255-00
- Application File for Statement of Claim 40S 215560-00

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; TLMD means Trust Lands Management Division; CFS means cubic feet per second; GPM means gallons per minute; AF means acre-feet; AC means acres; SOC means Statement of Claim; POD means Point of Diversion; POU means Place of Use; mi means mile; AF/YR means acre-feet per year; AOPI means Area of Potential Impact; uppermost point of diversion means POD 4; USGS means United States Geological Survey; 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 proposes adding PODs and POUs to the Richland County CD Water Reservation (40S 84500-00) that were not included in the original Water Reservation public notice.
2. The CD Record reflects the portion of Water Reservation No. 40S 84500-00, authorized for use by F&M Ranch, LLC. The portions authorized are for 0 CFS up to 124.45 AF for Irrigation of up to 65.5 AC.

Table 1: WATER RIGHT(S) PROPOSED FOR CHANGE

WR TYPE	WR NUMBER	WR PRIORITY DATE	WR SOURCE
Water Reservation	40S 84500-00	7/1/1985 08:00 AM	Missouri River
Conservation District Record	40S 30172430 (RI-029M)	3/18/2018 09:50 AM	Missouri River

3. There are no supplemental water rights for the proposed 65.5 AC to be irrigated.

CHANGE PROPOSAL

FINDINGS OF FACT

4. The Applicant proposes to change POD and POU to the Richland County CD Water Reservation (40S 84500-00) that were not included in the original Water Reservation public notice. The Applicant proposes to divert 124.45 AF of water from the Missouri River, from April 1 through October 19, from a point in the NWSESE (POD No. 4) and a point in the NESESE, Section 20, T27N, R57E, Richland County (POD No. 2), for Sprinkler Irrigation use from April 1 through October 19. No additional flow rate is proposed as part of this change application, as the 124.45 AF of additional volume will be used in combination with SOC 40S 171255-00 and SOC 40S 215560-00. Richland County CD owns the Water Reservation, but the producer, F&M Ranch LLC, controls the diversionary works and can adjust the volume diverted as necessary.

5. The proposed change to POU, as authorized by the CD, is for additional irrigated acreage located within existing center pivots that have been omitted from the F&M Ranch LLC SOC 40S 171255-00 and the Montana State Board of Land Commissioners SOC 40S 215560-00.

6. SOC 40S 171255-00 includes 4 PODs (POD Nos. 1,2,3,4) and its POU serves 752 AC. These 752 AC include all of Pivot 2, and partial places of use in Pivot 3, and Pivot 1, in addition to other fields. The proposed volume will be supplied by POD Nos. 2 and 4. SOC 40S 215560-00 has a POD upstream of SOC 40S 171255-00 and serves 38 AC in total with 8AC located in the W2NWNW, Section 28, T27N, R57E, being a part of Pivot 3. SOC 40S 215560-00 does not contribute to the proposed volume.

7. A total of 65.5 AC of Irrigation is proposed through the addition of three places of use. The proposed places of use include three pivots located in the following legal land descriptions:

Table 2: PROPOSED PLACE OF USE

Pivot No. (See Figure 1)	AC	Volume (AF)	Quarter Section	Section	Township	Range	County	Ownership	Change Type
"Pivot 3"	2.5	4.75	SWSWSW	21	27N	57E	Richland	MT State Board of Land Commissioners	Temporary Change Authorization
"Pivot 1"	32	60.8	SWSE	29	27N	57E	Richland	MT State Board of Land Commissioners	Temporary Change Authorization

"Pivot 6"	31	58.9	NWNW	33	27N	57E	Richland	F&M Ranch, LLC.	Change Authorization
Total	65.5	124.45							

8. This change authorization includes two temporary change authorizations because two proposed POU's are located on Montana State Board of Land Commissioners land and are subject to lease terms described in Agricultural & Grazing Lease of State Lands Leases AG-10540 and AG-10579. Both Leases were signed by the lessee, F&M Ranch, LLC and Montana State Board of Land Commissioners.

9. According to the Richland County CD Application to Change Water Reservation, Form 606-CD, the CD had 58.75 CFS and 13,731.7 AF remaining in its 40S 84500-00 Water Reservation prior to the submission of this application.

10. The CD granted the producer, F&M Ranch, LLC, the right to use a portion of the CD Water Reservation on November 21, 2025. The CD is approved, subject to the installation of a water measuring device. To meet the adverse effect criterion, the Department will add the following condition:

1. 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.

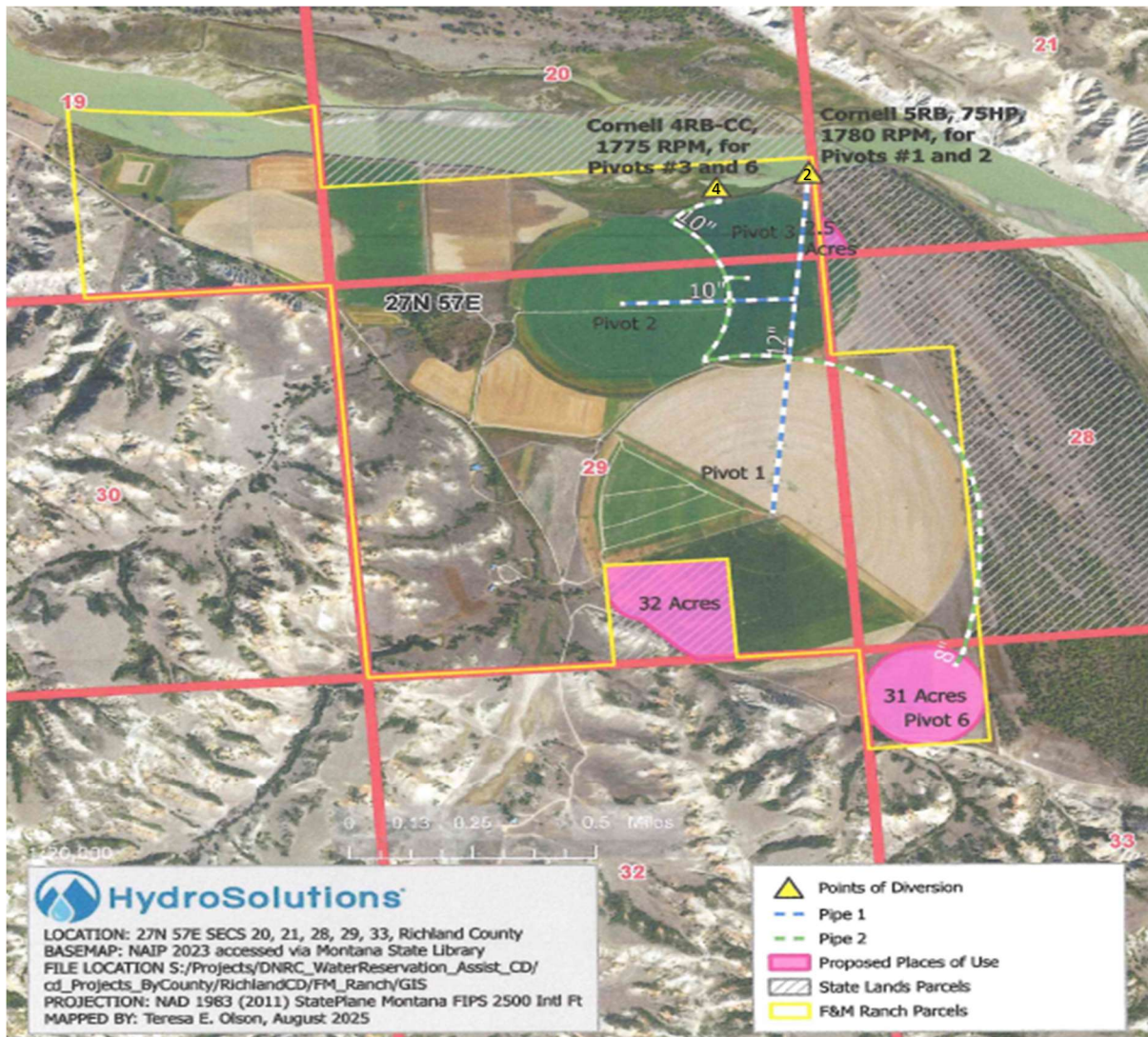


Figure 1. Applicant-Provided Map of Proposed PODs and POUs for CD Change Application No. 40S 30173545

WATER RIGHT CHANGE CRITERIA (§ 85-2-402, MCA)

11. 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), and, if applicable, subject to subsections (1)(c) and (15), 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.

12. 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

13. An authorization for change is required in § 85-2-316(12), MCA, because the Producer's proposed PODs and POUs are outside the project areas identified in the original Water Reservation application's public notice.

14. The purpose of the Water Reservation 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.
15. The need for the Water Reservation 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.
16. The amount of water necessary for the purposes for which the Water Reservation 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.
17. 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.
18. 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

19. The Board of Natural Resources and Conservation granted the Richland County CD a Water Reservation (40S 84500-00) for 186.9 CFS up to 25,349 AF for use on 11,141 AC 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.
20. 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

21. Richland County CD is proposing to add PODs and POUs to its Water Reservation. The proposed appropriation will use a portion of the Richland County CD Water Reservation from

the Missouri River to supply water to a pivot system for 65.5 AC in the POUs listed in Table 2. The proposed period of diversion and period of use is April 1 to October 19. The producer, F&M Ranch, LLC, proposes to divert up to 124.45 AF.

22. Water is available for appropriation under the Richland County CD Water Reservation.

23. The CD published notice of this proposed project on October 1, 2025, in the Roundup newspaper, and set a November 13, 2025, deadline for objections.

24. The CD sent individual public notices to water users downstream of the proposed POD and to the entities on the DNRC standardized list of entities to notice.

25. No objections were received by the CD to this project.

26. The CD Reserved Water Use Authorization is subject to all prior existing water rights in the source of supply. This Authorization is subject to any final determination of existing water rights, as provided by Montana law.

27. In order to prevent adverse effect from occulting to other water users, the Applicant will comply with any call being made by requesting the Producer of the CD Water Reservation to reduce their diversions of water such as that the 124.45 AF of volume granted through this change authorization will not be diverted from the source of supply through the duration of the call. The required measurement records described in FOF 36 shall document the reductions in diverted volume as a result of a call made by a senior water user.

28. 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 CD annually by November 15th. The water flow will be measured using a flowmeter.

29. There is no historic use for this unperfected portion of the Water Reservation; no comparison of historic and proposed consumptive use or return flows can be made.

30. There is no historical return flow to assess because the water has not yet been put to beneficial use.

Physical and Legal Availability

31. This application proposes using a non-perfected portion of the Richland County CD Water Reservation. Water rights, both senior and junior to Water Reservation No. 40S 84500-00, must be considered to determine whether this proposed application would have an adverse

effect because the PODs and POUs were not within the original public notice area identified in the Order of Board of Natural Resources Establishing Water Reservations proceedings on December 30, 1994. Therefore, the Department analyzed the physical and legal availability of water for this Application.

32. 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 USGS Gaging Station #06185500 is 6 river miles upstream of the proposed POD No. 4 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 subtracting all water rights between the gaging station and the proposed POD No. 4 (Table 4). Table 3 lists the existing water rights between the gaging station and the proposed upper POD:

Table 3: Existing Surface Water Rights between USGS Gaging Station #06185500 and Proposed POD No. 4			
Water Right Number	Water Right Type	Volume (AF)	Flow (CFS)
40S 137580 00	STATEMENT OF CLAIM	0.54	0.08
40S 77646 00	WATER RESERVATION	365	0.68
40S 188165 00	STATEMENT OF CLAIM	37.96	0.13
40S 188166 00	STATEMENT OF CLAIM	37.96	0.13
40S 1549 00	STATEMENT OF CLAIM	257.35	1.78
40S 30123529	STATEMENT OF CLAIM	13.60	0.10
40S 30142666	STATEMENT OF CLAIM	0.10	0.08
40S 188167 00	STATEMENT OF CLAIM	37.96	0.13
40S 30142624	STATEMENT OF CLAIM	0.54	0.08
40S 30142629	STATEMENT OF CLAIM	0.34	0.08
40S 186739 00	STATEMENT OF CLAIM	37.96	0.13
40S 30142623	STATEMENT OF CLAIM	0.10	0.08
40S 30161904	PROVISIONAL PERMIT	600	6.68
40S 188168 00	STATEMENT OF CLAIM	37.96	0.13
40S 186744 00	STATEMENT OF CLAIM	37.96	0.13
40S 137592 00	STATEMENT OF CLAIM	0.88	0.08
40S 186743 00	STATEMENT OF CLAIM	37.96	0.13
40S 114654 00	CONSERVATION DISTRICT RECORD	451	2.7
40S 30071102	PROVISIONAL PERMIT	1.25	0.02
40S 215560 00	STATEMENT OF CLAIM	102.22	1.44
40S 106914 00	CONSERVATION DISTRICT RECORD	804	5.1
40S 106915 00	CONSERVATION DISTRICT RECORD	520	3.9
40S 106990 00	CONSERVATION DISTRICT RECORD	636	4.2
40S 186742 00	STATEMENT OF CLAIM	544.00	2.90

40S 171255 00	STATEMENT OF CLAIM	1,827.36	15.6
40S 97742 00	PROVISIONAL PERMIT	542.7	2.67
40S 13498 00	PROVISIONAL PERMIT	324	2.23
40S 101292 00	STATEMENT OF CLAIM	1,869.55	6.24

KEY	Irrigation Volume Determined per Acreage and Climatic Area (60% Efficiency*AC)
	Irrigation - Volume Determined as Claimed
	Livestock Direct from Source

Table 4: Physical Availability of Flow Rate and Volume at the Uppermost Proposed Point of Diversion on the Missouri River

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 Gage #06185500 to POD (AF)	Physically Available Water at POD (CFS)	Physically Available Water at POD (AF)
April	8,000	475,200	46.49	823.33	7,953.51	474,376.67
May	8,656	531,305	57.62	1,297.46	8,598.38	530,007.82
June	9,547	567,092	57.62	1,297.46	9,489.38	565,794.34
July	9,371	575,192	57.62	1,297.46	9,313.38	573,894.52
August	8,973	550,763	57.62	1,297.46	8,915.38	549,465.28
September	7,836	465,458	57.62	1,297.46	7,778.38	464,160.94
October	6,976	428,156	54.95	1,188.92	6,920.55	426,967.27

33. The Department determined that the AOPI for this application extends 5.4 river miles downstream from the uppermost point of diversion. Table 5 lists the existing downstream users within the AOPI:

Table 5: Existing Surface Water Users within the AOPI

Water Right Number	Volume (AF)	Flow Rate (CFS)	Period of Diversion	Water Right Type
40S 12708 00	1,388	8.02	04/15 to 11/15	PROVISIONAL PERMIT
40S 99060 00	309.7	2.23	05/01 to 09/30	PROVISIONAL PERMIT
40S 137594 00	1.9	0.08	01/01 to 12/31	STATEMENT OF CLAIM
40S 137576 00	1.29	0.08	01/01 to 12/31	STATEMENT OF CLAIM
40S 30062765	182	1.52	04/01 to 10/15	CONSERVATION DISTRICT RECORD
40S 30113093	243	4.2	01/01 to 12/31	PROVISIONAL PERMIT
40S 30153305	210	1.5	01/01 to 12/31	PROVISIONAL PERMIT
40S 215560 00	102.22	1.44	04/01 to 11/04	STATEMENT OF CLAIM
40S 137593 00	1.29	0.08	01/01 to 12/31	STATEMENT OF CLAIM
40S 186738 00	43.06	0.14	01/01 to 12/31	STATEMENT OF CLAIM

40S 135791 00	10.34	0.09	01/01 to 12/31	STATEMENT OF CLAIM
40S 30132248	17	0.68	01/01 to 12/31	STATEMENT OF CLAIM
40S 74618 00	540	2.23	04/01 to 09/15	PROVISIONAL PERMIT
40S 171255 00	1,827.36	15.6	04/15 to 10/19	STATEMENT OF CLAIM
40S 30142622	2.45	0.08	01/01 to 12/31	STATEMENT OF CLAIM
40S 135792 00	7.89	0.09	01/01 to 12/31	STATEMENT OF CLAIM
40S 30142668	0.07	0.08	01/01 to 12/31	STATEMENT OF CLAIM
40S 137592 00	0.88	0.08	01/01 to 12/31	STATEMENT OF CLAIM

LIST KEY	Irrigation Volume Determined per Acreage and Climatic Area (60% Efficiency*AC)
	Irrigation - Volume Determined as Claimed
	Livestock Direct from Source

Table 6: Fort Peck-Montana Compact, MCA §85-20-201, Article III F.1 Volumes		
Month	Fort Peck Tribal Right (AF)	Fort Peck Tribal Right (CFS)**
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 the monthly volume in AF by the number of days in the month by 1.98 AF/day.

34. 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, defined in Table 6, (assuming full development of Fort Peck-Montana Compact, MCA §85-20-201, Article III F.1) from the flow and volume physically available at the uppermost proposed POD (POD No. 4). Tables 7 and 8 summarize the legal availability of flow and volume on the source within the AOPI. 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)**	Legally Available Water (CFS)
April	7,953.514	35.99	5,178.00	840	1,899.52
May	8,598.376	38.22	5,178.00	1708	1,674.16
June	9,489.376	38.22	5,178.00	2437	1,836.16
July	9,313.376	38.22	5,178.00	3497	600.16
August	8,915.376	38.22	5,178.00	2927	772.16
September	7,778.376	38.22	5,178.00	1765	797.16
October	6,920.546	33.76	5,178.00	813	895.79

** Flow rate in CFS is calculated by dividing the 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)	Legally Available Water (AF)
April	474,376.67	4,579	307,573.2	50,000	112,224.72
May	530,007.82	4,888	317,825.64	105,000	102,293.73
June	565,794.34	4,888	307,573.2	145,000	108,332.69
July	573,894.52	4,888	317,825.64	215,000	36,180.43
August	549,465.28	4,888	317,825.64	180,000	46,751.19
September	464,160.94	4,888	307,573.2	105,000	46,699.29
October	426,967.27	4,348	317,825.64	50,000	54,793.18

35. The least amount of flow legally available in any month during the period of diversion is 600.16 CFS in July, and the Applicant is applying for 0 GPM/CFS. The least amount of volume legally available in any month during the period of diversion is 36,180.43 AF in July, and the Applicant is requesting 124.45 AF for the entire period of use.

36. The Department finds the proposed change to the unperfected portion of the Richland County CD Water Reservation No. 40S 84500-00 will not have an adverse effect on other users when the following measurement condition is applied in accordance with FOF 27:

1. 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.

BENEFICIAL USE

FINDINGS OF FACT

37. The Applicant proposes to use water for Sprinkler Irrigation on 65.5 AC. Irrigation is recognized as a beneficial use under the Montana Water Use Act. § 85-2-102 (5), MCA. The volume was agreed upon by the CD and the Producer.

38. This change will allow the Richland County CD to authorize the use of a portion of its Water Reservation. The CD must authorize projects to fulfill the purpose of the reservation.

39. The Applicant proposes to divert 124.45 AF. Diverted volume was calculated by assigning a field application of 1.9 AF/AC, as authorized by the Richland County CD for 65.5 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 Department previously found, in Change Authorization 40S 30116313, under SOC 40S 171255-00, that 1.9 AF/AC was the amount historically diverted, therefore, that same volume was applied for the proposed AC to be developed in this change application.

40. The Department finds the proposed change in POD and POU for a portion of the Water Reservation 40S 84500-00 is a beneficial use of water.

ADEQUATE DIVERSION

FINDINGS OF FACT

41. The water will be diverted under Richland County's Water Reservation from the Missouri River at two PODs in combination with SOC 40S 171255-00 and further defined as POD Nos. 2 and 4 accordingly.

42. POD No. 4 is located in the NWSESE, Section 20, T27N, R57E, Richland County. The diversion method is a Cornell 4RB-CC floating pump capable of producing 1,200 GPM. POD No. 2 is located in NESESE, Section 20, T27N, R57E, Richland County. The diversion method is a Cornell 5RB pump capable of producing 1,800 GPM. These pumps are a shared diversion with SOC 40S 171255-00.

43. POD No. 4 diverts water through a 10" diameter pipe to existing Pivot 3 and proposed Pivot 6. In Pivot 3, it will serve the 2.5 AC of the proposed POU, SWSWSW Section 21, T27N, R57E, Richland County, located on the Montana State Board of Land Commissioners parcel, which was omitted from SOC 40S 215560-00 and SOC 40S 171255-00, which make up the rest of Pivot 3's POU. This is a temporary change that will expire on February 28, 2035, pursuant to the TLMD Authorization for Temporary change in Appropriation Right Consent Form.

44. In Pivot 6, it will serve a new 31 AC pivot in the NWNW, Section 33, T27N, R57E, Richland County, located on F&M Ranch.

45. POD No. 2 is located in the NESESE, Section 20, T27N, R57E, Richland County, and diverts water through a 12" pipe to Pivot 1 and Pivot 2. Pivot 2 is an existing pivot that is served by SOC 40S 171255-00. No new ACs are being proposed in Pivot 2. In Pivot 1, the diversion will serve 32 AC of the proposed POU, SWSE, Section 29, T27N, R57E, Richland County, located on the Montana State Board of Land Commissioners parcel, which was omitted from SOC 40S 171255-00, which serves the rest of Pivot 1's POU. This is a temporary change that will expire on February 28, 2034, pursuant to the TLMD Authorization for Temporary change in Appropriation Right Consent Form.

46. It is described in Change Authorization 40S 30116313, for SOC 40S 171255-00, that Pivot 1 irrigates approximately 30 AC of the Montana State Board of Land Commissioners in the SWSE, Section 29, Township 27N, Range 57E, Richland County, not currently covered under a water right. These 30 AC were originally covered under SOC 40S 171255-00. The 30 AC were amended off the claim in 2007 by Terril Raaum, owner of F&M Ranch, as part of a settlement

with the Montana State Board of Land Commissioners for Water Court case 40S-36. Therefore, the total 752 historic irrigated AC that pertain to SOC 40S 171255-00 do not include the 30 AC of the Montana State Board of Land Commissioners' land. The Applicant submitted Application RI-029M to the Richland CD on March 8, 2018, to cover these ACs.

47. SOC 40S 171255-00 has a flow rate of 7,000 GPM in total, of which 3,000 GPM is utilized at the aforementioned PODs No. 2 and 4, which would be utilized to convey the proposed additional 124.45 AF of water to irrigate 65.5 new AC, along with the 322 AC of existing Irrigation at an applied volume of 1.9 AF/AC. 3,000 GPM would be capable of producing 2,664.3 AF over the entire period of diversion and use, which is from April 1 through October 19, or 201 days ($3,000 \text{ GPM} / 448.8 = 6.68 \text{ CFS} * 1.98 \text{ AF per Day} = 13.255 \text{ AF} * 201 \text{ days} = 2,664.3 \text{ AF}$).

48. One pivot per pump will be operated at a time.

49. Measurements will be taken by a flowmeter to measure the total amount of water diverted from the Missouri River.

50. The Department finds the means of diversion and conveyance to be adequate to deliver water to the proposed places of use.

POSSESSORY INTEREST

FINDINGS OF FACT

51. The submission of the Conservation District Application for Reserved Water Use Authorization was signed by the Producer, Terril Raaum, owner of F&M Ranch LLC, 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.

52. An authorization for Temporary Change in Appropriation Right Consent form was signed by the Lessee, Terril Raaum, owner of F&M Ranch LLC, DNRC Area/Unit Office, Scott Aye, and DNRC AG & Grazing Bureau, Elizabeth Miller.

53. The Temporary Change in Appropriation Right Consent form is approved for the Lessee to utilize water on State Trust Land for the duration of time described in Agricultural & Grazing Lease of State Lands Leases AG-10540 and AG-10579.

- a. State Lease AG-10540
 - i. POU: SWSE Section 29 T27N R57E Richland County
 - ii. Proposed AC: 32 AC
 - iii. Duration: March 1, 2024, to February 28, 2034.
- b. State Lease AG-10579:
 - i. POU: SWSWSW Section 21 T27N R57E Richland County
 - ii. Proposed AC: 2.5 AC
 - iii. Duration: March 1, 2025, to February 28, 2035.

CONCLUSIONS OF LAW

WATER RESERVATION CRITERIA

54. 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 the Board of Natural Resources Establishing Water Reservations*. Sections 85-2-316(12), 85-2-402(2)(d), MCA (FOF Nos. 13-18).

HISTORICAL USE AND ADVERSE EFFECT

55. 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).¹

56. 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*, ¶¶ 43-45.²

57. 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

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

² 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).

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.³ 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).⁴

³A 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

⁴ 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

58. 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).⁵

59. Although the level of analysis may vary, analysis of the extent to which a proposed change may alter the amount, location, or timing of 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

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.)

⁵ 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).

731.

60. 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).

61. The Department’s rules reflect the above fundamental principles of Montana water law and are designed to itemize the type of 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.

62. 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. 19-20)

63. 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. 21-36).

BENEFICIAL USE

64. 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).

65. 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 that irrigation is a beneficial use and that 124.45 AF of diverted volume and 0 CFS flow rate of water requested is the amount needed to sustain the beneficial use on 65.5 AC. Section 85-2-402(2)(c), MCA (FOF Nos. 37-40).

ADEQUATE MEANS OF DIVERSION

66. 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).

67. 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. 41-50).

POSSESSORY INTEREST

68. 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.

69. 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. 51-53).

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 30173545 should be GRANTED subject to the following.

The Applicant proposes to divert water from the Missouri River, by means of two pumps, from April 1 through October 19 for 124.45 AF, from a point in the NWSESE (POD No. 4) and a point in the NESESE (POD No. 2), Section 20, T27N, R57E, Richland County, for Sprinkler Irrigation use from April 1 through October 19. No additional flow rate is proposed as a part of this change application, as the 124.45 AF of additional volume will be used in combination with SOC 40S 171255-00. The total combined appropriation of SOC 40S 171255-00 and CD Record 40S 30172430 will not exceed 7,000 GPM up to 1,529.09 AF.

The Applicant is authorized to add the proposed points of diversion and places of use. A volume of 124.45 AF shall be diverted from the Missouri River from the following locations: NWSESE and NESESE, Section 20, T27N, R57E, Richland County, to irrigate a total of 65.5 AC located in the SWSWSW, Section 21, 27N, R57E, SWSE, Section 29, T27N, R57E, and NWNW, Section 33, T27N, R57E. The period of diversion and the period of use are from April 1 to October 19.

The Applicant obtained written consent from the DNRC Trust Land Management Division to temporarily irrigate AC on the State Trust Land for the duration of the Agricultural & Grazing Lease of State Lands Agreement Nos. 10540 and 10579. Expiration or Termination of the Agricultural & Grazing Lease of State Lands Agreement Nos. 10540 and 10579 will result in the revocation of temporary change authorization in the following places of use:

- a. State Lease AG-10540
 - i. POU: SWSE Section 29 T27N R57E Richland County
 - ii. Proposed AC: 32 AC

iii. Revocation Date: February 28, 2034.

b. State Lease AG-10579:

i. POU: SWSWSW Section 21 T27N R57E Richland County

ii. Proposed AC: 2.5 AC

iii. Revocation Date: February 28, 2035.

This change authorization will be subject to the following conditions, limitations, or restrictions:

1. 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 1st day of July 2026.

Matt Miles

Digitally signed by Matt
Miles
Date: 2026.07.01 09:30:11
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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 1 day of July, 2026, by email and first-class United States mail.

RICHLAND COUNTY CONSERVATION DISTRICT
2745 WEST HOLLY ST
SIDNEY, MT 59270

Mark Elison, HydroSolutions Inc.
<marke@hydrosci.com>

Christine Kangas, HydroSolutions Inc.
<christinek@hydrosci.com>

Kailee
Ingalls

Digitally signed by
Kailee Ingalls
Date: 2026.07.01
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HAVRE Regional Office, (406) 265-5516