

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

**APPLICATION TO CHANGE WATER RIGHT) PRELIMINARY DETERMINATION TO
NO. 41B 30160682 BY PHIL AND ADELE) GRANT CHANGE
TAYLOR)**

On August 4, 2023, Phil and Adele Taylor (Applicant) submitted Application to Change Water Right No. 41B 30160682 to change Water Right Claim No. 41B 88737-00 to the Helena Regional Office of the Department of Natural Resources and Conservation (Department or DNRC). The Department published receipt of the Application on its website. The Department sent Applicant a deficiency letter under 5-2-302, Montana Code Annotated (MCA), dated December 14, 2023. The Applicant responded with information dated February 28, 2024. The Application was determined to be correct and complete as of May 28, 2024.

Applicant submitted a waiver of the timelines on June 18, 2024, pursuant to 85-2-307, MCA. Applicant submitted an amendment to the original Application on May 12, 2025, which reset the timelines. The amended Application was deemed correct and complete as of August 22, 2025. An Environmental Assessment for this Application was completed December 12, 2025.

INFORMATION

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

Application as filed:

- Application to Change Water Right, Form 606
- Signature addendum with McCollum Family Trust signatures
- Attachments to application questions
- Maps:
 - Color aerial photo depicting historic use
 - Black and white aerial photo depicting historic use
 - Color aerial photo depicting proposed use
- Attachment 1: Taylor-McCollum purchase agreement
- Attachment 2: Deed summary

- Attachment 3: Phil Taylor statement regarding historic use
- Attachment 4: Water Resources field notes
- Attachment 5: US Bureau of Reclamation water rights investigation
- Attachment 6: Ditch & soils information
- Attachment 7: Beaverhead River commissioner notes
- Attachment 8: Beaverhead River commissioner statement

Information Received after Application Filed

- Deficiency response received February 28, 2024
- Follow up e-mail and letter from Kyle Mace (Applicant's consultant) with additional deficiency response dated May 3, 2024
- E-mails between Kyle Mace and Erin Wall (DNRC) discussing consumptive use calculations dated June 4, 2024, through June 6, 2024
- Waiver of 120 Day Statutory Timeline received June 18, 2024
- Water Court Order addressing splits dated April 2, 2025
- Application Amendment Form 655 from Applicant received May 12, 2025

Information within the Department's Possession/Knowledge

- Water Resources Survey field notes dated July 7, 1973
- Water Resources Survey aerial photo CXM-2FF-123, dated July 31, 1965
- Montana Water Court Case No. 41B-0265-P-2015 Final Order dated December 24, 2020
- Irrigation Change Application Technical Report by Russ Gates (Department) dated May 5, 2025
- Revised Surface Water Change Report by Evan Norman, Groundwater Hydrologist (Department) dated August 14, 2025
- 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 Helena Regional Office at 406-444-6999 to request copies of the following documents.
 - Consumptive Use Methodology Memo dated March 17, 2010
 - Distributing Conveyance Loss on Multiple User Ditches Memorandum dated February 14, 2020

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

For the purposes of this document, Department or DNRC means the Department of Natural Resources & Conservation; CFS means cubic feet per second; GPM means gallons per minute; AF means acre-feet; AC means acres; and AF/YR means acre-feet per year.

WATER RIGHT TO BE CHANGED

FINDINGS OF FACT

1. The Applicant seeks to change Water Right Claim No. 41B 88737-00 which is for 1.33 CFS flow rate from the Beaverhead River for the purpose of flood irrigation with a priority date of April 15, 1880. The period of use and period of diversion is April 15 to October 15. Water was historically diverted through a headgate located in the SWNW NW of Section (S) 24, Township (T) 7S, Range (R) 9W, Beaverhead County into the Owen Ditch. DNRC records incorrectly list this diversion in the NWNW NW 24 7S 9W, however the SWNW NW is correct based on aerial photos and the Applicant's maps. The Owen Ditch transported water approximately 3.5 miles to the 43.5-acre historic place of use located in the NESE, NESESE, NWSESE, and SWSESE of Section 8, T7S, R8W.
2. Statements of Claim 41B 88735-00 and 41B 88736-00 list the same historical place of use as the water right proposed for change, however the Applicant asserts that these claims never provided effective irrigation on the historical place of use and that no control over the flow of water from these sources is possible as the sources for each are springs.

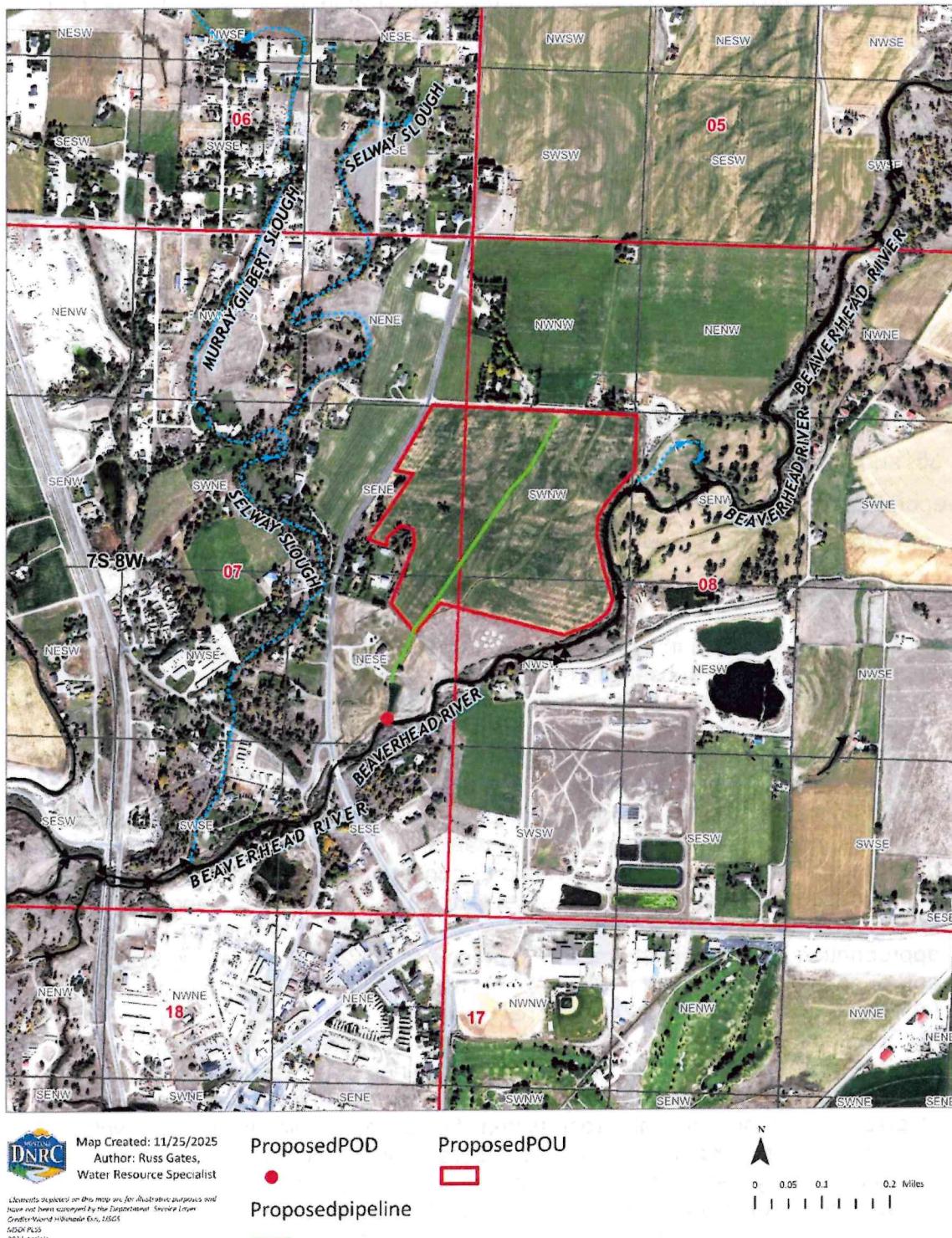
CHANGE PROPOSAL

FINDINGS OF FACT

3. The Applicant proposes to change the point of diversion (POD) and the place of use (POU) of irrigation Statement of Claim No. 41B 88737-00. The proposed new POD is approximately 2 miles downstream and northeast of the current POD. The proposed POD is located in the SENESE of S7 7S 8W Beaverhead County and will consist of a 24-inch screened headgate on the Beaverhead River. Diverted water will flow 25 feet through a pipe into an existing pond before being pumped into the pipeline system via an electric 50 horsepower (HP) pump. The pond and

associated volume are associated with Groundwater Certificate 41B 107899-00 and will serve as a flow-through system to convey water to the pump but will not contribute to irrigation volume. The proposed 29-acre POU is located in the SENENE, SENE, and NENESE of S7 T7S R8W and the NWNW, SWNW, NWNWSW of S8 T7S R8W in Beaverhead County. The proposed POU is owned by the McCollum Family Trust and the Applicant included a signed purchase agreement stating that upon the approval of this change application the water right would be sold to the McCollum Family Trust.

Figure 1: Proposed Use



4. Applicant proposes to alternate irrigation on two adjacent 29-acre fields within the proposed POU. Alternation will take place on a one year or more cycle depending on crop type, and only one 29-acre field will be irrigated in a given year. Measurements at the POD will be utilized to ensure that the authorized flow rate and volume are not exceeded.
5. The Applicant holds shares in the Clark Canyon Water Supply Company (CCWSC) which will be used supplementally on the proposed POU.

CHANGE CRITERIA

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

- (2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:
 - (a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.
 - (b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.
 - (c) The proposed use of water is a beneficial use.
 - (d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420

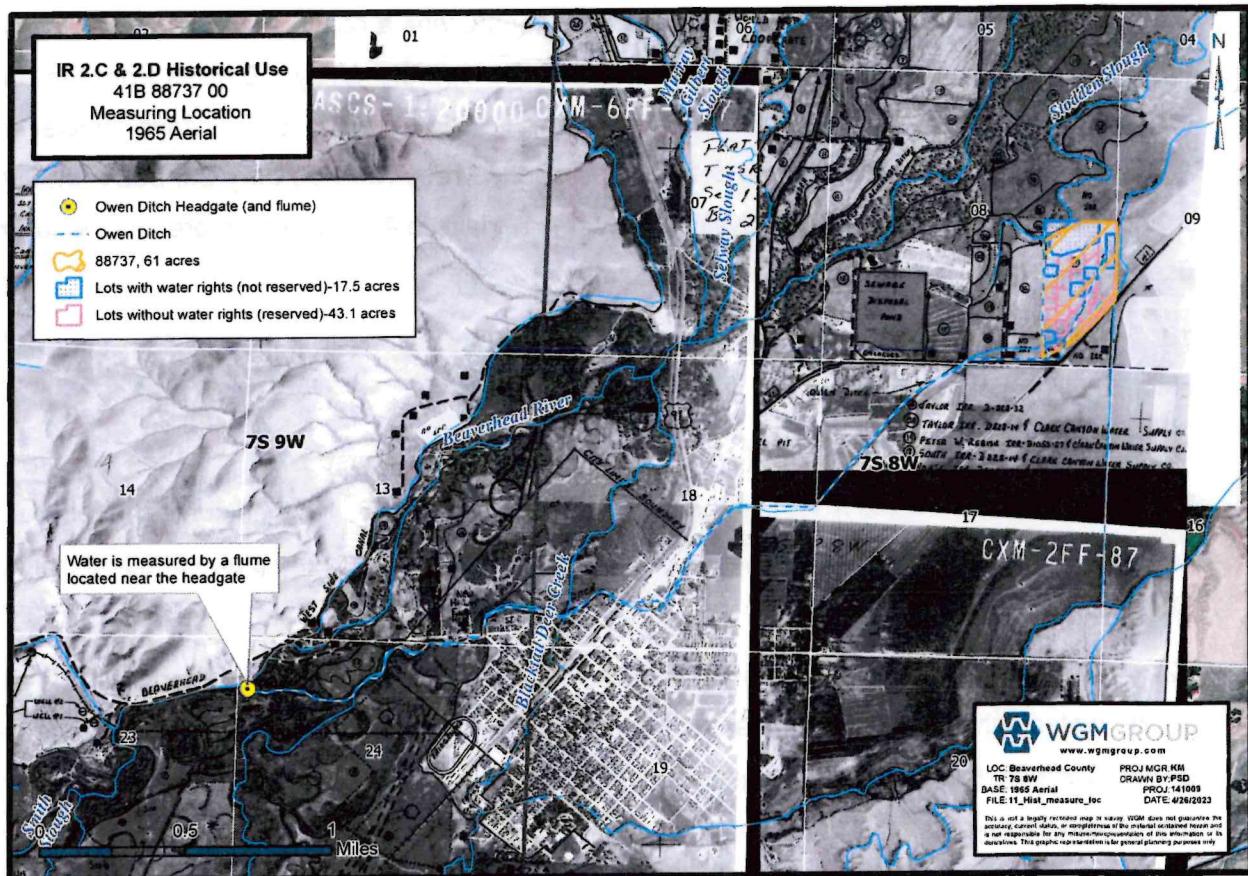
for mitigation or marketing for mitigation.

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

HISTORICAL USE

FINDINGS OF FACT

Figure 2: Historical Use



8. On April 2, 2025, the Water Court authorized a split and partial severance of the Applicant's portion of the original 61-acre place of use as listed under Statements of Claim 41B 88735-00, 41B 88736-00, and 41B 88737-00. The Applicant retained ownership of the severed 43.5 acres of the historical place of use under the original claim numbers and the Water Court created child rights 41B 30160106, 41B 30160107, and 41B 3016108 with the remaining 17.5 acres. The acres proposed for change under this Application are the 43.5 acres owned by the Applicant under original claim number 41B 88737-00. Claim 41B 88737-00 retained a flow rate of 1.33 CFS and the remaining flow rate was assigned to the child right.

9. Claim 41B 88737-00 has a priority date of April 15, 1880, and was historically diverted through a headgate into the Owen Ditch. The Owen Ditch transported water approximately 3.5 miles to the 43.5-acre historic place of use located in the NESE, NESESE, NWSESE, and SWSESE of S8, T7S, R8W. The Owen Ditch consisted of 3 reaches: Reach 1 was approximately 1.5 miles from the headgate to a concrete pipe, Reach 2 was a concrete pipe approximately 0.5 miles long through the City of Dillon, and Reach 3 ran approximately 1.5 miles from the end of Reach 2. The period of diversion for this Claim is April 15 to October 15 (183 days), however the Applicant's consultant stated in the deficiency response received February 28, 2024, that water would cease being diverted 7-10 days in July and 7-10 days in August. Therefore, the Department used 163 days for the diverted volume calculations.

10. Aerial photo CXM-2FF-123 dated July 31, 1965 supports irrigation of 43.5 acres of the claimed historical place of use.

11. Water Resources Survey (WRS) field notes dated August 14, 1973, and a Bureau of Reclamation Water Rights Investigation form dated November 16, 1949, indicate the full pre-split flow rate of 1.95 CFS (78 Miners Inches) was historically diverted to the place of use through the Owen Ditch.

12. Statements of Claim 41B 88735-00 and 41B 88736-00 list the same historical place of use as the water right proposed for change, however the Applicant asserts that these claims never provided effective irrigation on the historical place of use and that no control over the flow of water from these sources is possible as the sources for each are springs. 1973 Water Resources Survey notes submitted by the Applicant indicate that these sources were not in use at the time of the

survey. These rights were not considered in the calculations for the consumptive volume of the place of use in this Application.

13. The Applicant has shares in the Clark Canyon Water Supply Company (CCWSC), which supplements water to existing irrigated lands covered under Statement of Claim 41B 88737-00. These shares were used during periods of low flow or low water years. In Montana Water Court Case No. 41B-0265-P-2015 (p. 10)¹, the Water Court established that "lands served by CCWSC were irrigated with private water rights before the project was built. CCWSC was created to provide supplemental water to existing irrigated lands rather than water for new development." CCWSC shares will not be considered in this review. As described in the Water Court case 41B-0265-P-2015 CCWSC shares were only issued to the holders of existing private irrigation rights for supplemental irrigation of privately irrigated land. Water based on privately held rights and CCWSC shares was not measured separately and water users and commissioners had no way to distinguish between the two at the headgate, therefore delivered volumes included both types of water diverted through the headgate into the Owen Ditch. Calculations for the historical use for this Application do not include supplemental water supplied through shares in the CCWSC. The Department finds this an appropriate measure of assessing existing rights as it protects existing water users.

13. The following calculations detail the methodology described in ARM 36.12.1902(16) used to calculate historic consumed and diverted volumes:

The historic method of flood irrigation most closely resembles a graded border operation (design slope = 0.75-1.5%). Pursuant to the Department's Technical Memorandum *re: Development of standardized methodologies to determine Historic Diverted Volume*, dated September 13, 2012, the standard on-farm efficiency of this type of irrigation system is 65%. Per the historic 63.7% Beaverhead County management factor and the Dillon Weather Station IWR evapotranspiration requirement of 18.34 inches, the annual irrigation water requirement for the place of use is approximately 11.68 inches or 0.97 feet. Therefore, the historic crop consumptive use for the 43.5 irrigated acres is 42.4 acre-feet (AF). The following table summarizes the Department's historic consumptive use methodology inputs:

¹ Montana Water Court Case No. 41B-0265-P-2015 Final Order dated December 24, 2020

Table 1: Historic Consumptive Use Values for 41B 88737-00

County	Weather Station	IWR Flood Irrigation Seasonal ET	Beaverhead County 1964-1973 Management Factor (Percent)	Adjusted Crop Consumptive Volume after Inclusion of Management Factor	Historic Acres Irrigated	Historic Consumed Volume (HCV) AF
Beaverhead	Dillon	18.3	63.7%	11.68 inches or 0.97 feet	43.5	42.4

Pursuant to A.R.M. 36.12.1902(17), the Department calculates an additional 3.3 AF for non-crop related evaporative losses (irrecoverable evaporative losses for flood irrigation are assumed to be 5% of the historic volume applied to the field). The total historic consumptive volume is 45.7 AF. This is based on both crop and non-crop related consumptive use (see Table 2).

Table 2: Historic Consumptive Use Calculations for 41B 88737-00

Beaverhead County (Dillon Weather Station) Flood/Wheel line/Handline ET (Inches)	Beaverhead County 1964-1973 Management Factor (Percent)	Historic Acres	Historic Consumed Volume (HCV) AF	On-farm Efficiency (Percent)	Historic Field Application AF	Historic Irrecoverable Losses (IL) Flood 5%:	HCV AF (Including IL)
18.34	63.7%	43.5	42.4	65%	65.2	3.3	45.7

14. The historical means of diversion consisted of the Owen Ditch and headgate, which was filled with water diverted from the Beaverhead River into a headgate located in the SWNW NW of S24, T7S, R9W, Beaverhead County. The Owen Ditch transported water to the 43.5-acre historical place of use located in the NESE, NESESE, NWSESE, and SWSESE of S8, T7S, R8W. The period of diversion for this Claim is April 15 to October 15, however the Applicant's consultant stated in the deficiency response received February 28, 2024, that water would cease being diverted 7-10 days in July and 7-10 days in August. Therefore, the Department used 163 days for the diverted volume calculations. The Applicant provided ditch information such as dimensions and soil types for the three reaches of Owen Ditch. Because Reach 2 is a concrete pipe, it is

assumed that no seepage loss or evaporation occurs. Therefore, the Department did not calculate conveyance loss for Reach 2.

15. Historical diverted volume was calculated based on the water right before it was split by the Water Court. Pre-split conveyance loss was calculated by the Department using the methods outlined in the Department's Development of Standardized Methodologies to Determine Historic Diverted Volume Memorandum dated September 13, 2012. Table 3 lists conveyance loss values and calculations associated with the pre-split historical place of use of Claim 41B 88737-00.

Table 3: Historical Conveyance Loss Values and Calculations

Ditch ID	Length (feet)	Flow Rate (CFS)	Width (feet)	Wetted Perimeter (feet)	Ditch Loss Rate	Days Irrigated	Adj. Net Evaporation (inches)	Seepage Loss (AF)	Vegetation Loss (AF)	Evaporative Loss (AF)	Total Conveyance Loss (AF)
Reach 1	7920	7.5	8	11.7	0.7	163	18.3	242.7	27.5	2.2	272.4
Reach 3	7920	7.5	6	8.59	2.6	163	18.3	661.9	27.5	1.7	691.1

16. The Department identified seven other water rights that use the Owen Ditch as their means of diversion and used the procedure outlined in the Department's Distributing Conveyance Loss on Multiple User Ditches Memorandum dated February 14, 2020, to calculate the proportional conveyance loss. Because the seven other water rights divert water from the Owen Ditch for their places of use near Claim 41B 88737-00, the flow rates for all eight water rights were used in the calculation. The combined flow rate in the ditch is 7.5 CFS, with Claim 41B 88737-00 accounting for 26% of the pre-split combined flow rate. Refer to Table 4 for the proportional conveyance loss values.

Table 4: Proportional Historical Conveyance Loss of Water Rights on Owen Ditch

Water Right Number	Ditch ID	WR Flow Rate (CFS)	Proportion	Water Right Conveyance Loss (AF)	Ditch Flow Rate (CFS)
41B 88832-00	Reach 1	0.92	0.12	32.7	7.5
41B 88737-00	Reach 1	1.95	0.26	70.8	7.5
41B 88721-00	Reach 1	1.25	0.17	46.3	7.5
41B 88716-00	Reach 1	1	0.13	35.4	7.5
41B 88006-00	Reach 1	0.5	0.07	19.1	7.5
41B 5674-00	Reach 1	0.3	0.04	10.9	7.5
41B 30159238	Reach 1	1	0.13	35.4	7.5
41B 30155437	Reach 1	0.58	0.08	21.8	7.5
41B 88832-00	Reach 3	0.92	0.12	82.9	7.5
41B 88737-00	Reach 3	1.95	0.26	179.7	7.5
41B 88721-00	Reach 3	1.25	0.17	117.5	7.5
41B 88716-00	Reach 3	1	0.13	89.8	7.5
41B 88006-00	Reach 3	0.5	0.07	48.4	7.5
41B 5674-00	Reach 3	0.3	0.04	27.6	7.5
41B 30159238	Reach 3	1	0.13	89.8	7.5
41B 30155437	Reach 3	0.58	0.08	55.3	7.5

17. The historic diverted volume was calculated based on the pre-split 61 acres, then apportioned based on the percentage of total acres retained by the Applicant. $179.7 \text{ AF} + 70.8 \text{ AF}$ (pre-split conveyance losses from Table 4) * $(43.5 \text{ acres}/61 \text{ acres}) = 178.6 \text{ AF}$ post-split conveyance losses. 178.6 AF (post-split conveyance loss) + 65.2 AF (post-split field application from Table 2) = 243.8 AF post-split historical diverted volume.

18. The Department finds a post-split historic consumptive volume of 45.7 AF and a post-split historic diverted volume of 243.8 AF for Claim 41B 88737-00.

ADVERSE EFFECT

FINDINGS OF FACT

19. The Applicant proposes to change the POD and the POU of irrigation Statement of Claim No. 41B 88737-00. The proposed POD is approximately 2 miles downstream and northeast of the current POD. The proposed POD is located in the SENESE of S7 T7S R8W Beaverhead County, and will consist of a 24-inch screened headgate on the Beaverhead River. Diverted water will flow 25 feet through a pipe into a pond before being pumped into the pipeline system via an

electric 50 horsepower (HP) pump. The pump will only be operated when the headgate from the river is open to avoid lowering the water level of the pond. The proposed POU is located in the SENENE, SENE, and NENESE of S7 T7S R8W and the NWNW, SWNW, NWNW SW of S8 T7S R8W in Beaverhead County. Applicant proposes to alternate irrigation on two adjacent 29-acre fields within the proposed POU. Alternation will take place on a one year or more cycle depending on crop type, and only one 29-acre field will be irrigated in a given year. Measurements at the POD will be utilized to ensure that the authorized flow rate and volume are not exceeded. The proposed method of irrigation is sprinkler. Post-change consumptive use is calculated using the standard methodology identified under Historic Use above with the updated Management Factor listed under ARM 36.12.1902(16). Tables 5 and 6 summarize the variables considered in the Department's assessment of post-change consumptive use.

Table 5: Proposed Consumptive Use Values for 41B 88737-00

County	Weather Station	IWR Handline Irrigation Seasonal ET (Inches)	Management Factor (Proposed Use) (Percent)	Adjusted Crop Consumptive Volume after Inclusion of Management Factor	Proposed Acres Irrigated	Proposed Consumed Volume
Beaverhead	Dillon	18.4	88.3%	16.19 inches or 1.34 feet	29	39.2 AF

Table 6: Proposed Consumptive Use Calculations for 41B 88737-00

Beaverhead County (Dillon Weather Station) Flood/Wheel line/Handline ET (Inches)	Beaverhead County 1997-2009 Management Factor (Percent)	Proposed Acres	Proposed Crop Consumption (AF)	On-farm Efficiency (Percent)	Proposed Field Application AF	Proposed Irrecoverable Losses (IL) Sprinkler 10%:	Proposed CV AF (Including IL)
18.34	88.3%	29	39.2 AF	70%	55.9	5.6	44.8 AF

20. New consumptive use at the proposed place of use minus historic consumptive use from the retired acres: $44.8 \text{ AF} - 45.7 \text{ AF} = -0.9 \text{ AF}$

21. The proposed diverted volume is the same as the proposed field application volume as there are no conveyance losses associated with the pipeline from the diversion to the proposed place of use. Under the proposed change, the pond will operate as a flow-through system for water diverted under Claim 41B 88737-00 and storage volume and evaporative losses are

covered under Groundwater Certificate 41B 107899-00. The proposed diverted volume is 55.9 AF, or 187.9 AF less than the historical diverted volume. 243.8 AF historical diverted volume – 55.9 AF proposed diverted volume = 187.9 AF.

22. The Applicant proposes to utilize shares from the Clark Canyon Water Supply Company to supplement the water right proposed for change to irrigate the proposed place of use in the same way the shares were used to supplement irrigation on the historical acres. These shares were only issued to users with existing private irrigation rights and were intended to provide supplemental water for the existing irrigated acres. A description of the CCWSC shares is provided in Water Court Final Order, Case 41B-0265-P-2015. Water contributed through shares in the CCWSC is not included in calculations for proposed use.

23. The Revised Surface Water Change Report by Evan Norman, Department Groundwater Hydrologist, identified the Beaverhead River as the receiving stream for historical return flows and both the Beaverhead River and Selway Slough as the receiving streams for 75% and 25% of the respective return flows under the proposed change. The Applicant is proposing to leave 187.9 AF of historically diverted water instream in the Beaverhead River below the historical point of diversion therefore no analysis of the rate or timing of return flows to this source was performed.

24. The Applicant is proposing to move the point of diversion downstream from the historic location, therefore intervening users should not experience any loss in availability of water at their diversions. The Applicant supplied records showing that the full 1.33 CFS historic flow rate was delivered in the past, so moving the diversion will not provide access to more water than they have historically diverted.

25. The Applicant states that water on this reach of the Beaverhead River is distributed by a commissioner every year, therefore they will not use more than what has been authorized historically under the proposed use. The Applicant states that the pump will only run when the headgate is open and Beaverhead River water is being delivered by the commissioner as they do not want to alter the water level in the pond, which is kept full by groundwater when the headgate is closed. The pond will serve as a flow-through system for water diverted under Claim 41B 88737-00. Water will be measured at the pump by an inline flow meter which will be accessible to the commissioner.

26. Measurements are kept by the appointed water commissioner as water is distributed. If the proposed change is granted, the Applicant will be required to submit monthly measurements to the Department until project completion, and upon request thereafter.

27. The proposed change will be subject to the following condition to ensure no adverse effect to existing users:

THE APPLICANT IS AUTHORIZED TO DIVERT 1.33 CFS UP TO 55.9 AF TO IRRIGATE ONE OF THE TWO DESIGNATED 29-ACRE FIELDS PER YEAR. THE APPLICANT OR DESIGNEE SHALL MEASURE ALL THE FLOW DIVERTED UNDER THIS AUTHORIZATION MONTHLY DURING THE PERIOD OF USE USING DEPARTMENT APPROVED MEASURING DEVICES. ALL MEASUREMENTS WILL BE REPORTED TO THE DNRC HELENA REGIONAL OFFICE BY NOVEMBER 30 OF EACH YEAR UNTIL PROJECT COMPLETION AND UPON REQUEST AFTER COMPLETION. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A CHANGE.

28. The Department finds the Applicant did prove that the proposed change will not cause adverse effect to existing users on the Beaverhead River.

BENEFICIAL USE

FINDINGS OF FACT

29. Applicant proposes to use water for irrigation; irrigation is defined as a beneficial use of water per 85-2-102(5), MCA.

30. Applicant proposes to use 1.33 CFS up to 55.9 AF diverted volume. Based on the proposed consumptive use calculations in Table 6 above, the proposed 29 acres of irrigation would require 55.9 AF of applied volume. The Applicant proposes to use their existing shares which can supply up to 4 AF/acre, from the Clark Canyon Water Supply Company to supplement the water right proposed for change during low water years and later in the season.

31. The Department finds 1.33 CFS up to 55.9 AF diverted volume is a beneficial use of water for irrigation of 29 acres located in the SENENE, SENE, and NENESE of S7 T7S R8W and the NWNW, SWNW, NWNW SW of S8 T7S R8W in Beaverhead County.

ADEQUATE DIVERSION

FINDINGS OF FACT

32. The primary proposed diversion consists of a 24-inch screened headgate on the Beaverhead River. Diverted water will flow 25 feet into a pond before being pumped into the pipeline system via an electric 50 horsepower (HP) pump. At a velocity of 1 foot per second, a 24 inch, or 4-foot square, headgate can pass 4 cubic feet per second of water when fully open.

33. The Department finds that the proposed diversion is adequate to divert the proposed 1.33 CFS.

POSSESSORY INTEREST

FINDINGS OF FACT

34. The Applicant signed the affidavit on the application form affirming the Applicant has 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. The proposed place of use is owned by the McCollum Family Trust, who submitted a signed statement with the Application stating that they were in agreement with the proposed change.

35. The Department finds that the Applicant does have possessory interest in the proposed place of use.

CONCLUSIONS OF LAW

HISTORICAL USE AND ADVERSE EFFECT

36. 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, at ¶ 10 (an appropriator’s right only attaches to the amount of water actually taken and beneficially applied); Town of Manhattan v. DNRC, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, *Order Re Petition for Judicial Review*, Pg. 9 (2011)(the rule that one may change only that to which it has a right is a fundamental tenet of Montana water law and imperative to MWUA change provisions); In the Matter of Application to Change a Water Right No. 41I 30002512 by Brewer Land Co, LLC, DNRC Proposal For Decision and Final Order (2004).²

37. 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, at ¶¶43-45.³

38. 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, at ¶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

² DNRC decisions are available at:

http://www.dnrc.mt.gov/wrd/water_rts/hearing_info/hearing_orders/hearingorders.asp

³ 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).

change through evidence of the historic diverted amount, consumed amount, place of use, pattern of use, and return flow because a statement of claim, permit, or decree may not include the beneficial use information necessary to evaluate the amount of water available for change or potential for adverse effect.⁴ 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, at ¶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 historic 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).⁵

⁴A 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. §85-2-234, MCA

⁵ 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

39. 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, at ¶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; In the Matter of Application for Change Authorization No. G (W)028708-411 by Hedrich/Straugh/Ringer, DNRC Final Order (Dec. 13, 1991); In the Matter of Application for Change Authorization No. G(W)008323-G76I By Starkel/Koester, DNRC Final Order (Apr. 1, 1992); In the Matter of Application to Change a Water Right No. 41I 30002512 by Brewer Land Co, LLC, DNRC Proposal For Decision and Final Order (2004); Admin. R.M. 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).⁶

40. 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;

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.)

⁶ 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, ¶¶ 22, 31,43, 198 P.3d 219, ¶¶ 22, 31,43(citing Hidden Hollow Ranch v. Fields, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185).

Hohenlohe, at ¶¶ 45-6 and 55-6; Spokane Ranch & Water Co., 37 Mont. at 351-52, 96 P. at 731.

Noted Montana Water Law scholar Al Stone explained that the water right holder who seeks to change a water right is unlikely to receive the full amount claimed or historically used at the original place of use due to reliance upon return flows by other water users. Montana Water Law, Albert W. Stone, Pgs. 112-17 (State Bar of Montana 1994).

41. 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).

42. 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. A.R.M 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.

43. Applicant seeks to change existing water rights represented by its Water Right Claims. The "existing water rights" in this case are those as they existed prior to July 1, 1973, because with limited exception, no changes could have been made to those rights after that date without the Department's approval. Analysis of adverse effect in a change to an "existing water right" requires evaluation of what the water right looked like and how it was exercised prior to July 1, 1973. In McDonald v. State, the Montana Supreme Court explained:

The foregoing cases and many others serve to illustrate that what is preserved to owners of appropriated or decreed water rights by the provision of the 1972 Constitution is what the law has always contemplated in this state as the extent of a water right: such amount of water as, by pattern of use and means of use, the owners or their predecessors put to beneficial use. . . . the Water Use Act contemplates that all water rights, regardless of prior statements or claims as to amount, must nevertheless, to be recognized, pass the test of historical, unabandoned beneficial use. . . . To that extent only the 1972 constitutional recognition of water rights is effective and will be sustained.

220 Mont. at 529, 722 P.2d at 604; see also Matter of Clark Fork River Drainage Area, 254 Mont. 11, 17, 833 P.2d 1120 (1992).

44. Water Resources Surveys were authorized by the 1939 legislature. 1939 Mont. Laws Ch. 185, § 5. Since their completion, Water Resources Surveys have been invaluable evidence in water right disputes and have long been relied on by Montana courts. In re Adjudication of Existing Rights to Use of All Water in North End Subbasin of Bitterroot River Drainage Area in Ravalli and Missoula Counties, 295 Mont. 447, 453, 984 P.2d 151, 155 (1999)(Water Resources Survey used as evidence in adjudicating of water rights); Wareing v. Schreckendgust, 280 Mont. 196, 213, 930 P.2d 37, 47 (1996)(Water Resources Survey used as evidence in a prescriptive ditch easement case); Olsen v. McQueary, 212 Mont. 173, 180, 687 P.2d 712, 716 (1984) (judicial notice taken of Water Resources Survey in water right dispute concerning branches of a creek).

45. While evidence may be provided that a particular parcel was irrigated, the actual amount of water historically diverted and consumed is critical. E.g., In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC., DNRC Proposal for Decision adopted by Final Order (2005). The Department cannot assume that a parcel received the full duty of water or that

it received sufficient water to constitute full-service irrigation for optimum plant growth. Even when it seems clear that no other rights could be affected solely by a particular change in the location of diversion, it is essential that the change also not enlarge an existing right. See MacDonald, 220 Mont. at 529, 722 P.2d at 604; Featherman, 43 Mont. at 316-17, 115 P. at 986; Trail's End Ranch, L.L.C. v. Colorado Div. of Water Resources 91 P.3d 1058, 1063 (Colo., 2004).

46. The Department has adopted a rule providing for the calculation of historic consumptive use where the applicant proves by a preponderance of the evidence that the acreage was historically irrigated. ARM 36.12.1902 (16). In the alternative an applicant may present its own evidence of historic beneficial use. In this case Applicant has/ elected to proceed under Admin. R.M. 36.12.1902. (FOF No.13).

47. If an applicant seeks more than the historic consumptive use as calculated by ARM 36.12.1902 (16), the applicant bears the burden of proof to demonstrate the amount of historic consumptive use by a preponderance of the evidence. The actual historic use of water could be less than the optimum utilization represented by the calculated duty of water in any particular case. E.g., Application for Water Rights in Rio Grande County 53 P.3d 1165 (Colo., 2002) (historical use must be quantified to ensure no enlargement); In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC., *supra*; Orr v. Arapahoe Water and Sanitation Dist. 753 P.2d 1217, 1223 -1224 (Colo., 1988) (historical use of a water right could very well be less than the duty of water); Weibert v. Rothe Bros., Inc., 200 Colo. 310, 317, 618 P.2d 1367, 1371 - 1372 (Colo. 1980) (historical use could be less than the optimum utilization "duty of water").

48. Based upon the Applicant's evidence of historic use, the Applicant has proven by a preponderance of the evidence the historic use of Water Right Claim No. 41I 88737-00 of 243.8 acre-feet diverted volume and 1.33 CFS flow rate with a consumptive use of 45.7 acre-feet on 43.5 acres. (FOF Nos. 8-18)

49. 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. 85-2-402(2)(b), MCA. (FOF Nos. 19-28)

BENEFICIAL USE

50. A change applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. 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, Montana First Judicial District Court (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, Montana Fifth Judicial District Court, *Order Affirming DNRC Decision*, Pg. 3 (2011)(citing BRPA v. Siebel, 2005 MT 60, and rejecting applicant’s argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet); Toohey v. Campbell, 24 Mont. 13, 60 P. 396 (1900)(“The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses. He is restricted in the amount that he can appropriate to the quantity needed for such beneficial purposes.”); 85-2-312(1)(a), MCA (DNRC is statutorily prohibited from issuing a permit for more water than can be beneficially used).

51. Applicant proposes to use water for irrigation which is a recognized beneficial use. 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence irrigation is a beneficial use and that 55.9 acre-feet of diverted volume and 1.33 CFS flow rate of water requested is the amount needed to sustain the beneficial use and is within the standards set by DNRC Rule. 85-2-402(2)(c), MCA (FOF Nos. 29-31)

ADEQUATE MEANS OF DIVERSION

52. Pursuant to 85-2-402 (2)(b), MCA, the Applicant must prove by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. This codifies the prior appropriation principle that the means of diversion

must be reasonably effective for the contemplated use and may not result in a waste of the resource. Crowley v. 6th Judicial District Court, 108 Mont. 89, 88 P.2d 23 (1939); In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC (DNRC Final Order 2002) (information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies based upon project complexity; design by licensed engineer adequate).

53. Pursuant to 85-2-402 (2)(b), MCA, applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. (FOF No. 32-33)

POSSESSORY INTEREST

54. Pursuant to 85-2-402(2)(d), MCA, the Applicant must prove by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. See also ARM 36.12.1802

55. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. (FOF No. 34-35)

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. 41B 30160682 should be granted subject to the following:

The Applicant is authorized to divert 1.33 CFS up to 55.9 AF from the Beaverhead River at a diversion in the SENESE of S7 7S 8W Beaverhead County to be used for irrigation on one of the two designated 29-acre fields in the SENENE, SENE, and NENESE of S7 T7S R8W and the NWNW, SWNW, NWNNWSW of S8 T7S R8W in Beaverhead County. The authorized period of diversion and period of use are April 15 through October 15.

Necessary conditions for this change:

THE APPLICANT IS AUTHORIZED TO DIVERT 1.33 CFS UP TO 55.9 AF TO IRRIGATE ONE OF THE TWO DESIGNATED 29-ACRE FIELDS PER YEAR. THE APPLICANT OR DESIGNEE SHALL MEASURE ALL THE FLOW DIVERTED UNDER THIS AUTHORIZATION MONTHLY DURING THE PERIOD OF USE USING DEPARTMENT APPROVED MEASURING DEVICES. ALL MEASUREMENTS WILL BE REPORTED TO THE DNRC HELENA REGIONAL OFFICE BY NOVEMBER 30 OF EACH YEAR UNTIL PROJECT COMPLETION AND UPON REQUEST AFTER COMPLETION. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A CHANGE.

NOTICE

The Department will provide public notice of this Application and the Department's Preliminary Determination to Grant pursuant to 85-2-307, MCA. The Department will set a deadline for objections to this Application pursuant to 85-2-307, and -308, MCA. If this Application receives a valid objection, it will proceed to a contested case proceeding pursuant to Title 2, chapter 4, part 6, MCA, and 85-2-309, MCA. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this Application as herein approved. If this Application receives a valid objection(s) and the valid objection(s) are conditionally withdrawn, the Department will consider the proposed condition(s) and grant the Application with such conditions as the Department decides necessary to satisfy the applicable criteria. E.g., 85-2-310, -312, MCA.

DATED this 17th day of December 2025.



Jennifer Daly, Manager
Helena Regional Office
Department of Natural Resources
and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 17th day of December 2025, by first class United States mail.

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