

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

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PETITION TO MODIFY BENEFICIAL WATER) USE PERMIT NO. 41H 30021840))	PRELIMINARY DETERMINATION TO MODIFY PERMIT
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On July 19, 2019, Town of Manhattan (Applicant, Town) submitted a Petition to Modify Permit No. 41H 30021840 (petition) to the Bozeman Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC). The petition requests that DNRC modify the mitigation-related conditions placed on the permit when it was issued on September 21, 2010. The mitigation conditions were placed on the permit to satisfy a Court decision that required groundwater permits that depleted surface water to mitigate those depletions (Montana Trout Unlimited v. Department of Natural Resources and Conservation [2006]) and to satisfy objectors in a Final Order for Provisional Permit 41H 30021840 issued by the Department on December 8, 2009. The Department sent the Applicant a deficiency letter under §85-2-302, Montana Code Annotated (MCA), dated January 15, 2020. The Applicant responded with information dated March 4, 2020. The Applicant amended the petition on September 30, 2022, resetting statutory timelines. The Department sent the Applicant a deficiency letter under §85-2-302, Montana Code Annotated (MCA), dated March 29, 2023. The Applicant responded with information dated July 10, 2023. The Applicant amended the petition on December 20, 2023, resetting statutory timelines again. The Department sent the Applicant a deficiency letter under §85-2-302, Montana Code Annotated (MCA), dated May 31, 2024. The Applicant responded with information dated August 29, 2024. The amended petition was determined to be correct and complete as of November 25, 2024. The petition was amended on March 18, 2025, which reset application timelines. The amended petition was determined to be correct and complete as of September 12, 2025.

The Department met with the Applicant numerous times prior to the petition being submitted, but no formal preapplication meeting was held. Applicant submitted a concurrent Application to Change Water Right No. 30129387 to change Water Right Claim No. 41H 30069634, which contains the water being changed to a mitigation purpose. An environmental assessment was

completed for the change application and this modification request as a combined project on January 12, 2026.

INFORMATION

The Department considered the following information submitted by the Applicant.

- Petition to Modify Permit with associated attachments
 - November 18, 2018, Memo from Attila Felnagy to Kerri Strasheim – Manhattan Mitigation Plan Analysis
- Provisional Permit No. 41H 30021840
- Pending Change Application 41H 30129387 submitted concurrently with the instream mitigation water, including all associated file documents
- Deficiency Response dated March 4, 2020
- First amendment to Petition to Modify Form dated September 30, 2022
- Deficiency Response dated July 10, 2023
- Second amendment to Petition to Modify Form dated December 20, 2023
- Deficiency Response dated August 29, 2024
- Department Hydrologist Review of Groundwater Permit Petition to Modify, dated November 18, 2024
- Third Amendment to Petition to Modify Form on March 18, 2025

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, 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; and AF/YR means acre-feet per year. Values presented in this document may differ up to 0.1 due to rounding.

PROPOSED MODIFICATION

FINDINGS OF FACT

1. Provisional Permit No. 41H 30021840 with a priority date of April 25, 2006, is for an appropriation of 575 GPM up to an annual volume of 256.11 AF diverted from a groundwater well in the NENWSW of Section 3, T1N, R3E, Gallatin County. Water diverted from the well will be

used for municipal purposes from January 1 to December 31. The municipal purposes include lawn and garden use up to but not exceeding 78.6 acres. Of the total diverted volume, 138.21 AF was initially identified as consumptively used, resulting in a mitigation requirement in a closed basin.

2. The proposed new development that the permit supplies is on land formerly irrigated by Baker Ditch Company (Baker Ditch) water rights. The Town of Manhattan and Baker Ditch Company did not come to a mutual agreement on the use of Baker Ditch water until after the permit was issued. This modification proposal has two parts – a reduction of use in the permit based on how the project has evolved, and a new plan to prevent adverse effect which will replace the original permit's mitigation plan.

3. The Applicant proposes to modify Provisional Permit No. 41H 30021840 by reducing the amount needed for lawn and garden by 28.06 acres. This reduction is in part due to smaller lawns than originally planned. This reduction results in a total of 50.54 acres irrigated under the municipal use and a total diverted volume of 209.72 AF.

Table 1. Permit revised diverted (Div) and consumed (Cons) volumes of use. Purposes making up the municipal use are domestic (DM), commercial (CM) and lawn and garden irrigation (IR).

	Volume in AC-FT						
	DM/CM Div	IR Div	Total Diverted	DM/CM Cons	IR Cons	Evap Cons	Total Consumed
PC PH 1 & 2 & CV Residential Lots (227)	73.71	72.31	146.02	3.30	72.31		75.61
PC PH 3 & 4 Residential Lots (122)	42.70		42.70	2.49			2.49
CV Commercial Lots (15)	8.40	12.60	21.00	0.42	12.60		13.02
RIB Evapotranspiration						3.09	3.09
Totals	124.81	84.91	209.72	6.21	84.91	3.09	94.21

4. The Applicant proposes to alter the permit conditions based on a new plan to prevent adverse effect. Change Application No. 41H 30129387 was submitted on July 19, 2019, based on the new plan. Since the permit was issued on September 21, 2010, the following water right circumstances have changed:

1. Baker Ditch Company deeded the Town of Manhattan a portion of a water right, resulting in Statement of Claim No. 41H 30069634, with a flow rate of 7.75 CFS, a period of use from April 15 to November 4, and 218.59 acres of irrigation. This acreage was then removed from all other Baker Ditch water rights through a Water Court action, so this water right represents the only water right for those acres.
 2. A formal Share Redemption Agreement specifies that the Town of Manhattan would not use Baker Ditch to convey any mitigation water.
5. Per the revised plan to prevent adverse effect, the Town of Manhattan will change the wastewater disposal method to be like an aquifer recharge system, with instream mitigation water at the point in the river where wastewater was historically discharged (see Figure 1). This plan will result in no new net depletions to the Gallatin River. A Rapid Infiltration Basin (RIB) will be used for wastewater disposal (for an aquifer recharge site) and the amount that would have flowed into the Gallatin River will be mitigated by the instream mitigation water in the associated change application. As the wastewater generated from this permit has non-consumptive restrictions, the wastewater disposal into the RIB will only occur during the period of use of the instream mitigation water in the change application. The permit wastewater generated in the wintertime (November 5 – April 14) will still be discharged directly into the Gallatin River along with any water needed for carriage of this water, so that the full amount is discharged non-consumptively. Also, to ensure that the RIB is recharging the full required mitigation volume into groundwater, an additional 3.1 AF will be discharged into the RIB to account for the estimated additional consumption (e.g. evaporation) of water during RIB operations. As the new plan to prevent adverse effect includes a wastewater disposal change, no purpose of use changes are occurring to the original permitted purposes. The instream water represented by Change Application No. 41H 30129387 will be changed to a mitigation purpose, as the water will be technically left instream and used to mitigate the wastewater disposal method change. This plan is being referred to as the plan to prevent adverse effect.

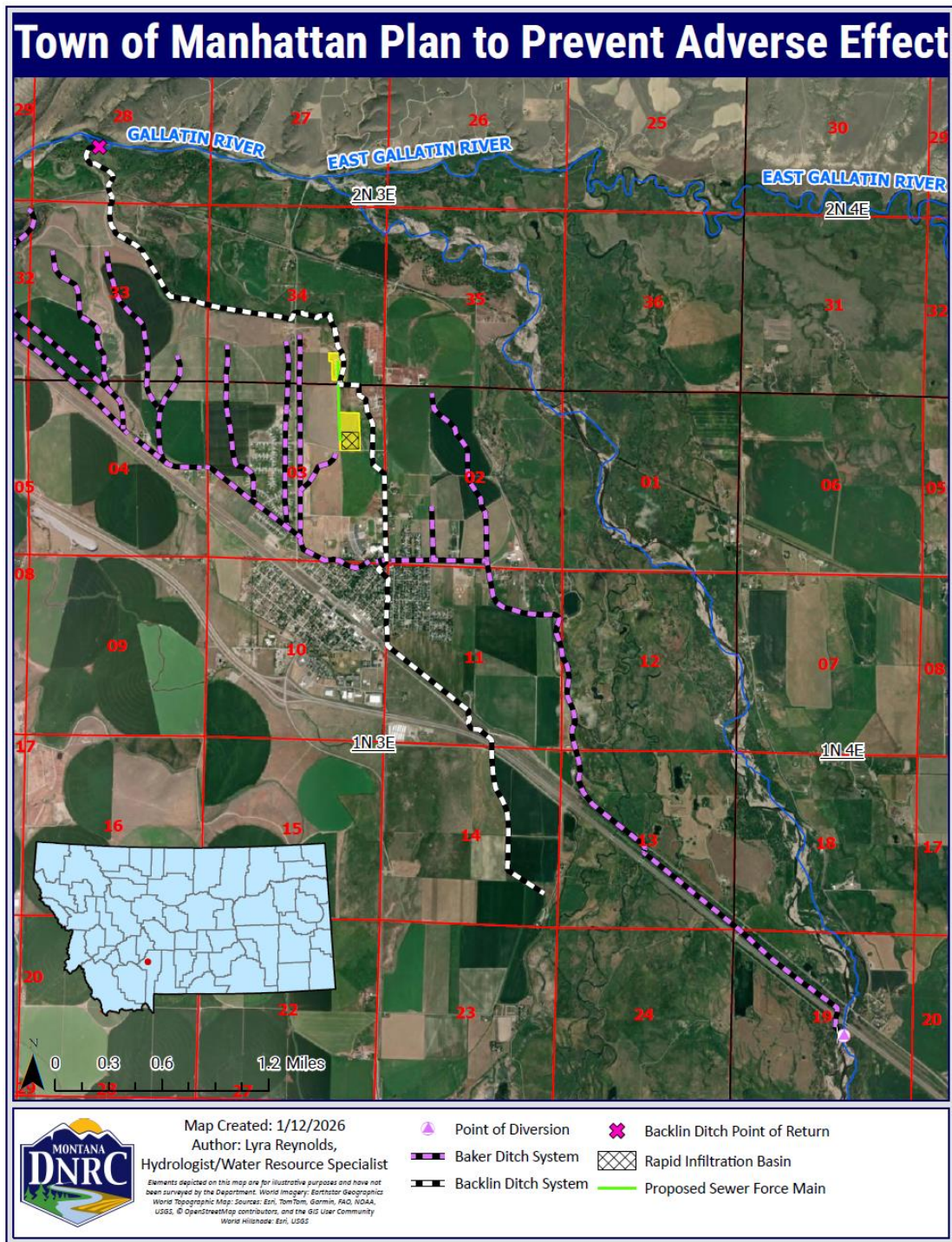


Figure 1. Map of Plan to Prevent Adverse Effect components (referenced point of diversion is the Baker Ditch Headgate). Note on source names: USGS has the Gallatin River mainstem start in the Gallatin Canyon. DNRC uses the local naming convention, where the river is called the West

Gallatin River until meeting up with the East Gallatin River – after this confluence is the Gallatin River, in DNRC source names.

6. The proposed revised conditions applicable to mitigation/aquifer recharge are as follows. DNRC would like to note that some discrepancies exist in how the irrigation season period is represented, due to uncertainty and amendments in the change process. The overall operation plan and the measurement requirements will ensure that no expansion or adverse effect occurs due to these period discrepancies.

Proposed Modification to Permit Condition #3

The existing condition for Condition #3 on Permit No. 41H 30021840 states:

ALL WATER NOT CONSUMED BY THE PROPOSED USE SHALL BE TREATED AT THE WASTEWATER TREATMENT PLANT AND DISCHARGED INTO THE BACKLIN DITCH. PERMITTEE SHALL NOT CAUSE OR ALLOW ANY WASTEWATER DISCHARGED FROM ITS WASTEWATER TREATMENT PLANT INTO THE BACKLIN DITCH FROM ITS USE UNDER THIS PERMIT TO BE DIVERTED OR USED FOR ANY PURPOSE OTHER THAN RETURNS TO THE GALLATIN RIVER REQUIRED BY THIS FINAL ORDER. AT ALL TIMES, THE APPLICANT SHALL DISCHARGE OR CAUSE TO BE DISCHARGED AT A MINIMUM 95% OF WATER APPROPRIATED FOR DOMESTIC AND COMMERCIAL POTABLE USES UNDER THIS PERMIT INTO THE BACKLIN DITCH AS WASTEWATER DESCRIBED IN FOF 69 - 71 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). AT FULL BUILD OUT, THE APPLICANT SHALL DISCHARGE OR CAUSE TO BE DISCHARGED 73.09 GPM FOR A TOTAL VOLUME OF 117.90 AC-FT/YR OF WASTEWATER INTO THE BACKLIN DITCH AS DESCRIBED IN FOF 69 - 71 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). PERMITTEE SHALL OBTAIN DEPARTMENT APPROVAL FOR ANY CHANGE IN THE METHOD OF DISPOSAL OF NON-CONSUMED/WASTEWATER, INCLUDING ANY REDUCTION IN WATER TREATED AT THE WASTEWATER TREATMENT PLANT AND DISCHARGED INTO BACKLIN DITCH FROM OTHER SOURCES.

The proposed condition for Condition #3 is:

ALL WATER NOT CONSUMED BY THE PROPOSED USE SHALL BE TREATED AT THE WASTEWATER TREATMENT PLANT AND DISCHARGED INTO THE BACKLIN DITCH OR INTO THE RAPID INFILTRATION BASIN (RIB) LOCATED AT THE SITE OF THE FORMER WASTEWATER TREATMENT LAGOONS. PERMITTEE SHALL NOT CAUSE OR ALLOW ANY WASTEWATER DISCHARGED FROM ITS WASTEWATER TREATMENT PLANT INTO THE BACKLIN DITCH FROM ITS USE UNDER THIS PERMIT TO BE DIVERTED OR USED FOR ANY PURPOSE OTHER THAN RETURNS TO GROUNDWATER VIA THE RIB OR THE GALLATIN RIVER REQUIRED BY THIS FINAL ORDER. AT ALL TIMES, THE APPLICANT SHALL DISCHARGE OR CAUSE TO BE DISCHARGED AT A MINIMUM 95% OF WATER APPROPRIATED FOR DOMESTIC AND COMMERCIAL POTABLE USES UNDER THIS PERMIT INTO GROUNDWATER

VIA THE RIB OR THE BACKLIN DITCH AS WASTEWATER DESCRIBED IN FOF 69 - 71 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). AT FULL BUILD OUT, THE APPLICANT SHALL DISCHARGE OR CAUSE TO BE DISCHARGED 73.09 GPM FOR A TOTAL VOLUME OF 117.90 AC-FT/YR OF WASTEWATER INTO GROUNDWATER VIA THE RIB OR THE BACKLIN DITCH AS DESCRIBED IN FOF 69 - 71 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). PERMITTEE SHALL OBTAIN DEPARTMENT APPROVAL FOR ANY CHANGE IN THE METHOD OF DISPOSAL OF NON-CONSUMED/WASTEWATER, INCLUDING ANY REDUCTION IN WATER TREATED AT THE WASTEWATER TREATMENT PLANT AND DISCHARGED INTO GROUNDWATER VIA THE RIB OR BACKLIN DITCH FROM OTHER SOURCES.

Proposed Modification to Permit Condition #4

The existing condition for Condition #4 on Permit No. 41H 30021840 states:

PERMITTEE SHALL DIVERT OR CAUSE TO BE DIVERTED 0.70 CFS OUT OF WATER RIGHT NO. 41H-119990-00, FOR A PERIOD OF 100 DAYS DURING THE PERIOD FROM MAY 15TH THROUGH SEPTEMBER 30TH, FOR A TOTAL ANNUAL DIVERSION OF 138.21 ACRE FEET, AND SHALL DISCHARGE SUCH AMOUNTS OF WATER INTO ITS INFILTRATION GALLERY IN THE MANNER DESCRIBED IN FOF 83 – 86 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). PERMITTEE SHALL INSTALL A MEASURING DEVICE AT THE POINT OF DISCHARGE INTO THE INFILTRATION GALLERY TO RECORD THE FLOW RATES AND VOLUME OF ALL WATER DIVERTED INTO ITS INFILTRATION GALLERY. APPLICANT SHALL MAINTAIN THE MEASURING DEVICE IN PROPER OPERATING CONDITION AT ALL TIMES. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPLICANT SHALL KEEP A WRITTEN RECORD OF DAILY, MONTHLY AND ANNUAL FLOW RATES AND VOLUMES MEASURED AT THE MEASURING DEVICE. APPLICANT SHALL SUBMIT TO THE DEPARTMENT'S BOZEMAN REGIONAL OFFICE COMPLETE WATER MEASUREMENT RECORDS BY NOVEMBER 1 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES OF THE YEAR.

The proposed condition for Condition #4 is:

PERMITTEE SHALL LEAVE ITS WATER RIGHT, 41H 30069634, INSTREAM FOR MITIGATION PURPOSES DURING THE PERIOD OF DIVERSION FROM APRIL 15 THROUGH NOV 4 OF EACH YEAR. IN ORDER TO MEET THE TIMING REQUIREMENT OF THE MITIGATION PLAN, THE PERMITTEE SHALL DISCHARGE A TOTAL OF 94.21 ACRE FEET OF EFFLUENT FROM THE WASTEWATER TREATMENT PLANT TO GROUNDWATER VIA A RAPID INFILTRATION BASIN (RIB) DURING THE SAME PERIOD (APR 15 TO NOV 4). AT OTHER TIMES DURING THE YEAR, THE PERMITTEE WILL DISCHARGE TO SURFACE WATER A MINIMUM OF 73 GPM. DURING TIMES WHEN THE WEST GALLATIN WATER COMMISSIONER IS EMPLOYED, THE PERMITTEE SHALL PAY ITS FAIR SHARE OF THE COMMISSIONER'S CHARGES TO ENSURE THE APPROPRIATE AMOUNT OF INSTREAM WATER IS DELIVERED. THE PERMITTEE SHALL SUBMIT TO THE DEPARTMENT'S BOZEMAN REGIONAL OFFICE COMPLETE WATER MEASUREMENT RECORDS OF THE AMOUNT OF THE APPLICANT'S WATER DELIVERED BY THE COMMISSIONER AND THE AMOUNT OF

WATER DISCHARGED TO THE RIB BY NOVEMBER 1 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES OF THE YEAR.

Proposed Additional Condition to Accompany Condition #4:

THE APPLICANT SHALL PROVIDE DOCUMENTATION THAT LANDS DESIGNATED FOR RETIREMENT ARE NO LONGER IRRIGATED. DOCUMENTATION OF NO IRRIGATION MAY CONSIST OF SITE-SPECIFIC PHOTOGRAPHS AND/OR AERIAL PHOTOGRAPHY. DOCUMENTATION SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR TO THE BOZEMAN WATER RESOURCES REGIONAL OFFICE. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE AUTHORIZATION.

Proposed Modification to Permit Condition #5

The existing condition for Condition #5 on Permit No. 41H 30021840 states:

PERMITTEE SHALL CAUSE BAKER DITCH COMPANY TO FILE THE APPLICATION TO CHANGE THE PURPOSE OF USE OF WATER RIGHT NO. 41H-119990-00 FOR USE AS MITIGATION IN ITS INFILTRATION GALLERY. THE VOLUME AND FLOW RATE OF WATER AUTHORIZED BY THE DEPARTMENT FOR CHANGE FROM WATER RIGHT NO. 41H-119990-00 MUST BE EQUAL TO OR GREATER THAN 0.70 CFS FOR A PERIOD OF 100 DAYS DURING THE PERIOD FROM MAY 15TH THROUGH SEPTEMBER 30TH, FOR A TOTAL ANNUAL VOLUME OF 138.21 AC-FT. THE PERMITTEE SHALL RETIRE A MINIMUM OF 123.40 ACRES OF LAND HISTORICALLY IRRIGATED BY WATER RIGHT NO. 41H-119990-00.

The proposed condition for Condition #5 is:

PERMITTEE SHALL FILE THE APPLICATION TO CHANGE THE PURPOSE OF USE OF WATER RIGHT NO. 41H 30069634 FOR USE AS INSTREAM MITIGATION. THE VOLUME OF WATER AUTHORIZED BY THE DEPARTMENT FOR CHANGE FROM WATER RIGHT NO. 41H 30069634 MUST BE MADE AVAILABLE FOR A PERIOD OF 100 DAYS DURING THE PERIOD FROM MAY 15TH THROUGH SEPTEMBER 30TH, FOR A TOTAL ANNUAL VOLUME OF 94.21 AC-FT. THE PERMITTEE SHALL RETIRE A MINIMUM OF 68.77 ACRES OF LAND HISTORICALLY IRRIGATED BY WATER RIGHT NO. 41H 30069634.

Proposed Modification to Information Remark

The existing informational remark on Permit No. 41H 30021840 states:

PERMITTEE SHALL NOT DIVERT OR USE WATER UNDER THIS PERMIT UNTIL: THE CHANGE IN WATER RIGHT NO. 41H-119990-00 HAS BEEN GRANTED IN THE AMOUNTS REQUIRED UNDER THE PERMITTEE'S MITIGATION PLAN AS REQUIRED BY CONDITIONS 4 AND 5; WATER FROM THE CHANGE IN WATER RIGHT NO. 41H-119990-00 IS DIVERTED INTO ITS INFILTRATION GALLERY AS REQUIRED BY CONDITIONS 4 AND 5, AND; WASTEWATER RETURNS ARE PROVIDED AS REQUIRED BY CONDITION 3.

The proposed informational remark is:

PERMITTEE SHALL NOT DIVERT OR USE WATER UNDER THIS PERMIT UNTIL: THE CHANGE IN WATER RIGHT NO. 41H 30069634 HAS BEEN GRANTED IN THE AMOUNTS REQUIRED UNDER THE PERMITTEE'S MITIGATION PLAN AS REQUIRED BY CONDITIONS 4, 5, AND 6; WATER FROM THE CHANGE IN WATER RIGHT NO. 41H 30069634 IS LEFT INSTREAM AS REQUIRED BY CONDITIONS 4 AND 5, AND; WASTEWATER RETURNS ARE PROVIDED AS REQUIRED BY CONDITION 3.

Proposed Modification to Information Remark

The existing informational remark on Permit No. 41H 30021840 states:

PERMITTEE SHALL NOT ALLOW MORE THAN 78.6 ACRES OF LAWN AND GARDEN TO BE IRRIGATED THROUGH WATER APPROPRIATED UNDER THIS PERMIT.

The proposed informational remark is:

PERMITTEE SHALL NOT ALLOW MORE THAN 50.54 ACRES OF LAWN AND GARDEN TO BE IRRIGATED THROUGH WATER APPROPRIATED UNDER THIS PERMIT.

Proposed Additional Conditions

Proposed condition on handling of non-consumed volume from the permit.

UPON FULL BUILD-OUT FROM NOV 5 THROUGH APRIL 14 OF EACH YEAR, THE APPLICANT WILL PROVIDE A MINIMUM AVERAGE MONTHLY DISCHARGE OF 142.5 GPM OF WASTEWATER EFFLUENT INTO THE BACKLIN DITCH.

Proposed general mitigation/aquifer recharge condition.

AQUIFER RECHARGE REQUIREMENT: THE APPROPRIATOR'S USE OF WATER UNDER THIS PERMIT IS CONDITIONED UPON THE 94.21 AC-FT OF AQUIFER RECHARGE VOLUME/MITIGATION VOLUME REQUIRED TO OFFSET ADVERSE EFFECTS FROM NET DEPLETION TO THE GALLATIN RIVER. DIVERSION UNDER THIS PERMIT MAY NOT COMMENCE UNTIL THE AQUIFER RECHARGE PLAN AND MITIGATION PLAN AS SPECIFICALLY DESCRIBED AND APPROVED THROUGH PERMIT MODIFICATION REQUEST AND CHANGE AUTHORIZATION 41H 30129387 IS LEGALLY IMPLEMENTED. DIVERSION UNDER THIS PERMIT MUST STOP IF MITIGATION AS HEREIN REQUIRED IN AMOUNT, LOCATION, AND DURATION CEASES.

Proposed Additional Informational Remark

Proposed additional informational remark:

THE TOTAL VOLUME OF WATER THAT MUST BE APPLIED TO THE RIB IS 94.21 AC-FT. THIS IS 91.12 AC-FT REQUIRED TO OFFSET DEPLETIONS TO SURFACE WATER CAUSED BY PUMPING UNDER PERMIT 41H 30021840, PLUS 3.09 AC-FT TO REPLACE THE INCREASED CONSUMPTION FROM RIB EVAPORATION.

7. Three important information remarks remain unchanged.

8. Applicant was not able to implement the approved mitigation plan, so a revised plan to prevent adverse effect and conditions were devised to meet mitigation requirements for this permit.

**§ 85-2-314, REVOCATION OR MODIFICATION OF PERMIT OR CHANGE IN
APPROPRIATION RIGHT**

GENERAL CONCLUSIONS OF LAW

9. Section 85-2-311, MCA, provides in relevant part:

85-2-311. Criteria for issuance of permit. (1) ... Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. ...

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) 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 use has 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 under the permit...

10. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension of the time stated in the permit, if the water is not being applied to the beneficial use contemplated in the permit or change in appropriation right, or if the permit or change in appropriation right is otherwise not being followed, the department may, after notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or change in appropriation right should not be modified or revoked. If the permittee or holder of the change in appropriation right fails to show sufficient cause, the department may modify or revoke the permit or change in appropriation right. §85-2-314, MCA.

11. The Department may take notice of judicially cognizable facts and generally recognized technical or scientific facts within the Department's specialized knowledge, as specifically identified in this document. ARM 36.12.221(4).

12. The Department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in [§85-2-311](#), MCA. 85-2-312, MCA.

13. The criterion at issue with the proposed modification is §85-2-311(1)(b), MCA, adverse effect to other appropriators.

Adverse Effect

FINDINGS OF FACT

14. The Applicant is not changing the overall groundwater model that was accepted in the permit. Groundwater was found to be legally available with no adverse effects from the proposed use. Other tributaries were discussed in the permit application with no adverse effect found from the proposed permit, so only Gallatin River surface water depletion adverse effect will be discussed in this modification request (see Table 1). The Applicant is changing the location of aquifer recharge. Water will be discharged into the RIB to offset net depletions associated with Permit No. 41H 30021840. DNRC hydrologist reviewed the RIB location prior to submittal of the Application and found the location to be adequate for aquifer recharge. The water right providing mitigation has changed, based on a split and deeded transfer of a specific amount to the Town of Manhattan. The method of getting water into the ground has changed, going from an aquifer recharge basin plan to a wastewater disposal method change using the RIB.

15. The Town of Manhattan has a split, deeded water right (Claim No. 41H 30069634) for 7.75 CFS of West Gallatin water (previously diverted into the Baker Ditch system and split from the

water right in the previous mitigation plan) for irrigation on 218.59 acres with a priority date of October 15, 1912, which is relatively junior. A change application (Change Application No. 41H 30129387) has been submitted concurrently to change the purpose to mitigation for plan to prevent adverse effect discussed in this modification. This water right had a historical use schedule of 100 days within the period of use, as found through the permit contested hearings process. The change application proposes to use the Department's historical consumptive use rules to determine total diverted volume and consumptive use at the field. The operation will be based on the confirmed 100 days of service along with the flow and volume analysis.

16. The net depletion from the new well authorized under Permit No. 41H 30021840 at full build out is 7.85 AF per month and 94.21 AF annually.

Plan to Prevent Adverse Effect

17. The Town of Manhattan will change the wastewater disposal method to resemble an aquifer recharge basin and will further mitigate consumption with the mitigation water left instream. As no conveyance easement exists to deliver water directly from the West Gallatin River to an infiltration gallery controlled by the Town of Manhattan, the solution is to recharge to the groundwater system by delivering a portion of the Town's treated and previously non-consumed wastewater to the proposed RIB instead of discharging the wastewater to the West Gallatin River via the Backlin Ditch (point of return is where mitigation will be met – see Figure 2). In addition, an equal amount of water will be left instream. The details of the instream water are provided in Change Application No. 41H 30129387. This plan to prevent adverse effect allows the Town of Manhattan to deliver the treated wastewater to the proposed RIB as aquifer recharge and to effectively mitigate all net depletions to the Gallatin River, including wintertime net depletions. DNRC hydrologist review approved this location.

18. The permit portion of wastewater disposal into the RIB can only occur during the period of use of the instream mitigation water right. The Town of Manhattan will measure all water diverted into the RIB to show the aquifer recharge requirement is being met, which is 94.21 AF. The requirement is equal to net depletions associated with 91.12 AF consumed volume from the proposed use of Permit No. 41H 30021840 plus an additional 3.09 AF required to offset the RIB consumptive use. The accepted model shows that depletions and accretions to groundwater in this area will occur at a constant rate throughout the year regardless of when the groundwater pumping/recharge takes place. Table 2 below shows the net effect of depletions and the proposed wastewater disposal aquifer recharge schedule. The proposed wastewater disposal plan will provide full mitigation of the year-round net depletion associated with the permit.

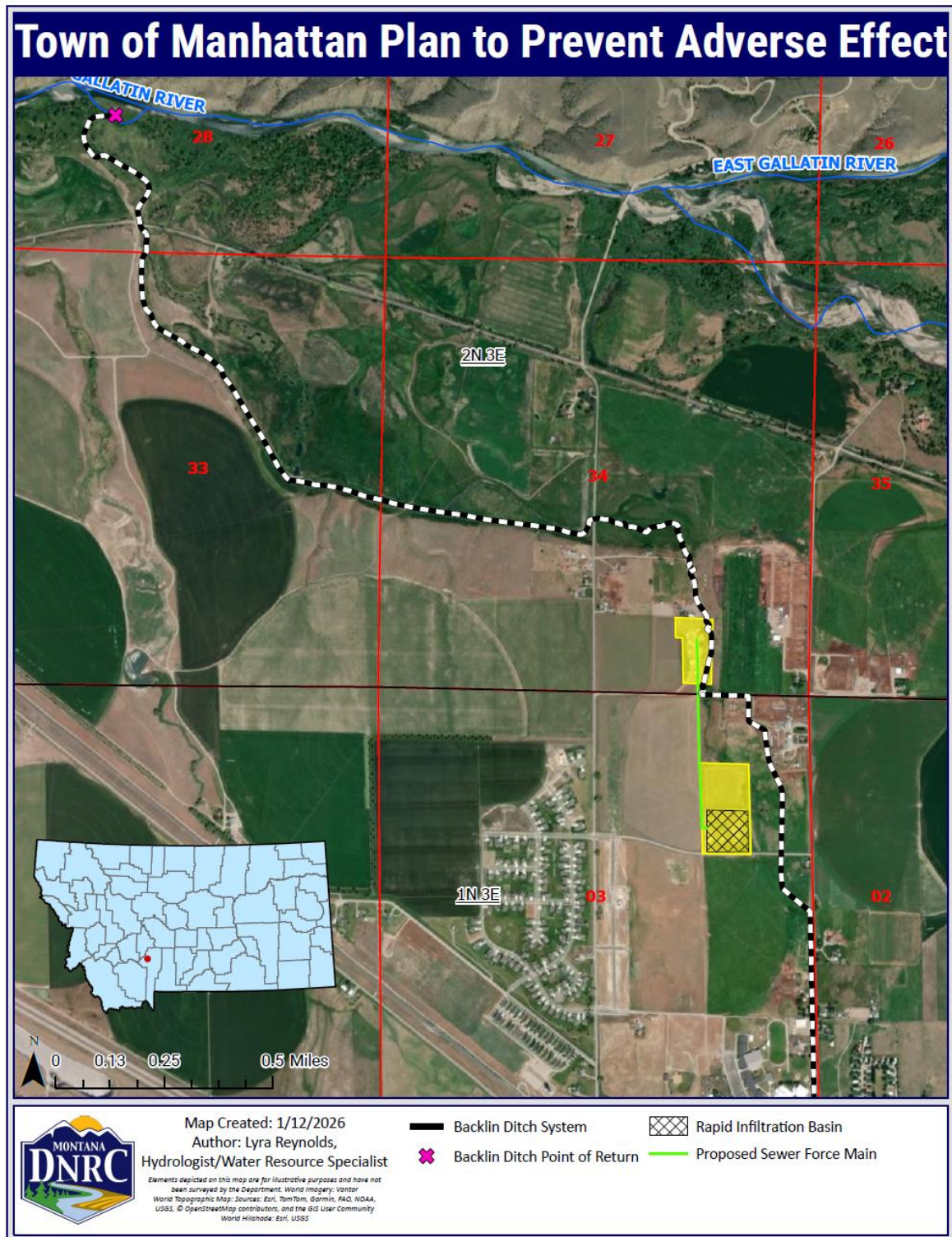


Figure 2. Permit operated plan to prevent adverse effect using a change in wastewater disposal

method with instream mitigation being met at the point Backlin Ditch water returns to the Gallatin River.

Table 2. Assessment of the plan to prevent adverse effect which includes wastewater disposal aquifer recharge to a constructed RIB to offset stream depletion to the West Gallatin River from pumping the existing wells and constructed RIB evaporation.

Month	Aquifer Recharge Schedule ¹ (AF)	Net Depletion Existing Wells (AF)	RIB Evap. (1-acre) (AF) ³	Accretion from Aquifer Recharge to West Gallatin River (AF)	Water left Instream West Gallatin River ² (AF)	Net Effect to West Gallatin River (AF)
January	0.0	-7.7	0.0	8.0	0.0	0.0
February	0.0	-7.0	0.0	7.2	0.0	0.0
March	0.0	-7.7	0.0	8.0	0.0	0.0
April	0.0	-7.5	-0.1	7.7	0.0	0.0
May	18.7	-7.7	-0.5	8.0	18.7	0.0
June	45.3	-7.5	-0.5	7.7	45.3	0.0
July	10.3	-7.7	-0.7	8.0	10.3	0.0
August	7.1	-7.7	-0.6	8.0	7.1	0.0
September	12.8	-7.5	-0.4	7.7	12.8	0.0
October	0.0	-7.7	-0.2	8.0	0.0	0.0
November	0.0	-7.5	0.0	7.7	0.0	0.0
December	0.0	-7.7	0.0	8.0	0.0	0.0
TOTAL	94.2	-91.1	-3.1	94.2	94.2	0.0

¹Assuming aquifer recharge of 94.2 AF of treated effluent discharged to the RIB May 15 – September 24, which is shorter than the period of use of Claim No. 41H 30069634. Date ranges associated with the aquifer recharge schedule: May 15-31, June 1-30, July 1-15, August 15-31, September 1-24.

²Per submitted Application to Change an Existing Irrigation Water Right, Application No. 41H 30129387, which will change a portion of Statement of Claim No. 41H 30069634 (94.2 AF) to the purpose of mitigation (instream) on the West Gallatin River April 15 to November 4 and retire 74.52 acres of historically irrigated land.

³Per Applicant RIB will have standing water April 1 – October 31st.

19. The Applicant feels that a buffer exists in the amount of wastewater available for aquifer recharge, so a shortage is unlikely. If a shortage in the mitigation or wastewater disposal aquifer recharge water were to occur, the Applicant would limit uses in the permit accordingly.

20. The wastewater under this permit is to remain fully non-consumed, so the conditions are revised to continue to require surface water discharge and adequate carriage water in the Backlin Ditch during the winter months, when no mitigation water instream is available based on the

historical period of diversion. This ensures no expansion of permit consumption with respect to wastewater treatment consumption.

21. Under § 85-2-362, 364, MCA, MT DNRC is required to have evidence that appropriate MT DEQ water quality permitting is in place prior to approval of a mitigation plan or aquifer recharge plan. The Applicant asserts that proper permitting is currently in place, providing a DEQ discharge permit dated August 30, 2024.

22. The Town of Manhattan water permit was originally objected to by Janis Dyk, F Double D LLC, Samuel and Diane Buckman, MT FWP, William and Virginia Heavner, MT Trout Unlimited (TU), and the Association of Gallatin Agricultural Irrigators (AGAI). MT FWP and MT TU have been involved in the planning process for the revised mitigation plan.

23. The Department finds no adverse effect based on the revised plan to prevent adverse effect being sufficient to prevent adverse effects from the beneficial use of Permit No. 41H 30021840. Reductions to use and changes in the plan to prevent adverse effects will meet the requirements to offset depletions to surface water. The Department finds that changing the plan to prevent adverse effect will not cause an adverse effect.

CONCLUSIONS OF LAW

24. Pursuant to § 85-2-311(1)(b), MCA, the Applicant bears the affirmative burden of proving by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Analysis of adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. See Montana Power Co. (1984), 211 Mont. 91, 685 P.2d 336 (purpose of the Water Use Act is to protect senior appropriators from encroachment by junior users); Bostwick Properties, Inc. ¶ 21.

25. An applicant must analyze the full area of potential impact under the § 85-2-311, MCA criteria. *In the Matter of Beneficial Water Use Permit No. 76N-30010429 by Thompson River Lumber Company* (DNRC Final Order 2006). While § 85-2-361, MCA, limits the boundaries expressly required for compliance with the hydrogeologic assessment requirement, an applicant is required to analyze the full area of potential impact for adverse effect in addition to the requirement of a hydrogeologic assessment. Id. ARM 36.12.120(5).

26. Applicant must prove that no prior appropriator will be adversely affected, not just the objectors. Sitz Ranch v. DNRC, DV-10-13390, Montana Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 4.

27. It is the applicant's burden to produce the required evidence. E.g., Id. at Pg. 7 (legislature has placed the burden of proof squarely on the applicant); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005).

28. Section 85-2-311 (1)(b) of the Water Use Act does not contemplate a *de minimis* level of adverse effect on prior appropriators. Wesmont Developers v. DNRC, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pg. 8; see also, *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009)(permit denied).

29. Simply asserting that an acknowledged reduction, however small, would not affect those with a prior right does not constitute the preponderance of the evidence necessary to sustain applicant's burden of proof. Wesmont Developers v. DNRC, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pg. 11 (Court rejected applicant's argument that net depletion of .15 millimeters in the level of the Bitterroot River could not be adverse effect.); Sitz Ranch v. DNRC, DV-10-13390, Montana Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pgs. 3-4 (Court rejected applicant's arguments that its net depletion (3 and 9 gpm, respectively to Black Slough and Beaverhead River) was "not an adverse effect because it's not measurable," and that the depletion "won't change how things are administered on the source."); *In the Matter of Beneficial Water Use Permit No. 76N-30010429 by Thompson River Lumber Company* (DNRC Final Order 2006)(adverse effect not required to be measurable but must be calculable); see also Robert and Marlene Tackle v. DNRC et al., Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994).

After calculating the projected depletion for the irrigation season, the District Court in Sitz Ranch v. DNRC explained:

Section 85-2-363(3)(d) MCA requires analysis whether net depletion will adversely affect prior appropriators. Many appropriators are those who use surface water. Thus, surface water must be analyzed to determine if there is a net depletion to that resource. Sitz's own evidence demonstrates that about 8 acre feet of water will be consumed each

irrigation season. Both Sitz and any other irrigator would claim harm if a third party were allowed to remove 8 acre feet of water each season from the source upon which they rely.

Sitz Ranch v. DNRC, DV-10-13390, Montana Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pgs. 3-4.

30. The Department can and routinely does, condition a new permit's use on use of that special management, technology or measurement such as augmentation now generally known as mitigation and aquifer recharge. See § 85-2-312; § 85-2-360 et seq., MCA; see, e.g., In the Matter of Beneficial Water Use Permit No. 107-411 by Diehl Development (DNRC Final Order 1974) (No adverse effect if permit conditions to allow specific flow past point of diversion.); *In the Matter of Combined Application for Beneficial Water Use Permit No. 76H- 30043133 and Application No. 76H-30043132 to Change Water Right Nos. 76H-121640-00, 76H-131641-00 and 76H-131642-00 by the Town of Stevensville* (DNRC Final Order 2011).

31. The Department has a history of approving new appropriations where applicant will mitigate/augment to offset depletions caused by the new appropriation. E.g., In the Matter of Beneficial Water Use Permit Application Nos. 41H 30012025 and 41H 30013629 by Utility Solutions, LLC, (DNRC Final Order 2006)(permit conditioned to mitigate/augment depletions to the Gallatin River by use of infiltration galleries in the amount of .55 cfs and 124 AF), *affirmed, Faust v. DNRC et al.*, Cause No. CDV-2006-886, Montana First Judicial District (2008); *In the Matter of Beneficial Water Use Permit Application Nos. 41H 30019215 by Utility Solutions, LLC*, (DNRC Final Order 2007)(permit conditioned to mitigate 6 gpm up to 9.73 AF of potential depletion to the Gallatin River), *affirmed, Montana River Action Network v. DNRC*, Cause No. CDV-2007-602, Montana First Judicial District Court, (2008); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 by Utility Solutions LLC* (DNRC Final Order 2008)(permit conditioned on mitigation of 3.2 gpm up to 5.18 AF of depletion to the Gallatin River); *In the Matter of Beneficial Water Use Permit Application No. 41I-104667 by Woods and Application to Change Water Right No 41I-G(W) 125497 by Ronald J. Woods*, (DNRC Final Order 2000); *In The Matter of Application To Change Appropriation Water Right 76GJ 110821 by Peterson and MT Department of Transportation*,(DNRC Final Order 2001); *In The Matter of Application To Change Appropriation Water Right No. 76G-3235699 by Arco Environmental Remediation LLC*.(DNRC Final Order 2003) (allows water under claim 76G-32356 to be exchanged for water appropriated out of priority by permits at the wet closures and wildlife to offset consumption). *In The Matter of*

Designation of the Larsen Creek Controlled Groundwater Area as Permanent, Board of Natural Resources Final Order (1988).

Montana case law also provides a history of mitigation, including mitigation by new or untried methods. See *Thompson v. Harvey* (1974), 154 Mont. 133, 519 P.2d 963; *Perkins v. Kramer* (1966), 148 Mont. 355, 423 P.2d 587.

Augmentation/ mitigation is also recognized in other prior appropriation states for various purposes. E.g. C.R.S.A. § 37-92-302 (Colorado); A.R.S. § 45-561 (Arizona); RCWA 90.46.100 (Washington); ID ST § 42-1763B and § 42-4201A (Idaho).

The requirement for mitigation in closed basins has been codified in § 85-2-360, *et seq.*, MCA. Section 85-2-360(5), MCA provides in relevant part:

A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, location, and duration of the amount of net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

E.g., *Combined Application for Beneficial Water Use Permit No. 76G-30050801 and Change Authorization 76G-30050805 by Missoula County* (DNRC Final Order 2012)(permit granted conditioned on mitigation of depletion ranging .8 to 7.4 gpm); *In the Matter of Application No. 76H-30046211 for a Beneficial Water Use Permit and Application No. 76H-30046210 to Change a Non-filed Water Right by Patricia Skergan and Jim Helmer* (DNRC Final Order 2010, Combined Application)(permit granted conditioned on mitigation).

32. In analyzing adverse effect to other appropriators, an applicant may use the water rights claims of potentially affected appropriators as evidence of their “historic beneficial use.” See *Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston* (1991), 249 Mont. 425, 816 P.2d 1054.

33. The Department will evaluate whether an applicant’s proposed plan, i.e. mitigation or aquifer recharge, will offset depletions so as to meet § 85-2-311(1)(b), MCA, in the permit proceeding. The applicant’s authority to use the water as proposed is assumed for the purposes of the analysis. The authority of the applicant to use the offset water as proposed for the plan is not determined in the permit proceeding but is determined in any required application for change in appropriation. Whether the applicant proves by a preponderance of the evidence that the

mitigation/aquifer recharge plan will be effective is determined in the permit proceeding. Thus, the applicant must accurately convey to the Department exactly what it proposes for a mitigation/aquifer recharge plan. E.g., Wesmont Developers v. DNRC, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pg. 10 (it was within the discretion of the Department to decline to consider an undeveloped mitigation proposal as mitigation for adverse effect in a permit proceeding); *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 And 41H 30013629 By Utility Solutions LLC* (DNRC Final Order 2006), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit 41H 30019215 by Utility Solutions LLC* (DNRC Final Order 2007) , *affirmed*, Montana River Action Network et al. v. DNRC et al., Cause No. CDV-2007-602, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 by Utility Solutions LLC* (DNRC Final Order 2008); § 85-2-360 *et seq.*

34. Pursuant to § 85-2-363, MCA, an applicant whose hydrogeologic assessment conducted pursuant to § 85-2-361, MCA, predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

35. Pursuant to § 85-2-362, MCA, a mitigation plan must include: where and how the water in the plan will be put to beneficial use; when and where, generally, water reallocated through exchange or substitution will be required; the amount of water reallocated through exchange or substitution that is required; how the proposed project or beneficial use for which the mitigation plan is required will be operated; evidence that an application for a change in appropriation right, if necessary, has been submitted; evidence of water availability; and evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.

36. Pursuant to § 85-2-362, MCA, an aquifer recharge plan must include: evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to §§75-5-410 and 85-2-364, MCA; where and how the water in the plan will be put to beneficial use when and where, generally, water reallocated through exchange or substitution will be required; the amount of water reallocated through exchange or substitution that is required; how the proposed project or beneficial use for which the aquifer recharge plan is required will be

operated; evidence that an application for a change in appropriation right, if necessary, has been submitted; a description of the process by which water will be reintroduced to the aquifer; evidence of water availability; and evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

37. In this case Applicant proposes to mitigate its full consumptive use under the proposed appropriation. This mitigation provides mitigation of full depletion of surface waters by the proposed appropriation in amount, location, and duration of the depletion. Because Applicant proposes to mitigate the full amount of its consumptive use, there is no adverse effect from depletion of surface waters to the historic beneficial use of surface water rights. E.g., In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 by Utility Solutions LLC (DNRC Final Order 2008).

38. The Applicant has proven by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected by the proposed appropriation as conditioned on Applicant's revised plan to prevent adverse effect. § 85-2-311(d), MCA. (FOF 14-23)

PRELIMINARY DETERMINATION

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Provisional Permit No. 41H 30021840 should be MODIFIED.

The Department determines the mitigation plan conditions should be modified as follows:

Proposed Modification to Permit Condition #3

The existing condition for Condition #3 on Permit No. 41H 30021840 states:

ALL WATER NOT CONSUMED BY THE PROPOSED USE SHALL BE TREATED AT THE WASTEWATER TREATMENT PLANT AND DISCHARGED INTO THE BACKLIN DITCH. PERMITTEE SHALL NOT CAUSE OR ALLOW ANY WASTEWATER DISCHARGED FROM ITS WASTEWATER TREATMENT PLANT INTO THE BACKLIN DITCH FROM ITS USE UNDER THIS PERMIT TO BE DIVERTED OR USED FOR ANY PURPOSE OTHER THAN RETURNS TO THE GALLATIN RIVER REQUIRED BY THIS FINAL ORDER. AT ALL TIMES, THE APPLICANT SHALL DISCHARGE OR CAUSE TO BE DISCHARGED AT A MINIMUM 95% OF WATER APPROPRIATED FOR DOMESTIC AND COMMERCIAL POTABLE USES UNDER THIS PERMIT INTO THE BACKLIN DITCH AS WASTEWATER DESCRIBED IN FOF 69 - 71 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). AT FULL BUILD OUT, THE APPLICANT SHALL DISCHARGE OR

CAUSE TO BE DISCHARGED 73.09 GPM FOR A TOTAL VOLUME OF 117.90 AC-FT/YR OF WASTEWATER INTO THE BACKLIN DITCH AS DESCRIBED IN FOF 69 - 71 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). PERMITTEE SHALL OBTAIN DEPARTMENT APPROVAL FOR ANY CHANGE IN THE METHOD OF DISPOSAL OF NON-CONSUMED/WASTEWATER, INCLUDING ANY REDUCTION IN WATER TREATED AT THE WASTEWATER TREATMENT PLANT AND DISCHARGED INTO BACKLIN DITCH FROM OTHER SOURCES.

The proposed condition for Condition #3 is:

ALL WATER NOT CONSUMED BY THE PROPOSED USE SHALL BE TREATED AT THE WASTEWATER TREATMENT PLANT AND DISCHARGED INTO THE BACKLIN DITCH OR INTO THE RAPID INFILTRATION BASIN (RIB) LOCATED AT THE SITE OF THE FORMER WASTEWATER TREATMENT LAGOONS. PERMITTEE SHALL NOT CAUSE OR ALLOW ANY WASTEWATER DISCHARGED FROM ITS WASTEWATER TREATMENT PLANT INTO THE BACKLIN DITCH FROM ITS USE UNDER THIS PERMIT TO BE DIVERTED OR USED FOR ANY PURPOSE OTHER THAN RETURNS TO GROUNDWATER VIA THE RIB OR THE GALLATIN RIVER REQUIRED BY THIS FINAL ORDER. AT ALL TIMES, THE APPLICANT SHALL DISCHARGE OR CAUSE TO BE DISCHARGED AT A MINIMUM 95% OF WATER APPROPRIATED FOR DOMESTIC AND COMMERCIAL POTABLE USES UNDER THIS PERMIT INTO GROUNDWATER VIA THE RIB OR THE BACKLIN DITCH AS WASTEWATER DESCRIBED IN FOF 69 - 71 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). AT FULL BUILD OUT, THE APPLICANT SHALL DISCHARGE OR CAUSE TO BE DISCHARGED 73.09 GPM FOR A TOTAL VOLUME OF 117.90 AC-FT/YR OF WASTEWATER INTO GROUNDWATER VIA THE RIB OR THE BACKLIN DITCH AS DESCRIBED IN FOF 69 - 71 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). PERMITTEE SHALL OBTAIN DEPARTMENT APPROVAL FOR ANY CHANGE IN THE METHOD OF DISPOSAL OF NON-CONSUMED/WASTEWATER, INCLUDING ANY REDUCTION IN WATER TREATED AT THE WASTEWATER TREATMENT PLANT AND DISCHARGED INTO GROUNDWATER VIA THE RIB OR BACKLIN DITCH FROM OTHER SOURCES.

Proposed Modification to Permit Condition #4

The existing condition for Condition #4 on Permit No. 41H 30021840 states:

PERMITTEE SHALL DIVERT OR CAUSE TO BE DIVERTED 0.70 CFS OUT OF WATER RIGHT NO. 41H-119990-00, FOR A PERIOD OF 100 DAYS DURING THE PERIOD FROM MAY 15TH THROUGH SEPTEMBER 30TH, FOR A TOTAL ANNUAL DIVERSION OF 138.21 ACRE FEET, AND SHALL DISCHARGE SUCH AMOUNTS OF WATER INTO ITS INFILTRATION GALLERY IN THE MANNER DESCRIBED IN FOF 83 – 86 (DNRC FINAL ORDER DATED DECEMBER 8, 2009). PERMITTEE SHALL INSTALL A MEASURING DEVICE AT THE POINT OF DISCHARGE INTO THE INFILTRATION GALLERY TO RECORD THE FLOW RATES AND VOLUME OF ALL WATER DIVERTED INTO ITS INFILTRATION GALLERY. APPLICANT SHALL MAINTAIN THE MEASURING DEVICE IN PROPER OPERATING CONDITION AT ALL TIMES. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPLICANT SHALL KEEP A WRITTEN RECORD OF DAILY, MONTHLY AND ANNUAL FLOW RATES AND VOLUMES MEASURED AT THE MEASURING DEVICE. APPLICANT SHALL SUBMIT TO THE

DEPARTMENT'S BOZEMAN REGIONAL OFFICE COMPLETE WATER MEASUREMENT RECORDS BY NOVEMBER 1 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES OF THE YEAR.

The proposed condition for Condition #4 is:

PERMITTEE SHALL LEAVE ITS WATER RIGHT, 41H 30069634, INSTREAM FOR MITIGATION PURPOSES DURING THE PERIOD OF DIVERSION FROM APRIL 15 THROUGH NOV 4 OF EACH YEAR. IN ORDER TO MEET THE TIMING REQUIREMENT OF THE MITIGATION PLAN, THE PERMITTEE SHALL DISCHARGE A TOTAL OF 94.21 ACRE FEET OF EFFLUENT FROM THE WASTEWATER TREATMENT PLANT TO GROUNDWATER VIA A RAPID INFILTRATION BASIN (RIB) DURING THE SAME PERIOD (APR 15 TO NOV 4). AT OTHER TIMES DURING THE YEAR, THE PERMITTEE WILL DISCHARGE TO SURFACE WATER A MINIMUM OF 73 GPM. DURING TIMES WHEN THE WEST GALLATIN WATER COMMISSIONER IS EMPLOYED, THE PERMITTEE SHALL PAY ITS FAIR SHARE OF THE COMMISSIONER'S CHARGES TO ENSURE THE APPROPRIATE AMOUNT OF INSTREAM WATER IS DELIVERED. THE PERMITTEE SHALL SUBMIT TO THE DEPARTMENT'S BOZEMAN REGIONAL OFFICE COMPLETE WATER MEASUREMENT RECORDS OF THE AMOUNT OF THE APPLICANT'S WATER DELIVERED BY THE COMMISSIONER AND THE AMOUNT OF WATER DISCHARGED TO THE RIB BY NOVEMBER 1 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES OF THE YEAR.

Proposed Additional Condition to Accompany Condition #4:

THE APPLICANT SHALL PROVIDE DOCUMENTATION THAT LANDS DESIGNATED FOR RETIREMENT ARE NO LONGER IRRIGATED. DOCUMENTATION OF NO IRRIGATION MAY CONSIST OF SITE-SPECIFIC PHOTOGRAPHS AND/OR AERIAL PHOTOGRAPHY. DOCUMENTATION SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR TO THE BOZEMAN WATER RESOURCES REGIONAL OFFICE. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE AUTHORIZATION.

Proposed Modification to Permit Condition #5

The existing condition for Condition #5 on Permit No. 41H 30021840 states:

PERMITTEE SHALL CAUSE BAKER DITCH COMPANY TO FILE THE APPLICATION TO CHANGE THE PURPOSE OF USE OF WATER RIGHT NO. 41H-119990-00 FOR USE AS MITIGATION IN ITS INFILTRATION GALLERY. THE VOLUME AND FLOW RATE OF WATER AUTHORIZED BY THE DEPARTMENT FOR CHANGE FROM WATER RIGHT NO. 41H-119990-00 MUST BE EQUAL TO OR GREATER THAN 0.70 CFS FOR A PERIOD OF 100 DAYS DURING THE PERIOD FROM MAY 15TH THROUGH SEPTEMBER 30TH, FOR A TOTAL ANNUAL VOLUME OF 138.21 AC-FT. THE PERMITTEE SHALL RETIRE A MINIMUM OF 123.40 ACRES OF LAND HISTORICALLY IRRIGATED BY WATER RIGHT NO. 41H-119990-00.

The proposed condition for Condition #5 is:

PERMITTEE SHALL FILE THE APPLICATION TO CHANGE THE PURPOSE OF USE OF WATER RIGHT NO. 41H 30069634 FOR USE AS INSTREAM MITIGATION. THE VOLUME OF WATER AUTHORIZED BY THE DEPARTMENT FOR CHANGE FROM WATER RIGHT NO. 41H 30069634 MUST BE MADE AVAILABLE FOR A PERIOD OF 100 DAYS DURING THE PERIOD FROM MAY 15TH THROUGH SEPTEMBER 30TH, FOR A TOTAL ANNUAL VOLUME OF 94.21 AC-FT. THE PERMITTEE SHALL RETIRE A MINIMUM OF 68.77 ACRES OF LAND HISTORICALLY IRRIGATED BY WATER RIGHT NO. 41H 30069634.

Proposed Modification to Information Remark

The existing informational remark on Permit No. 41H 30021840 states:

PERMITTEE SHALL NOT DIVERT OR USE WATER UNDER THIS PERMIT UNTIL: THE CHANGE IN WATER RIGHT NO. 41H-119990-00 HAS BEEN GRANTED IN THE AMOUNTS REQUIRED UNDER THE PERMITTEE'S MITIGATION PLAN AS REQUIRED BY CONDITIONS 4 AND 5; WATER FROM THE CHANGE IN WATER RIGHT NO. 41H-119990-00 IS DIVERTED INTO ITS INFILTRATION GALLERY AS REQUIRED BY CONDITIONS 4 AND 5, AND; WASTEWATER RETURNS ARE PROVIDED AS REQUIRED BY CONDITION 3.

The proposed informational remark is:

PERMITTEE SHALL NOT DIVERT OR USE WATER UNDER THIS PERMIT UNTIL: THE CHANGE IN WATER RIGHT NO. 41H 30069634 HAS BEEN GRANTED IN THE AMOUNTS REQUIRED UNDER THE PERMITTEE'S MITIGATION PLAN AS REQUIRED BY CONDITIONS 4, 5, AND 6; WATER FROM THE CHANGE IN WATER RIGHT NO. 41H 30069634 IS LEFT INSTREAM AS REQUIRED BY CONDITIONS 4 AND 5, AND; WASTEWATER RETURNS ARE PROVIDED AS REQUIRED BY CONDITION 3.

Proposed Modification to Information Remark

The existing informational remark on Permit No. 41H 30021840 states:

PERMITTEE SHALL NOT ALLOW MORE THAN 78.6 ACRES OF LAWN AND GARDEN TO BE IRRIGATED THROUGH WATER APPROPRIATED UNDER THIS PERMIT.

The proposed informational remark is:

PERMITTEE SHALL NOT ALLOW MORE THAN 50.54 ACRES OF LAWN AND GARDEN TO BE IRRIGATED THROUGH WATER APPROPRIATED UNDER THIS PERMIT.

Proposed Additional Conditions

Proposed condition on handling of non-consumed volume from the permit.

UPON FULL BUILD-OUT FROM NOV 5 THROUGH APRIL 14 OF EACH YEAR, THE APPLICANT WILL PROVIDE A MINIMUM AVERAGE MONTHLY DISCHARGE OF 142.5 GPM OF WASTEWATER EFFLUENT INTO THE BACKLIN DITCH.

Proposed general mitigation/aquifer recharge condition.

AQUIFER RECHARGE REQUIREMENT: THE APPROPRIATOR'S USE OF WATER UNDER THIS PERMIT IS CONDITIONED UPON THE 94.21 AC-FT OF AQUIFER RECHARGE VOLUME/MITIGATION VOLUME REQUIRED TO OFFSET ADVERSE EFFECTS FROM NET DEPLETION TO THE GALLATIN RIVER. DIVERSION UNDER THIS PERMIT MAY NOT COMMENCE UNTIL THE AQUIFER RECHARGE PLAN AND MITIGATION PLAN AS SPECIFICALLY DESCRIBED AND APPROVED THROUGH PERMIT MODIFICATION REQUEST AND CHANGE AUTHORIZATION 41H 30129387 IS LEGALLY IMPLEMENTED. DIVERSION UNDER THIS PERMIT MUST STOP IF MITIGATION AS HEREIN REQUIRED IN AMOUNT, LOCATION, AND DURATION CEASES.

Proposed Additional Informational Remark

Proposed additional informational remark:

THE TOTAL VOLUME OF WATER THAT MUST BE APPLIED TO THE RIB IS 94.21 AC-FT. THIS IS 91.12 AC-FT REQUIRED TO OFFSET DEPLETIONS TO SURFACE WATER CAUSED BY PUMPING UNDER PERMIT 41H 30021840, PLUS 3.09 AC-FT TO REPLACE THE INCREASED CONSUMPTION FROM RIB EVAPORATION.

Note: Three important information remarks remain unchanged.

NOTICE

The Department will provide public notice to the objectors and their successors in interest of this Petition to Modify a Permit and the Department's Preliminary Determination to Modify pursuant to § 85-2-314, MCA. The Department will set a deadline for objections to this Petition to Modify pursuant to §§ 85-2-307, and -308, MCA. If this Petition to Modify receives no valid objections or all valid objections are unconditionally withdrawn, the Department will grant this Petition to Modify as herein approved. If this Application receives a valid objection, the application and objection will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If valid objections to a Petition to Modify are received and withdrawn with stipulated conditions and the department preliminarily determined to grant the Petition to Modify, the department will modify the appropriation right to conditions necessary to satisfy applicable criteria. To exhaust administrative remedies, one must file a valid objection and proceed to hearing and final order by the Department. The final order of the Department is reviewable by a district court only if all administrative remedies are exhausted.

DATED this 12th day of January, 2026.

/Original signed by Kerri Strasheim/

Kerri Strasheim, Regional Manager
Bozeman Regional Office
Department of Natural Resources and
Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO MODIFY was served upon all parties listed below on this day of January 12, 2026, by first class United States mail.

TOWN OF MANHATTAN
C/O JANE MERSEN
PO BOX 96
MANHATTAN, MT 59741-0096

Regional Office, (406) 586-3136