

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

* * * * *

APPLICATION FOR BENEFICIAL WATER USE	)	DRAFT PRELIMINARY DETERMINATION TO
PERMIT NO. 41Q 30170946 BY	)	GRANT PERMIT
NORTHWESTERN CORPORATION	)	

* * * * *

On June 5, 2026, NorthWestern Corporation (d/b/a NorthWestern Energy; henceforth, Applicant) submitted Application for Beneficial Water Use Permit No. 41Q 30170946 to the Lewistown Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) for 1,602 CFS AND 1,005,684 AF/YR for Power Generation, Nonconsumptive purpose. The Department published receipt of the Application on its website. A preapplication meeting was held between the Department and the Applicant on May 14, 2025, in which the Applicant designated that the Technical Analyses for this application would be completed by the Department. The Applicant returned the completed Preapplication Meeting Form on October 21, 2025. The Department delivered the Department-completed Technical Analyses on December 12, 2025. The Application was determined to be correct and complete as of June 26, 2026. An Environmental Assessment for this application was completed on June 30, 2026.

INFORMATION

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

Application as filed:

- Application for Beneficial Water Use Permit, Form 600
- Addenda:
 - Criteria Addendum Application for Beneficial Water Use Permit for Appropriations Greater than 5.5 CFS and 4,000 AF, Form 600-B
- Attachments:

- Applicant's Exhibit A—FERC, *Order Amending License, Approving Revised Exhibit A and Exhibit F Drawings and Revising Annual Charges*, 171 FERC ¶ 62,077 (dated May 4, 2020).
- Applicant's Exhibit B—FERC, *Order Amending License, Revising Project Description, Revising Annual Charges, and Approving Revised Exhibit A and Exhibit F Drawings*, 180 FERC ¶ 62,131 (dated September 12, 2022).
- Applicant's Exhibit C—Proposed Point of Diversion/Place of Use Maps (undated).
- Applicant's Exhibit D—Site Map (Missouri—Madison Project No. 2188 Black Eagle Development Project Boundary Exhibit Nos. G-19-1 and G-19-2), created by PPL Montana, LLC and dated March 29, 2012.
- Applicant's Exhibit E—Labeled Diagram/Overview Photo of Black Eagle system (Black Eagle Development Location Map Exhibit 2-1), created by NorthWestern Energy and dated May 14, 2021.
- Applicant's Exhibit F—Turbine Data and Performance Curves, 2 new turbines (dated April 2019).
- Applicant's Exhibit G—Turbine Performance Curve, existing turbine. From S. Morgan Smith Co., York, PA for Montana Power Co. Black Eagle Development. Dated June 30, 2026.
- Applicant's Exhibit H—18 Code of Federal Regulations (CFR) § 11.1, Costs of administration.
- Applicant's Exhibit I—DNRC, *Surface Water Permit Technical Analyses Report, Application No. 41Q 30170946* (Amended Mar 30, 2026).

- Maps:

- Applicant's Exhibit C—Proposed Point of Diversion/Place of Use Map (undated; creator uncredited).
- Applicant's Exhibit E—Labeled Diagram/Overview Photo of Black Eagle system (Black Eagle Development Location Map Exhibit 2-1), created by NorthWestern Energy and dated May 14, 2021.

- Department-completed Technical Analyses Report based on information provided in the Preapplication Meeting Form (sent to Applicant on December 12, 2025).
 - The Department- completed Technical Analyses was amended via DNRC Memorandum to file *Original Technical Analyses concerning Permit Application No. 41Q 30170946 is corrected*, dated March 30, 2026.

Information within the Department's Possession/Knowledge

- Surface Water Permit Technical Analyses Report – Notice of Erratum, dated August 24, 2026.
 - In the Department-completed Technical Analyses for Application for Beneficial Water Use Permit No. 41Q 30170946, nonconsumptive instream water rights between the proposed POD and USGS Gage 06090300 were not included in the legal demand index. The notice of erratum incorporates nonconsumptive instream water rights within the Area of Potential Impact into the legal demands index. Additionally, the notice of erratum provides updated legal demands for each month.
- Montana Water Court, Upper Missouri Division Missouri River From Sun River To Marias River - Basin 41 Q, Case 41Q-22 (Order Amending And Adopting Master's Report filed June 29, 2018)
- Final Environmental Impact Statement, Missouri-Madison Hydroelectric Project (FERC No. 2188), Montana (Dated September 1999)
- USGS gage stream records
- 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 Lewistown Regional Office at 406-538-7459 to request copies of the following documents.
 - Department Standard Practice for Determining Physical Availability of Surface Water
 - Department Standard Practice for Area of Potential Impact Analysis, Department Permit Application Manual (Revised February 14, 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; FERC means Federal Energy Regulatory Commission; USGS means the United States Geological Survey; FoF means Finding of Fact; SoC means Statement of Claim; CFS means cubic feet per second; GPM means gallons per minute; AF means acre-feet; AC means acres; AF/YR means acre-feet per year; and MW means Mega-Watt. Point of diversion is abbreviated as POD and POU means Place of use. Legal land description is abbreviated as LLD. Related to LLD, Sec. means Section; TWP means Township; RGE means Range; and Co. means County. Black Eagle is interchangeable with Black Eagle Hydroelectric Development, Black Eagle Dam, or simply Black Eagle.

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to appropriate water from the Missouri River, by means of a dam (Black Eagle), from January 1 to December 31 at 1,602 CFS. Under Application for Beneficial Water Use Permit No. 41Q 30170946, the Applicant proposes to divert a volume of up to 1,005,684 AF/YR from four points of diversion in the NW Sec. 5 and NE Se. 6 of TWP 20N RGE 4E Cascade Co. Four LLDs are provided in **Table 1** below to represent the extent of the Black Eagle Dam. The four LLDs, together, fully describe Black Eagle Dam (the diversion dam). The proposed purpose is Power Generation, Nonconsumptive. The proposed period of diversion and period of use is January 1 to December 31. The proposed POU is in NWNW Sec. 5 TWP 20N RGE 4E Cascade Co.

2. The proposed POU is also located in Black Eagle Dam's powerhouse. The powerhouse (and the entirety of Black Eagle Hydroelectric Development) is built within the bed of the Missouri River (between the high-water marks of the respective banks). As such, the proposed POU occupies space to which no Government Lot number is assigned by the Public Land Survey

System. As **Figure 1** below indicates, the powerhouse is closely associated with (in proximity to), but outside of Government Lot 4 Sec. 5 TWP 20N RGE 4E Cascade Co.

Table 1: Summary of Proposed Use

Flow Rate (CFS)	Volume (AF)	Purpose	Period Of Use	Place Of Use	Points Of Diversion^A	Priority Date
1,602	1,005,684	Power Generation, Nonconsumptive	1/1-12/31	NWNW Sec. 5, TWP 20N, RGE 4E Cascade Co.	-SWNWNW Sec. 5, TWP 20N, RNG 4E - NWSWNW Sec. 5, TWP 20N, RNG 4E - SENENE Sec. 6, TWP 20N, RNG 4E - NESENE, Sec. 6, TWP 20N, RNG 4E	06/05/2026

^AAll four proposed points of diversion are in Cascade Co.

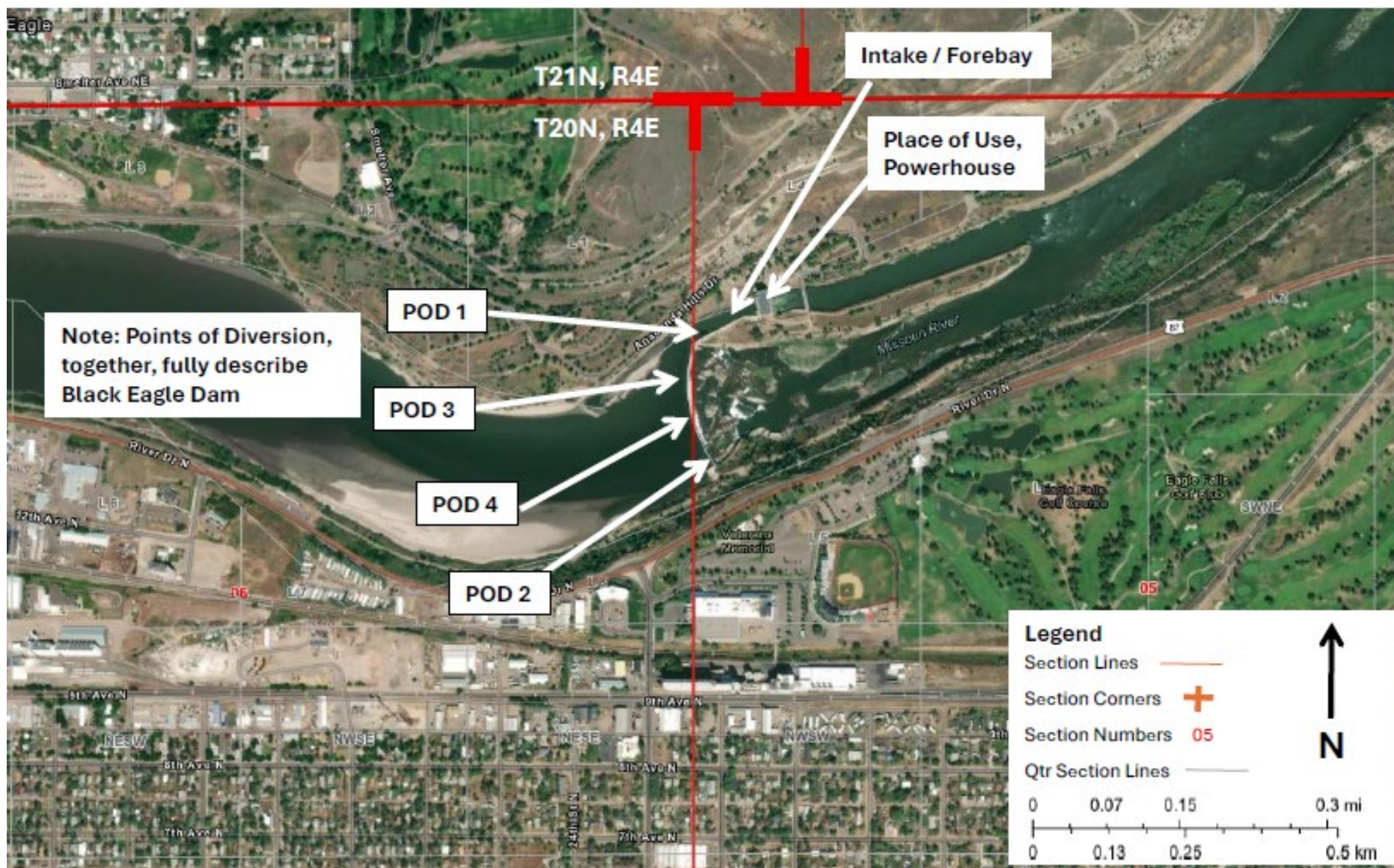


Figure 1. Applicant's Exhibit C— Proposed Points of Diversion / Place of Use Map (undated).

3. Black Eagle is operated as a baseload, run-of-river facility. Under existing operations, the hydroelectric development uses the natural inflows as they occur, and the reservoir level is maintained at a relatively constant level. As such, water is spilled during high flows, and reduced power generation occurs during low flows. Under the proposed appropriation, this operation will continue as permitted under SoC Nos. 41Q 94354-00; 41Q 94355-00; 41Q 94356-00; 41Q 94357-00; and 41Q 94359, except the increase in power generation capacity will allow more water to be routed through the powerhouse and tailrace, rather than having that water flow over the Black Eagle spillway. The Black Eagle spillway and tailrace discharge to the same location on the Missouri River.

4. The Applicant proposes to modify Black Eagle Hydroelectric Development to increase its power generation capacity. Two Non-Capacity License Amendment Applications for Black Eagle were approved by FERC (collectively “Amendments”; Applicant’s Exhibit A, Order Amending License, May 4, 2020, and Applicant’s Exhibit B, Order Amending License, Sept. 12, 2022. Together, the Amendments permit the replacement of two turbines at Black Eagle (Units 1 and 3) and refurbishment (rewinds) of two generators (also Units 1 and 3). Additionally, the Amendments permit the continued operation of the third existing turbine and generator (Unit 2). Each of the two replacement turbines would increase its hydraulic capacity from 1,680 CFS to 2,481 CFS. Thus, the overall hydraulic capacity of Black Eagle Hydroelectric Development would increase from 5,040 CFS to 6,642 CFS, a difference of 1,602 CFS. This 1,602 CFS is the flow rate the Applicant is requesting in Applicant for Beneficial Water Use Permit No. 41Q 3017094, to fully utilize the capacity of the new (upgraded) turbines.

5. The Applicant holds five existing water rights (all statements of claim) on Black Eagle Dam for a total flow rate of 5,040 CFS. Four of the five existing rights have a purpose of Power Generation (with a purpose clarification of, “hydroelectric”). A fifth right, Statement of Claim No. 41Q 94357-00, has a purpose of Storage with a purpose clarification stating, “for power generation.” The Department finds that the five existing Black Eagle water rights (summarized in **Table 2** below) meet the definition of supplemental water rights provided in ARM 36.12.101(70), “separate water rights for the same purpose, owned by the same water user, and used on overlapping places of use”. Furthermore, the Department finds that the

appropriation sought via Application for Beneficial Water Use Permit No. 41Q 30170946 will be supplemental to the Applicant's five existing water rights on Black Eagle. Additionally, the Department finds that these same five rights will become associated with the appropriation sought via Application for Beneficial Water Use Permit No. 41Q 30170946 as the rights will share the same points of diversion and means of conveyance (ARM 36.12.101(8)).

Table 2: Summary of supplemental and associated rights

Water Right/ Application No.	Typical Period of Diversion	Typical Period of Use	Flow Rate (CFS)	Volume Contributed (AF)
41Q 94354-00	1/1-12/31	1/1-12/31	3,300	2,389,200
41Q 94355-00	1/1-12/31	1/1-12/31	900	651,600
41Q 94356-00	1/1-12/31	1/1-12/31	560	405,440
41Q 94357-00 ^A	1/1-12/31	1/1-12/31	N/A ^B	29,480
41Q 94359-00	1/1-12/31	1/1-12/31	280	202,720
Subtotal			5,040	3,678,440
41Q 30170946	1/1-12/31	1/1-12/31	1,602	1,005,684
Total			6,642	4,684,124

^AThe Department finds Statement of Claim No. 41Q 94357-00, a Storage right, to be supplemental with the other rights/application in Table 2 as a purpose clarification on the claim reveals that water appropriated and stored is ultimately used for (hydroelectric) power generation.

^BStatement of Claim No. 41Q 94357-00 has not been decreed a flow rate as its purpose is for Storage.

6. Infrastructure improvements at Black Eagle Dam, permitted via FERC Amendments, will allow an additional 1,602 CFS to be run through the turbines, rather than spilling that water over the dam. Accordingly, this Application will increase the total flow rate at Black Eagle Dam to 6,642 CFS. At times, when flow is available and needed, all six of the water rights in Table [X] above (which includes the proposed appropriation) will be utilized at the same time to provide the needed flow rate, not to exceed the individual volumetric limits on the rights.

7. Black Eagle Dam forms a portion of the FERC Missouri-Madison Project No. 2188. Project No. 2188 consists of nine hydroelectric developments. Starting farthest upstream, the developments include Hebgen, Madison, Hauser, Holter, Black Eagle, Rainbow, Cochrane, Ryan, and Morony. The Applicant also has a water right to store water for use in power generation in Canyon Ferry Reservoir (SoC No. 41I 94385-00). Water authorized by DNRC to be appropriated and stored at Canyon Ferry under SoC No. 41I 94385-00 is further authorized by the

Department to be used for the purpose of Power Generation at Hauser, Holter, Black Eagle, Rainbow, Ryan, Cochrane, and Morony dams.

8. Over Black Eagle; the four upstream hydroelectric developments associated with FERC Missouri-Madison Project No. 2188 (Hebgen; Madison, Hauser, and Holter); or out of Canyon Ferry, the Applicant also owns seven Power Generation purpose water rights, each with a storage element. The seven rights are summarized in **Table 3** below. All seven rights are claimed to be used for power generation at any of the Applicant's respective downstream hydroelectric developments. Thus, water stored at Black Eagle Dam, and any of the five upstream dams (including Canyon Ferry), may be used for power generation at Black Eagle. The period of diversion and period of use for each of these rights is year-round, and typical releases under these rights have been throughout this year-round period, whenever such water is needed.

Table 3: Applicant-owned, upstream water rights with storage element authorized for power generation at Black Eagle Dam.

Dam Name	SoC No.	Priority date	Flow rate ^A	Volume (AF/YR)
Hebgen	41F 94371-00	04/30/1906	No decreed flow rate	345,123.78
	41F94372-00	08/17/1959	No decreed flow rate	33,718.99
Madison	41F 94376-00	02/06/1896	No decreed flow rate	96,896.48
Canyon Ferry ^B	41I 94385-00	10/31/1898	No decreed flow rate	47,500.00
Hauser	41I 94387-00	06/23/1905	No decreed flow rate	204,133.00
Holter	41I 94349-00	04/30/1918	No decreed flow rate	313,636.00
Black Eagle	41Q 94357-00	08/31/1927	No decreed flow rate	29,480.00

^ANo flow rate decreed for these other uses claims involving only water from on-stream reservoirs, pursuant to Adj. WRCER 29(c)(1).

^BNot a portion of FERC Missouri-Madison Project No. 2188.

9. This Application is subject to the higher evidentiary requirement of clear and convincing evidence and proving an additional criterion of Reasonable Use because the requested flow rate and volume exceed 5.5 CFS and 4,000 AF pursuant to § 85-2-311(3), MCA.

10. This Application is for the purpose of Power Generation, Nonconsumptive. This Application is located within both the Upper Missouri River Basin Legislative Closure and the U.S. Bureau of Land Management - Montana Compact: Upper Missouri National Wild & Scenic River (UMNW&SR) Closure.

11. The location of the Upper Missouri River Basin Legislative Closure (Effective date April 16, 1993) is the drainage area of the Missouri River and its tributaries above Morony Dam. Under the conditions of the Upper Missouri River Basin Legislative Closure and pursuant to MCA §§ 85-2-319 and 85-2-343, DNRC may not process or grant applications for permits to appropriate water or applications for state water reservations within the upper Missouri River basin. This closure is temporary until final decrees have been issued for all the subbasins of the upper Missouri River basin.

12. The location of the U.S. Bureau of Land Management - Montana Compact: UMNW&SR Closure (Effective date April 16, 1993) is the Missouri River Basin and tributaries above the designated Upper Missouri Wild & Scenic River. Under the conditions of the U.S. Bureau of Land Management - Montana Compact: UMNW&SR Closure and Pursuant to MCA § 85-20-501, DNRC shall not grant an appropriation in the Missouri River basin upstream from where the river leaves the boundary of the UMNW&SR in any month in which the water volume designated for the Available Water Supply has been exhausted (significant water remains available for new appropriations).

13. A mutual exception to both the Upper Missouri Basin Legislative Closure and the U.S. Bureau of Land Management - Montana Compact: UMNW&SR Closure statutes are for appropriations for nonconsumptive uses (MCA § 85-2-343(2)(b); MCA § 85-20-501(III)(C)(1)). The proposed power generation appropriation in this Application is a nonconsumptive use. Accordingly, the Department finds that the basin closure statutes do not prohibit DNRC from granting this application.

BENEFICIAL WATER USE PERMIT CRITERIA (§ 85-2-311, MCA)

GENERAL CONCLUSIONS OF LAW

14. The Montana Constitution expressly recognizes in relevant part that:

- (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
- (2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use . . . shall be held to be a public use.
- (3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

Mont. Const. Art. IX, § 3. While the Montana Constitution recognizes the need to protect senior appropriators, it also recognizes a policy to promote the development and use of the waters of the state by the public. This policy is further expressly recognized in the water policy adopted by the Legislature codified at § 85-2-102, MCA, which states in relevant part:

- (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter. . . .
- (3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana . . .

15. Pursuant to § 85-2-302(1), MCA, except as provided in §§ 85-2-306 and 85-2-369, MCA, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the Department. See § 85-2-102(1), MCA. An Applicant in a beneficial water use permit proceeding must affirmatively prove all of the applicable criteria in § 85-2-311, MCA. Section § 85-2-311(1) states in relevant part:

- ... 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. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(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;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The Applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

To meet the preponderance of evidence standard, “the Applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the Applicant, the department, the U.S. geological survey, or the U.S.

natural resources conservation service and other specific field studies.” Section 85-2-311(5), MCA (emphasis added). The determination of whether an application has satisfied the § 85-2-311, MCA criteria is committed to the discretion of the Department. *Bostwick Properties, Inc. v. Montana Dept. of Natural Resources and Conservation*, 2009 MT 181, ¶ 21. The Department is required grant a permit only if the § 85-2-311, MCA, criteria are proven by the Applicant by a preponderance of the evidence. *Id.* A preponderance of evidence is “more probably than not.” *Hohenlohe v. DNRC*, 2010 MT 203, ¶¶ 33, 35, 357 Mont. 438, 240 P.3d 628.

16. Pursuant to § 85-2-312, MCA, the Department may condition permits as it deems necessary to meet the statutory criteria:

(1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. 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 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

E.g., Montana Power Co. v. Carey (1984), 211 Mont. 91, 96, 685 P.2d 336, 339 (requirement to grant applications as applied for, would result in, “uncontrolled development of a valuable natural resource” which “contradicts the spirit and purpose underlying the Water Use Act.”); *see also, In the Matter of Application for Beneficial Water Use Permit No. 65779-76M by Barbara L. Sowers* (DNRC Final Order 1988)(conditions in stipulations may be included if it further compliance with statutory criteria); *In the Matter of Application for Beneficial Water Use Permit No. 42M-80600 and Application for Change of Appropriation Water Right No. 42M-036242 by Donald H. Wyrick* (DNRC Final Order 1994); Admin. R. Mont. (ARM) 36.12.207.

17. The Montana Supreme Court further recognized in *Matter of Beneficial Water Use Permit Numbers 66459-76L, Ciotti: 64988-G76L, Starner*, 278 Mont. 50, 60-61, 923 P.2d 1073, 1079, 1080 (1996), *superseded by legislation on another issue*:

Nothing in that section [85-2-313], however, relieves an Applicant of his burden to meet the statutory requirements of § 85-2-311, MCA, before DNRC may issue

that provisional permit. Instead of resolving doubts in favor of appropriation, the Montana Water Use Act requires an Applicant to make explicit statutory showings that there are unappropriated waters in the source of supply, that the water rights of a prior appropriator will not be adversely affected, and that the proposed use will not unreasonably interfere with a planned use for which water has been reserved.

See also, Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order* (2011). The Supreme Court likewise explained that:

.... unambiguous language of the legislature promotes the understanding that the Water Use Act was designed to protect senior water rights holders from encroachment by junior appropriators adversely affecting those senior rights.

Montana Power Co., 211 Mont. at 97-98, 685 P.2d at 340; *see also* Mont. Const. art. IX § 3(1).

18. An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of § 85-2-311, MCA is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this § 85-2-311, MCA. Section 85-2-311(6), MCA.

19. 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).

20. This application proposes to use more than 5.5 CFS and 4000 AF per year. Pursuant to § 85-2-311 (3), MCA, the Applicant must prove by clear and convincing evidence that the criteria in § 85-2-311(1), MCA are met. "Clear and convincing evidence" means evidence in which "there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt." *Czajkowski v. Meyers*, 2007 MT 292, ¶ 43, 339 Mont. 503, 172 P.3d 94; *Seltzer v. Morton*, 2007 MT 62, ¶ 159, 336 Mont. 225, 154 P.3d 561.

PHYSICAL AVAILABILITY

FINDINGS OF FACT

21. The Applicant proposes to modify its existing Black Eagle Hydroelectric Development by increasing its power generation capacity. This proposed power generation capacity increase requires an additional 1,602 cubic feet second (CFS) of water, up to 1,005,684 AF/YR. The requested period of diversion and period of use is January 1 to December 31.

22. The proposed source, the Missouri River, is a perennial stream as per USA Topo Maps and the USGS National Hydrography Dataset.

23. The USGS has operated a gaging station on the Missouri River near Great Falls (USGS Gage No. 06090300) since October of 1956. The gaging station is located just downstream of Morony Dam, 10.5-miles downstream of Black Eagle Dam.

24. Pursuant to methodology described in ARM 36.12.1702(1)(a), the Department conducted an analysis of gaging records including assessment of median of the mean discharge data collected on the during the period of record (October 1956 to December 2024).

25. To calculate physical water availability at Black Eagle Dam, the Department analyzed and included existing downstream water rights with diversions between USGS Gage No. 06090300 and the four proposed PODs.

26. The four proposed PODs, together, fully describe Black Eagle Dam. Additionally, the proposed PODs transect the Missouri River in a manner such that the Department finds that the water physically available is consistent at the four proposed PODs.

27. Although instream flow water rights are legal demands, they do not impact the physical flow of a source and as such they have no bearing on a stream's physical availability. Therefore, the Department does not consider "run of the river" hydropower (power generation) and instream demand (fishery) when calculating physical availability (DNRC Permit Application Manual, Last Updated: February 14, 2025, Pg. 69).

28. The intervening water rights (21) between the proposed PODs and downstream gage are shown in **Table 4** below, however only the three intervening rights with consumptive use diversions (Statement of Claims Nos. 41Q 94363-00 and 41Q 202344-00; Water Reservation

No. 41K 71890-00) were added to the USGS gaged flows and used to reflect physical availability at Black Eagle Dam.

Table 4: Existing Water Rights between Black Eagle and USGS Gage 06090300.

Water Right No.	Priority Date	Owners	Purposes	Period of Diversion	Maximum Flow	Maximum Volume (AF/YR)
Instream Rights						
41Q 94354 00	1892/06/01	NWE	POWER GEN.	1/1-12/31	3300 CFS	2,389,200.00
41Q 94355 00	1893/12/31	NWE	POWER GEN.	1/1-12/31	900 CFS	651,600.00
41Q 94356 00	8/31/1927	NWE	POWER GEN.	1/1-12/31	560 CFS	405,440.00
41Q 94359 00	12/31/1912	NWE	POWER GEN.	1/1-12/31	280 CFS	202,720.00
41Q 94358 00	9/16/1908	NWE	POWER GEN.	1/1-12/31	3500 CFS	2,533,884.00
41Q 94360 00	7/1/1917	NWE	POWER GEN.	1/1-12/31	1640 CFS	1,187,306.00
41Q 94361 00	3/26/1958	NWE	POWER GEN.	1/1-12/31	480 CFS	292,000.00
41Q 30042060	5/13/2008	NWE	POWER GEN.	1/1-12/31	2380 CFS	466,007.00
41Q 94365 00	6/16/1955	NWE	POWER GEN.	1/1-12/31	10000 CFS	7,240,000.00
41Q 94367 00	8/31/1915	NWE	POWER GEN.	1/1-12/31	5900 CFS	4,271,600.00
41Q 30148072	1/27/2020	NWE	POWER GEN.	1/1-12/31	1300 CFS	941,200.00
41Q 94396 00	12/20/1928	NWE	POWER GEN.	1/1-12/31	8280 CFS	5,994,720.00
41Q 30017520	7/1/1985	MT FWP	FISHERY	1/1-12/31	3876 CFS	2,805,904.69
Stored / Diverted Rights						
41Q 94357 00	8/31/1927	NWE	STORAGE	1/1-12/31	n/a	29,480.00
41Q 94362 00	9/16/1908	NWE	STORAGE	1/1-12/31	n/a	8,507
41Q 94363 00	9/16/1908	NWE	LAWN & GARDEN	4/1-10/1	250 GPM	203.3
41Q 94366 00	6/16/1955	NWE	STORAGE	1/1-12/31	n/a	54,779.00
41Q 94368 00	8/31/1915	NWE	STORAGE	1/1-12/31	n/a	52,808.00
41Q 94397 00	12/20/1928	NWE	STORAGE	1/1-12/31	n/a	81,947.00
41K 71890 00	7/1/1985	CITY OF GREAT FALLS	MUNICIPAL	1/1-12/31	4,700 GPM	6,022.00
41Q 202344 00	10/24/1892	MARY URQUHART; URQUHART, DUANE L BY-PASS TRUST UNDER WILL	STOCK (Direct)	1/1-12/31	35 GPM	3.50
Totals				1/1-3/31,	10.55 CFS	19,462.2
				10/1-12/31		AF / Mo
				4/1-10/1	11.10 CFS	19,496.1
						AF / Mo

29. **Table 5** below provides the physically available flow rate and volume at Black Eagle Dam (PODs), by month.

Table 5: Physical Availability at the Black Eagle Dam (PODs) on Missouri River.^A

A	B	C	D	E	F
Month	Median of the Mean Monthly Flow Rate (CFS) at USGS Gage #0690300	Median of the Mean Monthly Volume (AF) at USGS Gage #0690300	Existing Rights from Black Eagle Dam to USGS Gage #0690300 (CFS)	Physically Available Water at PODs (CFS)	Physically Available Water at PODs (AF)
January	6,039.00	370,673.82	10.55	6,049.55	390,136.03
February	6,062.00	336,077.28	10.55	6,072.55	355,539.49
March	5,992.50	367,819.65	10.55	6,003.05	387,281.86
April	7,255.00	430,947.00	11.10	7,266.10	450,443.09
May	10,075.00	618,403.50	11.10	10,086.10	637,899.59
June	11,705.00	695,277.00	11.10	11,716.10	714,773.09
July	7,249.50	444,974.31	11.10	7,260.60	464,470.40
August	5,405.00	331,758.90	11.10	5,416.10	351,254.99
September	5,185.50	308,018.70	11.10	5,196.60	327,514.79
October	5,360.00	328,996.80	10.55	5,370.55	348,459.01
November	5,562.00	330,382.80	10.55	5,572.55	349,845.01
December	5,766.00	353,917.08	10.55	5,776.55	373,379.29
Total		4,917,246.84			5,150,996.64

^AValues in Table 5 come from correction item No (3)(a) from Memo to File dated March 30, 2026, and titled, Corrections to the Technical Analyses concerning Permit Application No. 41Q 30170946.

30. Table 5 above shows that median of the mean monthly stream flows, including intervening consumptive diversions, are greater than the proposed flow rate of 1,602 CFS during all months of the requested period of diversion (January 1 through December 31). The requested flow rate will act as a limiting factor regarding volume per month, though the maximum proposed annual volume is less than the annual flow rate over time. Appropriating continuously at the maximum requested flow rate and over the course of a given month, the maximum volume appropriated in any month under the proposal would be 98,479.75 AF (1,602 CFS X 1.983 AF/day X 31 days/mo. = 98,479.75 AF/mo.). The 98,479.75 AF/mo. figure is less than the physically available water at the PODs in the month with the smallest surplus, September, at 327,514.79 AF. The Department finds by clear and convincing evidence that surface water is physically available in the amount the Applicant seeks to appropriate (1,602 CFS and up to 1,005,684 AF/YR).

LEGAL AVAILABILITY

FINDINGS OF FACT

31. The area of potential impact is on the mainstem of the Missouri River at Black Eagle Dam down to the nearest gage, USGS Gage No. 0690300 Missouri River near Great Falls. Black Eagle Dam is in the W2NW Sec. 5 (Gov Lot 4) T20N R4E Cascade Co. and extends into the E2NE Sec. 6 20N R4E Cascade Co. USGS Gage No. 0690300 is in the SESW Sec. 11 T21N R5E Cascade Co. This reach includes the portion of the Upper Missouri River Basin Closure Area downstream to Morony Dam. § 85-2-343, MCA.

32. The Department has designated USGS Gage No. 06090300 – Missouri River near Great Falls as the extent of the area of potential impact. Morony Dam is in proximity to USGS Gage No. 06090300 – Missouri River near Great Falls (within 1,000 FT, as per the USGS National Water Dashboard). Morony Dam is the dam furthest downstream of Black Eagle Dam and is the last of a series of five hydropower dams in the Great Falls area. The Department finds that there are no additional water rights between Morony Dam and USGS Gage # 0690300.

33. As per Department standard practice (Department Standard Practice for Area of Potential Impact Analysis), only intervening rights with consumptive use are used for calculating legal demands. For purposes of the legal demand comparison, nonconsumptive instream water rights were not included in the monthly demands because the appropriation proposed under Application for Beneficial Water Use Permit No. 41Q 30170946 is nonconsumptive. Although instream rights were not included in the comparison, the Applicant's intervening storage rights (5) were included in the volume calculation.

34. Water rights within the area of potential impact were quantified through their appropriated volumes and flow rates. Both consumptive and non-consumptive purposes have been considered.

35. Statement of Claim No. 41Q 202344-00 has a purpose of livestock direct from source and unquantified flow rate and volume. Given 103 AUs were claimed, DNRC finds the Applicant-supplied flow rate of 35 GPM for Statement of Claim No. 41Q 202344-00 to be reasonable. When rounded, the applicant-submitted 35 GPM maximum flow rate produces the same flow rate of 0.08 CFS as does the DNRC standard method of quantifying flow rate for livestock direct

claims $((103 \text{ AU} \times 0.034 \text{ AF}) / (1.98 \text{ AF} \times 365 \text{ days}) \times 448.8312 + 35 \text{ GPD} = 37.17490918 \text{ GPM} \approx 0.08 \text{ CFS})$.

36. Statement of Claim No. 41Q 94362-00 is a Storage purpose SoC (with a “power generation” purpose clarification) for Rainbow Dam (downstream of Black Eagle Dam) and is owned by the Applicant. SoC No. 41Q 94362-00 was claimed to have a flow rate of 532 CFS and no quantified volume. Pursuant to adjudication rule (Adj. WRCER 29(c)(1)), other uses claims involving only water from onstream reservoirs (i.e., Rainbow Dam) are not decreed a quantified flow rate but are decreed a quantified volume. In 2018, Statement of Claim No. 41Q 94362-00 was modified by the Water Court (Montana Water Court, Upper Missouri Division Missouri River From Sun River To Marias River - Basin 41Q, Case 41Q-22) to remove a quantified flow rate, and include a quantified volume of 8,507 AF/YR.

Table 6: Legal demands within the Area of Potential Impact.

Existing Water Rights between Black Eagle and USGS Gage 06090300						
Water Right No.	Priority Date	Owners	Purposes	Period of Diversion	Maximum Flow	Maximum Volume (AF/YR)
41Q 94354 00	1892/06/01	NWE	POWER GEN.	1/1-12/31	3300 CFS	2,389,200.00
41Q 94355 00	1893/12/31	NWE	POWER GEN.	1/1-12/31	900 CFS	651,600.00
41Q 94356 00	8/31/1927	NWE	POWER GEN.	1/1-12/31	560 CFS	405,440.00
41Q 94359 00	12/31/1912	NWE	POWER GEN.	1/1-12/31	280 CFS	202,720.00
41Q 94358 00	9/16/1908	NWE	POWER GEN.	1/1-12/31	3500 CFS	2,533,884.00
41Q 94360 00	7/1/1917	NWE	POWER GEN.	1/1-12/31	1640 CFS	1,187,306.00
41Q 94361 00	3/26/1958	NWE	POWER GEN.	1/1-12/31	480 CFS	292,000.00
41Q 30042060	5/13/2008	NWE	POWER GEN.	1/1-12/31	2380 CFS	466,007.00
41Q 94365 00	6/16/1955	NWE	POWER GEN.	1/1-12/31	10000 CFS	7,240,000.00
41Q 94367 00	8/31/1915	NWE	POWER GEN.	1/1-12/31	5900 CFS	4,271,600.00
41Q 30148072	1/27/2020	NWE	POWER GEN.	1/1-12/31	1300 CFS	941,200.00
41Q 94396 00	12/20/1928	NWE	POWER GEN.	1/1-12/31	8280 CFS	5,994,720.00
41Q 30017520	7/1/1985	MT FWP	FISHERY	1/1-12/31	3876 CFS	2,805,904.69
41Q 94357 00	8/31/1927	NWE	STORAGE	1/1-12/31	n/a	29,480.00
41Q 94362 00	9/16/1908	NWE	STORAGE	1/1-12/31	n/a	8,507
41Q 94363 00	9/16/1908	NWE	LAWN & GARDEN	4/1-10/1	250 GPM	203.3
41Q 94366 00	6/16/1955	NWE	STORAGE	1/1-12/31	n/a	54,779.00
41Q 94368 00	8/31/1915	NWE	STORAGE	1/1-12/31	n/a	52,808.00
41Q 94397 00	12/20/1928	NWE	STORAGE	1/1-12/31	n/a	81,947.00
41K 71890 00	7/1/1985	CITY OF GREAT FALLS	MUNICIPAL	1/1-12/31	4,700 GPM	6,022.00
41Q 202344 00	1892/10/24	URQUHART	STOCK (L.D.S.)	1/1-12/31	35 GPM	3.50
				1/1-3/31, 10/1-12/31	42,406.55 CFS	2,467,927.35 AF / Mo
				4/1-10/1	42,407.11 CFS	2,467,961.23 AF / Mo

^ATotals in Table 6 are consistent with those provided in Surface Water Permit Technical Analyses Report – Notice of Erratum for Permit Application No. 41Q 30170946, dated August 24, 2026.

37. The legal demands for Application for Beneficial Water Use Permit No. 41Q 30170946 include water appropriated from the Missouri River in the reach above USGS Gage No. 06090300 – Missouri River near Great Falls to Black Eagle Dam. **Table 7** below shows a

comparison of the physical water supply on the Missouri River at Black Eagle Dam (Table 5) and legal demands between Black Eagle Dam and USGS Gage No. 06090300.

Table 7: Comparison of physical water supply at the PODs to the existing water rights in the area of potential impact over the requested period of diversion.

Month	Physically Available Water at PODs (CFS)	Physically Available Water at PODs (AF)	Existing Legal Demands (CFS)	Existing Legal Demands (AF)	Legally Available Water (CFS)	Legally Available Water (AF)
January	6,049.55	390,136.03	42,406.55	2,467,927.35	-36,357.00	-2,077,791.32
February	6,072.55	355,539.49	42,406.55	2,467,927.35	-36,334.00	-2,112,387.86
March	6,003.05	387,281.86	42,406.55	2,467,927.35	-36,403.50	-2,080,645.49
April	7,266.10	450,443.09	42,407.11	2,467,961.23	-35,141.01	-2,017,518.14
May	10,086.10	637,899.59	42,407.11	2,467,961.23	-32,321.01	-1,830,061.64
June	11,716.10	714,773.09	42,407.11	2,467,961.23	-30,691.01	-1,753,188.14
July	7,260.60	464,470.40	42,407.11	2,467,961.23	-35,146.51	-2,003,490.83
August	5,416.10	351,254.99	42,407.11	2,467,961.23	-36,991.01	-2,116,706.24
September	5,196.60	327,514.79	42,407.11	2,467,961.23	-37,210.51	-2,140,446.44
October	5,370.55	348,459.01	42,406.55	2,467,927.35	-37,036.00	-2,119,468.34
November	5,572.55	349,845.01	42,406.55	2,467,927.35	-36,834.00	-2,118,082.34
December	5,776.55	373,379.29	42,406.55	2,467,927.35	-36,630.00	-2,094,548.06

38. The combined appropriations for Black Eagle Dam (proposed appropriation and existing, supplemental water rights) are 6,642 CFS. The Applicant owns four hydroelectric power generation facilities upstream of Black Eagle Dam. The four upstream facilities, along with Black Eagle Dam, form a portion of the FERC Missouri-Madison Project No. 2188. Each of the four facilities upstream of Black Eagle Dam hold water rights at greater flow rates than 6,642 CFS (the proposed total flow rate for Black Eagle Dam). These include 10,000 CFS at Cochrane Dam, 7,200 CFS at Ryan Dam, 8,280 CFS at Morony Dam, and 8,000 CFS at Rainbow Dam. Black Eagle Dam will be operated concurrently with the four upstream dams, and therefore no additional demand or impact on the source will be realized by the proposed appropriation.

39. The proposed power generation use will not alter the amount or timing of water available downstream of the existing POD, and the proposed project would leave the same amount of water legally available to prior water users after permit issuance. Due to the non-consumptive nature of the proposed project, the Department finds clear and convincing evidence that water

can be reasonably considered legally available for the proposed nonconsumptive power generation use.

ADVERSE EFFECT

FINDINGS OF FACT

40. The proposed appropriation is located at an existing instream diversion structure with existing supplemental water rights. The only other water rights which share the proposed PODs are owned by the Applicant, and constitute the existing water rights historically associated with the operation of Black Eagle Dam. (These five existing rights are summarized in Table 2 above.)

41. Under the proposed appropriation, an additional quantity of water would be routed through the Black Eagle Dam intake, and into the penstocks and turbines to generate power. Immediately thereafter, such water is routed back into the Missouri River through the tailrace which discharges immediately below the dam. Currently, this additional amount of water spills over the dam instead of passing through the turbines to generate power.

42. The Applicant makes the following assertions regarding potential adverse effect to senior water right holders: the proposed appropriation will not change the time, amount, or location of any water flowing in the Missouri River above or below the dam; any water in the stream will be legally available to use under the circumstances of this specific new appropriation and will have no effect on other existing water rights; any use of this water will not interfere with, or diminish, water legally available to downstream existing water rights; and that call will not increase available water to other users and the nonconsumptive use under this Application will have no impacts on any senior water user. The Department finds the Applicant's assertions to be substantial and credible.

43. In the instance call is made, the Department finds that the Applicant would be physically able to cease diversions. This would be accomplished via bypassing the water appropriated under Application for Beneficial Water Use Permit No. 41Q 30170946 over the Black Eagle Dam spillway, rather than using it through the dam's intake/powerhouse. The Applicant would still be able operate the hydroelectric facility at flow rates lower than the maximum amount sought in this Application. The Applicant is able to make such adjustments through the intake

structure, (which is further detailed in the Adequate Means of Diversion section), as conditions on the river change.

44. The Department finds that the proposed appropriation is nonconsumptive and will not cause depletions in the source.

45. The Department finds that the water use flowing through the reach of the river will not change in timing and amount as a result of the appropriation.

46. The Department finds that the applicant has proven by clear and convincing evidence that the proposed use of 1,005,684 AF/YR & 1,602 CFS will not have an adverse effect on existing water users.

ADEQUATE MEANS OF DIVERSION

FINDINGS OF FACT

47. The Black Eagle Hydroelectric Development consists of: (1) a 782-foot-long, 34.5-foot-high curved concrete gravity dam with a spillway crest elevation of 3,279 feet with 24 bays of 11-foot-high flashboards on top and 1 trash gate bay; (2) an impoundment, known as Black Eagle Reservoir, with a surface area of approximately 402 AC and an approximate storage capacity of 1,820 AF, at an estimated 'normal' maximum operational water surface elevation of approximately 3,290 FT; (3) a 421-foot-long, 96-foot-wide forebay; (4) an intake structure; (5) three 15-foot-diameter riveted steel penstocks; (6) a powerhouse with three turbine-generator units with an authorized (FERC Amendments) installed capacity of 23.90 MW; (7) an interconnection with the licensee's integrated transmission system at the powerhouse; (8) a tailrace; and (9) other appurtenances. Black Eagle's structural components are identified in **Figure 2** below.



Figure 2. Applicant's Exhibit E—Labeled Diagram / Overview Photo of Black Eagle system (Black Eagle Development Location Map Exhibit 2-1), created by NorthWestern Energy and dated May 14, 2021.

48. The water storage associated with the impoundment is fulfilled with SoC No. 41Q 94357-00. No increase in water storage is proposed through this application. The intake is located on the Black Eagle diversion dam. The intake is located at the downstream extent of a forebay section of the dam. The intake (as well as upstream forebay and downstream powerhouse) is located within the LLD for proposed POD No. 1 (SWNWNW Sec. 5, TWP 20N, RNG 4E Cascade Co.)

49. The forebay forms the left abutment of the dam and is located at the left end of the spillway. It is a concrete structure with a combination of bedrock and concrete floor. It has a nominal length of 421 FT and a width of 96 FT and it directs flow to the powerhouse.

50. The inlet to the forebay structure is 95 FT, 6 $\frac{3}{4}$ IN wide. It is divided into four bays separated by 4-foot wide piers. The piers are equipped with guides for stoplogs to allow dewatering of the forebay. A wooden bridge, 6 FT, 8 IN wide, is supported by steel beams which span between the piers to provide access to the spillway and right forebay wall. The top of the forebay walls are at elevation 3,294.5 FT and vary in width up to a maximum of 5 FT, 6 IN. The right wall has a downstream slope of 2.6:12; the left wall has a downstream slope of 1:2. The forebay floor is at elevation 3,267 FT. The downstream end of the forebay forms the intake to the powerhouse.

51. The intake/powerhouse section is a concrete gravity structure, 96 FT, 6 IN wide, with the intake forming the back wall of the powerhouse.

52. The intake section contains three penstocks which provide water supply to three turbine generating units. The penstocks are riveted steel with a diameter of 15 FT. Centerline elevation of the penstocks is 3,266.5 FT at the intake gate and 3,249.5 FT at the centerline of the distributor for the hydraulic turbines. Closure of the main penstocks is provided by fabricated steel slide gates which are 15 FT, 11 $\frac{5}{8}$ IN wide by 19 FT, 3 IN high and are equipped with guide rollers. The gates are opened and closed mechanically by screw stems driven by an electrically operated line shaft. A flat intake screen structure, battered at 1:12, extends across the upstream face of the intake and prevents debris from entering the penstocks.

53. The powerhouse (which serves as the proposed POU) has a mass concrete substructure and a reinforced concrete superstructure with concrete floors and roof slabs supported by steel

trusses. It is constructed integrally with the intake. Its average dimensions are 134 FT, 8 IN long by 49 FT, 8 IN wide. The building has four levels. The turbine floor contains three hydraulic turbines Units 1 and 3 rated at 11,283 hp each and Unit 2 rated at 9,300 hp. The generator floor houses three self-excited generators; Unit 1 is rated at 9,801 kVA and 0.92 power factor, Unit 2 is rated at 9,801 kVA and 0.80 power factor, and Unit 3 is rated at 10,496 kVA and 0.86 power factor. The control station, electrical busses, and switchgear are located on the other two floors.

54. The hydraulic capacity (e.g. maximum flow rate) of the originally installed turbines was 1,680 CFS, for a total original maximum flow rate of 5,040 CFS for Black Eagle. The Applicant is upgrading two of the three existing turbines, which is resulting in an increased hydraulic capacity of the facility by 1,602 CFS. (See Applicant's Exhibits A and B.) After these upgrades are complete, the two new turbines in the plant will each have a maximum hydraulic capacity of 2,481 CFS, which combined with the existing 1,680 CFS turbine, results in a total plant capacity of 6,642 CFS. The turbine data and performance curves for both the existing turbine, and the two new turbines are available in Applicant's Exhibits F and G.

55. Flow through the turbines is discharged through three elbow draft tubes with a bottom elevation of 3,221.67 FT. Discharge into the Missouri River is through a tailrace channel approximately 1,500 FT long with vertical concrete sidewalls with a batter of 1:2. These walls have been extended by dry wall masonry at the upper sections of the channel.

56. The Applicant will control the flow rate into the powerhouse (POU) through opening/closing of the three penstocks which provide water supply to three turbine generating units. Quantities of water in excess of the authorized flow rate/volume will be bypassed over the top of Black Eagle spillway. Closure of the main penstocks is provided by fabricated steel slide gates. The gates are opened and closed mechanically by screw stems driven by an electrically operated line shaft. (Specifications of the penstocks and steel slide gates are provided in FoF No. 53 above.)

57. Water flowing through the powerhouse and hydro-turbine generators will be measured with the aid of turbine performance curves from the manufacturer. The curves plot a turbine's output (Mega-Watts) versus water discharge in cubic feet per second (CFS). A plant control

system continuously monitors and records flow through the powerhouse. The Application materials include a Predicted Turbine Performance data summary and Expected Performance Curve for the two new turbines (Applicant's Exhibit F) showing the upper cavitation limit related to the capacity of each upgraded turbine to utilize a flow rate up to 2,481 CFS. An Expected Performance Curve for the existing turbine (Applicant's Exhibit G) shows the upper cavitation limit related to the capacity of the existing turbine to utilize a flow rate up to 1,680 CFS.

58. The proposed facility upgrades were approved by the FERC on May 4, 2020, and September 12, 2022. Amending Orders are included in the Application file and identified as Applicant's Exhibits A and B, respectively.

59. The Department finds the proposed means of diversion and conveyance capable of diverting and conveying the proposed flow rate (1,602 CFS) and volume (1,005,684 AF) by clear and convincing evidence.

BENEFICIAL USE

FINDINGS OF FACT

60. The proposed appropriation (1,602 CFS and up to 1,005,684 AF/YR) is for Power Generation, Nonconsumptive purpose. The appropriation will be combined with five existing water rights that will increase the total amount of water beneficially used at Black Eagle Dam to 6,642 CFS and 4,684,124 AF (see Table 2 above). Power (generation) is recognized as a beneficial use of water under MCA 85-2-102(5)(a).

61. There is no standard flow rate or volume described in ARM 36.12.1801 for the purpose of power generation.

62. The requested flow rate of 1,602 CFS is based upon the new turbine data and performance curves (Applicant's Exhibit F).

63. The requested volume of 1,005,684 AF/YR is based on actual available water supply at Black Eagle Dam in the three highest water years of the last 30 years and is found to be reasonable by the Department based on the physical availability on the source and the proposed enhancements to Black Eagle Dam authorized by the Federal Energy Regulatory Commission (FERC).

64. The FERC-approved upgrades and subsequent additional flow rate and volume will increase installed capacity at the facility from 20.94 MW to 23.90 MW.

65. The Department finds the applicant has proven by clear and convincing evidence that the proposed water use is beneficial, and that the requested flow rate of 1,602 CFS and annual volume of 1,005,684 AF are reasonably justified per ARM 36.12.1801(3).

POSSESSORY INTEREST

FINDINGS OF FACT

66. The Applicant owns the property where water is to be put to beneficial use, which demonstrates possessory interest. The Department finds the possessory interest criterion to be met.

67. The Missouri River is considered non-navigable at Black Eagle Dam, as determined by State v. Talen Montana, LLC and upheld by the 9th Cir. 2025. Thus, despite residing within the bed and banks of the Missouri River, the Black Eagle Hydroelectric Development is located on private property, which is deeded to and owned by the Applicant.

REASONABLE USE

FINDINGS OF FACT

68. The Applicant proposes to use up to 1,602 CFS and 1,005,684 AF/YR for Power Generation, Nonconsumptive purpose (FoF Nos. 1—2). Accordingly, the Applicant is required to prove by clear and convincing that the proposed use in excess of a volume of 4,000 AF and flow rate of 5.5 CFS of water is a reasonable use pursuant to § 85-2-311(3)(b), MCA.

69. Pursuant to § 85-2-311(3)(b)(i), MCA, the Applicant must prove the appropriation is a reasonable use based on a consideration of the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum stream flows for the protection of existing water rights and aquatic life.

70. The proposed beneficial use is for a nonconsumptive purpose, a statutory exception to both the Upper Missouri River Basins Closure (MCA § 85-2-343(2)(b)) and the UMNW&SR Closure (MCA § 85-20-501(III)(C)(1)).

71. Existing demands on the state water supply have been considered as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum stream flows for the protection of existing water rights and aquatic life, both upstream and downstream of the proposed diversion point. The proposed appropriation is nonconsumptive, with the diverted volume (1,005,684 AF/YR) passing through the Black Eagle Dam facility in near-simultaneous fashion and returning to the source below. There will be no effect on the existing or projected demands on the state water supply since this project will not consume water, and the appropriation will be operated concurrently with other hydroelectric water rights and dams in the area. There will be no additional demand or impact on the source and water will remain available for appropriation for potential future uses, both upstream and downstream, as prescribed under the Upper Missouri River Basin Closure and UMNW&SR Closure statutes.

72. Pursuant to § 85-2-311(3)(b)(ii), MCA, the Applicant must prove the appropriation is a reasonable use based on consideration of the benefits to the Applicant and the State.

73. Upgrades to the Black Eagle Dam hydroelectric facility (two upgraded replacement turbines and two refurbished generators) have been approved by FERC. The FERC-authorized improvements will provide Black eagle with an installed capacity of 23.90 MW of electricity from the "clean-energy" project, offsetting electricity generated from fossil fuels and steam-electric generating plants. The project will help conserve nonrenewable resources and reduce pollution.

74. The Department finds the proposed beneficial use of power generation will benefit the Applicant and the State of Montana. Power generation is a defined beneficial use pursuant to § 85-2-102(5)(a), MCA.

75. Pursuant to § 85-2-311(3)(b)(iii), MCA, the Applicant must prove the appropriation is a reasonable use based on a consideration of the effects on the quantity and quality of water for existing beneficial uses in the source of supply.

76. The proposed water use at Black Eagle is nonconsumptive and will not result in depletions of stream flows. Section 401 of the Clean Water Act prevents FERC from issuing a license or permit that may result in a discharge from the project unless the water quality

certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification. The 2020 FERC Order at ¶ 7 (Applicant's Exhibit A) states the Montana Department of Environmental Quality (MDEQ) provided an email stating it had no comments on the proposed project. The DNRC had no comment other than a request that the Applicant file this present application for Beneficial Water User Permit. The 2022 FERC Order at ¶ 8 (Applicant's Exhibit B) states MDEQ provided an email stating that no further conditioning is required under the existing Section 401 Water Quality Certificate pertaining to Black Eagle. The DNRC had no comment other than a request that the Applicant file this present application for Beneficial Water Use Permit. The Department finds there will be no effect on the quantity and quality of water for existing beneficial uses in the source of supply.

77. Pursuant to § 85-2-311(3)(b)(iv), MCA, the Applicant must prove the appropriation is a reasonable use based on a consideration of the availability and feasibility of using low-quality water (meaning not potable for human consumption) for the purpose for which application has been made.

78. The proposed use of water is not for potable purposes. Black Eagle Dam is an existing hydroelectric facility on the Missouri River and the river is the only water supply available for the project.

79. All the water in the Missouri River, up to the capacity of the turbines, is used to generate power at Black Eagle. While the project uses water from the source without requirements as to water quality for the purpose of power generation, the location and nature of the nonconsumptive operation does not allow for the introduction and use of low-quality water.

80. The Department finds the existing source of water to be the only alternative for the proposed use, and there is no availability or feasibility of using lower-quality water.

81. Pursuant to § 85-2-311(3)(b)(v), MCA, the Applicant must prove the appropriation is a reasonable use based on a consideration of the effects on private property rights by any creation of or contribution to saline seep.

82. The proposed use of water is a run-of-the-river, nonconsumptive appropriation and the beneficial use is power generation. The planned upgrade to the facility includes higher-capacity

turbines than currently exist at the facility yet will use the same intake and penstock infrastructure. There are no identified impacts created from saline seep.

83. The Department finds there will be no effects on private property rights by the creation of, or contribution to, saline seep.

84. Pursuant to § 85-2-311(3)(b)(vi), MCA, the Applicant must prove the appropriation is a reasonable use based on a consideration of the probable significant adverse environmental impacts of the proposed use of water as determined by the DNRC pursuant to MCA Title 75, chapter 1, or Title 75, chapter 20.

85. The proposed diverted volume of 1,005,684 AF/YR passes through the facility and in near-simultaneous fashion re-enters the source below. The Department completed an Environmental Assessment on June 30, 2026. This Environmental Assessment was prepared pursuant to the requirements of the Montana Environmental Policy Act and found no significant adverse environmental impacts are anticipated by completion of this project.

86. The FERC Amendments for Black Eagle approved in 2020 and 2022 (Applicant's Exhibits A & B, respectively) authorized the installation of two new turbines and two generator rewinds, with no changes to the third existing turbine and generator.

87. As part of these approvals, FERC was required to undertake an environmental review. The 2020 FERC Order at ¶ 10 and the 2022 FERC Order at ¶ 29 state the installation of the new turbines and the new generator rewinds will not have any appreciable effect on any environmental or cultural resources within the project area. Moreover, FERC concluded the proposed amendments do not affect environmental resources beyond those previously analyzed at the project. 2020 FERC Order at ¶ 10; 2022 FERC Order at ¶ 17.

88. The previous analysis FERC referred to occurred as part of the Missouri-Madison Project which was approved by the FERC 2000 relicensing order. In its 2000 relicensing order, FERC concluded:

“Operating and maintaining the project in the manner required by the license will protect and enhance fish and wildlife resources, water quality, recreational, and cultural resources. The electric power generated from renewable water power resources will be beneficial because it will continue to offset the use of

fossil-fuel, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution. With this project providing the infrastructure for a total generating capacity of 326.9 MW, using the Oak Ridge Competitive Electricity Dispatch model, it is estimated that approximately 300,000 metric tons of greenhouse gas emissions may be avoided annually. We find, therefore, that the Missouri Madison Hydroelectric Project, with the required measures, is best adapted to a comprehensive plan for the use, conservation, and development of the waterway for beneficial public purposes.”

89. The environmental effects of the Missouri-Madison Hydroelectric Project (FERC No. 2188) were assessed in a FEIS issued by the FERC Office of Hydropower Licensing in September 1999.

90. The Department finds that there are no significant adverse environmental impacts associated with the project.

91. The Department finds the Applicant has proven by clear and convincing evidence the proposed purpose of Power Generation, Nonconsumptive and the appropriation of more than 4,000 AF and 5.5 CFS is a reasonable use of water pursuant to § 85-2-311(3)(b), MCA.

CONCLUSIONS OF LAW

BASIN CLOSURE

92. DNRC cannot grant an application for a permit to appropriate water within the upper Missouri River basin until final decrees have been issued in accordance with Title 85, chapter 2, part 2, MCA, for all of the sub-basins of the upper Missouri River basin. Section 85-2-343(1), MCA. The upper Missouri River basin consists of the drainage area of the Missouri River and its tributaries above Morony Dam. (§ 85-2-342(3), MCA). The proposed well(s) are located within the upper Missouri River basin closure area.

93. This application is for Power Generation, Nonconsumptive purpose. The application falls under the exceptions for the Upper Missouri River Basin Legislative Closure, § 85-2-343(2)(b), MCA.

94. This application is for Power Generation, Nonconsumptive purpose. The application falls under the exceptions for the U.S. Bureau of Land Management - Montana Compact: UMNW&SR Closure, § 85-20-501 Article III(C)(1), MCA.

95. A basin closure exception does not relieve the Department of analyzing § 85-2-311, MCA criteria. Qualification under a basin closure exception allows the Department to accept an application for processing. The Applicant must still prove the requisite criteria. *E.g., In the Matter of Application for Beneficial Water Use Permit No. 41K-30043385 by Marc E. Lee* (DNRC Final Order 2011); *In the Matter of Application for Beneficial Water Use Permit No. 41K-30045713 by Nicholas D. Konen*, (DNRC Final Order 2011).

PHYSICAL AVAILABILITY

96. Pursuant to § 85-2-311(1)(a)(i), MCA, an Applicant must prove by a preponderance of the evidence that “there is water physically available at the proposed point of diversion in the amount that the Applicant seeks to appropriate.” However, when an Applicant seeks an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, § 85-2-311(3), MCA, elevates the burden of proof from a preponderance of evidence to clear and convincing evidence.

97. It is the Applicant’s burden to produce the required evidence. *In the Matter of Application for Beneficial Water Use Permit No. 27665-41I by Anson* (DNRC Final Order 1987) (Applicant produced no flow measurements or any other information to show the availability of water; permit denied); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005).

98. An Applicant must prove that at least in some years there is water physically available at the point of diversion in the amount the Applicant seeks to appropriate. *In the Matter of Application for Beneficial Water Use Permit No. 72662s76G by John Fee and Don Carlson* (DNRC Final Order 1990); *In the Matter of Application for Beneficial Water Use Permit No. 85184s76F by Wills Cattle Co. and Ed McLean* (DNRC Final Order 1994).

99. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. Section 85-2-311(1)(a)(i), MCA. (FoF Nos. 21—30)

LEGAL AVAILABILITY

100. Pursuant to § 85-2-311(1)(a), MCA, an Applicant must prove clear and convincing evidence that:

(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. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

E.g., ARM 36.12.101 and 36.12.120; *Montana Power Co.*, 211 Mont. 91, 685 P.2d 336 (Permit granted to include only early irrigation season because no water legally available in late irrigation season); *In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson* (DNRC Final Order 1992).

101. It is the Applicant's burden to present evidence to prove water can be reasonably considered legally available. *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (the legislature set out the criteria (§ 85-2-311, MCA) and placed the burden of proof squarely on the Applicant. The Supreme Court has instructed that those burdens are exacting.); *see also 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 (burden of proof on Applicant in a change proceeding to prove required criteria); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005) (it is the Applicant's burden to produce the required evidence.); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility*

Solutions, LLC (DNRC Final Order 2007) (permit denied for failure to prove legal availability); *see also* ARM 36.12.1705.

102. Applicant has proven by clear and convincing evidence that 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. Section 85-2-311(1)(a)(ii), MCA. (FoF Nos. 31-39)

ADVERSE EFFECT

103. 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.*, 211 Mont. 91, 685 P.2d 336 (1984) (purpose of the Water Use Act is to protect senior appropriators from encroachment by junior users); *Bostwick Properties, Inc.*, ¶ 21.

104. 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).

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

106. 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, 249 Mont. 425, 816 P.2d 1054 (1991).

107. It is the Applicant's burden to produce the required evidence. *E.g., Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, 7 (2011) (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). The Department is required to grant a permit only if the § 85-2-311, MCA, criteria are proven by the Applicant by a preponderance of the evidence. *Bostwick Properties, Inc.*, ¶ 21.

108. 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, First Judicial District Court, *Memorandum and Order*, 8 (2011).

109. The Applicant has proven by clear and convincing 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. Section 85-2-311(1)(b), MCA. (FOF Nos. 40-46)

ADEQUATE DIVERSION

110. Pursuant to § 85-2-311(1)(c), MCA, an Applicant must demonstrate that the proposed means of diversion, construction, and operation of the appropriation works are adequate.

111. The adequate means of diversion statutory test merely codifies and encapsulates the case law notion of appropriation to the effect that the means of diversion must be reasonably effective, i.e., must not result in a waste of the resource. *In the Matter of Application for Beneficial Water Use Permit No. 33983s41Q by Hoyt* (DNRC Final Order 1981); § 85-2-312(1)(a), MCA.

112. Applicant has proven by clear and convincing evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. Section 85-2-311(1)(c), MCA. (FoF Nos. 47-59)

BENEFICIAL USE

113. Under § 85-2-311(1)(d), MCA, an Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use.

114. An appropriator may appropriate water only for a beneficial use. See also, § 85-2-301 MCA. It is a fundamental premise of Montana water law that beneficial use is the basis, measure, and limit of the use. *E.g., McDonald; Toohey v. Campbell* (1900), 24 Mont. 13, 60 P. 396. The amount of water under a water right 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, Lewis and Clark County (2003), *affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518; *In The Matter Of Application For Beneficial Water Use Permit No. 43C 30007297 by Dee Deaterly* (DNRC Final Order), *affirmed other grounds, Dee Deaterly v. DNRC*, Cause No. 2007-186, Montana First Judicial District, *Order Nunc Pro Tunc on Petition for Judicial Review* (2009); *Worden v. Alexander* (1939), 108 Mont. 208, 90 P.2d 160; *Allen v. Petrick* (1924), 69 Mont. 373, 222 P. 451; *In the Matter of Application for Beneficial Water Use Permit No. 41S-105823 by French* (DNRC Final Order 2000).

115. Amount of water to be diverted must be shown precisely. *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, 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).

116. It is the Applicant's burden to produce the required evidence. *Bostwick Properties, Inc. v. DNRC*, 2013 MT 48, ¶ 22, 369 Mont. 150, 296 P.3d 1154 ("issuance of the water permit itself does not become a clear, legal duty until [the applicant] proves, by a preponderance of the evidence, that the required criteria have been satisfied"); *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7; *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005); *see also Royston; Ciotti*.

117. Applicant proposes to use water for Power generation, Nonconsumptive purpose which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by clear and convincing evidence Power generation, Nonconsumptive purpose is a beneficial use and that

1,005,684 AF/YR of diverted volume and 1,602 CFS is the amount needed to sustain the beneficial use. Section 85-2-311(1)(d), MCA. (FoF Nos. 60-65)

POSSESSORY INTEREST

118. Pursuant to § 85-2-311(1)(e), MCA, an 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, 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.

119. Pursuant to ARM 36.12.1802:

(1) An Applicant or a representative shall sign the application affidavit to affirm the following:

(a) the statements on the application and all information submitted with the application are true and correct and

(b) except in cases of an instream flow application, or where the application is for sale, rental, distribution, or is a municipal use, or in any other context in which water is being supplied to another and it is clear that the ultimate user will not accept the supply without consenting to the use of water on the user's place of use, the Applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

(2) If a representative of the Applicant signs the application form affidavit, the representative shall state the relationship of the representative to the Applicant on the form, such as president of the corporation, and provide documentation that establishes the authority of the representative to sign the application, such as a copy of a power of attorney.

(3) The department may require a copy of the written consent of the person having the possessory interest.

120. The Applicant has proven by clear and convincing 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. Section 85-2-311(1)(e), MCA. (FoF Nos. 66-67)

REASONABLE USE

121. The Department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that the § 85-2-311(1), MCA, criteria are satisfied and the proposed appropriation is a reasonable use. Section 85-2-311(3), MCA. The applicant must consider: the existing legal demands of water rights on the state water supply and future beneficial purposes; the benefits to the Applicant and the state; the effects on the quantity and quality of the water for existing uses; the availability of using low-quality water for the purpose of the appropriation; the effects on private property rights by any saline seep contributions; and the probable significant adverse environmental impacts of the proposed use. *Id.* The Applicant has proven by clear and convincing evidence that the proposed appropriation of 1,005,684 AF/YR and 1,602 CFS is a reasonable use of water. (FoF Nos. 68-91)

PRELIMINARY DETERMINATION

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Application for Beneficial Water Use Permit No. 41Q 30170946 should be granted.

The Department determines the Applicant may divert water from the Missouri River, by means of a dam, from January 1 to December 31 at 1,602 CFS or up to 1,005,684 AF/YR, from four points of diversion which located in TWP 20N RGE 4E Cascade Co. Three-quarter-section LLDs for the four points of diversion are provided in **Table 8** below. The appropriated water may be put to beneficial use for Power Generation, Nonconsumptive purpose from January 1 to December 31. The place of use is the NWNW Sec. 5 TWP 20N RNG 4E Cascade Co.

Table 8: Point of Diversion Legal Land Descriptions

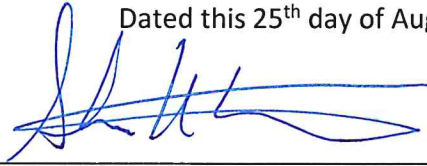
POD Id No.	¼ Section	¼ Section	¼ Section	Section No.
1	SW	NW	NW	5
2	NW	SW	NW	5
3	SE	NE	NE	6
4	NE	SE	NE	6

^AAll four PODs are located within TWP 20N RGE 4E Cascade Co.

NOTICE

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

Dated this 25th day of August 2026.

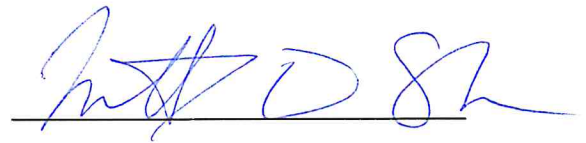


Steven B. Hamilton, Manager
Lewistown Regional Office
Montana Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the DRAFT PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 25th day of August, 2026, by first class United States mail.

FRANZ & DRISCOLL, PLLP
C/O RYAN MCLANE
PO BOX 1155
HELENA, MT 59624-1155

A handwritten signature in blue ink, appearing to read "J. D. 82", is written over a horizontal line.

Lewistown Regional Office, (406) 538-7459