

NOTICE AREA

Application No. **42J 30165246**

Regional Office # **3**

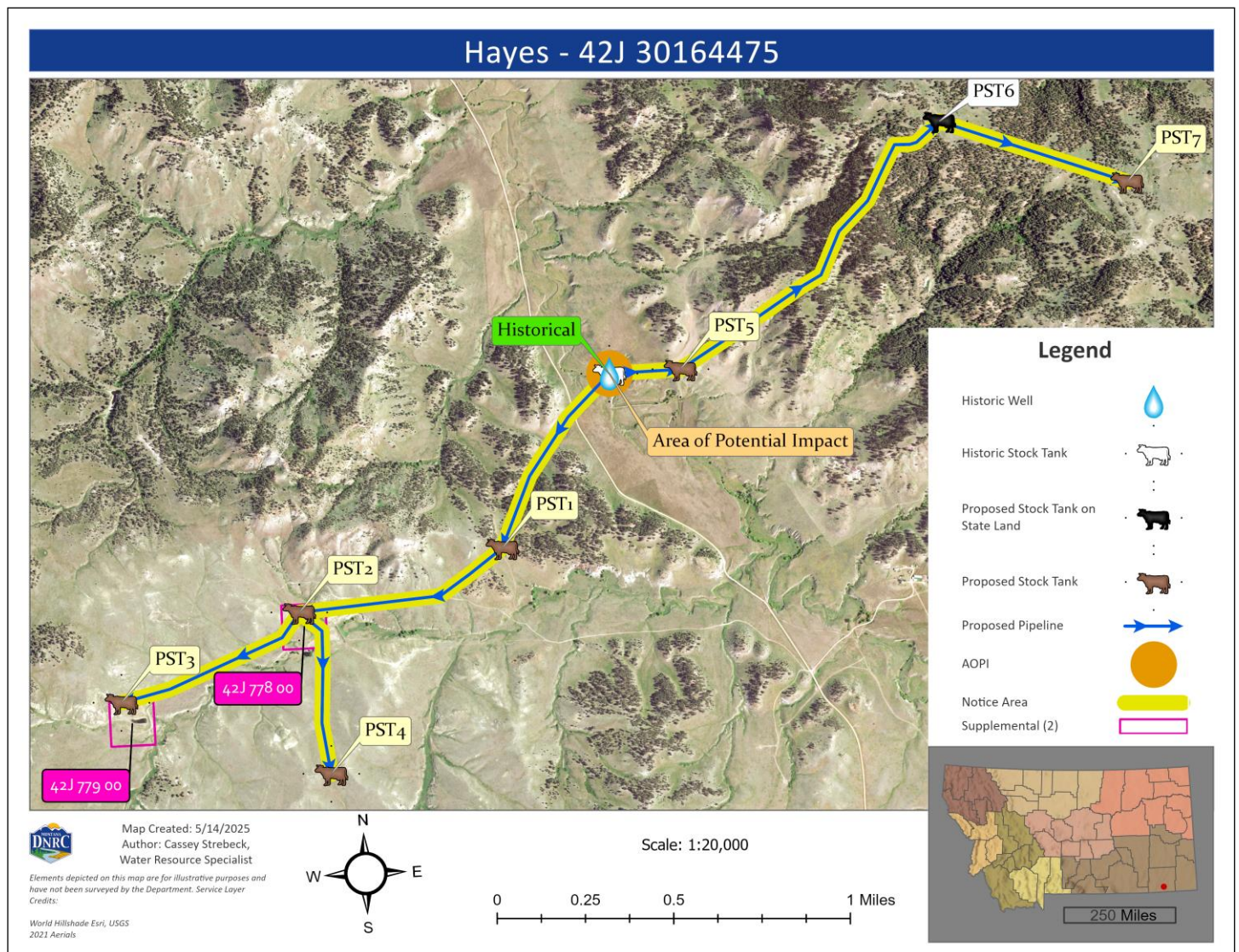
Applicant's Name **Debra L. Hayes**

Indian Reservation ☐ Yes ☒ No If yes, Reservation _____

Irrigation District ☐ Yes ☒ No If yes, District _____

Specialist **C. Strebeck**

Date **June 18, 2025**



Water Right Owner	Water Right # (Basin, ID, and Number)
Applicant: Debra L. Hayes	42J 772-00
	42J 778-00
	42J 779-00
	Standards
	1BIA
	1DSL
	1FWP
	1PPL
	1NWE
	2FWP
	3BLG
	3NPR
	1WDB
	59560
PUBLISHED: POWDER RIVER EXAMINER	

**If owner listed twice, only one notice sent*

The area of potential impact is at the well. There will be no increase in flow rate, volume diverted, or volume consumed. Therefore, there will be no change in the rate or timing of depletions on the affected source. No existing water rights will be affected by this proposed change in place of use.

The public notice area is shown on the map, highlighted in yellow. There are two water rights in this area that are owned by the Applicant and will become supplemental to Powder River Declaration 772-00 following the approval of the change. The entire system will consist of 8 stock tanks on approximately 4.1 miles of pipeline, in three directions, to expand across three of the Applicant's parcels and one parcel belonging to State Lands. The system measures approximately 3.5 linear miles from the most south-westward tank to the most eastward tank.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Water Resources Division • Billings Regional Office

1371 Rintop Drive, Billings, MT 59105 Phone: (406) 247-4415 Fax: (406) 247-4416



GREG GIANFORTE, GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2074
FAX: (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

May 27, 2025

Ms. Debra L. Hayes
1093 Three Runs Plantation Drive
Aiken, SC, 29803

Subject: Draft Preliminary Determination to Grant Water Right Change Application No. 42J 30165246

Dear Applicant,

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

You have the opportunity to request an extension of time to submit additional information for the Department to consider in the decision, within 15 business days of the date of this letter. If no response is received by June 17, 2025, the Department will prepare a notice of opportunity to provide public comment per §85-2-307(4), MCA.

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

Please let me know if you have any questions.

Sincerely Yours,

A handwritten signature in blue ink that reads "Cassey Strebeck".

Cassey Strebeck
Water Resource Specialist
Billings Regional Office, Montana DNRC
Cassey.Strebeck@mt.gov
406-247-4422

CC:
Quinten Rumph
PO Box 342
Biddle, MT, 59314

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

APPLICATION TO CHANGE WATER)	DRAFT PRELIMINARY
RIGHT NOS. 42J 30164475 AND 42J)	DETERMINATION TO GRANT
30165246 BY DEBRA L. HAYES)	CHANGE

On September 16, 2024, the Billings Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) received Application to Change Water Right No. 42J 30164475 for Powder River Declaration 42J 772-00, by Debra L. Hayes (Applicant). Change Application No. 42J 30165246 was created for the temporary portion of the change application. No scoping or preapplication meetings were held. The Department published the receipt of the application on its website. Cassey Strebeck, for the Department, spoke with the Applicant via phone on October 10, 2024, who assigned Quentin Rumph as the contact person for the change application. The Department sent Applicant a deficiency letter under §85-2-302, Montana Code Annotated (MCA), dated October 29, 2024. The Applicant's contact, Quentin Rumph, responded with information up to and on January 30, 2025. The Application was determined to be correct and complete as of January 31, 2025. The Department-completed Technical Analyses were delivered to the Applicant with this Draft Preliminary Determination. An Environmental Assessment for this application was completed on May 12, 2025.

INFORMATION

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

Application as filed:

- Application to Change a Water Right, Additional Stock Tanks, Form 606-ST, received September 16, 2024
- Attachments:
 - General Abstract for Powder River Declaration 42J 772-00

- MT DNRC – Trust Lands Management Division (TLMD) – Authorization for Temporary Change in Appropriation Right Consent Form – State Lease No. 827, contracted from March 1, 2021, to February 28, 2031
- Maps:
 - Map titled: Water Right 42J 772-00 with Temporary Change in Appropriation Overview, completed by TLMD for Applicant – with Public Land Survey System (PLSS), showing proposed stock tank on state land, historical well, and pipeline from well to stock tank
 - Map, untitled, completed by TLMD for Applicant – white background, showing proposed stock tank on state land, historic well, and pipeline from well to stock tank
 - Map, untitled, completed by TLMD for Applicant – topographic map showing proposed stock tank on state land parcel and pipeline

Information Received after Application Filed

- Applicant’s deficiency response received January 30, 2025.
- Correspondences to resolve deficiencies:
 - Emails to Ms. Hayes and/or Mr. Rumph, dated October 30, 2024; November 6, 2024; November 12, 2024; November 14, 2024; December 28, 2024; January 22, 2025; January 23, 2025; January 30, 2025
 - Emails from Mr. Rumph, dated November 7, 2025; December 31, 2024; January 30, 2025
- MT DNRC – Trust Lands Management Division (TLMD) – Land Use License No. 310-2500013, contracted from August 24, 2024, to February 28, 2035. Received from DNRC Eastern Land Office Land Use Specialist Aaron Kneeland, on May 23, 2025.
- MT DNRC – Trust Lands Management Division (TLMD) – Ag. and Grazing Lease of State Lands, Agreement (Lease) No. 827, contracted from April 02, 2021, to March 28, 2031. Received from DNRC Eastern Land Office Land Use Specialist Aaron Kneeland, on May 23, 2025.

Information within the Department’s Possession/Knowledge

- Water right file for Powder River Declaration 42J 772-00.
- DNRC water rights information system (WRIS)

- DNRC permit and change manual
- Department-completed technical analyses based on information provided in the application and deficiency response, dated May 27, 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, part 4, MCA).

For the purposes of this document, Department or DNRC means the Department of Natural Resources & Conservation; AC means acres; AF means acre-feet; AF/YR means acre-feet per year; AU means animal units; CFS means cubic feet per second; GPM means gallons per minute; HP means horsepower; POD means point of diversion; POU means place of use; and PST means proposed stock tank.

WATER RIGHTS TO BE CHANGED

FINDINGS OF FACT

1. The Applicant proposes a permanent and temporary change to the POU of Powder River Declaration 42J 772-00. Powder River Declaration 42J 772-00 was decreed on May 31, 1983, through Decree #76, for a flow rate of 15.0 GPM, up to 1.5 AF per year, for use by stock of 50 AU, from January 1 to December 31. This water right has a priority date of December 31, 1943. The POD is an 80-foot deep well located in the SWSENW of Section 2, Township 8 South, Range 50 East, Powder River County. The water was historically conveyed by a pump and pipeline, no more than 6 feet long, to a stock tank located in the SWSENW of Section 2, Township 8 South, Range 50 East, Powder River County. The project is approximately 11.9 miles WNW of Biddle, MT. The historical description of Powder River Declaration 42J 772-00 is shown below in Table 1.

Table 1: Water Right Proposed for Change

Water Right No.	Purpose	Place of Use	Point of Diversion	Flow Rate	Diverted Volume	Priority Date	Period Of Use
42J 772-00	Stock	SWSENW Sec. 2, T8S, R50E	SWSENW Sec. 2, T8S, R50E	15.0 GPM	1.5 AF	12/31/1943	01/01 – 12/31

2. Prior to these Applications, Powder River Declaration 42J 772-00 had no overlapping or supplemental water rights. If this change is granted, Powder River Declaration 42J 772-00 will be supplemental to two other water rights: (1) Powder River Declaration 42J 778-00 is for stock, with two POUs including the NENENW of Sec. 10, 8S, R50E, having the same POU as proposed stock tank no. two (PST2, Figure 1); (2) Powder River Declaration 42J 779-00 is for stock in the NESENE of Sec. 9, 8S, R50E, having the same POU as proposed stock tank no. three (PST3, Figure 1). Both rights are for dams on an unnamed tributary of Butte Creek. The water will be used by the same herd. These changes in authorizations have become necessary for the Applicant due to the lack of surface water previously available to the stock at these POUs. The volumes for Powder River Declarations 42J 772, 42J 778, and 42J 779 were all decreed on May 31, 1983, through Decree #76. Using the Department standard for Livestock Claims, volume for livestock is calculated at 30GPD/AU or 0.034 AF/YR, times the number of AU. Powder River Declarations 42J 772, 42J 778, and 42J 779, treated as Statements of Claims for pre-July 1, 1973, appropriations, have appropriated volumes of 1.5 AF, 11.2 AF, and 11.7 AF, respectively, for 44 AU, 329 AU, and 344 AU. The Applicant has claimed 50 AU on this Application. The 1.5 AF volume for Powder River Declaration 42J 772-00 is less than the standard of what would be calculated for 50 AU. However, 1.5 AF has been decreed; therefore, it is accepted by the Department. These supplemental water rights are shown in Table 2.

Table 2: Supplemental Water Rights to Powder River Declaration 42J 772-00

Water Right No.	Purpose	Place of Use	Point of Diversion	Diversion & Source	Diverted Volume	Calculated Stock	Priority Date	Period Of Use
42J 778 00	STOCK	NENENW Sec. 10 T8S R50E	NWNWNE Sec. 10 T8S R50E	Dam on UT of Butte Creek	11.2 AF	329	12/31/1932	01/01-12/31
42J 779 00	STOCK	NESENE Sec. 9 T8S R50E	NESENE Sec. 9 T8S R50E	Dam on UT of Butte Creek	11.7 AF	344	12/31/1945	01/01-12/31

3. There have been no previous changes authorized on Powder River Declaration 42J 772-00.

CHANGE PROPOSAL

FINDINGS OF FACT

4. The Applicant proposes a permanent and temporary change to the POU for Powder River Declaration 42J 772-00, in order to add six (6) permanent POUs and one temporary POU to Powder River Declaration 42J 772-00. The historical POU located in the SWSENE of Sec. 2, T8S, R50E will remain in use, resulting in a total of 8 POU. No other aspect of the water right is proposed for change.

5. Through Permanent Change Application No. 42J 30164475, the Applicant proposes to permanently add six (6) stock tanks to six (6) POUs on private property owned by the Applicant. The proposed permanent POUs for Change Application No. 42J 30164475 are shown in Table 3.

Table 3: Permanent proposed POU for Powder River Declaration 42J 772-00, under Permanent Change Application 42J 30164475

POU#	Map Place Name	Quarter Sections	Section	Township	Range	Change Type	Land Owner
1	Historical & Proposed	SWSENE	2	8S	50E	Permanent	Applicant
2	PST1	NWSWSW	2	8S	50E	Permanent	Applicant
3	PST2	NENENE	10	8S	50E	Permanent	Applicant
4	PST3	NESENE	9	8S	50E	Permanent	Applicant
5	PST4	SESENE	10	8S	50E	Permanent	Applicant
6	PST5	SESWNE	2	8S	50E	Permanent	Applicant
7	PST7	Lot 1 (NWNENE)	1	8S	50E	Permanent	Applicant

6. Through Temporary Change Application No. 42J 30165246, the Applicant proposes to permanently add seven (7) stock tanks to seven (7) POUs. Six (6) of the stock tanks are on land owned by the Applicant (and are the proposed POUs shown in Table 3, as part of Permanent Change Application No. 42J 30164475); one stock tank is on land owned by the State of Montana and managed by DNRC School Trust Lands Management Division (TLMD). The proposed temporary POU for Change Application No. 42J 30165245 are shown in Table 4.

Table 4: Temporary proposed POU for Powder River Declaration 42J 772-00, under Temporary Change Application 42J 30165246

POU#	Map Place Name	Quarter Sections	Section	Township	Range	Change Type	Land Owner
1	Historical & Proposed	SWSNW	2	8S	50E	Permanent	Applicant
2	PST1	NWSWSW	2	8S	50E	Permanent	Applicant
3	PST2	NENENW	10	8S	50E	Permanent	Applicant
4	PST3	NESENE	9	8S	50E	Permanent	Applicant
5	PST4	SESENE	10	8S	50E	Permanent	Applicant
6	PST5	SESWNE	2	8S	50E	Permanent	Applicant
7	PST7	Lot 1 (NWNENE)	1	8S	50E	Permanent	Applicant
8*	PST6*	NESESW	36	7S	50E	Temporary*	State of Montana

*Temporary Place of Use

7. To utilize State Land, the Applicant must have a lease on record. The Applicant has provided an Authorization for Temporary Change in Appropriation Right Consent Form from TLMD. The authorization was signed by the Applicant on August 1, 2024; by Elizabeth Miller for DNRC Ag & Grazing Bureau on August 2, 2024; by Aaron Kneeland for DNRC State Lands – Eastern Land Office on August 5, 2024; and was received by DNRC Water Resources Division with the Application on September 16, 2024. State land lease No. 827 took effect March 1, 2021, for a term of 10 years with an expiration date of February 28, 2031. If the Applicant renews the lease, they must apply to renew the temporary change authorization to continue using this temporary POU.

8. To convey water to the stock tank located in the NENW of Lot 1, in Sec. 1, T8S, R50E, the Applicant leased from TLMD (Land Use License No. 310-2500013 August 24, 2024, to February 28, 2035) a strip of land in Sec. 36 of T7S, R50E, for the purpose of a stock water pipeline. This License expires four (4) years after the Applicant's State Land Lease and Authorization for Temporary Change in Appropriation Right Consent Form, giving the Applicant a time-buffer to extend the Lease and Appropriation Right, or otherwise make other arrangements, while continuing to convey water to the NENW of Lot 1, in Sec. 1, T8S, R50E for stock purposes.

9. The six (6) tanks being permanently added through Change Application No. 42J 30164475 are included in the seven (7) tanks being added as proposed temporary POU for Change

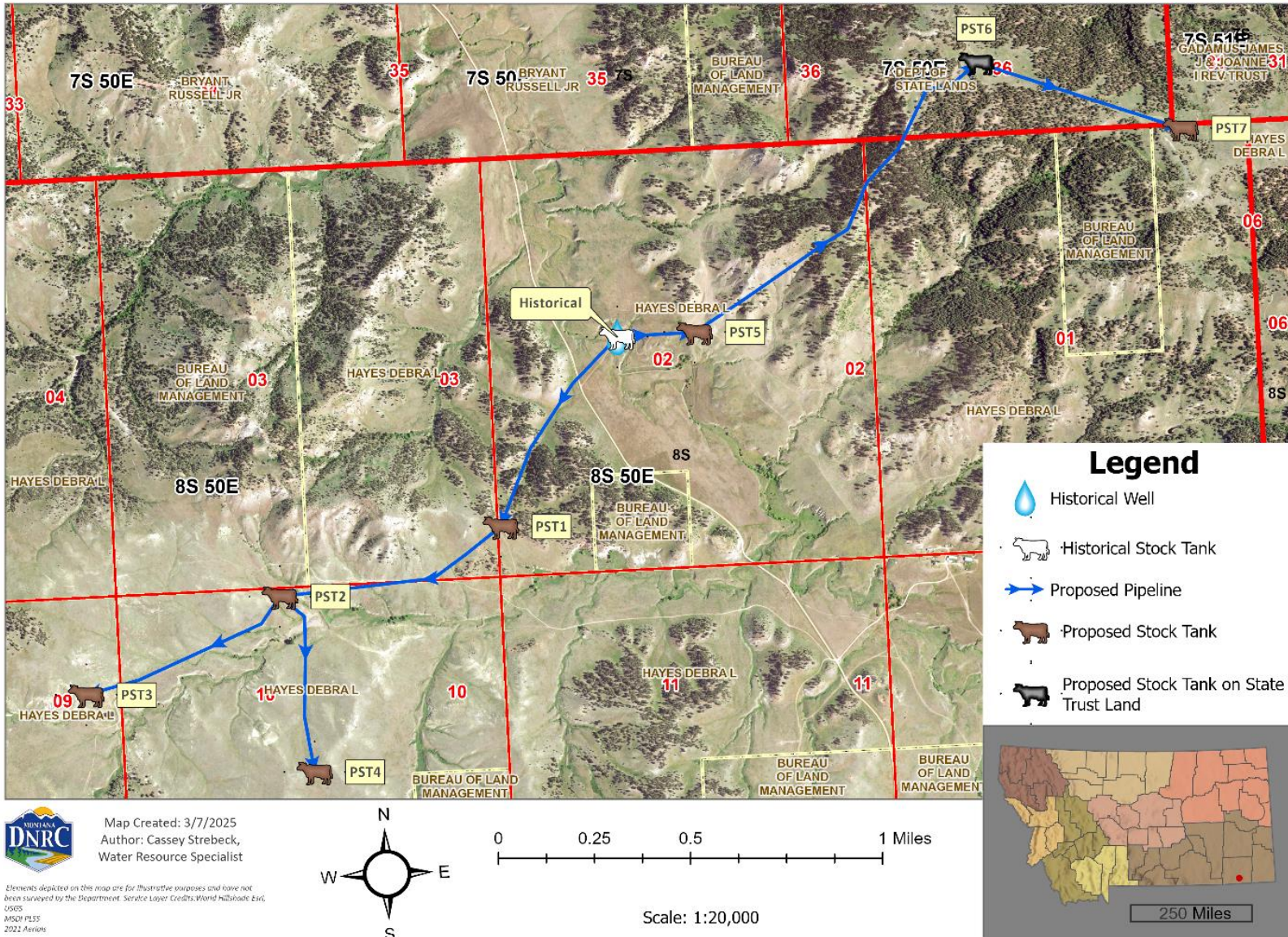
Application No. 42J 30165246. Temporary Change Authorization No. 42J 30165246 will be the active version of the water right, and the POU for the temporary change will be eight (8) tanks.

10. In the instance that Temporary Change Authorization 42J 30165246 is not renewed, expires, or is terminated, Powder River Declaration 42J 772-00 will be used in accordance with the terms set forth in Permanent Change Authorization No. 42J 30164475.

11. Should Permanent Change Authorization No. 42J 30164475 and Temporary Change Authorization No. 42J 30165246 be authorized, the following condition will be added to the water right to satisfy the possessory interest criterion:

IN THE PRESENT CASE, THE APPLICANTS ARE THE OWNER OF POWDER RIVER DECLARATION 42J 772-00. THE APPLICANTS PROPOSE TO TAKE WATER DIVERTED FROM THE WELL LOCATED ON PRIVATE PROPERTY, AND TEMPORARILY USE IT FOR STOCK USE ON STATE TRUST LAND FOR THE DURATION OF AGRICULTURAL & GRAZING LEASE OF STATE LANDS NO 827. THE APPLICANTS OBTAINED WRITTEN CONSENT FROM THE DNRC TRUST LAND MANAGEMENT DIVISION TO TEMPORARILY USE POWDER RIVER DECLARATION 42J 772-00 ON THE STATE TRUST LAND FOR THE DURATION OF AGRICULTURAL & GRAZING LEASE OF STATE LANDS NO. 827. EXPIRATION OR TERMINATION OF AGRICULTURAL & GRAZING LEASE OF STATE LANDS NO. 827 WILL RESULT IN THE REVOCATION OF TEMPORARY CHANGE AUTHORIZATION 42J 30165246, AND POWDER RIVER DECLARATION 42J 772-00 WILL REVERT TO THE PERMANENT CHANGE VERSION AUTHORIZED BY CHANGE AUTHORIZATION 42J 30164475.

Hayes 42J 30164475 & 42J 30165246 - Historical & Proposed



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Figure 1. Historical and Proposed infrastructure for Powder River Declaration 42J 772-00, to provide water to stock.

CHANGE CRITERIA

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

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The Applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the Applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

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

14. In addition to the § 85-2-402(2), MCA, an Applicant for a temporary change authorization must comply with the requirements and conditions set forth in § 85-2-407, MCA. Section 85-2-441, MCA, provides that a water right owner may temporarily apply water diverted from a well or developed spring located on private land to beneficial use on state trust land for the duration of a state land lease held by the water right owner. Pursuant to § 85-2-407, MCA, a temporary change may be approved for a period not to exceed 10 years. Upon expiration of the temporary change, the water right will automatically revert to its original terms. This temporary change may be renewed an indefinite number of times but may not exceed 10 years for each renewal. An application for renewal requires the written consent of the DNRC Trust Land Management Division.

HISTORICAL USE

FINDINGS OF FACT

15. The water right being proposed for change is Powder River Declaration 42J 772-00, with a priority date of December 31, 1943. This water right was filed on December 20, 1963, in Powder River County, as a groundwater well with a 15.0 GPM appropriation. Historically, water was pumped from the well by a ½ HP electric well pump through an 8-inch steel well casing and conveyed through a 1-5/8 inch (1.625 inches) steel galvanized pipe for 6 feet, to fill a 12-foot-diameter by 2-foot-deep wooden stock tank. The period of diversion is from January 1 to December 31, at 15 GPM (0.03 CFS), up to 1.5 AF/YR. Direct pumping and conveyance via steel infrastructure means there was no conveyance loss for the transportation of water from the well to the stock tank. The historical POD and POU - well, pump, pipeline, and stock tank - were field investigated and field verified on August 30, 1976, by DNRC's former employee, Michael Peterson, who confirmed the flow rate and priority date.

16. Powder River Declaration 42J 772-00 diverts groundwater from a well located in the SWSENW of Sec. 2, T8S, R50E, at 15.0 GPM, up to 1.5 AF from January 1 to December 31, to be used from January 1 to December 31 by stock in the SWSENW of Sec. 2, T8S, 50E, Powder River County. This information was decreed on May 31, 1983, through Decree #76, and is therefore accepted by the Department.

17. Prior to this Application, there has been no mention of AU in the historical documents with regards to Powder River Declaration 772-00. The Applicant has claimed 50 AU on this Application. The 1.5 AF volume for Powder River Declaration 42J 772-00 is less than the standard of what would be calculated for 50 AU at 30GPD/AU or 0.034 AF/YR, times the number of AU. The calculated volume for 50 AU is 1.7 AF ($0.034 \times 50 \text{ AU} = 1.7 \text{ AF}$). However, 1.5 AF has been decreed; therefore, it is accepted by the Department. Stock use is considered 100% consumptive; therefore, the historical consumed volume and historical diverted volume are the same, and the Department finds the historical consumed and diverted volume is 1.5 AF, as shown in Table 5.

Table 5: Historic Consumed & Diverted Volume of Powder River Declaration 42J 772-00

Purpose	Animal Units (AU)	Consumed Volume	Diverted Volume
Stock	50 AU	1.5 AF	1.5 AF

18. Prior to these Applications, Powder River Declaration 42J 772-00 had no overlapping or supplemental water rights. If this change is granted, Powder River Declaration 42J 772-00 will be supplemental to two other water rights: (1) Powder River Declaration 42J 778-00 is for stock, with two POU's including the NENENW of Sec. 10, 8S, R50E, having the same POU as proposed stock tank no. two (PST2, Figure 1); (2) Powder River Declaration 42J 779-00 is for stock in the NESENE of Sec. 9, 8S, R50E, having the same POU as proposed stock tank no. three (PST3, Figure 1). Both rights are for dams on an unnamed tributary of Butte Creek. Butte Creek is classified by Montana DEQ as a C-3 and as intermittent by USGS. The source has become unreliable, and added stock tanks have become necessary for the herd to obtain water. The Applicants' herd will use the various sources as available to them.

19. The Department finds the historical use for Powder River Declaration 772-00, as shown in Table 6.

Table 6: Summary of the historical use of Powder River Declaration 42J 772-00.

WR Number	Purpose	Flow Rate	Volume	Period of Use	Point of diversion	Place of use	Priority date
42J 772-00	Stock	15 GPM	1.5 AF	01/01 – 12/31	SWSENW Sec 2, T8S, R50E, Powder River County	SWSENW Sec 2, T8S, R50E, Powder River County	12/31/1943

ADVERSE EFFECT

FINDINGS OF FACT

20. The historical use for Powder River Declaration 42J 722-00 is for 15.0 GPM, up to 1.5 AF for stock purposes from January 1 to December 31 (Table 1, FOF 1). In Change Application No. 42J 30164475, the Applicant proposes to permanently supply water from the existing well to the existing stock tank and six (6) proposed stock tanks, for a total of seven (7) tanks supplied through the pipeline system. In Change Application No. 42J 30165246, the Applicant proposes to temporarily supply water to seven (7) proposed stock tanks, for a total of eight (8) tanks supplied through the pipeline system.

21. In Permanent Change Application 42J 30164475, the Applicants propose to supply water from the existing well to six (6) additional stock tanks for a total of seven (7) tanks supplied through the pipeline system. In Temporary Change Application 42J 30165246, the Applicants propose to temporarily supply water to seven (7) additional stock tanks, for a total of eight (8) tanks supplied through the pipeline system. In both the Permanent Change Application 42J 30164475 and Temporary Change Application 42J 30165246, the herd size will not increase under the proposed change. Neither the flow rate nor the volume will increase as part of these changes. There will be no change in the rate or timing of stock use. Only the place of use will change due to the addition of stock tanks. Water will be conveyed to the proposed stock tanks through a pipeline, so there will be no conveyance losses. The Applicant proposes equipping each stock tank with float/shut-off valves to control flow to the tanks. The Applicant can shut off the well pump if a call is made. There are no plans or requirements to measure diversion or use from this system.

22. Because no change in the POD is proposed, the area of potential impact is the Applicant's well. The only water right on the well is the one in this Application, Powder River Declaration 772-00. The Applicant's changes will not increase the flow rate or the volume diverted and will remain under the amount decreed and historically appropriated.

23. The Department finds there will be no adverse effect as a result of this change.

BENEFICIAL USE

FINDINGS OF FACT

24. For both the Change Application No. 42J 30164475 and 42J 30165246, the Applicant proposes to use water for stock, which is recognized as a beneficial use under the Montana Water

Use Act §85-2-102 (4), MCA. The Applicant proposes a flow rate of 15.0 GPM, up to 1.5 AF of diverted volume from January 1 to December 31, for stock use for 50 AU. This amount is less than Department standards for 50 AU but is beneficial to the Applicant (FOF 17). The volume of 1.5 AF is the maximum amount claimed and decreed for the Applicant's livestock.

25. These changes will make Powder River Declaration 772-00 supplemental to two rights that have become unreliable (FOF 2).

26. The Department finds that stock is a beneficial use, and the flow rate and volume are the necessary amounts of water for that use.

ADEQUATE DIVERSION

FINDINGS OF FACT

27. The Applicant diverts water via a well with a depth of 80 ft, located in the SWSENW of Sec. 2, T8S, R50E, Powder River County. The water will be withdrawn by a 1.5HP Grundfos pump, through 1.25 Poly-pipe, to the stock tanks. The Applicant has tested the conveyance utilizing the 5-gallon bucket test to measure the flow rate at the well and each of the stock tanks. The Applicant's measurements show 4.5 GPM at the last stock tank, approximately 1.8 pipeline miles from the well.

28. The Applicant proposes a pipeline system moving south-westward, with four stock tanks. From the well, the pipeline will travel approximately 0.6 miles to the first stock tank on this line (PST1, Figure 1), that will provide water for the stock in the NWSWSW of Sec. 2, T8S, R50E. This tank will be regulated with a valve and float. The pipeline will then travel approximately 0.6 miles to the second stock tank on this line (PST2, Figure 1), that will provide water for the stock in the NENENW of Sec. 10, T8S, R50E. This tank will be regulated with a valve and float. From the second tank on this line, the pipeline will tee off to the third and fourth stock tanks. From this tee, the pipeline will travel approximately 0.6 miles to the third stock tank (PST3, Figure 1), that will provide water to the stock in the NESENE of Sec. 9, T8S, R50E. This tank will be regulated with a valve and float. From the T located near the second stock tank, the pipeline will travel approximately 0.5 miles to the last stock tank on this line. The fourth stock tank (PST4, Figure 1) will provide water to the stock in the SESENE of Sec. 10, T8S, R50E. This tank will be regulated with a valve and float. These four POUs will be permanent through Change Authorization 42J 30164475.

29. The Applicant proposes a pipeline system moving northeastward, with one tank on the Applicant's property. From the well, the pipeline will travel approximately 0.2 miles to this stock tank on this line (PST5, Figure 1). This stock tank will provide water to the stock in the SESWNE of Sec. 2, T8S, R50E. This tank will be regulated with a valve and float. This place of use will be permanent through Change Authorization 42J 30164475.

30. The Applicant proposes adding a stock tank and pipeline starting from the stock tank in the SESWNE of Sec. 2, T8S, R50E, which will travel over a mile (upgradient) to State Land in Sec. 36, T7S, R50E, to bypass BLM land. Use of State Lands for a stock water pipeline has been granted by TLMD through Land Use License No. 310-2500013. The pipeline will then travel approximately 0.6 miles, returning to private property, to the second permanent stock tank on this line (PST7, Figure 1). The stock tank will provide water to the stock in the NENW of Lot 1, in Sec. 1, T8S, R50E. This tank will be regulated with a valve and float, and will be the last tank to fill. This place of use will be permanent through Change Authorization 42J 30164475.

31. The Applicant proposes to add one tank on State Land. This stock tank (PST6, Figure 1) will be connected to the pipeline that moves northeastward from the well. This tank is located on State Land and is temporary under Change Authorization 42J 30165246. This stock tank will provide water to the NESESW and NWSWSE of Sec. 36, T7S, R50E. This tank will be regulated with a valve and float. This place of use will be permanent through Change Authorization 42J 30165246. Use of a water right on State Lands has been granted through TLMD Authorization for Temporary Change in Appropriation Right Consent Form – for Lease No. 827.

32. The entire system will consist of 8 stock tanks on approximately 4.1 miles of pipeline, to expand across three of the Applicant's parcels and one parcel belonging to State Lands. The system measures approximately 3.5 linear miles from the most south-westward tank to the most eastward tank.

33. The Department finds that the proposed diversion and conveyance are capable of carrying the flow rate of 15.0 GPM and diverted volume up to 1.5 AF.

POSSESSORY INTEREST

FINDINGS OF FACT

34. The Applicant signed the affidavit on the application form affirming the Applicant has possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. The affidavit will be kept on file with the Department.

35. The following condition is proposed to satisfy the possessory interest criterion:

IN THE PRESENT CASE, THE APPLICANT IS THE OWNER OF POWDER RIVER DECLARATION 42J 772-00. THE APPLICANT PROPOSES TO TAKE WATER DIVERTED FROM THE WELL LOCATED ON PRIVATE PROPERTY, AND TEMPORARILY USE IT FOR STOCK USE ON STATE TRUST LAND FOR THE DURATION OF AGRICULTURAL & GRAZING LEASE OF STATE LANDS AGREEMENT NO. 827. THE APPLICANT OBTAINED WRITTEN CONSENT FROM THE DNRC TRUST LAND MANAGEMENT DIVISION TO TEMPORARILY USE POWDER RIVER DECLARATION 42J 772-00 ON THE STATE TRUST LAND FOR THE DURATION OF AGRICULTURAL & GRAZING LEASE OF STATE LANDS AGREEMENT NO. 827. EXPIRATION OR TERMINATION OF AGRICULTURAL & GRAZING LEASE OF STATE LANDS AGREEMENT NO. 827 WILL RESULT IN THE REVOCATION OF TEMPORARY CHANGE AUTHORIZATION 42J 30165246, AND POWDER RIVER DECLARATION 42J 772-00 WILL REVERT TO THE PERMANENT CHANGE AUTHORIZATION 42J 30164475.

CONCLUSIONS OF LAW

HISTORICAL USE AND ADVERSE EFFECT

36. Montana's change statute codifies the fundamental principles of the Prior Appropriation Doctrine. Sections 85-2-401 and -402(1)(a), MCA, authorize changes to existing water rights, permits, and water reservations subject to the fundamental tenet of Montana water law that one may change only that to which he or she has the right based upon beneficial use. A change to an existing water right may not expand the consumptive use of the underlying right or remove the well-established limit of the appropriator's right to water actually taken and beneficially used. An increase in consumptive use constitutes a new appropriation and is subject to the new water use permit requirements of the MWUA. *McDonald v. State*, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986) (beneficial use constitutes the basis, measure, and limit of a water right); *Featherman v.*

Hennessey, 43 Mont. 310, 316-17, 115 P. 983, 986 (1911) (increased consumption associated with expanded use of underlying right amounted to new appropriation rather than change in use); *Quigley v. McIntosh*, 110 Mont. 495, 103 P.2d 1067, 1072-74 (1940) (appropriator may not expand a water right through the guise of a change – expanded use constitutes a new use with a new priority date junior to intervening water uses); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924) (“quantity of water which may be claimed lawfully under a prior appropriation is limited to that quantity within the amount claimed which the appropriator has needed, and which within a reasonable time he has actually and economically applied to a beneficial use. . . . it may be said that the principle of beneficial use is the one of paramount importance . . . The appropriator does not own the water. He has a right of ownership in its use only”); *Town of Manhattan*, ¶ 10 (an appropriator’s right only attaches to the amount of water actually taken and beneficially applied).¹

37. Sections 85-2-401(1) and -402(2)(a), MCA, codify the prior appropriation principles that Montana appropriators have a vested right to maintain surface and ground water conditions substantially as they existed at the time of their appropriation; subsequent appropriators may insist that prior appropriators confine their use to what was actually appropriated or necessary for their originally intended purpose of use; and, an appropriator may not change or alter its use in a manner that adversely affects another water user. *Spokane Ranch & Water Co. v. Beatty*, 37 Mont. 342, 96 P. 727, 731 (1908); *Quigley*, 110 Mont. at 505-11, 103 P.2d at 1072-74; *Matter of Royston*, 249 Mont. at 429, 816 P.2d at 1057; *Hohenlohe*, ¶¶ 43-45.²

38. The cornerstone of evaluating potential adverse effect to other appropriators is the determination of the “historic use” of the water right being changed. *Town of Manhattan*, ¶10 (recognizing that the Department’s obligation to ensure that change will not adversely affect other water rights requires analysis of the actual historic amount, pattern, and means of water use). A change Applicant must prove the extent and pattern of use for the underlying right proposed for change through evidence of the historic diverted amount, consumed amount, place of use, pattern

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

² See also *Holmstrom Land Co., Inc., v. Newlan Creek Water District*, 185 Mont. 409, 605 P.2d 1060 (1979); *Lokowich v. Helena*, 46 Mont. 575, 129 P. 1063 (1913); *Thompson v. Harvey*, 164 Mont. 133, 519 P.2d 963 (1974) (plaintiff could not change his diversion to a point upstream of the defendants because of the injury resulting to the defendants); *McIntosh v. Graveley*, 159 Mont. 72, 495 P.2d 186 (1972) (appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909) (successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes); and, *Gassert v. Noyes*, 18 Mont. 216, 44 P. 959 (1896) (change in place of use was unlawful where reduced the amount of water in the source of supply available which was subject to plaintiff’s subsequent right).

of use, and return flow because a statement of claim, permit, or decree may not include the beneficial use information necessary to evaluate the amount of water available for change or potential for adverse effect.³ A comparative analysis of the historic use of the water right to the proposed change in use is necessary to prove the change will not result in expansion of the original right, or adversely affect water users who are entitled to rely upon maintenance of conditions on the source of supply for their water rights. *Quigley*, 103 P.2d at 1072-75 (it is necessary to ascertain historic use of a decreed water right to determine whether a change in use expands the underlying right to the detriment of other water user because a decree only provides a limited description of the right); *Royston*, 249 Mont. at 431-32, 816 P.2d at 1059-60 (record could not sustain a conclusion of no adverse effect because the Applicant failed to provide the Department with evidence of the historic diverted volume, consumption, and return flow); *Hohenlohe*, ¶ 44-45; Town of Manhattan v. DNRC, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, *Order Re Petition for Judicial Review*, Pgs. 11-12 (proof of historic use is required even when the right has been decreed because the decreed flow rate or volume establishes the maximum appropriation that may be diverted, and may exceed the historical pattern of use, amount diverted or amount consumed through actual use); Matter of Application For Beneficial Water Use Permit By City of Bozeman, *Memorandum*, Pgs. 8-22 (Adopted by DNRC *Final Order* January 9, 1985)(evidence of historic use must be compared to the proposed change in use to give effect to the implied limitations read into every decreed right that an appropriator has no right to expand his appropriation or change his use to the detriment of juniors).⁴

³A claim only constitutes *prima facie* evidence for the purposes of the adjudication under § 85-2-221, MCA. The claim does not constitute *prima facie* evidence of historical use in a change proceeding under § 85-2-402, MCA. For example, most water rights decreed for irrigation are not decreed with a volume and provide limited evidence of actual historic beneficial use. Section 85-2-234, MCA

⁴ Other western states likewise rely upon the doctrine of historic use as a critical component in evaluating changes in appropriation rights for expansion and adverse effect: Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy District, 717 P.2d 955, 959 (Colo. 1986)("[O]nce an appropriator exercises his or her privilege to change a water right ... the appropriator runs a real risk of requantification of the water right based on actual historical consumptive use. In such a change proceeding a junior water right ... which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historic use of the right."); Santa Fe Trail Ranches Property Owners Ass'n v. Simpson, 990 P.2d 46, 55 -57 (Colo., 1999); Farmers Reservoir and Irr. Co. v. City of Golden, 44 P.3d 241, 245 (Colo. 2002)("We [Colorado Supreme Court] have stated time and again that the need for security and predictability in the prior appropriation system dictates that holders of vested water rights are entitled to the continuation of stream conditions as they existed at the time they first made their appropriation"); Application for Water Rights in Rio Grande County, 53 P.3d 1165, 1170 (Colo. 2002); Wyo. Stat. § 41-3-104 (When an owner of a water right wishes to change a water right ... he shall file a petition requesting permission to make such a change The change ... may be allowed provided that the quantity of water transferred ... shall not exceed the amount of water historically diverted under the existing use, nor increase the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic

39. An Applicant must also analyze the extent to which a proposed change may alter historic return flows for purposes of establishing that the proposed change will not result in adverse effect. The requisite return flow analysis reflects the fundamental tenant of Montana water law that once water leaves the control of the original appropriator, the original appropriator has no right to its use and the water is subject to appropriation by others. *E.g., Hohenlohe*, ¶ 44; *Rock Creek Ditch & Flume Co. v. Miller*, 93 Mont. 248, 17 P.2d 1074, 1077 (1933); *Newton v. Weiler*, 87 Mont. 164, 286 P. 133 (1930); *Popham v. Holloron*, 84 Mont. 442, 275 P. 1099, 1102 (1929); *Galiger v. McNulty*, 80 Mont. 339, 260 P. 401 (1927); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909); *Spokane Ranch & Water Co.*, 37 Mont. at 351-52, 96 P. at 731; *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185; ARM 36.12.101(56) (Return flow - that part of a diverted flow which is not consumed by the appropriator and returns underground to its original source or another source of water - is not part of a water right and is subject to appropriation by subsequent water users).⁵

40. Although the level of analysis may vary, analysis of the extent to which a proposed change may alter the amount, location, or timing return flows is critical in order to prove that the proposed change will not adversely affect other appropriators who rely on those return flows as part of the source of supply for their water rights. *Royston*, 249 Mont. at 431, 816 P.2d at 1059-60; *Hohenlohe*, at ¶¶ 45-46 and 55-6; *Spokane Ranch & Water Co.*, 37 Mont. at 351-52, 96 P. at 731.

41. In *Royston*, the Montana Supreme Court confirmed that an Applicant is required to prove lack of adverse effect through comparison of the proposed change to the historic use, historic consumption, and historic return flows of the original right. 249 Mont. at 431, 816 P.2d at 1059-60. More recently, the Montana Supreme Court explained the relationship between the fundamental principles of historic beneficial use, return flow, and the rights of subsequent appropriators as they relate to the adverse effect analysis in a change proceeding in the following

amount of return flow, nor in any manner injure other existing lawful appropriators.); *Basin Elec. Power Co-op. v. State Bd. of Control*, 578 P.2d 557, 564 -566 (Wyo,1978) (a water right holder may not effect a change of use transferring more water than he had historically consumptively used; regardless of the lack of injury to other appropriators, the amount of water historically diverted under the existing use, the historic rate of diversion under the existing use, the historic amount consumptively used under the existing use, and the historic amount of return flow must be considered.)

⁵ The Montana Supreme Court recently recognized the fundamental nature of return flows to Montana's water sources in addressing whether the Mitchell Slough was a perennial flowing stream, given the large amount of irrigation return flow which feeds the stream. The Court acknowledged that the Mitchell's flows are fed by irrigation return flows available for appropriation. *Bitterroot River Protective Ass'n, Inc. v. Bitterroot Conservation Dist.*, 2008 MT 377, ¶¶ 22, 31, 43, 346 Mont. 508, 198 P.3d 219,(citing *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185).

manner:

The question of adverse effect under §§ 85-2-402(2) and -408(3), MCA, implicates return flows. A change in the amount of return flow, or to the hydrogeologic pattern of return flow, has the potential to affect adversely downstream water rights. There consequently exists an inextricable link between the “amount historically consumed” and the water that re-enters the stream as return flow. . . .

An appropriator historically has been entitled to the greatest quantity of water he can put to use. The requirement that the use be both beneficial and reasonable, however, proscribes this tenet. This limitation springs from a fundamental tenet of western water law—that an appropriator has a right only to that amount of water historically put to beneficial use—developed in concert with the rationale that each subsequent appropriator “is entitled to have the water flow in the same manner as when he located,” and the appropriator may insist that prior appropriators do not affect adversely his rights.

This fundamental rule of Montana water law has dictated the Department’s determinations in numerous prior change proceedings. The Department claims that historic consumptive use, as quantified in part by return flow analysis, represents a key element of proving historic beneficial use.

We do not dispute this interrelationship between historic consumptive use, return flow, and the amount of water to which an appropriator is entitled as limited by his past beneficial use.

Hohenlohe, at ¶¶ 42-45 (internal citations omitted).

42. The Department’s rules reflect the above fundamental principles of Montana water law and are designed to itemize the type of evidence and analysis required for an Applicant to meet its burden of proof. ARM 36.12.1901 through 1903. These rules forth specific evidence and analysis required to establish the parameters of historic use of the water right being changed. ARM 36.12.1901 and 1902. The rules also outline the analysis required to establish a lack of adverse effect based upon a comparison of historic use of the water rights being changed to the proposed use under the changed conditions along with evaluation of the potential impacts of the change on other water users caused by changes in the amount, timing, or location of historic diversions and return flows. ARM 36.12.1901 and 1903.

43. Based upon the Applicant’s evidence of historic use, the Applicant has proven by a preponderance of the evidence the historic use of Powder River Declaration 772-00 to be a diverted volume of 1.5 AF, a historically consumed volume of 1.5 AF, and flow rate of 15 GPM. (FOF Nos. 15-19)

44. Based upon the Applicant's comparative analysis of historic water use and return flows to water use and return flows under the proposed change, the Applicant has proven that the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued. Section 85-2-402(2)(a), MCA. (FOF Nos. 20-23)

BENEFICIAL USE

45. A change Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. Sections 85-2-102(4) and -402(2)(c), MCA. Beneficial use is and has always been the hallmark of a valid Montana water right: "[T]he amount actually needed for beneficial use within the appropriation will be the basis, measure, and the limit of all water rights in Montana . . ." McDonald, 220 Mont. at 532, 722 P.2d at 606. The analysis of the beneficial use criterion is the same for change authorizations under §85-2-402, MCA, and new beneficial permits under §85-2-311, MCA. ARM 36.12.1801. The amount of water that may be authorized for change is limited to the amount of water necessary to sustain the beneficial use. *E.g., Bitterroot River Protective Association v. Siebel, Order on Petition for Judicial Review*, Cause No. BDV-2002-519 (Mont. 1st Jud. Dist. Ct.) (2003) (*affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518); *Worden v. Alexander*, 108 Mont. 208, 90 P.2d 160 (1939); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924); *Sitz Ranch v. DNRC*, DV-10-13390,, *Order Affirming DNRC Decision*, Pg. 3 (Mont. 5th Jud. Dist. Ct.) (2011) (citing *BRPA v. Siebel*, 2005 MT 60, and rejecting Applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet); *Toohey v. Campbell*, 24 Mont. 13, 60 P. 396 (1900) ("The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses. He is restricted in the amount that he can appropriate to the quantity needed for such beneficial purposes."); § 85-2-312(1)(a), MCA (DNRC is statutorily prohibited from issuing a permit for more water than can be beneficially used).

46. Applicant proposes to use water for stock, which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence that stock is a beneficial use and that a 15.0 GPM flow rate of water, up to 1.5 AF of diverted volume requested

is the amount needed to sustain the beneficial use and is within the standards set by DNRC Rule. Section 85-2-402(2)(c), MCA (FOF Nos. 24-26).

ADEQUATE MEANS OF DIVERSION

47. Pursuant to § 85-2-402 (2)(b), MCA, the Applicant must prove by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. This codifies the prior appropriation principle that the means of diversion must be reasonably effective for the contemplated use and may not result in a waste of the resource. *Crowley v. 6th Judicial District Court*, 108 Mont. 89, 88 P.2d 23 (1939); *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002) (information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies based upon project complexity; design by licensed engineer adequate).

48. Pursuant to § 85-2-402 (2)(b), MCA, Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. (FOF Nos. 24-33)

POSSESSORY INTEREST

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

50. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. (FOF Nos. 34-35)

PRELIMINARY DETERMINATION

Application to Change Water Right No. 42J 30164475

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Permanent Application to Change Water Right No. 42J 30164475 should be granted subject to the following:

The Department determines the Applicant may change Powder River Declaration 42J 772-00 by permanently adding six (6) POUs. The Applicant is authorized to add new stock tanks in the NWSWSW Sec. 2, T8S, R50E; NENENW Sec. 9, T8S, R50E; NESENE Sec. 9, T8S, R50E; SESENE Sec. 10, T8S, R50E; SESWNE Sec. 2, T8S, R50E; and Lot 1 (NWNENE) Sec. 1, of T8S, R50E, Powder River County, for stock use, up to 50 AU. Powder River Declaration 772-00 will continue to use the historical and decreed POD located in the SWSENE of Sec. 2, T8S, R50E, Powder River County, for a period of diversion from January 1 to December 31, and a period of use from January 1 to December 31, at a flow rate of 15 GPM, up to 1.5 AF in volume, for stock purposes.

Application to Change Water Right No. 42J 30165246

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right No. 42J 30165246 should be GRANTED subject to the following:

The Department determines the Applicant may change Powder River Declaration 42J 772-00 by temporarily adding seven (7) POUs. The Applicant is authorized to add stock tanks in the NWSWSW Sec. 2, T8S, R50E; NENENW Sec. 9, T8S, R50E; NESENE Sec. 9, T8S, R50E; SESENE Sec. 10, T8S, R50E; SESWNE Sec. 2, T8S, R50E; Lot 1 (NWNENE) Sec. 1, of T8S, R50E; and NESENE Sec. 36, T7S, R50E, Powder River County, for stock use up to 50 AU. In the instance that Temporary Change Authorization 42J 30165246 is not renewed, expires, or is terminated, Powder River Declaration 42J 772-00 will be used in accordance with the terms set forth in Permanent Change Authorization No. 42J 30164475. Powder River Declaration 772-00 will continue to use the historical and decreed POD located in the SWSENE of Sec. 2, T8S, R50E, Powder River County, for a period of diversion from January 1 to December 31, and a period of use from January 1 to December 31, at a flow rate of 15 GPM, up to 1.5 AF in volume, for stock purposes. If granted, Permanent Change Authorization No. 42J 30164475 and Temporary Change Authorization 42J 30165246 will be subject to the following conditions:

IN THE PRESENT CASE, THE APPLICANT IS THE OWNER OF POWDER RIVER DECLARATION 42J 772-00. THE APPLICANT PROPOSES TO TAKE WATER DIVERTED FROM THE WELL LOCATED ON PRIVATE PROPERTY AND TEMPORARILY USE IT FOR STOCK USE ON STATE TRUST LAND FOR THE DURATION OF AGRICULTURAL

& GRAZING LEASE OF STATE LANDS AGREEMENT NO 827. THE APPLICANT OBTAINED WRITTEN CONSENT FROM THE DNRC TRUST LAND MANAGEMENT DIVISION TO TEMPORARILY USE POWDER RIVER DECLARATION 42J 772-00 ON THE STATE TRUST LAND FOR THE DURATION OF THE AGRICULTURAL & GRAZING LEASE OF STATE LANDS AGREEMENT NO. 827. EXPIRATION OR TERMINATION OF AGRICULTURAL & GRAZING LEASE OF STATE LANDS AGREEMENT NO. 827 WILL RESULT IN THE REVOCATION OF TEMPORARY CHANGE AUTHORIZATION 42J 30165246, AND POWDER RIVER DECLARATION 42J 772-00 WILL REVERT TO THE PERMANENT CHANGE VERSION AUTHORIZED BY CHANGE AUTHORIZATION 42J 30164475.

NOTICE

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

Dated this 27th day of May, 2025.



Mark Elison
Manager, Billings Regional Office,
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 27th day of May, 2025, by first class United States mail.

MS. DEBRA L. HAYES
1093 THREE RUNS PLANTATION DRIVE
AIKEN, SC, 29803
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CASSEY STREBECK
Billings Regional Office, Department of
Natural Resources and Conservation
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406-247-4422



DATE

Montana Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau

ENVIRONMENTAL ASSESSMENT
For Routine Actions with Limited Environmental Impact

Part I. Proposed Action Description

Applicant/Contact name and address:

Ms. Debra L. Hayes
1093 Three Runs Plantation Drive
Aiken, SC, 29803

Type of action: Application to Change No. 42J 30165246

Water source name: Groundwater

Location affected by the project: Table 1

Narrative summary of the proposed project, purpose, action to be taken, and benefits:

The applicant requires additional stock tanks due to a lack of surface water previously available. The project will not increase its volume, flow rate, or herd size; the Applicant will not exceed 15.0 GPM, up to 1.5 AF per year, the amount historically allotted to Powder River Declaration 772-00 since 1943. The applicant will keep the historic well and tank, and add seven stock tanks, for a total of 8 stock tanks on Powder River Declaration 772-00. One of the seven stock tanks is located on State Land and is permitted by State Lands Lease No. 827, March 1, 2021, to February 28, 2031. These stock tanks will provide water for stock and wildlife. The water will be conveyed by a pipeline system laid beneath the land surface. There will be no impediment to surface water flow, effect on recreation, or an ongoing disturbance to land. Table 1.

Table 1: Place of Use for Powder River Declaration 772-00

POU#	Map Place Name	Quarter Sections	Section	Township	Range	Change Type	Land Owner
1	Historical & Proposed	SWSENW	2	8S	50E	Permanent	Applicant
2	PST1	NWSWSW	2	8S	50E	Permanent	Applicant
3	PST2	NENENW	10	8S	50E	Permanent	Applicant
4	PST3	NESENE	9	8S	50E	Permanent	Applicant
5	PST4	SESENW	10	8S	50E	Permanent	Applicant
6	PST5	SESWNE	2	8S	50E	Permanent	Applicant
7	PST7	Lot 1 (NWNENE)	1	8S	50E	Permanent	Applicant
8*	PST6*	NESESW	36	7S	50E	Temporary*	State of Montana

Agencies consulted during the preparation of the Environmental Assessment:
(include agencies with overlapping jurisdiction)

Montana Department of Natural Resources and Conservation
Montana Department of Fish, Wildlife and Parks (FWP)
Montana Department of Environmental Quality (DEQ)
Montana Sage Grouse Habitat Conservation Program (SGHCP)
Montana Natural Heritage Program (NHP)
U.S. Fish and Wildlife Service (USFWS)
U.S. Department of Agriculture, National Resource Conservation Service (USDA, NRCS)

Part II. Environmental Review

1. Environmental Impact Checklist:

PHYSICAL ENVIRONMENT

WATER QUANTITY, QUALITY AND DISTRIBUTION

Water quantity:

This project utilizes the historic well on the water right. The project will not increase its volume, flow rate, or herd size; the Applicant will not exceed 15.0 GPM, up to 1.5 AF per year, the amount historically allotted to Powder River Declaration 772-00. Nor is there an increase in conveyance loss due to the use of pipelines. There will be no effects made to water quantity.

Determination: No Significant Impact

Water quality:

This project utilizes the historic well on the water right. There will be no effects on water quantity.

Determination: No Significant Impact

Groundwater

The Applicant will not exceed 15.0 GPM, up to 1.5 AF per year, the amount historically allotted to Powder River Declaration 772-00, since 1943.

Determination: No Significant Impact

Diversion works:

The project will convey water from the historic well via pipelines to a total of 8 stock tanks. The pipeline runs underground. Each stock tank, except for the last, have floats to prevent overflow. Any excess water will alleviate the loss of surface water in the area, and likely recharge the groundwater system, if not first consumed by stock and wildlife.

Determination: No Significant Impact

UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES

Endangered and threatened species

The Montana Natural Heritage Program (MT NHP) identifies the following as Species of Concern (SOC) within the general area of the project:

Amphibian: Great Plains Toad and Northern Leopard Frog.

Bird: Pinyon Jay, Common Poorwill, Sharp-tailed Grouse, Yellow-billed Cuckoo, Red-headed Woodpecker, Plumbeous Vireo, Eastern Bluebird, Lewis's Woodpecker, Grasshopper Sparrow, Golden Eagle, Cassin's Kingbird, Ovenbird, Black-and-white Warbler, Brewer's Sparrow, Eastern Screech-Owl, Great Blue Heron, American Goshawk, Clark's Nutcracker, Greater Sage-Grouse, Loggerhead Shrike, Long-billed Curlew, Sage Thrasher, Bobolink, Cassin's Finch, Black-billed Cuckoo, Burrowing Owl, Ferruginous Hawk, and Sprague's Pipit.

Insect: *Danaus Plexippus* and *Bombus suckleyi*.

Mammal: Northern Hoary Bat, North American Porcupine, Meadow Jumping Mouse, Pallid Bat, Long-legged Myotis, Townsend's Big-eared Bat, Spotted Bat, Merriam's Shrew, Eastern Red Bat, Long-eared Myotis, Prairie Shrew, Black-tailed Prairie Dog, Little Brown Myotis, Silver-haired Bat, Fringed Myotis, and Northern Myotis.

Reptile: Western Milksnake, Plains Hog-nosed Snake, and Greater Short-horned Lizard.

Vegetation: *Dichanthelium oligosanthos* var. *scribnerianum*, *Astragalus ceramicus* var. *filifolius*, *Cirsium pulcherrimum*, *Triodanis leptocarpa*, *Physaria brassicoides*, *Physaria ludoviciana*, *Pediomelum hypogaeum* var. *hypogaeum*, *Dalea enneandra*, *Carex gravida*, *Astragalus barrii*, *Carex crawei*, and *Cyperus schweinitzii*.

While there is an abundance of species present, this project is not expected to have an adverse effect on the wildlife community. The increase in stock tanks in the area may benefit the wildlife community.

Determination: No Significant Impact

Wetlands

No wetlands were claimed or proposed in this project or identified in the general area of the project were reported on the Montana Natural Heritage Program (MT NHP) report.

Determination: No Significant Impact

Ponds

No ponds were claimed or proposed in this project or identified in the general area of the project via the Montana Natural Heritage Program (MT NHP) report.

Determination: No Significant Impact

GEOLOGY/SOIL QUALITY, STABILITY, AND MOISTURE

USDA Web Soil Survey gives the following soils throughout the project area:

Arvada-Bone complex, 0 to 4 percent slopes; Cabba association, 15 to 50 percent slopes; Elso silt loam, 8 to 15 percent slopes; Elso silt loam, 15 to 45 percent slopes; Fergus-Relan association, 2 to 8 percent slopes; Fort Collins silt loam, 2 to 4 percent slopes; Fort Collins silt loam, 4 to 8 percent slopes; Haverson silt loam; Haverson silty clay loam; Haverson soils, channeled; Hesper silty clay loam, 2 to 4 percent slopes; Hesper silty clay loam, 4 to 8 percent slopes; Hesper silty clay loam, 8 to 15 percent slopes; Hopley and Relan loams, 4 to 8 percent slopes; Hydro silty clay loam, 4 to 8 percent slopes; Kyle clay, 8 to 15 percent slopes; McRae silt loam, 0 to 2 percent slopes; McRae silt loam, 2 to 4 percent slopes; McRae silt loam, 4 to 8 percent slopes; Midway-Elso association, 8 to 35 percent slopes; Midway and Elso rocky soils, 35 to 75 percent slopes; Relan gravelly loam, gravelly variant, 4 to 8 percent slopes; Remmit-Ocean lake fine sandy loam, 8 to 25 percent slopes; Ringling slaty loam, 20 to 50 percent slopes; Ringling-Cabba association, 15 to 50 percent slopes; Ringling-Relan association, 6 to 25 percent slopes; and Terrace escarpments.

While soil types are abundant, the source is groundwater from an established well, and the conveyance system is underground. There should be no continued effect on soil after the pipelines have been placed, covered with soil, and vegetation has had time to regrow.

Determination: No Significant Impact

VEGETATION COVER, QUANTITY, AND QUALITY/NOXIOUS WEEDS

The Montana Natural Heritage Program (MT NHP) identified the following primary land cover in the general project area:

Great Plains Mixed grass Prairie, Great Plains Ponderosa Pine Woodland and Savanna, Big Sagebrush Steppe, and Great Plains Riparian.

MT NHP identified the following as Invasive and Pest Species:

Nymphaea odorata, *Nymphoides peltate*, *Isatis tinctoria*, *Hieracium piloselloides*, *Hieracium praealtum*, *Ventenata dubia*, *Cirsium arvense*, *Euphorbia virgata*, *Centaurea stoebe*, *Centaurea diffusa*, *Potentilla recta*, *Cynoglossum officinale*, *Convolvulus arvensis*, and *Bromus tectorum*.

It will be the responsibility of the landowner to prevent the establishment and spread of noxious weeds.

Determination: No Significant Impact

AIR QUALITY

No impact on air quality is expected due to this project proposing a change in point of diversion.

Determination: No Impact

HISTORICAL AND ARCHEOLOGICAL SITES

Not applicable; the project is not located on State or Federal Lands. The Montana State Historic Preservation Office was not consulted regarding this project. As the project is located on private property, any cultural resource inventory conducted would be at the property owner's discretion.

Determination: Not Applicable

DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AND ENERGY

No additional impact on other environmental resources is expected due to this project.

Determination: No Impact

HUMAN ENVIRONMENT

LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS

There are no known locally adopted environmental plans or goals.

Determination: Not Applicable

ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES

This project will have no significant impact on recreational and wilderness activities.

Determination: No Significant Impact

HUMAN HEALTH

This project will have no significant impact on human health.

Determination: No Significant Impact

PRIVATE PROPERTY - *Assess whether there are any government regulatory impacts on private property rights.*

Yes___ No_X_ If yes, analyze any alternatives considered that could reduce, minimize, or eliminate the regulation of private property rights.

Determination: No Impact

OTHER HUMAN-ENVIRONMENTAL ISSUES - *For routine actions of limited environmental impact, the following may be addressed in a checklist fashion.*

Impacts on:

- (a) Cultural uniqueness and diversity? No Significant Impact
- (b) Local and state tax base and tax revenues? No Significant Impact
- (c) Existing land uses? No Significant Impact
- (d) Quantity and distribution of employment? No Significant Impact
- (e) Distribution and density of population and housing? No Significant Impact

(f) Demands for government services? No Significant Impact

(g) Industrial and commercial activity? No Significant Impact

(h) Utilities? No Significant Impact

(i) Transportation? No Significant Impact

(j) Safety? No Significant Impact

(k) Other appropriate social and economic circumstances? No Significant Impact

2. Secondary and cumulative impacts on the physical environment and human population:

(a) Secondary Impacts: No secondary impacts are identified

(b) Cumulative Impacts: No cumulative impacts are identified

3. Describe any mitigation/stipulation measures: None at this time

4. Description and analysis of reasonable alternatives to the proposed action, including the no-action alternative, if an alternative is reasonably available and prudent to consider:

The alternative to the proposed project is the no-action alternative. The no-action alternative prevents the property owner from improving the operation of their irrigation system. The no-action alternative does not prevent or mitigate any significant environmental impacts.

PART III. Conclusion

1. Preferred Alternative: Issue the change authorization if the applicant proves the criteria in 85-2-402 MCA are met.

2. Comments and Responses: None at this time.

3. Finding:

Yes___ No_X_ Based on the significance criteria evaluated in this EA, is an EIS required?

No significant environmental impacts were identified; therefore, an EIS is not required.

Name of person(s) responsible for preparation of EA:

Name: Cassey Strebeck

Title: Water Resource Specialist

Date: May 12, 2025

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Water Resources Division • Billings Regional Office

1371 Rintop Drive, Billings, MT 59105 Phone: (406) 247-4415 Fax: (406) 247-4416



GREG GIANFORTE, GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2074
FAX: (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

January 31, 2025

Ms. Debra L. Hayes
1093 Three Runs Plantation Drive
Aiken, SC, 29803

Subject: Correct and Complete Application for Change No. 42J 30165246

Dear Applicant,

The Department of Natural Resources and Conservation (Department) has determined that your application is correct and complete pursuant to ARM 36.12.1601. Please remember that correct and complete **does not mean that your application will be granted.** The purpose of this letter is to indicate that the Department has enough information to analyze your water right application.

The Department will issue a Draft Preliminary Determination document and Technical Analysis within 120 days of the date of this letter per §85-2-307(2)(b), MCA.

Following the issuance of the Draft Preliminary Determination, you (Applicant) will have 15 business days to request an extension of time to submit additional information, if desired pursuant to §85-2-307(3)(a), MCA.

If no extension of time is requested and the Draft Preliminary Determination decision is to grant your application or grant your application in modified form, the Department will prepare a notice of opportunity to provide public comment, per §85-2-307(4)(a), MCA.

If you have any questions or concerns about the application process, please contact me.

Sincerely Yours,

A handwritten signature in blue ink that reads "C Strebeck".

Cassey Strebeck
Water Resource Specialist
Billings Regional Office, Montana DNRC
Cassey.Strebeck@mt.gov
406-247-4422

CC:
Quinten Rumph
PO Box 342
Biddle, MT, 59314

From: [Strebeck, Cassey](#)
To: [Quentin Rumph](#); DebraLHayes1@outlook.com
Cc: [Elison, Mark](#)
Subject: RE: [EXTERNAL] We feel like we have provided you with all the documents you need for our water rights proposal and would like to move forward at this time
Date: Thursday, January 30, 2025 3:52:00 PM

Mr. Rumph,

Thank you for taking the time to provide the information needed for Ms. Hayes' application. I will move forward with reviewing the information provided. You should expect communication via mail in the next few weeks with a letter outlining the process moving forward.

It has been a pleasure working with you, please feel free to contact me if you have any questions.

Thank you,
Cassey

-----Original Message-----

From: Quentin Rumph <quentinrumph@gmail.com>
Sent: Thursday, January 30, 2025 3:12 PM
To: Strebeck, Cassey <Cassey.Strebeck@mt.gov>
Subject: [EXTERNAL] We feel like we have provided you with all the documents you need for our water rights proposal and would like to move forward at this time

Sent from my iPad

From: [Strebeck, Cassey](#)
To: [Quentin Rumph](#)
Subject: RE: Tank and Pipeline specifications
Date: Thursday, January 23, 2025 9:23:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[Russel Rumph_Historical_Docs.pdf](#)

Mr. Rumph,

Thank you for calling in and providing the information. Here is a screenshot of the wells in the historical record. This well for this water right is No. 3. I have attached the complete file for you as well.

70137 Filed,
Twp. 8 S, Rge. 1 E
at 10:10 A. M.
\$2.00 fee paid

STATE OF MONTANA
ADMINISTRATOR OF GROUNDWATER CODE
OFFICE OF STATE ENGINEER

Twp 8 S, Rge 1 E

DECLARATION OF VESTED GROUNDWATER RIGHTS
Clerk and Recorder (Under Chapter 237, Montana Session Laws, 1961)

1. Glen W. Russell, of Middlefork, Montana, County of POWDER RIVER, State of MONTANA, have appropriated groundwater according to the Montana Laws in effect prior to January 1, 1962, as follows:

	8-30	8-30	8-50	8-50	8-50	9-50
	Sec. 26	Sec. 25	Sec. 2	Sec. 13	Sec. 21	Sec. 3
WELLS	No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
2. Basis of Beneficial Use	stock	stock	stock	stock	stock	stock
DATE OF USE	1922	1922	1943	1923	1943	1950
3. How continuous	6 mo	12 mo	6 mo	6 mo	6 mo	6 mo
4. Amount claimed (gal. per minute)	15	15	15	15	15	15
Irrigated description						
Irrigation owner						
5. Irrigated acreage						
6. Location	WGSN	WGSN	WGSN	WGSN	WGSN	WGSN
Withdrawal means	pump	pump	pump	pump	pump	pump
7. Completion date	1922	1922	1943	1923	1943	1950
8. Water depth table	10'	10'	30'	10'	30'	20'
Type (drilled or dug)	dug	dug	drilled	dug	drilled	drilled
9. Size & depth	18" x 30'	18" x 30'	6" x 20'	4" x 25'	6" x 75'	6" x 35'
10. Estimated annual Amount withdrawn			772			
11. Other information						
12. Log, if available						

STATE OF MONTANA)
County of Powder River)

Signature of Owner: Glen W. Russell

Date 1-20-53

Glen W. Russell having first been duly sworn, deposes and says that he is of lawful age and is the appropriator and claimant of the order and water right mentioned in the foregoing Declaration of Vested Groundwater Rights and the person whose name is subscribed to the foregoing Declaration of Vested Groundwater Rights and he knows the contents

Have a good day!
Cassey

From: Strebeck, Cassey
Sent: Wednesday, January 22, 2025 3:41 PM

To: Quentin Rumph <quentinrumph@gmail.com>

Subject: FW: Tank and Pipeline specifications

Mr. Rumph,

My apologies. Can you also confirm that there have been no changes to the well. I have it listed as drilled, 6 inches wide, 80 feet deep, with a 30-foot water table.

Thank you.

From: Strebeck, Cassey

Sent: Wednesday, January 22, 2025 2:30 PM

To: quentinrumph@gmail.com

Subject: Tank and Pipeline specifications

Mr. Rumph,

I have a few questions, if you can clarify them for me. Instead of typing out each question, I provided a table, if you could complete it using the labels on the map for the desired stock tank. I think this should cover any calculation I may need to do and clarify the questions I had about the email responses. Using the attached map, please complete the attached table. It can be saved and sent back.

Thank you for your cooperation, if you can get it back to me by the end of the month – February 7th at the latest.



Cassey Strebeck | Water Resource Specialist
Water Resources Division
Montana Department of Natural Resources and Conservation
Billings Regional Office
1371 Rintop Dr, Billings, MT 59105

DESK: 406-247-4422 **EMAIL:** cassey.strebeck@mt.gov

Website | **Facebook** | **X (Twitter)** | **Instagram**

How did we do? Let us know here: [Feedback Survey](#)

Tank							$(\pi \times \text{tank radius}^2 \times \text{tank height})$ $\times (7.481 \text{ gal} / 1 \text{ ft}^3)$	
	Diameter in feet	depth in feet	Gallons at capacity	Material		Valve Type	radius	
Historical	8	2	650	fiberglass	no Over flow	roberts floats	4	752.0721485
PST1	12	2	1400	rubber tire	no Over flow	roberts floats	6	1692.162334
PST2	10	2	1000	*fiberglass	no Over flow	roberts floats	5	1175.112732
PST3	12	2	1400	rubber tire	no Over flow	roberts floats	6	1692.162334
PST4	12	2	1400	rubber tire	no Over flow	roberts floats	6	1692.162334
PST5	10	2	1000	*fiberglass	no Over flow	roberts floats	5	1175.112732
PST6	12	2	1400	rubber tire	no Over flow	roberts floats	6	1692.162334
PST7	12	2	1400	rubber tire	Over flow	no floats	6	1692.162334
* gallons provided by manufacturer								
9650							Total	11563.10928

drains are not near the tank. Drains are located in low level areas and are utilized in winter.

pipeline is 2 miles
pipeline diameter is 1.25 inches

Mr. Rumph,

Happy New Year!

If I recall correctly, you may be in Arizona.

If so, I am hoping you have someone local who can assist with this question.

There was a question left unanswered in the email you sent me, ST.2.C.

I would like to confirm the flow and adequacy of the system.

Can you, or someone you trust, perform a 5-gal bucket test at the well and each stock tank?

You simply time how long it takes for the bucket to completely fill with water, at the site.

There is a table below that can be filled in.

I am attaching my map for location labeling. You can also print the map, write the measurements on the map, and send that back if you prefer. If possible, please try to get this to me by the end of January. If you have any questions, I will be available for phone calls after January 1st. Also, my table below and map lead me to ask for clarity – looking at the map I have provided, is the historical tank still in place? That there are a total of 8 stock tanks?

Thank you, and Happy Holidays to you, and yours.

location	Time - in Seconds	Size of bucket – in gallons
Well / pump	60	
Historical tank	60	?
PST 1	60	5
PST 2	60	5
PST 3	60	5
PST 4	60	5
PST 5	60	6
PST 6 (state/school)	60	4 1/2
PST 7	60	4 1/2

From: [Quentin Rumph](#)
To: [Strebeck, Cassey](#)
Subject: [EXTERNAL] Fwd: WR 42J 772-00 5-Gal Bucket Test Request
Date: Tuesday, December 31, 2024 3:35:24 PM
Attachments: [CCF_000002\(3\).pdf](#)

Sent from my iPad

Begin forwarded message:

From: Kenny & Donna Dague <kdague@q.com>
Date: December 31, 2024 at 10:45:53 MST
To: quentinrumph@gmail.com
Subject: Re: Fwd: WR 42J 772-00 5-Gal Bucket Test Request

On Tue, 31 Dec, 2024 at 9:16 AM, Quentin Rumph <quentinrumph@gmail.com> wrote:

To: kdague@q.com

Sent from my iPad

Begin forwarded message:

From: "Strebeck, Cassey" <Cassey.Strebeck@mt.gov>
Date: December 28, 2024 at 11:14:13 MST
To: DebraL.Hayes1@outlook.com, Quentin Rumph <quentinrumph@gmail.com>
Cc: "Elison, Mark" <MElison@mt.gov>
Subject: WR 42J 772-00 5-Gal Bucket Test Request

Mr. Rumph,

Happy New Year!

If I recall correctly, you may be in Arizona.

If so, I am hoping you have someone local who can assist with this question.

There was a question left unanswered in the email you sent me, ST.2.C.

I would like to confirm the flow and adequacy of the system.

Can you, or someone you trust, perform a 5-gal bucket test at the well and each stock tank?

You simply time how long it takes for the bucket to completely fill with water, at the site.

There is a table below that can be filled in.

I am attaching my map for location labeling. You can also print the map, write the measurements on the map, and send that back if you prefer. If possible, please try

to get this to me by the end of January. If you have any questions, I will be available for phone calls after January 1st. Also, my table below and map lead me to ask for clarity – looking at the map I have provided, is the historical tank still in place? That there are a total of 8 stock tanks?

Thank you, and Happy Holidays to you, and yours.

location	Time - in Seconds	Size of bucket – in gallons
Well / pump		
Historical tank		
PST 1		
PST 2		
PST 3		
PST 4		
PST 5		
PST 6 (state/school)		
PST 7		

From: [Strebeck, Cassey](#)
To: [Quentin Rumph](#); [DebraLHayes1@outlook.com](#)
Cc: [Elison, Mark](#); [Schweigert, Christine](#); [Corbett, Veronica](#)
Subject: Update on WR 42J 772-00
Date: Thursday, November 14, 2024 3:21:00 PM
Attachments: [image001.png](#)

Mr. Rumph,

I wanted to let you know that the two sets of coordinates you gave me over the phone, matched up with the maps you provided. I will review the information again and get back to you by the end of next week.

Thank you,



Cassey Strebeck | Water Resource Specialist
Water Resources Division
Montana Department of Natural Resources and Conservation
Billings Regional Office
1371 Rimtop Dr, Billings, MT 59105
DESK: 406-247-4422 **EMAIL:** cassey.strebeck@mt.gov
[Website](#) | [Facebook](#) | [X \(Twitter\)](#) | [Instagram](#)
How did we do? Let us know here: [Feedback Survey](#)

From: [Strebeck, Cassey](#)
To: [Quentin Rumph](#); DebraLHayes1@outlook.com
Cc: [Elison, Mark](#); [Schweigert, Christine](#); [Corbett, Veronica](#)
Subject: RE: Update on Water Right 772-00
Date: Tuesday, November 12, 2024 3:02:00 PM
Attachments: [Quentin1.pdf](#)
[image002.png](#)
[image003.png](#)

Mr. Rumph,

Attached is the map that I mentioned in our phone conversation. This map was provided with the application, showing the stock tank on state land as the yellow triangle in the NESESW of section 36. Which differs from the location provided by the coordinates, that put the stock tank more so in the NENESW of section 36.

Thank you,
Cassey

From: Strebeck, Cassey
Sent: Tuesday, November 12, 2024 1:29 PM
To: Quentin Rumph <quentinrumph@gmail.com>; DebraLHayes1@outlook.com
Cc: Elison, Mark <MElison@mt.gov>; Schweigert, Christine <CSchweigert@mt.gov>; Corbett, Veronica <Veronica.Corbett@mt.gov>
Subject: Update on Water Right 772-00

Mr. Rumph,

I have taken a quick review of the information you have provided, thus far. You did a great job. I was able to find the locations via the coordinates you provided.

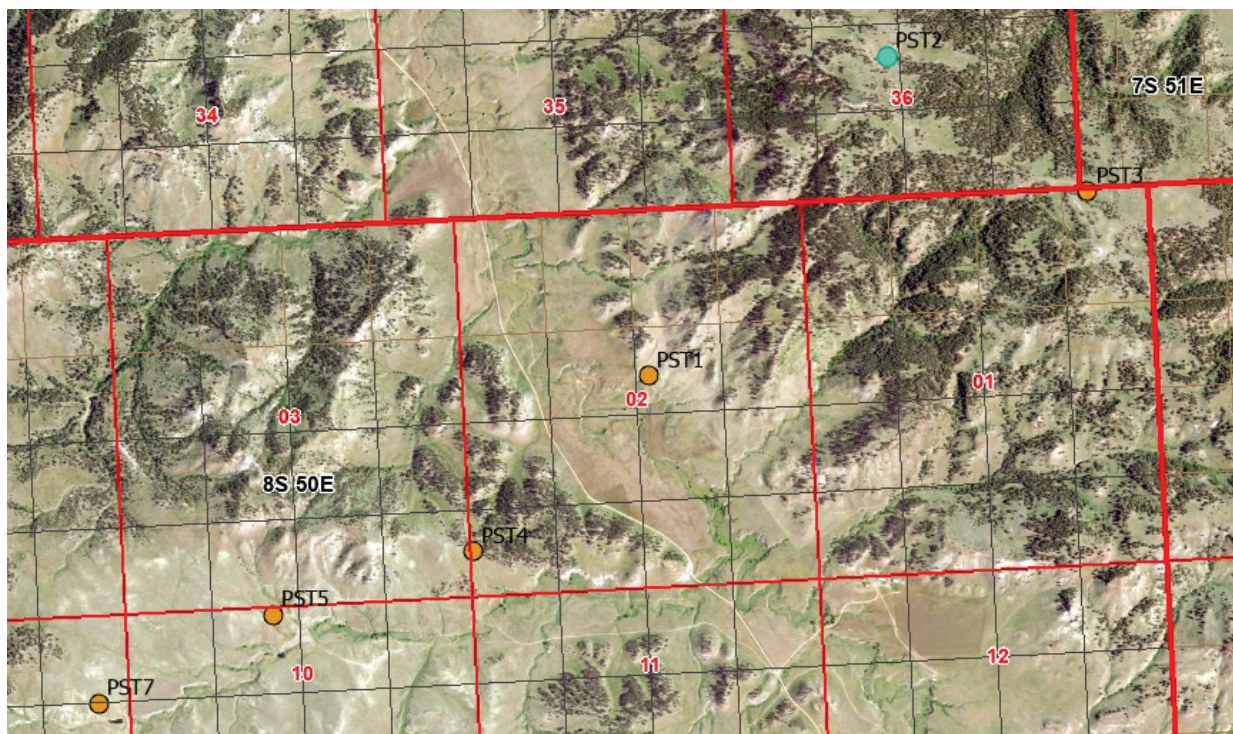
However, based on the drawings, it looks as though the coordinates for PST2, on State Land, may have been incorrect.

Please confirm if the legal land descriptions (Township, Range, Section Qtr_Sec) in the screenshot are correct, or if changes should be made. The blue colored one is the stock tank on state lands.

Also, can you confirm the coordinates, or legal land description for the historic well. It was drawn on both maps, but I could not find the coordinates or legal land description.

Feel free to take your time.

Thank you!



105.5957414°W 45.1546666°N

Zoom To Switch Clear Delete Copy

ST_...	Long_X	Lat_Y	Township	Range	Section	Qtr_Sec	GeoCode
PST1	105° 33' 22.00000000" W	45° 10' 05.00000000" N	8S	50E	2	SESWNE	09-0303-02-1-01-01-0000
PST2	105° 32' 28.00000000" W	45° 10' 51.00000000" N	7S	50E	36	NESESW	09-0392-36-1-01-01-0000
PST3	105° 31' 46.90000000" W	45° 10' 29.30000000" N	8S	50E	1	NENWL1	09-0303-01-1-01-01-0000
PST4	105° 34' 01.00000000" W	45° 09' 40.00000000" N	8S	50E	2	NWSWSW	09-0303-03-1-01-01-0000
PST5	105° 34' 44.00000000" W	45° 09' 32.00000000" N	8S	50E	10	NENENW	09-0303-10-1-01-01-0000
PST6	105° 34' 39.00000000" W	45° 09' 08.00000000" N	8S	50E	10	SESENW	09-0303-10-1-01-01-0000
PST7	105° 35' 22.00000000" W	45° 09' 20.00000000" N	8S	50E	9	NESENE	09-0303-09-1-01-01-0000

N
V
ir



Cassey Strebeck | Water Resource Specialist
 Water Resources Division
 Montana Department of Natural Resources and Conservation
 Billings Regional Office
 1371 Rimtop Dr, Billings, MT 59105
DESK: 406-247-4422 **EMAIL:** cassey.strebeck@mt.gov
[Website](#) | [Facebook](#) | [X \(Twitter\)](#) | [Instagram](#)
 How did we do? Let us know here: [Feedback Survey](#)

From: omrumph@rangeweb.net
To: [Strebeck, Cassey](#)
Cc: [Quentin Rumph](#)
Subject: [EXTERNAL] Hayes Water Right
Date: Thursday, November 7, 2024 5:22:00 PM
Attachments: [Producer Map Hayes Pipeline.pdf](#)
[HAYES HISTORIC WELL.pdf](#)
[Hayes For Email with Quentin"s edits.docx](#)

Hi Cassey — Please find attached the documentation for the Hayes Water Right. Also attached are two maps. Quentin will try to check in with you tomorrow to see if you need additional information.

Thank you!



✕

POWDER RIVER

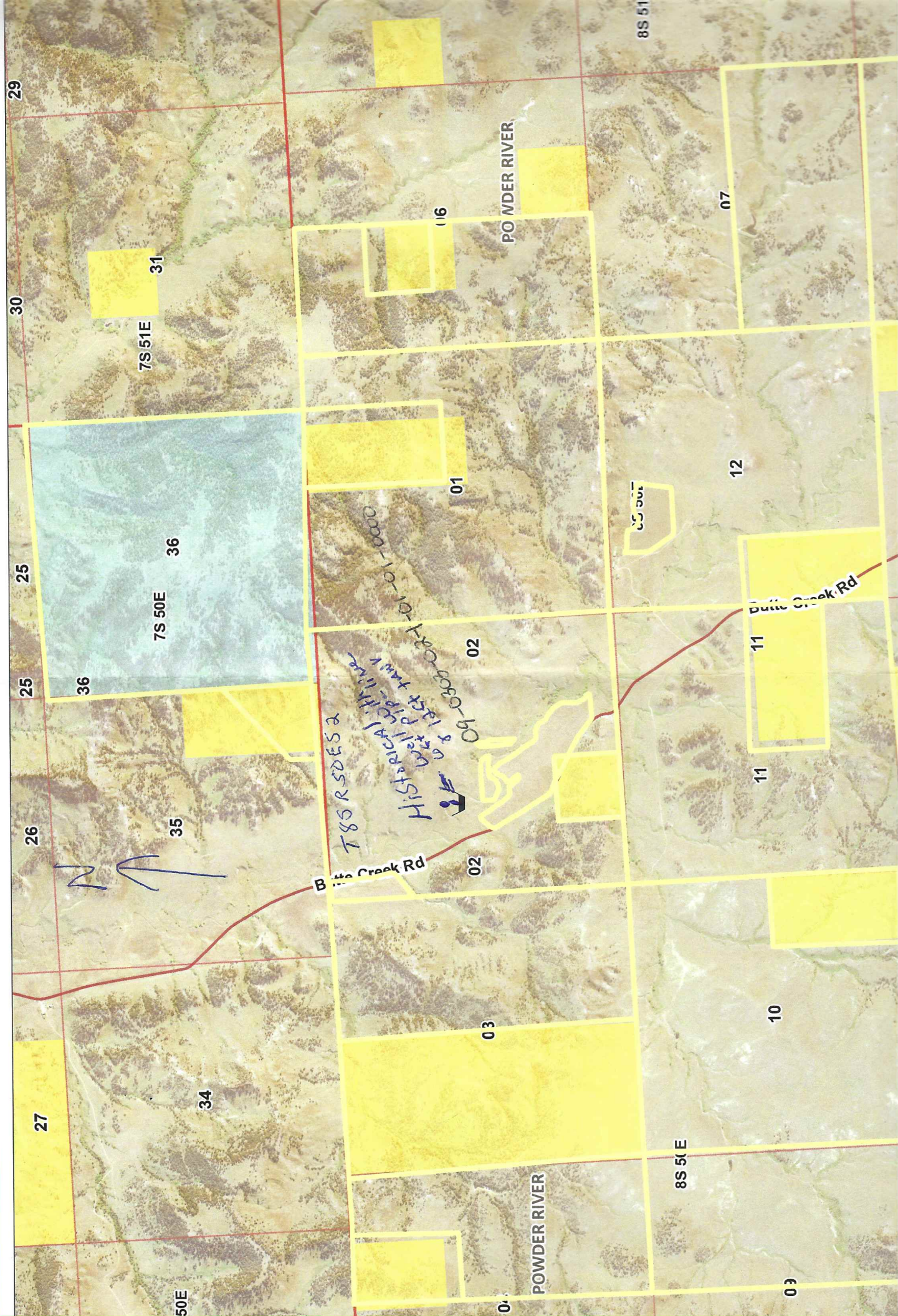
98S 5(E)

09-0303-02-1-01-0000

✗

Historical Producer Map - Debra Hayes

USDA is an equal opportunity provider, employer, and lender



ST.1.B ☐ How many stock tanks do you wish to add through this change?

You state that you propose to add 2 tanks, however only one is on the maps provided with the application, and per my phone conversation with Mr. Rumph, at least 5 additional tanks are moving westward that are not included in Powder River Declaration 42J 772-00. Powder River Declaration 42J 772-00 has one well, one 6-foot pipeline, and one stock tank, 12 feet in diameter with a 2-foot depth. Any wells, pipelines, and stock tanks added, or any other changes made after this water right first was put to use are considered Proposed Use and should be included in this application.

The historical water right had 1 wooden tank on it. That tank is gone and has been replaced by an 8-foot fiber glass tank. The well is still a 15 gal. producer. We are adding 7 stock tanks on 2 pipelines to this water right.

ST.1.E ☐ Place of Use – GEOCODE:

Please provide geocodes for the parcel location of each stock tank or proposed place of use.

☐ Place of Use – LEGAL LAND DESCRIPTION:

Please provide the legal land description for each stock tank or proposed place of use.

PST1 AND HISTORICAL TANK 09-0303-02-1-01-01-0000

Land Description – See map

PST 2 School Section

PST 3 09-0303-01-1-01-01-0000

PST 4 09-0303-03-1-01-01-0000

PST5,PST6 09-0303-10-1-01-01-0000

PST 7 09-0303-09-1-01-01-0000

ST.1.F ☐ Attach a narrative explaining specific details of the requested change to the water right(s) and why it is being requested. Please label attachment ST.1F Application Details.

Please attach a narrative explaining the proposed changes to this water right, including the location of all pipelines and stock tanks which may be added through this change.

The water holes have dried up and we need water to water the stock. The locations are all drawn on the map.

ST.1.G ☐ Are you proposing to change all of the water right(s) associated with the place of use? If no, attach an explanation of why not and how those rights will be operated to ensure no increase in use. Please label attachment ST.1.G Application Details.

The boxes for “yes” and “no” are both selected. Please clarify the answer. If No, please attach an explanation of why not and how those rights will be operated to ensure no increase in use.

Yes

ST.2 ADEQUATE DIVERSION MEANS AND OPERATION – ARM 36.12.1904

ST.2.B ☐ Identify the flow rate you will be diverting.

Your application states that you will be diverting 6 GPM. Can you explain why this differs from what is stated on the Water Right Abstract?

We will be diverting 6 GPM. Even tho we have a 15 GPM well the pipelines only need 6 gallons to

do what we need at this time.

ST.2.C ☐ How was the diverted flow rate determined?

Please explain how the diverted flow rate was determined and how this method is adequate.

ST.2.D ☐ Provide evidence to show that the flow rate will be adequate for the proposed system. Please label attachment ST.2.D Adequate Diversion Means and Operation.

A General Abstract cannot justify that the pump system meets the needs of a pipeline extension. Please provide substantial evidence for how the diversion / pump system will adequately meet the needs of the proposed conveyance system. You may do this as a hand-drawn diagram if preferred, but you may be able to request a schematic from the persons who installed the infrastructure.

The tanks are all operational at this time and are full and we have 6 gallons out the overflow on the last tank that is not floated off.

ST.2.F ☐ Provide design plans for the proposed stock tank system from the point of diversion to the place of use (tanks). Include pump information, pipe size, pipe length, pipe material, any valves or booster pumps used, depth pipeline will be buried, etc. Please label the attachment ST.2.F Adequate Diversion Means and Operation.

Please provide the system design for all infrastructure added after the water right was Decreed.

The pump is 1½ hp grundflos. There is approximately 4 miles of pipeline. 1¼ poly pipe buried 2 feet deep with 14 drains in all the low places. So, we can drain it in the winter when it is not in use. This is a summer water system.

ST.3 MAP- ARM 36.12.111

ST.3A ☐ Provide a map or maps depicting the historical and proposed water system.

Aerial photos may be available from DNRC, NRIS, NRCS, USGS, or other sources. Depending on the size of the project, one map showing all items listed below may be acceptable. If using one map, be sure to indicate which tanks are currently authorized and which tanks are being added via this change. As previously mentioned, all pipelines and stock tanks not listed on the original water right must be included as part of the proposed changes.

☐ **Historical** – Infrastructure as the water right was Decreed

- ☐ Note the section corners, township, range, and add a north arrow to the map
- ☐ Identify the historical point of diversion
- ☐ Identify the historical means of conveyance (well, ditch, pump, pipeline)
- ☐ Identify historical stock tank locations

☐ **Proposed** – Infrastructure added after the water right was Decreed

- ☐ Note the section corners, township, range, and add a north arrow to the map
- ☐ Identify the proposed point of diversion
- ☐ Identify the proposed means of conveyance
- ☐ Identify the proposed place of use

- ☐ Additionally, label the historical and proposed conveyance and tanks appropriately. For example, historical pipeline, proposed pipeline, historical tank 1, proposed tank 1, proposed tank 2, proposed tank 3, etc. You may abbreviate, so long as it is clear which is historical, and which is proposed. For example, the historical pipeline could be HP, the historical stock tank could be HST, and the proposed stack tanks could be PST1, PST2, PST3, etc. You may do this with a hand-drawn illustration, over a printed aerial map.

ST.4 HISTORICAL USE - ARM 36.12.1902

ST.4.B ☐ What is the historical diverted flow rate of your stock watering system?

Your application states 6 GPM for the historical flow rate. Please explain why this differs from the flow rate Decreed for this water right, as listed on the water right General Abstract. Please explain what “line” you are referring to when referencing the flow rate.

The flow rate is different because we are pushing water up 4 miles of pipeline.

ST.4.D ☐ Attach a description of the historical operation of the stock watering system. Include information on diversion operation, means of conveyance (size, type), booster pumps, and any control structures such as valves, discharge piping, etc. Please label attachment ST.4.D Historical Use.

As mentioned previously, only the infrastructure included in the original water right may be included in the historical use. Please describe the watering system that was in place on or prior to when the water right was Decreed.

The historical operation was just a ½ hp pump, pumped directly into water tank at the well head with a 6 foot pipeline. It pumped 15 gallons per minute.

From: [Strebeck, Cassey](#)
To: [quentinrumph@gmail.com](#); [DebraHayes1@outlook.com](#)
Cc: [Elison, Mark](#); [Schweigert, Christine](#); [Corbett, Veronica](#)
Subject: FW: Maps and Deficiencies for Water Right 42J 772-00
Date: Wednesday, November 6, 2024 4:49:00 PM
Attachments: [image001.png](#)
[Hayes - 42J 30164475 - Historical.pdf](#)
[Hayes and State Land - Proposed.pdf](#)
[Hayes For Email.docx](#)
[image002.png](#)
[image003.png](#)
[image006.png](#)
[image004.png](#)
[image005.png](#)

Mr. Rumph,

My apologies - you were correct, I left out the website to help you find all of the geocodes.

<https://svc.mt.gov/msl/cadastral/?page=Map>

On the left side, select **Owner**.

Then input the following information.

County: **Powder River**

Owner Name: **Hayes Debra**

Then the **search** button.

All of the geocodes assigned to Ms. Hayes' property will be listed on the left side.

If you select **ADD ALL RESULTS TO MAP**, it will show you all of the properties on the map.

Then, find the location of the stock tanks using their legal land description.

They will be in/about: **8S 50E**.

Select the coordinated parcel on the left or on the map.

I sometimes have issues when selecting on the map, and just use the list on the left.

The parcel information and geocode will appear on the right.

Screenshots below for guidance.

In my last screenshot, I selected 8S 50E Section 2, where the well is located.

I highlighted it's geocode on the left and right.

Also, I noticed that Debra Hayes and Quentin Rumph are listed as owners of the property.

Am I correct to assume that you both own the land?

Talk to you soon,

Cassey

MONTANA STATE LIBRARY

Map Data Sources User Guide Feedback

New Search

21 result(s) found [ADD ALL RESULTS TO MAP](#)

Geocode: 09-0303-02-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-03-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-04-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-09-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-10-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L


Geocode: 09-0303-11-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-12-2-02-02-0000
Address: 31 BALDY PEAK RD BIDDLE, MT 59314
Owner: HAYES DEBRA L

Geocode: 09-0304-06-2-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0304-07-3-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0304-18-1-01-01-0000



The BLUE squares are State Lands.
The YELLOW are BLM.

MONTANA STATE LIBRARY

Map Data Sources User Guide Feedback

Montana Cadastral

1 of 1

09-0303-02-1-01-01-0000

11 result(s) found [ADD ALL RESULTS TO MAP](#)

Geocode: 09-0303-02-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-03-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-04-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-09-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-10-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

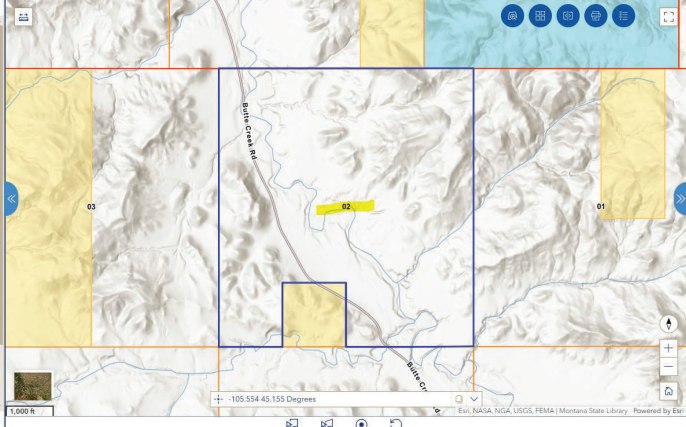
Geocode: 09-0303-11-1-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0303-12-2-02-02-0000
Address: 31 BALDY PEAK RD BIDDLE, MT 59314
Owner: HAYES DEBRA L

Geocode: 09-0304-06-2-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0304-07-3-01-01-0000
Address: N/A
Owner: HAYES DEBRA L

Geocode: 09-0304-18-1-01-01-0000



PROPERTY INFORMATION

Property: N/A
Address: N/A
Geocode: 09-0303-02-1-01-01-0000
Tax Year: 2024

Summary

Primary Information

Property Category: RP Subcategory: Agricultural and Timber Properties
Geocode: 09-0303-02-1-01-01-0000 Assessment Code: 0001321991
Primary Owner: HAYES DEBRA L Property Address: RUMPH QUENTIN MAIL TO: BIDDLE, MT 59314
Certificate of Survey: Legal Description: 001 S, R20 E, R4BRL
Last Modified: 10/18/2024 7:25:2 AM

General Property Information

Neighborhood: 209.001 Property Type: VAC, R-1
Living Units: 0 Vacant Land: Rural
Levy District: 09 0092-6/EDFD
Zoning: Ownership: 100%

From: Strebeck, Cassey
Sent: Wednesday, November 6, 2024 3:13 PM
To: quentinrumph@gmail.com; DebraLHayes1@outlook.com
Cc: Elison, Mark <MElison@mt.gov>; Schweigert, Christine <CSchweigert@mt.gov>; Corbett, Veronica <Veronica.Corbett@mt.gov>
Subject: Maps and Deficiencies for Water Right 42J 772-00

Mr. Rumph,



Billings Regional Office
1371 Rimtop Dr, Billings, MT 59105
DESK: 406-247-4422 **EMAIL:** cassey.strebeck@mt.gov
[Website](#) | [Facebook](#) | [X \(Twitter\)](#) | [Instagram](#)
How did we do? Let us know here: [Feedback Survey](#)

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Water Resources Division • Billings Regional Office

1371 Rintop Drive, Billings, MT 59105 Phone: (406) 247-4415 Fax: (406) 247-4416



GREG GIANFORTE, GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2074
FAX: (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

October 29, 2024

Debra L. Hayes
1093 Three Runs Plantation Drive
Aiken, SC 29803

Subject: Deficiency letter for Change Application No. 42J - 30164475

Dear Applicant,

The Department of Natural Resources and Conservation (DNRC or Department) has begun reviewing your application. This letter is to notify you of the deficiencies in your application as required in ARM 36.12.1501(1) and §85-2-302(5)(b), MCA. An Applicant is required to submit substantial and credible information addressing the rules and statutes that are relative to your application. You must provide the information specified below for your application to be considered correct and complete. "Correct and complete" means all of the information provided is substantial and credible and provides all of the information as required by applicable rules and statutes. The application as submitted contains deficiencies in the following section(s):

ST.1 APPLICATION DETAILS – ARM 36.12.1305

ST.1.B ☐ How many stock tanks do you wish to add through this change?

You state that you propose to add 2 tanks, however only one is on the maps provided with the application, and per my phone conversation with Mr. Rumph, at least 5 additional tanks are moving westward that are not included in Powder River Declaration 42J 772-00. Powder River Declaration 42J 772-00 has one well, one 6-foot pipeline, and one stock tank, 12 feet in diameter with a 2-foot depth. Any wells, pipelines, and stock tanks added, or any other changes made after this water right first was put to use are considered Proposed Use and should be included in this application.

ST.1.E ☐ Place of Use – GEOCODE:

Please provide geocodes for the parcel location of each stock tank or proposed place of use.

☐ Place of Use – LEGAL LAND DESCRIPTION:

Please provide the legal land description for each stock tank or proposed place of use.

ST.1.F ☐ Attach a narrative explaining specific details of the requested change to the water right(s) and why it is being requested. Please label attachment ST.1F Application Details.

Please attach a narrative explaining the proposed changes to this water right, including the

location of all pipelines and stock tanks which may be added through this change.

ST.1.G ☐ Are you proposing to change all of the water right(s) associated with the place of use? If no, attach an explanation of why not and how those rights will be operated to ensure no increase in use. Please label attachment ST.1.G Application Details.

The boxes for “yes” and “no” are both selected. Please clarify the answer. If No, please attach an explanation of why not and how those rights will be operated to ensure no increase in use.

ST.2 ADEQUATE DIVERSION MEANS AND OPERATION – ARM 36.12.1904

ST.2.B ☐ Identify the flow rate you will be diverting.

Your application states that you will be diverting 6 GPM. Can you explain why this differs from what is stated on the Water Right Abstract?

ST.2.C ☐ How was the diverted flow rate determined?

Please explain how the diverted flow rate was determined and how this method is adequate.

ST.2.D ☐ Provide evidence to show that the flow rate will be adequate for the proposed system. Please label attachment ST.2.D Adequate Diversion Means and Operation.

A General Abstract cannot justify that the pump system meets the needs of a pipeline extension. Please provide substantial evidence for how the diversion / pump system will adequately meet the needs of the proposed conveyance system. You may do this as a hand-drawn diagram if preferred, but you may be able to request a schematic from the persons who installed the infrastructure.

ST.2.F ☐ Provide design plans for the proposed stock tank system from the point of diversion to the place of use (tanks). Include pump information, pipe size, pipe length, pipe material, any valves or booster pumps used, depth pipeline will be buried, etc. Please label the attachment ST.2.F Adequate Diversion Means and Operation.

Please provide the system design for all infrastructure added after the water right was Decreed.

ST.3 MAP- ARM 36.12.111

ST.3A ☐ Provide a map or maps depicting the historical and proposed water system.

Aerial photos may be available from DNRC, NRIS, NRCS, USGS, or other sources. Depending on the size of the project, one map showing all items listed below may be acceptable. If using one map, be sure to indicate which tanks are currently authorized and which tanks are being added via this change. As previously mentioned, all pipelines and stock tanks not listed on the original water right must be included as part of the proposed changes.

☐ **Historical** – Infrastructure as the water right was Decreed

- ☐ Note the section corners, township, range, and add a north arrow to the map
- ☐ Identify the historical point of diversion
- ☐ Identify the historical means of conveyance (well, ditch, pump, pipeline)
- ☐ Identify historical stock tank locations

☐ **Proposed** – Infrastructure added after the water right was Decreed

- ☐ Note the section corners, township, range, and add a north arrow to the map
- ☐ Identify the proposed point of diversion
- ☐ Identify the proposed means of conveyance

- ☐ Identify the proposed place of use
- ☐ Additionally, label the historical and proposed conveyance and tanks appropriately. For example, historical pipeline, proposed pipeline, historical tank 1, proposed tank 1, proposed tank 2, proposed tank 3, etc. You may abbreviate, so long as it is clear which is historical, and which is proposed. For example, the historical pipeline could be HP, the historical stock tank could be HST, and the proposed stock tanks could be PST1, PST2, PST3, etc. You may do this with a hand-drawn illustration, over a printed aerial map.

ST.4 HISTORICAL USE - ARM 36.12.1902

ST.4.B ☐ What is the historical diverted flow rate of your stock watering system?

Your application states 6 GPM for the historical flow rate. Please explain why this differs from the flow rate Decreed for this water right, as listed on the water right General Abstract. Please explain what "line" you are referring to when referencing the flow rate.

ST.4.D ☐ Attach a description of the historical operation of the stock watering system. Include information on diversion operation, means of conveyance (size, type), booster pumps, and any control structures such as valves, discharge piping, etc. Please label attachment ST.4.D Historical Use.

As mentioned previously, only the infrastructure included in the original water right may be included in the historical use. Please describe the watering system that was in place on or prior to when the water right was Decreed.

As stated above, the information submitted to address the rules and statutes listed in this deficiency letter must be substantial credible information to be acceptable at the correct and complete determination. §§85-2-102 (9) and (26), MCA.

Please submit the information specified above to the Billings Regional Office by **02/26/2025**. This is the only deficiency letter that will be sent. An application not corrected or completed within 120 days from the date of this letter is terminated per ARM 36.12.1501(2) and §85-2-302(6)(a), MCA. If you have any questions, please call me at (406)-247-4422 or email me at Cassey.Strebeck@mt.gov.

Sincerely,



Cassey Strebeck
Water Resource Specialist
Billings Regional Office, Montana DNRC
Cassey.Strebeck@MT.Gov
406-247-4422

IMPORTANT NOTICE: This will be the final opportunity for you to provide the required information to the Department. If all of the requested information in this letter is not postmarked or submitted within 120 days of this letter, the application will be terminated within 30 days and the application fee will not be refunded.



606-ST: APPLICATION TO CHANGE A WATER RIGHT Additional Stock Tanks

Complete this form to add stock tanks to a water right, move existing stock tanks, or change to stock tanks from an instream direct water right. This form can only be used for water rights which have an existing stock purpose listed.

FILING FEE \$400.00

This form cannot be used if the amount of water diverted from the source or the number of animal units will be increased.

RECEIVED

SEP 16 2024

DNRC-WRD-BILLINGS

FOR DEPARTMENT USE ONLY

Application No. 30164475 Basin 42J
 Date Received SW
 Time 14:02 AM / PM
 Rec'd by SW
 Fee Rec'd \$ 400.00 Check No. 2195
 Deposit Receipt # 8LS2503667
 Payor (if different from Applicant name(s))
Debra L. Hayes.
 Refund \$ _____ Date _____

Applicant Name Debra L. Hayes - 426339
 Mailing Address 1093 Three Runs Plantation Drive City Aiken State SC Zip 29803
 Phone Numbers: Home _____ Work _____ Cell 303-921-1412
 Email Address _____

Contact Person: ☒ Contact is Applicant ☐ Contact is Consultant ☐ Contact is Attorney ☐ Contact is Other

Contact Name _____
 Mailing Address _____ City _____ State _____ Zip _____
 Phone Numbers: Home _____ Work _____ Cell _____
 Email Address _____

NOTE: If a contact person is identified as an attorney, all communication will be sent only to the attorney unless the attorney provides written instruction to the contrary. If a contact person is identified as a consultant, employee, or lessee, the individual filing the water right form or objection form will receive all correspondence and a copy may be sent to the contact person.

CHANGE APPLICATION INFORMATION

This application may only be used for the following:

- A change to allow stock tanks to be added to a livestock direct from source right which does not increase the livestock use. The maximum allowable flow rate for this change will be 35 GPM.
- A change which adds additional stock tanks to an existing stock watering system and does not increase historical use.
- A change which moves stock tank locations on an existing stock watering system and does not increase historical use.

If you are adding a stock tank rather than having the animals drink from the source, you can divert water to the tank, but the diversion must shut off when the tank is full. If you will not have an automatic shut off on the tank, overflow water must be immediately directed back to the source.

If you are increasing the number of animal units using the stock watering system, please consult your regional Water Resources Office on how to proceed.

You must provide a written notice of the application to each owner of an appropriation right sharing the point of diversion or means of conveyance (canal, ditch, flume, pipeline, or other constructed waterway).

- Have you sent this notice? ☒ N/A ☐ Yes ☐ No If no, your application cannot be deemed correct and complete until you have sent the notice. § 85-2-302 (4)(c), MCA

ST.1 APPLICATION DETAILS

ST.1.A Identify the water right number(s) proposed for change:

42J 772-00

If you do not have a DNRC water right number, you may have an existing exempt water use. Water for stock use from groundwater sources (well or developed spring) or drinking directly from a surface water source were exempt from the general adjudication filing requirements for claims of existing water rights if they met either of the following criteria:

- For wells, the water was put to use prior to January 1, 1962, or if water was put to use between January 1, 1962, and July 1, 1973, and a notice was filed in the courthouse records.
- For stock drinking directly from the source, the water was put to use prior to July 1, 1973.

If your stock use meets one of the above criteria, complete this form and a Non-Filed Water Project Addendum. The addendum can be obtained from the DNRC Website. <http://www.dnrc.mt.gov/wrd/>. If your use does not meet these criteria, call the regional office serving your area.

ST.1.B How many stock tanks do you wish to add through this change? 2 - 1 on school section

ST.1.C Will the existing place of use continue to be used? yes

ST.1.D What are the number and type of stock that will be watered on the proposed stock watering system?

50 Type Cows/Calves # 50 Type calves # _____ Type _____

ST.1.E Place of Use: Please provide the following:

GEOCODE(S) of the place of use (17 digits) 09-0303-02-1-01-0000-9

If there are multiple places of use, list the geocode for each parcel on an attached sheet. The geocodes can be found at the County Clerk and Recorder's Office or by visiting <http://svc.mt.gov/msl/mtcadastral>.

LEGAL LAND DESCRIPTION: Include additional places of use on a separate sheet.

NE 1/4 SE 1/4 SW 1/4 Sec 36 Twp 7 N/S Rge 50 E/W County Powder River
____ 1/4 ____ 1/4 ____ 1/4 Sec ____ Twp ____ N/S Rge ____ E/W County ____
____ 1/4 ____ 1/4 ____ 1/4 Sec ____ Twp ____ N/S Rge ____ E/W County ____

ST.1.F Attach a narrative explaining specific details of the requested change to the water right(s) and why it is being requested. Please label attachment **ST.1.F Application Details**.

ST.1.G ☒ Yes ☒ No Are you proposing to change all of the water right(s) associated with the place of use? If no, attach an explanation of why not and how those rights will be operated to ensure no increase in use. Please label attachment **ST.1.G Application Details**.

ST.1.H ☒ Yes ☐ No Are you proposing to add stock tanks on State of Montana school trust land? If yes, you must include a copy of written approval from DNRC Trust Lands Management Division. A change authorization to add stock tanks on school trust land will be temporary for the duration of the lease term. Throughout this application, make clear which tanks are on school trust land. You may use the same application to add permanent stock tanks on private land and temporary stock tanks on school trust land.

ST.2 ADEQUATE DIVERSION MEANS AND OPERATION

ST.2.A How will water be diverted from the source?

☒ Well ☒ Pump ☐ Gravity Flow ☐ Other Pipeline

ST.2.B Identify the flow rate you will be diverting: 100 GPM

ST.2.C How was the diverted flow rate determined? Owner/DNRC
well log & pump determined by pump flow

ST.2.D Provide evidence to show that the flow rate will be adequate for the new/proposed system. Please label attachment **ST.2.D Adequate Diversion Means and Operation**. General Abstract

ST.2.E ☒ Yes ☐ No Will a pipeline be used to convey water to the new tanks? If no, please explain the new means of conveyance. _____

ST.2.F Provide design plans for the proposed stock tank system from the point of diversion to the place of use (tanks). Include pump information, pipe size, pipe length, pipe material, any valves or booster pumps used, depth pipelines will be buried, etc. Please label the attachment **ST.2.F Adequate Diversion Means and Operation**.

ST.3 MAP

ST.3.A Provide a map or maps depicting the historical and proposed water system. Aerial photos may be available from DNRC, NRIS, NRCS, USGS, or other sources. Depending on the size of the project, one map showing all items listed below may be acceptable. If using one map, be sure to indicate which tanks are currently authorized and which tanks are being added via this change.

- Note the section corners, township, range, and add a north arrow to the map for all maps submitted.
- Historical Use - for each water right being changed, provide a map depicting the historical point(s) of diversion, means of conveyance, and stock tank locations.
- Proposed Use - provide a map which clearly identifies the proposed point(s) of diversion, means of conveyance, and stock tanks which are being added via this change. For partial changes, the map should reflect the entire water right including the proposed change and the remaining historical use.

ST.4 HISTORICAL USE

Historical diverted volume will be calculated using DNRC standards for the right(s) to be changed.

ST.4.A What is the historical number and type of livestock served under the water right(s) to be changed?

50 Type Cows/Calves # 50 Type calves # _____ Type _____

ST.4.B What is the historical diverted flow rate of your stock watering system? for well 6 GPM

ST.4.C How was the flow rate determined? pump flow and pressure
for this pipe line

ST.4.D Attach a description of the historical operation of the stock watering system. Include information on diversion operation, means of conveyance (size, type), booster pumps, and any control structures such as valves, discharge piping, etc. Please label attachment **ST.4.D Historical Use**

ST.5 ADVERSE EFFECT

ST.5.A ☒ Yes ☐ No Will float or shut off valves be used to control flow into the new tank(s)? If yes, attach information on what types of valves will be used and where they will be located. Please label attachment **ST.5.A Adverse Effect**.

ST.5.B If no, how will flow into the tanks be controlled? _____

ST.5.C Attach an explanation of how your diversion can be controlled to not create an adverse effect to existing water users on the source. Please label attachment **ST.5.B Adverse Effect**.

ST.6 SAGE GROUSE HABITAT PROJECT REVIEW

Required if the diversion and/or place of use are located within an area designated as sage grouse habitat, (<https://sagegrouse.mt.gov>).

ST.7 PROJECT COMPLETION

The Department will assign 3 years for completion of the project unless the application states otherwise. If you wish to have a different project completion period, provide an attachment that identifies the time period requested for project completion and an explanation of why this time period is necessary. Please label attachment **ST.7.A Project Completion**. If you are unable to complete the project within the time assigned, you may apply for an Extension of Time.

ST.8 AFFIDAVIT & CERTIFICATION

All undivided interest owners must sign as applicants. Read carefully before you sign and review with legal counsel if you have any questions.

I affirm the information provided for this application is to the best of my knowledge true and correct. I also affirm I have 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.

I understand that making a false statement under oath or affirmation in this application and official proceedings throughout the examination of my application may subject me to prosecution under §45-7-202, MCA, a misdemeanor punishable by a jail term not to exceed 6 months or a fine not to exceed \$500, or both. I have read this Affidavit and understand the terms and conditions.

I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

Printed Name _____
Applicant Signature Debra L Hayes Date: 8/25/24
Printed Name _____
Applicant Signature _____ Date: _____

WATER RESOURCES OFFICES

Billings:	1371 RIMTOP DR., BILLINGS MT 59105-1978 PHONE: 406-247-4415 FAX: 406-247-4416 EMAIL: DNRCBillingsWater@mt.gov SERVING: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, and Yellowstone Counties	Helena:	1424 9TH AVE., PO BOX 201601, HELENA MT 59620-1601 PHONE: 406-444-6999 FAX: 406-444-9317 EMAIL: DNRCHelenaWater@mt.gov SERVING: Beaverhead, Broadwater, Deer Lodge, Jefferson, Lewis and Clark, Powell, and Silver Bow Counties
Bozeman:	2273 BOOT HILL COURT, SUITE 110, BOZEMAN MT 59715 PHONE: 406-586-3136 FAX: 406-587-9726 EMAIL: DNRCBozemanWater@mt.gov SERVING: Gallatin, Madison, and Park Counties	Kalispell:	655 TIMBERWOLF PARKWAY, SUITE 4, KALISPELL MT 59901-1215 PHONE: 406-752-2288 FAX: 406-752-2843 EMAIL: DNRCKalispellWater@mt.gov SERVING: Flathead, Lake, Lincoln, and Sanders Counties
Glasgow:	222 6TH STREET SOUTH, PO BOX 1269, GLASGOW MT 59230-1269 PHONE: 406-228-2561 FAX: 406-228-8706 Email: DNRCGlasgowWater@mt.gov SERVING: Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, and Wibaux Counties	Lewistown:	613 NORTHEAST MAIN ST., SUITE E, LEWISTOWN MT 59457-2020 PHONE: 406-538-7459 FAX: 406-538-7089 EMAIL: DNRCLewistownWater@mt.gov SERVING: Cascade, Fergus, Golden Valley, Judith Basin, Meagher, Musselshell, Petroleum, and Wheatland Counties
Havre:	210 6TH AVENUE, PO BOX 1828, HAVRE MT 59501-1828 PHONE: 406-265-5516 FAX: 406-265-2225 EMAIL: DNRCHavreWater@mt.gov SERVING: Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties	Missoula:	2705 SPURGIN RD., BLDG. C, PO BOX 5004, MISSOULA MT 59806-5004 PHONE: 406-721-4284 FAX: 406-542-5889 EMAIL: DNRCMissoulaWater@mt.gov SERVING: Granite, Mineral, Missoula, and Ravalli Counties

Attached Narrative

ST.1.F: The purpose of this application for the extending of a pipeline from an existing well, with the inclusion of two tanks. There exist in this pasture, a current tank on the same pipeline, a spring fed reservoir and a spring fed tank. These will not be changed, as this pipeline will be independent of these, and merely an extension of the pipeline currently in place. The existing well will not be altered from the state it is in at this time.

The reason for this extension and added tanks is to provide water to areas of pasture that now do not have adequate water supply. Reservoir and springs have dried significantly with drought and no longer are adequate for watering cattle or other animals.

ST.2.F Adequate Diversion Means and Operations: See attached diagram. Pipe size: 1 ¼". Length of pipe: 2 miles. Pipe material: poly. Valves: 6" and 12" brass Roberts. Float: Universal Rubber float. Depth of Pipeline is 3.5 ft.

ST.4.D Historical Use: See attached diagrams.

ST.5.Adverse Effect: Each tank will have valve and float to regulate the flow into tank so overflow does not happen. Tank farthest from well will be last one to fill.

ST.5.C Diversion is controlled by floats on tank and shut off valve, which will send flow to next tank.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 42J 772-00 POWDER RIVER DECLARATION

Version: 1 -- ORIGINAL RIGHT

Version Status: ACTIVE

Owners: DEBRA L HAYES
1093 THREE RUNS PLANTATION DR
AIKEN, SC 29803-1237

Priority Date: DECEMBER 31, 1943

Enforceable Priority Date: DECEMBER 31, 1943

Purpose (Use): STOCK

Maximum Flow Rate: 15.00 GPM

Maximum Volume: 1.50 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENW	2	8S	50E	POWDER RIVER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Well Depth: 80.00 FEET

Pump Size: 0.50 HP

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSENW	2	8S	50E	POWDER RIVER

Geocodes/Valid: 09-0303-02-1-01-01-0000 - Y

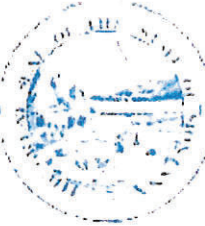
Remarks:

OWNERSHIP UPDATE RECEIVED

OWNERSHIP UPDATE TYPE 608 # 213814 RECEIVED 01/11/2021.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Trust Lands Management Division



GREG GIANFORTE, GOVERNOR

1589 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2974
FAX: (406) 444-2644

PO BOX 201601
HELENA, MONTANA 59620-1601

Montana Department of Natural Resources and Conservation
Trust Lands Management Division
Authorization for Temporary Change in Appropriation Right
Consent Form

The lessee proposes to obtain a temporary change in appropriation right to use the lessee's water right(s) on school trust land for the duration of the State Lease 827; lease term beginning March 1, 2021 and ending Feb 28, 2031, pursuant to §§ 85-2-407 and -441, MCA.

Information about the water right proposed for temporary use on state trust land:

Water Right: 42J 772-00

Means of diversion ☒ well
☐ developed spring

Point of diversion:

Place of use:

Purpose of use:

Information regarding proposed purpose of use/place of use:

☐ Irrigation: _____ acres of State Trust Land
_____ acres of Non-Trust Land

☒ Stock/Stock Tanks: 1 tanks on State Trust Land
_____ tanks on Non-Trust Land

☐ Industrial/commercial

☐ Other (describe _____)

☐ Attach map depicting proposed point of diversion, place of use, location of stock tanks, acres irrigated, etc.

TLMD authorizes the lessee to obtain a temporary change in appropriation right to use the lessee's water right described herein on school trust land for the duration of State Lease 827 pursuant to §§ 85-2-407 and -441, MCA. TLMD does not assert an ownership or co-ownership interest in the water right being temporarily changed. Temporary use of the lessee's water right on the state trust land is not an improvement subject to 77-6-301, MCA, and ARM 36.25.125. Authorization is only for the term of the lease and must be re-applied for at the time of lease renewal.

This approval is made upon the express condition that the lessee shall assume all liability for any injury, property damage or loss by any persons, including such loss to any employee or property of lessee, its agents, or third persons, or to the lessee, from any cause or causes arising from placing the above-described water right on state land. Lessee shall indemnify lessor and save, protect, defend, and hold lessor harmless from any and all liability, loss, damage, expense (including legal expenses and reasonable attorney fees), causes of action, suits, claims or judgments arising from injury to person or property or resulting from or based upon lessor's ownership of the property, which is the subject of this lease, from any cause or causes arising from using the above-described water right on state land, and shall, at lessee's own cost and expense, defend any and all suits which may be brought against lessor, either alone or in conjunction with others, upon any such liability or claim(s). Lessee shall satisfy, pay and discharge any and all judgments and fines that may be recovered against lessor in any such action(s).

Debra L Hayes
Lessee Signature

8/1/24
Dated

Lessee Signature

Dated

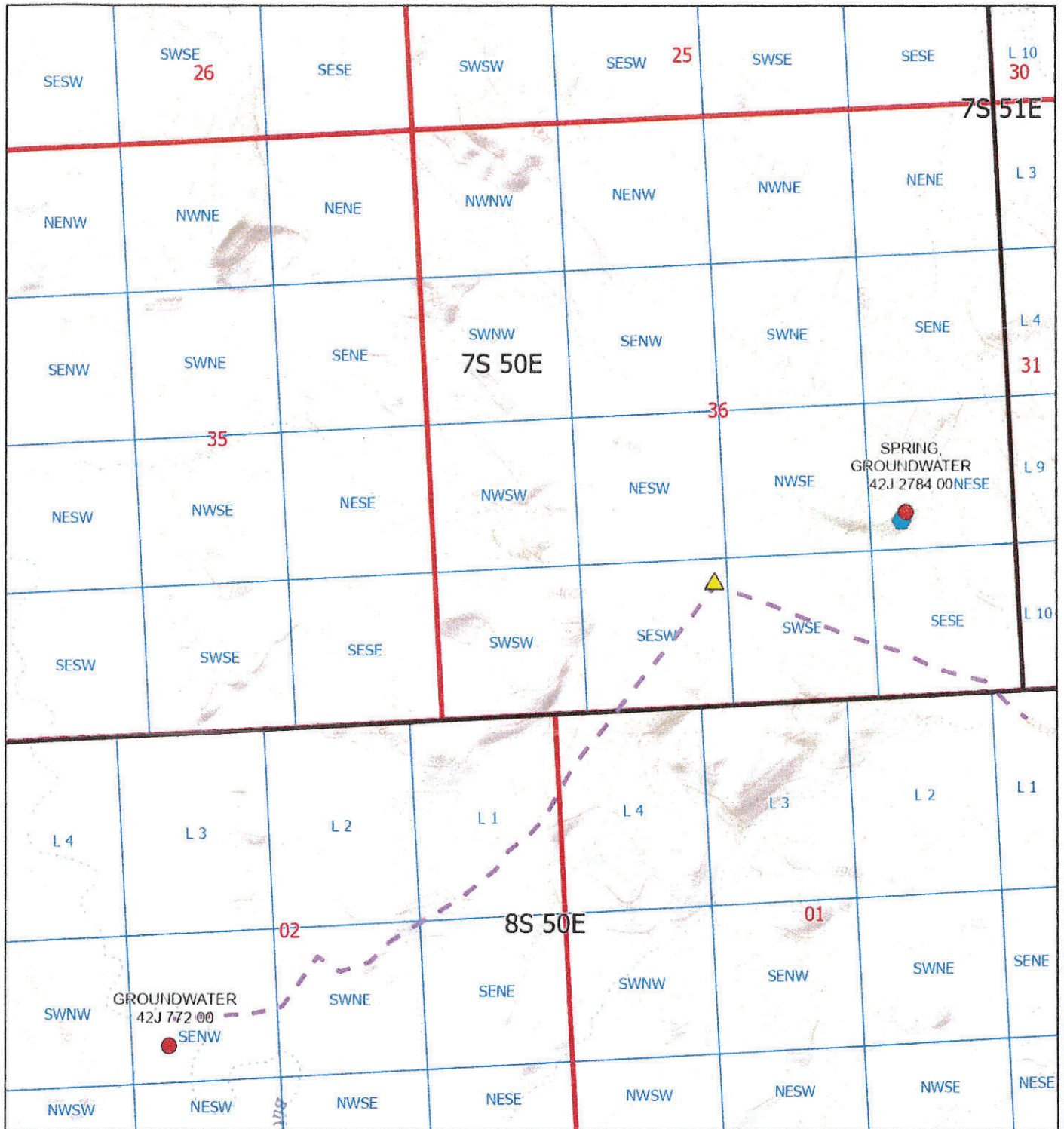
Ann Kuehler LUS
DNRC Area/Unit Office Approval

8/5/24
Dated

Elizabeth M Miller
DNRC AG & Grazing Bureau Approval

8/2/2024
Dated

Water Right 42J 772-00 with Temporary Change in Appropriation Overview



Legend

- Point Of Diversion
- Existing Tank
- ▲ Proposed Tank
- Proposed Pipeline
- Township
- Sections
- Quarters



Scale: 1:15,000

0 0.25 0.5 Miles

Map for reference only

GPS accuracy 10 m

26

25



35



36

Stockwater Tank Spring development

Stockwater Tank

Water Well

02

01



GPS accuracy 15.9 ft

