

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

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**APPLICATION FOR BENEFICIAL WATER )  
USE PERMIT NO. 42L 30165296 BY FALLON ) DRAFT PRELIMINARY DETERMINATION  
COUNTY ) TO GRANT PERMIT**

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On October 8, 2025, Fallon County (Applicant) submitted Application for Beneficial Water Use Permit No. 42L 30165296 to the Billings Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) for 200 gallons per minute (GPM) and 80.45 acre-feet (AF) for irrigation. The Department published receipt of the application on its website. The Department sent the Applicant a deficiency letter under § 85-2-302, Montana Code Annotated (MCA), dated October 30, 2025. The Applicant responded with information dated December 3, 2025. A preapplication meeting was held between the Department and the Applicant on February 4, 2025, in which the Applicant designated that the technical analyses for this application would be completed by the Department. The Applicant returned the completed Preapplication Checklist on February 13, 2025. The Department delivered the Department-completed Technical Analyses on April 15, 2025. The application was determined to be correct and complete as of January 2, 2026. An Environmental Assessment for this application was completed on February 10, 2026.

**INFORMATION**

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

**Application as filed:**

- Application for Beneficial Water Use Permit, Form 600
- Addenda:
  - Reservoir/ Place of Storage Addendum, Form 600-SA
- Attachments:
  - Letter from Montana Sage Grouse Habitat Conservation Program dated January 10, 2025
  - Four undated photos showing manufacturer plates for pump and motor located at the proposed point of diversion (POD)

- Data Sheet for Cornell 3RB-CC pump showing a maximum pumping capacity of 710 GPM
- Pages 1, 2, and 14 of 41 of Construction Plans for City of Baker Wastewater Treatment Facility Expansion Baker, Montana dated June 2014 showing (pg. 1) project vicinity of Lagoon Cell 3 (source of water for proposed appropriation), (pg. 2) quantities and design criteria for existing and proposed lagoon cells, and (pg. 3) undated aerial imagery showing existing lagoon cells 1-3 and proposed Lagoon Cell (unnumbered)
- Six pages (unnumbered, double-sided), information sheets on Super T Series Self-Priming Solids-Handling Trash Pumps labeled “Future Pump” with a pump curve showing a pumping capability above the requested 200 GPM
- Ten pages of engineering plans titled Lakeview Country Club Pond, Fallon County, Montana, dated January 13, 2025, detailing the proposed intake from Lagoon Cell 3, inlet to the Golf Course Pond, Golf Course Pond liner, overflow piping, and bathymetry of Golf Course Pond
- Five pages (unnumbered, double-sided), design drawings titled Fallon County Golf Course, Baker, Montana, Automatic Pumping Station With Jockey Pump Plumbing and Electrical Details designed by Frank Hummel, Greeley, Colorado 1982, showing the Golf Course Pond pumping station, sprinkler transition, pump panel wiring schematic, outlet structure detail, and wet well detail
- Undated aerial imagery overlain with sprinkler layout and buffer zones, as well as the proposed place of use (POU) property boundary and the Golf Course Pond
- Copy of the City of Baker-Fallon County lease/contract titled An Agreement for the Operation of a Golf Course Irrigation Line dated July 18, 2013
- Copy of a Pipeline Easement titled 59075 Easement and Right-of-Way, where Howard O’Laughlin grants to Fallon County, Montana, an easement and right-of-way for the purpose of laying a water line through the SWSE Sec. 14, T7N, R59E, Fallon County, to connect the City of Baker sewer lagoon system with the Municipal Golf Course, dated April 30, 1990
- Copy of a Pipeline Easement titled 59186 Easement and Right-of-Way, where Gunderson Farms Inc. grants to Fallon County, Montana, an easement and right-of-way for the purpose of laying a water line through the NENE Sec. 23, T7N,

R59E, Fallon County, to connect the City of Baker sewer lagoon system with the Municipal Golf Course dated April 25, 1990

- Copy of the Pipeline Easement titled 59187 Easement and Right-of-Way, where Ida Wild grants to Fallon County, Montana, an easement and right-of-way for the purpose of laying a water line through the NWNW Sec. 24, T7N, R59E, Fallon County, to connect the City of Baker sewer lagoon system with the Municipal Golf Course, dated April 25, 1990
- Copy of the Pipeline Easement titled Doc # 0105911 Easement and Right-of-Way, where Allan and Ruth Wang grant to Fallon County, Montana, an easement and right-of-way for the purpose of laying a water line through the SWNW and the SW of Sec. 14, T7N, R59E, Fallon County, to connect the City of Baker sewer lagoon system with the Municipal Golf Course dated March 27, 1990
- Copy of the Recreation Easement titled 37913 Recreation Easement, where the City of Baker grants to the County of Fallon, State of Montana, for public use, an easement and right-of-way for the purpose of establishing, building, and maintaining a recreation area dated February 1, 1983, containing two tracts of land; one in the NE of Sec. 24, T7N, R59E, and the other in the SE of Sec. 13, T7N, R59E, Fallon County
- City Lagoon Deed number 122326, where Verne R. Hitchcock and Ella D. Hitchcock grant the City of Baker land in the S2SW Sec. 11, T7N, R59E, Fallon County, dated June 25, 1956, where a portion of the wastewater treatment facility for the City of Baker is now located
- City Lagoon Deed number 1995, where Verne R. Hitchcock and Ella D. Hitchcock grant the City of Baker land in the S2SE Sec. 10 and the S2SW Sec. 11, T7N, R59E, Fallon County, dated February 1, 1966, where a portion of the wastewater treatment facility for the City of Baker is now located.
- 1995 Plat of the Hitchcock to City of Baker Tract, Fallon County, Montana Book 51, page 233 dated January 18, 1966
- City Lagoon Deed number 53772, where Verne R. Hitchcock and Ella D. Hitchcock grant the City of Baker land in the SESE Sec. 10, T7N, R59E, Fallon County, dated December 2, 1987, where a portion of the wastewater treatment facility for the City of Baker is now located

- City Lagoon Deed number 121365, where Mrs. Gretchen Mengel grants to the City of Baker 40 acres of land in the SESE Sec. 10, SWSW and SESW Sec. 11, T7N, R59E, Fallon County, dated October 23, 1953, where a portion of the wastewater treatment facility for the City of Baker is now located
- Plat number 121366 showing parcel of land from Mengel to City of Baker, Book 40, page 300, dated October 16, 1953
- Spreadsheet titled Lakeview Country Club System Head Characteristics with highlighted rows indicating a 200 GPM flow rate with 90 linear feet of 8-inch suction pipe with a suction head of 12.17 ft; and 2,200 linear feet of 6-inch discharge pipe with a discharge head of 118.5 ft. Total head is 137.67 ft.
- Spreadsheet titled Lakeview Country Club Transfer Pump 1 – Suction Side highlighted rows indicating a 200 GPM flow rate through 8-inch pipe with 12.17 Total Hf feet
- Spreadsheet titled Lakeview Country Club Transfer Pump – Discharge Side highlighted rows indicating a 200 GPM flow rate through 6-inch pipe with 114.93 Total Hf feet
- Maps:
  - Topographic map showing proposed POD, conveyance pipeline location, and proposed POU
  - Undated aerial image overlain with property boundary line, acres proposed for irrigation, place of storage, and existing wells.
- Department- completed technical analyses based on information provided in the Preapplication Checklist, Form 600P, dated April 15, 2025

Information Received after Application Filed

- Letter from Applicant’s Consultant, Shannon Hewson, PE of Brosz Engineering, to DNRC, dated November 17, 2025, Re: Deficiency Letter for Beneficial Water Use Permit Application No. 42L 30165296 (Fallon County), received by DNRC on December 3, 2025

Information within the Department’s Possession/Knowledge

- Request for Preapplication Meeting received by DNRC July 15, 2025
- Preapplication Meeting Form Permit, Form 600P, received by DNRC February 13, 2025, for preapplication meeting held February 4, 2025

- Letter from Department Water Resource Specialist Veronica Corbett to Applicant, Fallon County, dated March 4, 2025, Re: Incomplete Preapplication for Beneficial Water Use Permit Application No. 42L 30165296
- Email chain between Department Hydrologist Christine Schweigert and Applicant's consultant Shannon Hewson, dated May 6, 2024, through June 18, 2024, Re: water source measurement records
- Email attachments from Applicant's consultant Shannon Hewson to Department Hydrologist Christine Schweigert, June 18, 2024
  - Main Lift Flows Excel spreadsheet showing daily pump run times for the period from January 1, 2023, through December 31, 2023, as well as total annual water volume produced based on run times and flow rate, lagoon surface area, average annual rainfall, average annual evaporation, total annual evaporation, and total available water estimate
  - Quantities and Design Criteria for City of Baker Wastewater Treatment Facility Expansion design sheets by Brosz Engineering, which include dimensions for existing Lagoon Cell 3
  - Baker Main Lift Pumps design drawing, shipping information sheet, and submersible motor manufacturer name plate
- Montana Department of Environmental Quality (DEQ) Authorization Number MTG580029 under the Montana Pollutant Discharge Elimination System (MPDES) General Permit for Domestic Sewage Treatment Lagoons – Batch and Non-Discharging Facilities – Baker Wastewater Treatment Facility (WWTF), dated December 13, 2022.
- The Department also routinely considers the following information. The following information is not included in the administrative file for this application but is available upon request. Please contact the Billings Regional Office at 406-247-4419 to request copies of the following documents.
  - DNRC Water Right Information System (WRIS)
  - National Hydrography Dataset (NHD)
  - Montana DNRC Permit Manual, February 2025
  - Department Standard Practice for Determining Physical Availability of Water
  - Department Standard Practice for Area of Potential Impact Analysis
  - DNRC Technical Memorandum: Pond and Wetland Evaporation/Evapotranspiration, dated June 7, 2023

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

For the purposes of this document, Department or DNRC means the Department of Natural Resources & Conservation; AC means acres; AF means acre-feet; AF/YR means acre-feet per year; ARM means Administrative Rules of Montana; CFS means cubic feet per second; GPM means gallons per minute; MCA means Montana Code Annotated; POD means Point of Diversion; POU means Place of Use; R means Range; Sec. means Section; T means Township; and WRIS means Water Right Information System

## **PROPOSED APPROPRIATION**

### **FINDINGS OF FACT**

1. The Applicant proposes to divert water from an unnamed tributary of Sandstone Creek (unnamed tributary or Lagoon Cell 3), which originates in Lagoon Cell 3, as treated wastewater that has been processed by the City of Baker's Wastewater Treatment Facility. The unnamed tributary can, and sometimes does, release water to Sandstone Creek from Lagoon Cell 3. The proposed means of diversion is a pump. The proposed period of diversion is from April 1 through October 31 at 200 GPM, up to 80.45 AF, from a point in the SWSESE Sec. 10, T7N, R59E, for irrigation use, from April 1 through October 31. The Applicant proposes to divert water from Lagoon Cell 3 via a pump and a pipeline, approximately 2.3 miles, to a holding pond at the Lakeview Country Club to irrigate 29 acres within the Lakeview Country Club golf course. Water will be stored in a 5.2 AF holding pond in the NENE Sec. 24, T7N, R59E, year-round, as part of the golf course. The place of use is generally located in the NWNE and S2NE Sec. 24, T7N, R59E, Fallon County.

2. There is a Conservation District (CD) Reserved Water Use Authorization, CD Record 42L 56547-00, with a point of diversion in the N2SE Sec. 13, T7N, R59E, Fallon County, for an unnamed tributary of Sandstone Creek with a maximum flow rate of 1,500 GPM, up to 270 AF for the irrigation of 109 acres from March 15 through October 15. The place of use is 29 acres in the SE of Sec. 13, T7N, R59E, and 80 acres in the NE of Sec. 24, T7N, R59E, Fallon County. The unnamed tributary under the CD authorization is a different unnamed tributary from the one proposed for appropriation in this application. The Applicant does not use the CD water right because the water quality is not sufficient for golf course irrigation.

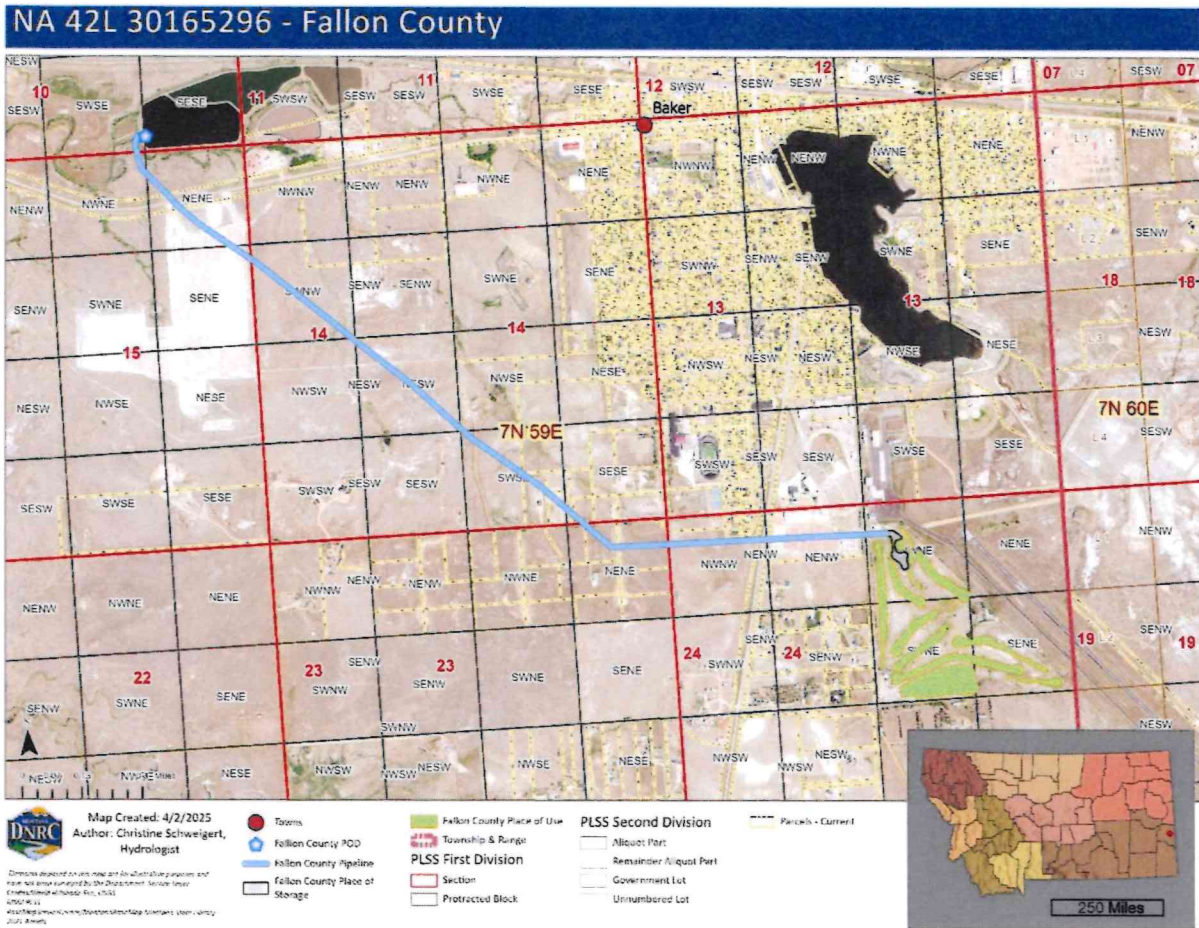


Figure 1. Proposed project area

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

**GENERAL CONCLUSIONS OF LAW**

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

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

(1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter. . . .

(3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana . . .

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

... the department shall issue a permit if the Applicant proves by a preponderance of evidence that the following criteria are met:

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

(ii) water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

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

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

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

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

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

(e) the Applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or

place of use on national forest system lands, the Applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

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

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

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

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

To meet the preponderance of evidence standard, “the Applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the Applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.” Section 85-2-311(5), MCA (emphasis added). The determination of whether an application has satisfied the § 85-2-311, MCA criteria is committed to the discretion of the Department. *Bostwick Properties, Inc. v. Montana Dept. of Natural Resources and Conservation*, 2009 MT 181, ¶ 21. The Department is required grant a permit only if the § 85-2-311, MCA, criteria are proven by the Applicant by a preponderance of the evidence. *Id.* A preponderance of evidence is “more probably than not.” *Hohenlohe v. DNRC*, 2010 MT 203, ¶¶ 33, 35, 357 Mont. 438, 240 P.3d 628.

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

(1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

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

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

Nothing in that section [85-2-313], however, relieves an Applicant of his burden to meet the statutory requirements of § 85-2-311, MCA, before DNRC may issue that provisional permit. Instead of resolving doubts in favor of appropriation, the Montana Water Use Act requires an Applicant to make explicit statutory showings that there are unappropriated waters in the source of supply, that the water rights of a prior appropriator will not be adversely affected, and that the proposed use will not unreasonably interfere with a planned use for which water has been reserved.

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

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

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

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

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

**PHYSICAL AVAILABILITY**

**FINDINGS OF FACT**

9. The Applicant proposes to divert 80.45 AF per year from an unnamed tributary to Sandstone Creek to a holding pond as part of the Lakeview County Club golf course to irrigate 29 acres of turf grass at the Lakeview Country Club golf course from April 1 through October 31. Water would be diverted from Lagoon Cell 3 at the City of Baker Wastewater Treatment Facility via pump at a rate of 200 GPM into an 8-inch pipeline approximately 2.3 miles long to the 5.2 AF Lakeview Country Club holding pond. Water would then be pumped from the holding pond into an underground sprinkler system to irrigate greens, tees, and fairways.

10. The City of Baker Wastewater Treatment facility has four lagoon cells. The total capacity of the lagoon cells is approximately 233.35 AF. The capacity of Lagoon Cell 1A is approximately 31.05 AF, Lagoon Cell 1 is approximately 27.7 AF, Lagoon Cell 2 is approximately 57.5 AF, and Lagoon Cell 3 is approximately 117.1 AF.

11. Water is moved from one lagoon cell to another, as part of the treatment process. Evaporation occurs as the water moves through the series of lagoons. The amount of water available at the proposed point of diversion (POD) is the amount pumped from the treatment plant to the lagoons, minus the volume of water evaporated from the lagoon cell surfaces.

12. The total surface area of the lagoons is 42.35 acres. The annual net evaporation rate is 21.434 inches per acre per the Gridded Net Evaporation data referenced in DNRC Technical Memorandum; Pond and Wetland Evaporation/Evapotranspiration (DNRC, 2023). The total annual net evaporation from the surface of the lagoons is 75.64 AF (42.35 AC \* 21.434 in /12 in/ft = 75.64 AF). The monthly evaporation rates are shown in Table 1.

*Table 1. Monthly Gridded Net Evaporation*

<b>Month</b>	<b>Evaporation (in.)</b>	<b>Evaporation (AF)</b>
<b>January</b>	0.523518	1.847582275
<b>February</b>	0.282615	0.997395438
<b>March</b>	0.586036	2.068218717
<b>April</b>	1.11924	3.9499845
<b>May</b>	1.25743	4.437680042
<b>June</b>	0.87816	3.099173
<b>July</b>	2.21899	7.831185542
<b>August</b>	4.20039	14.82387638
<b>September</b>	4.49265	15.85531063

<b>October</b>	3.12789	11.03884513
<b>November</b>	1.58299	5.586635542
<b>December</b>	1.16409	4.108267625
<b>Total</b>	<b>21.434</b>	<b>75.6441548</b>

13. The City of Baker uses lift pumps to discharge reclaimed wastewater into a series of four lagoons at its wastewater treatment facility. Flow meters at the point where water is discharged from the treatment plant to the first lagoon are used to measure the amount of water being moved. The Applicant provided a spreadsheet showing the daily number of hours that wastewater was pumped at a rate of 840 GPM from January 1, 2023, to December 31, 2023. The 840 GPM pumping rate was multiplied by the number of hours the pump ran to calculate the volume of water pumped each month. The cumulative volume pumped in 2023 was 266.19 AF. The volume of water physically available is 190.55 AF (266.19 AF pumped – 75.64 AF evaporated from the surface of the lagoons = 190.55 AF). Table 2 displays the monthly flow and volume of water available in the proposed source of supply.

*Table 2. Monthly Flow and Volume Measurements*

<b>Month</b>	<b>Flow Rate (GPM)</b>	<b>Volume Pumped (AF)</b>	<b>Evaporation (AF)</b>	<b>Volume Pumped Minus Evaporation (AF)</b>
<b>January</b>	840	17.48	1.85	15.63
<b>February</b>	840	18.25	1.00	17.25
<b>March</b>	840	21.81	2.07	19.74
<b>April</b>	840	21.96	3.95	18.01
<b>May</b>	840	23.97	4.44	19.53
<b>June</b>	840	25.52	3.10	22.42
<b>July</b>	840	23.51	7.83	15.68
<b>August</b>	840	26.29	14.82	11.47
<b>September</b>	840	22.89	15.86	7.03
<b>October</b>	840	22.43	11.04	11.39
<b>November</b>	840	21.65	5.59	16.06
<b>December</b>	840	20.42	4.11	16.31
<b>Total</b>	<b>840</b>	<b>266.19</b>	<b>75.64</b>	<b>190.55</b>

14. The Applicant-provided measurements are within the requirements of ARM 36.12.1702. The calculation of annual net evaporation was done using Department standard practice (DNRC, 2023) and the standards in ARM 36.12.116 (1)(c).

15. The water measurements paired with as-built dimensions and capacity data for the source water provided by the Applicant are considered adequate for use in evaluating physical availability of water in the source of supply.

16. The requested flow rate of 200 GPM is less than the 840 GPM flow rate being pumped into the lagoons. While the pumps are not run continuously, the Applicant has demonstrated that there is approximately 190.55 AF of water available in the source (Table 2).

17. The Department finds surface water is physically available in excess of the 200 GPM and up to 80.45 AF requested by the Applicant at the proposed point of diversion in the SWSESE Sec. 10, T7N, R59E, Fallon County, during the proposed period of diversion from April 1 through October 31.

## **LEGAL AVAILABILITY**

### **FINDINGS OF FACT**

18. The source of water for the City of Baker municipal water supply is a series of wells 500-650 ft deep in a consolidated sandstone bedrock aquifer. The treated wastewater is not a natural contributor to Sandstone Creek, and water is not regularly discharged to Sandstone Creek. The area of potential impact is the unnamed tributary to Sandstone Creek (Lagoon Cell 3). There are no legal demands on Lagoon Cell 3.

19. The Department considered the source of water, the receiving water, and the proposed appropriation.

20. There are no legal demands unique to this area, such as reservations, downstream hydropower rights, or compact considerations.

21. There are no existing legal demands on this unnamed tributary to Sandstone Creek. The amount of water physically available, 190.55 AF, is the amount of water legally available, indicating that water is legally available for the proposed appropriation.

22. The Department finds the proposed appropriation of 200 GPM and up to 80.45 AF to be legally available at the proposed point of diversion in the SWSESE Sec. 10, T7N, R59E, Fallon County, during the proposed period of diversion from April 1 through October 31.

## **ADVERSE EFFECT**

### **FINDINGS OF FACT**

23. The Applicant's plan to prevent adverse effect is to cease diversion from the unnamed tributary to Sandstone Creek (Lagoon Cell 3) in the instance valid call is made.

24. The Applicant has proven that water is physically and legally available in the source of supply for the proposed appropriation of 200 GPM, up to 80.45 AF, from April 1 through October 31. There are no other legal demands on this unnamed tributary to Sandstone Creek.

25. The water proposed for appropriation originates from a wastewater treatment facility. The water treatment process has been completed prior to discharge. The City of Baker has a discharge permit from the Montana Department of Environmental Quality, permit no. MTG580029, for Domestic sewage treatment Lagoons Batch and Non-Discharging facilities, effective January 1, 2023, and expiring on December 31, 2027.
26. The Applicant does not have any plans to discharge water from the irrigation system at the Lakeview Country Club golf course.
27. The Department finds that the proposed use of 200 GPM, up to 80.45 AF for their holding pond and irrigation of 29 acres of turf grass, from April 1 through October 31 will not have an adverse effect on existing water users.

### **ADEQUATE MEANS OF DIVERSION**

#### **FINDINGS OF FACT**

28. The proposed means of diversion is a Cornell 3RB-30-3-4 pump with a Baldor Reliancer Super-E 30-HP electric motor. The intake is a 4-inch inlet with a 3-inch outlet (-3-4 of model number), and flow is measured. The pump diverts up to 200 GPM from Lagoon Cell 3 into an 8-inch diameter pipeline, which conveys the water approximately 2.3-miles to the Lakeview Country Club holding pond. The pump consists of a skid-mounted pump with check valve, reducers, air relief valve, and piping. The pump is rated for 200 GPM at 138 feet of total dynamic head.
29. The capacity of Lagoon Cell 3 is approximately 117.1 AF. The capacity was estimated using survey data and surface modeling, which was included in the 2014 Wastewater Treatment Facility Expansion as completed by the City of Baker in 2014 and included in the application materials.
30. The Lakeview Country Club golf course holding pond has a surface area of 1.54 acres, maximum depth of 8.5 feet, and a capacity of 5.2 AF (1.54 AC X 8.5 ft. X 0.4 slope factor = 5.2 AF). The capacity was estimated using Department standard practice. Evaporation from the surface of the holding pond was estimated using Department standard practice and is 2.75 AF based on the 1.54 AC surface area and an annual net evaporation of 21.434 inches per acre of surface area (FOF 12) (1.54 AC X 21.434 inches /12 inches per foot = 2.75 AF). Holding pond depth contours are shown within the Lakeview Country Club Pond Plans. The irrigation pump from the holding pond at the golf course is fed by an 18-inch corrugated metal pipe into a wet well.

31. The irrigation network consists of the pump system from the holding pond, piping network consisting of 6-inch, 4-inch, 2-inch, and 1-inch irrigation lines; and 276 sprinkler heads. The sprinkler system is broken into zones with 1-3 sprinkler heads per zone and multiple zones on each fairway, green, tee, and putting green. Watering plans were done by the Golf Course Superintendent with additional oversight by the Irrigation Representative. The Watering Plan was built using Toro software. The sprinkler heads are rated for 7.1 – 56.3 GPM, dependent on their individual configuration.

32. The Department finds that the proposed means of diversion and conveyance are capable of diverting the proposed 200 GPM, up to 80.45 AF for irrigation of 29 acres of turf grass.

### **BENEFICIAL USE**

#### **FINDINGS OF FACT**

33. The Applicant proposes to divert 200 GPM, up to 80.45 AF for a holding pond and irrigation of 29 acres of turf grass at the Lakeview Country Club golf course in Fallon County using reclaimed wastewater from the City of Baker Wastewater Treatment Facility. The requested volume of 80.45 AF is the amount proposed for beneficial use based on 2.5 AF/AC for 29 acres of irrigation ( $2.5 \times 29 = 72.5$  AF), one fill of the 5.2 AF holding pond, and 2.75 AF of annual evaporation from the surface of the pond ( $72.5$  AF irrigation +  $5.2$  AF initial pond fill +  $2.75$  AF annual evaporation =  $80.45$  AF). The proposed use of 2.5 AF/AC is within the Department standard for lawn and garden irrigation as found in ARM 36.12.115(2)(b). The requested flow rate of 200 GPM is based on actual use and the capacity of the pump and was determined based on water meter measurements. The requested period of diversion from April 1 through October 31 is the standard period for climatic area II as found in ARM 36.12.112(1)(c). The requested period of use from January 1 through December 31 is based on the year-round use of the holding pond for storage as found in ARM 36.12.112(2).

34. The Department finds that the proposed use of 200 GPM, up to 80.45 AF for irrigation of 29 acres of turf grass, one fill of the holding pond, and annual evaporation from the surface of the holding pond are reasonably justified per ARM 36.12.1801(3).

### **POSSESSORY INTEREST**

#### **FINDINGS OF FACT**

35. The Applicant signed 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.

36. The Applicant provided a copy of "An Agreement for the Operation of a Golf Course Irrigation Line" dated July 8, 2013, in which the City of Baker agrees to provide water from its wastewater facility for irrigation water to be used on the City-owned, County-operated, golf course.

## **CONCLUSIONS OF LAW**

### **PHYSICAL AVAILABILITY**

37. Pursuant to § 85-2-311(1)(a)(i), MCA, an Applicant must prove by a preponderance of the evidence that "there is water physically available at the proposed point of diversion in the amount that the Applicant seeks to appropriate."

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

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

40. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. Section 85-2-311(1)(a)(i), MCA. (FOF 9-17)

### **LEGAL AVAILABILITY**

41. Pursuant to § 85-2-311(1)(a), MCA, an Applicant must prove by a preponderance of the evidence that:

(ii) water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

- (B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and
- (C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

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

42. It is the Applicant's burden to present evidence to prove water can be reasonably considered legally available. *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (the legislature set out the criteria (§ 85-2-311, MCA) and placed the burden of proof squarely on the Applicant. The Supreme Court has instructed that those burdens are exacting.); *see also Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston* (1991), 249 Mont. 425, 816 P.2d 1054 (burden of proof on Applicant in a change proceeding to prove required criteria); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005) (it is the Applicant's burden to produce the required evidence.); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions, LLC* (DNRC Final Order 2007) (permit denied for failure to prove legal availability); *see also* ARM 36.12.1705.

43. Applicant has proven by a preponderance of the evidence that water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the Department and other evidence provided to the Department. Section 85-2-311(1)(a)(ii), MCA. (FOF 18-22)

#### ADVERSE EFFECT

44. Pursuant to § 85-2-311(1)(b), MCA, the Applicant bears the affirmative burden of proving by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Analysis of adverse effect must be determined based on a consideration of an Applicant's plan for the exercise of the permit that demonstrates that the Applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. *See Montana*

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

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

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

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

48. It is the Applicant's burden to produce the required evidence. *E.g.*, *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, 7 (2011) (legislature has placed the burden of proof squarely on the Applicant); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005). The Department is required to grant a permit only if the § 85-2-311, MCA, criteria are proven by the Applicant by a preponderance of the evidence. *Bostwick Properties, Inc.*, ¶ 21.

49. Section 85-2-311 (1)(b) of the Water Use Act does not contemplate a de minimis level of adverse effect on prior appropriators. *Wesmont Developers v. DNRC*, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, 8 (2011).

50. The Applicant has proven by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Section 85-2-311(1)(b), MCA. (FOF 23-27)

#### ADEQUATE DIVERSION

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

52. The adequate means of diversion statutory test merely codifies and encapsulates the case law notion of appropriation to the effect that the means of diversion must be reasonably

effective, i.e., must not result in a waste of the resource. *In the Matter of Application for Beneficial Water Use Permit No. 33983s41Q by Hoyt* (DNRC Final Order 1981); § 85-2-312(1)(a), MCA.

53. Whether party presently has easement not relevant to determination of adequate means of diversion. *In the Matter of Application to Change a Water Right No. G129039-76D by Keim/Krueger* (DNRC Final Order 1989).

54. 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. *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002).

55. 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. Section 85-2-311(1)(c), MCA (FOF 28-32)

#### BENEFICIAL USE

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

57. An appropriator may appropriate water only for a beneficial use. See also, § 85-2-301 MCA. It is a fundamental premise of Montana water law that beneficial use is the basis, measure, and limit of the use. *E.g., McDonald; Toohey v. Campbell* (1900), 24 Mont. 13, 60 P. 396. The amount of water under a water right is limited to the amount of water necessary to sustain the beneficial use. *E.g., Bitterroot River Protective Association v. Siebel, Order on Petition for Judicial Review*, Cause No. BDV-2002-519, Montana First Judicial District Court, Lewis and Clark County (2003), *affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518; *In The Matter Of Application For Beneficial Water Use Permit No. 43C 30007297 by Dee Deaterly* (DNRC Final Order), *affirmed other grounds, Dee Deaterly v. DNRC*, Cause No. 2007-186, Montana First Judicial District, *Order Nunc Pro Tunc on Petition for Judicial Review* (2009); *Worden v. Alexander* (1939), 108 Mont. 208, 90 P.2d 160; *Allen v. Petrick* (1924), 69 Mont. 373, 222 P. 451; *In the Matter of Application for Beneficial Water Use Permit No. 41S-105823 by French* (DNRC Final Order 2000).

58. Amount of water to be diverted must be shown precisely. *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, 3 (2011) (citing *BRPA v.*

*Siebel*, 2005 MT 60, and rejecting Applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet).

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

60. Applicant proposes to use water for irrigation which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence irrigation is a beneficial use and that 80.45 AF of diverted volume and 200 GPM is the amount needed to sustain the beneficial use. Section 85-2-311(1)(d), MCA. (FOF 33-34)

#### POSSESSORY INTEREST

61. Pursuant to § 85-2-311(1)(e), MCA, an Applicant must prove by a preponderance of the evidence that it has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the Applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

62. Pursuant to ARM 36.12.1802:

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

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

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

(2) If a representative of the Applicant signs the application form affidavit, the representative shall state the relationship of the representative to the Applicant on the form, such as president of the corporation, and provide documentation that

establishes the authority of the representative to sign the application, such as a copy of a power of attorney.

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

63. 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. Section 85-2-311(1)(e), MCA. (FOF 35-36)

### **PRELIMINARY DETERMINATION**

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Application for Beneficial Water Use Permit No. 42L 30165296 should be GRANTED.

The Department determines the Applicant may divert water from the unnamed tributary to Sandstone Creek, by means of a pump, from April 1 through October 31 at 200 GPM, up to 80.45 AF, from a point in the SWSESE Sec. 10, T7N, R59E, Fallon County, to store water for from January 1 through December 31 for irrigation use from April 1 through October 31. The Applicant may irrigate turf grass on 29 acres. The place of use includes 7 acres located in the NWNNE Sec. 24, 17.1 acres in the SWNE Sec. 24, and 4.9 acres in the SENE Sec. 24, all in T7N, R59E, Fallon County. Applicant may store water in a reservoir located in the W2NWNE Sec. 24, T7N, R59E, Fallon County.

**NOTICE**

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

Dated this 3rd day of March 2026.



Heidi Christison  
Billings Regional Manager  
Department of Natural Resources and  
Conservation  
Water Resources Division  
1371 Rimtop Drive  
Billings, MT, 59105

**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 3rd day of March 2026, by first class United States mail.

FALLON COUNTY  
PO BOX 846  
BAKER, MT 59313

BROSZ ENGINEERING, INC.

SHANNON HEWSON, P.E.

109 S. MAIN BOX 357

BOWMAN, ND 58623

A handwritten signature in blue ink, appearing to read "Amanda Schlegel", is written over a horizontal line.

BILLINGS Regional Office, (406) 247-4419