DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Water Resources Division

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May 7, 2025

Martin S. Smith
Felt Martin PC
550 N 31st Street, Ste. 500
Billings, MT 59101-1949

Subject: Water Right Permit Application 43O 30162567

Dear Applicant,

The Department of Natural Resources and Conservation (DNRC) has completed our preliminary review of your application. This review consists of an evaluation of the criteria of issuance of an authorization to changes in appropriation rights, found in §85-2-402, -407 and -408, MCA. The Department preliminarily determined that the criteria are met, and this Application should be granted. A copy of the Preliminary Determination to Grant your application is attached. The next step in the process is for the Department to provide public notice of this application and an opportunity for objection as per §85-2-307, MCA. If you have any questions or comments, please call or email me using my contact information below.

Sincerely,

C. Strebeck

Cassey Strebeck
Water Resource Specialist
Montana Department of Natural Resources and Conservation
Billings Regional Office
1371 Rimtop Dr, Billings, MT 59105
406-247-4422
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**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

* * * * * * *

APPLICATION TO CHANGE WATER RIGHT NO. 43O 30162567 by Sunlight Ranch Company	)))	**PRELIMINARY DETERMINATION TO GRANT CHANGE**

* * * * * * *

On December 22, 2023, Sunlight Ranch Company (Applicant) submitted Application to Change Water Right No. 43O 30162567 to change Statement of Claim 43O 185505-00 to the Billings Regional Office of the Department of Natural Resources and Conservation (Department or DNRC). The Department published the receipt of the application on its website. The Department sent Applicant a deficiency letter under §85-2-302, Montana Code Annotated (MCA), dated June 19, 2024. The Applicant responded with information dated October 16, 2024. A preapplication meeting was held between the Department and the Applicant on December 11, 2023. The Application was determined to be correct and complete as of January 8, 2025. The Department also met with the Applicant on February 24, 2025; to discuss the results of the Technical Report. An amendment was made by the Applicant to retire an additional 12.4 AC. The amendment was considered minor, and timelines were not reset. An Environmental Assessment for this application was completed on May 6, 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 an Existing Irrigation Water Right, Form 606-IR
- Attachments:
    - Calculations of historical and proposed consumptive use and diverted volume
- Maps:
    - USDA FSA Map: Farm 13788, Tract 11596, 21-8S-35E
    - USDA FSA Map: Farm 13788, Tract 11645, 28-8S-35E
    - USDA FSA Map: Farm 13788, Tract 11649, 28-8S-35E
    - USDA FSA Map: Farm 13788, Tract 11655, 29-8S-35E
    - USDA FSA Map: Farm 13788, Tract 12272, 2-9S-34E
    - USDA FSA Map: Farm 13788, Tract 12274, 2-9S-34E
    - USDA FSA Map: Farm 13788, Tract 12277, 2-9S-34E

  - USDA FSA Map: Farm 13788, Tract 12279, 1-9S-34E
  - USDA FSA Map: Farm 13788, Tract 12285, 12-9S-34E
  - USDA FSA Map: Farm 13788, Tract 12289, 11-9S-34E
  - USDA FSA Map: Farm 13788, Tract 12290, 11-9S-34E
  - USDA FSA Map: Farm 13788, Tract 12290, 2-9S-34E
  - USDA FSA Map: Farm 13788, Tract 12291, 11-9S-34E
  - USDA FSA Map: Farm 13788, Tract 12397, 6-9S-35E
  - IR.2.E Map showing Proposed Use, dated October 30, 2023
  - IR.2.C Map showing Historic Use, dated November 10, 2023
  - Historical and Proposed Irrigation Footprint Comparison, dated October 30, 2023
- Department- completed Technical Report, dated January 08, 2025

Information Received after Application Filed

- Deficiency Response dated October 16, 2024
  - Exhibit A – IR.2.C Historic Use Map
  - Exhibit B – IR.2.E Proposed Use Map
  - Exhibit C – Picture and cross-section of the Bozeman Trail Ditch
  - Exhibit D – Picture and cross-section of the Campbell-Belken Ditch
  - Exhibit E – Valley Standard 6000 - Murphy Pivot Sprinkler Chart
- Amendment (minor), to retire an additional 12.4 AC, February 12, 2025
  - Map showing additional acres to be removed
  - Updated Place of Use Map: IR.2.E Proposed Use
  - Updated Place of Use List

Information within the Department's Possession/Knowledge

- 1947 Big Horn Country Water Resources Survey
- Water Resources Aerial Imagery Dated 1939
  - CCL-233-84
  - CCL-233-85
  - CCL-233-86
  - CCL-255-10
  - CCL-255-12
  - CCL-255-13
  - CCL-255-34
- Department Water Right Files for Statement of Claim 43O 185505-00
- Surface Water Change Report, dated May 7, 2025

- Crow Tribe Current Use List
- DNRC CONVERGE – Water Right Information Resource – Internal Mapping Database
- 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 406-247-4415 to request copies of the following documents.
    - Consumptive Use Methodology Memo
    - Historic Diverted Volume Memo
    - DNRC Change Manual
    - Technical Memo for Distributing Conveyance Loss on Multiple User Ditches

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; CFS means cubic feet per second; FSA means Farm Service Agency; GPM means gallons per minute; POD means point of diversion; POU means place of use; USDA means United States Department of Agriculture; and WRS means Water Resources Survey.

PRELIMINARY MATTERS

FINDINGS OF FACT

1. The Department Water Right Files for Statement of Claim 43O 185505-00 contain the following historical documentation:

a. On April 29, 1982, the Department received a Statement of Claim for Existing Water Rights form to divert water from the Little Bighorn River in the SWSWSE, Section 11, T9S, R34E, by means of a headgate for the Bozeman Trail Ditch for irrigation purposes. The claim was for 85 CFS up to 19,503 AF from April 1 – October 31, to irrigate 676.8 AC.

b. The claim included a Notice of Appropriation (Abstract #2901) provided by Carl W. Gross, President of the Bozeman Trail Ditch Company dated and notarized on July 15, 1920, addressed to the Public, and filed July 19, 1920 stating that the Bozeman Trail Ditch Company (appropriator and claimant) has appropriated 3400 miner's inches (85 CFS) since October

3rd, 1916, for the intended use of domestic purposes, water of livestock, and for the irrigation of lands in Section 1, 2, and 11 of T9S, R34E, and other lands. Page 44 of the Big Horn County WRS states that the Bozeman Trail Ditch was completed in 1922, with an initial capacity of 65.25 CFS. The WRS further states that in 1946, the Bozeman Trail Ditch Company irrigated 1,630.95 acres of a maximum of 2,152.87 irrigable acres.

c. Ownership of Statement of Claim 43O 185505-00 was transferred to Sinclair Oil Corporation (Sunlight Ranch Company) on November 17, 1987. Sinclair Oil Corporation transferred all of the water rights to one name, Sunlight Ranch Company, received by DNRC on August 15, 1995.

d. A 2002 DNRC examination challenged the 85 CFS flow rate and legal land description of the POD. The flow rate was reduced to 25.64 CFS, and the POD was changed to NWSWSE Section 11, T9S, R34E.

e. A 2008 DNRC examination corrected the POD to NWSWNE Section 11, T9S, R34E, and POU to 676.70 AC to match the parcel acreage. The examination also changed the water right type from a Reserved Claim to a Statement of Claim and found 342.74 AC shown in the WRS.

f. In 2019, Water Court Case 43O-208 amended Statement of Claim 43O 185505-00 by changing the priority date from May 7, 1868, to July 19, 1920; the flow rate from 25.64 CFS to 13.20 CFS; the maximum AC from 676.70 AC to 348.24 AC; and the water right type from a ‘use’ to a ‘filed’.

WATER RIGHTS TO BE CHANGED

FINDINGS OF FACT

2. The Applicant seeks to change the POD and POU for Statement of Claim 43O 185505-00. Statement of Claim 43O 185505-00 has a priority date of July 19, 1920, and a flow rate of 13.20 CFS, and the amount of diverted volume put to historical and beneficial use. The period of diversion and the period of use are from April 1 – October 31. Water is diverted from the Little Bighorn River via means of a headgate at a point of diversion located in the NWSWNE Section 11, T9S, R34E, and conveyed by the Bozeman Trail Ditch, for the irrigation of 348.24 acres

generally located in Sections 1, 2, 11, and 12 of T9S, 34E; Sections 21, 28, and 29 of T8S, 35E; and Section 6, T9S, 35E, of Big Horn County.

Table 1: Water Right(S) Proposed for Change

Water Right Number	Flow Rate	Volume	Purpose	Period Of Use	Point Of Diversion	Place Of Use	Acres	Priority Date
43O 185505-00	13.20 CFS	Amount put to historical & beneficial use	Irrigation	04/01 – 10/31	NWSWNE Sec. 11, T9S, R34E Big Horn County	Table 2	348.24	07/19/1920

Table 2: Historical Place of Use of Statement of Claim 43O 185505-00, per Water Court

POU	Acres	Gov't Lot	Qtr Sec	Section	Township	Range	County
1	4.87	-	NWSE	1	9S	34E	Big Horn
2	2.66	-	NESW	1	9S	34E	Big Horn
3	19.95	-	SESW	1	9S	34E	Big Horn
4	4.35	-	SESE	2	9S	34E	Big Horn
5	13.66	-	NENE	11	9S	34E	Big Horn
6	0.10	-	NENW	12	9S	34E	Big Horn
7	7.76	-	NWNE	21	8S	35E	Big Horn
8	34.57	-	SWNE	21	8S	35E	Big Horn
9	3.98	-	SENW	21	8S	35E	Big Horn
10	22.41	-	NWSE	21	8S	35E	Big Horn
11	37.82	-	NWNW	28	8S	35E	Big Horn
12	22.68	-	SWNW	28	8S	35E	Big Horn
13	40.59	-	NENE	29	8S	35E	Big Horn
14	38.30	2	NENE	6	9S	35E	Big Horn
15	35.30	3	NWNE	6	9S	35E	Big Horn
16	0.13	-	SENE	6	9S	35E	Big Horn
17	21.52	-	SWNE	6	9S	35E	Big Horn
18	17.83	-	SENW	6	9S	35E	Big Horn
19	19.76	5	SWNW	6	9S	35E	Big Horn

3. The places of use indicated in Table 2 reflect the pre-1973 use of Statement of Claim 43O 185505-00. These acres are identified as the historical place of use in the application materials submitted by the Applicant and align with the Post-Decree Version of the Statement of Claim. The

AC listed in Table 2 reflects the 348.24 AC as determined through Water Court Case 43O-208 (FOF 1(e)(f)).

4. POU 14, as listed in Table 2, was incorrectly labeled Government Lot 2, NENE of Section 6, T9S, R35E, in the Master Report dated November 27, 2019, Water Court Case 43O-208. This error was confirmed using Statement of Claim for Existing Water Rights, Exhibit A, and Addendum to Statement of Claim for Existing Water Rights, received April 29, 1982, and WRS aerial imagery dated 1939. POU 14, henceforth, is being correctly identified as Government Lot 2, in the NWNE of Section 6, T9S, R35E. POU 14 is correctly listed in the Proposed Place of Use, shown in Table 4.

5. POU 15, as listed in Table 2, was incorrectly labeled Government Lot 3, NWNE, Section 6, T9S, R35E, in the Master Report dated November 27, 2019, Water Court Case 43O-208. This error was confirmed using Statement of Claim for Existing Water Rights, Exhibit A, and Addendum to Statement of Claim for Existing Water Rights, received April 29, 1982, and WRS aerial imagery dated 1939. POU 15, henceforth, is being correctly identified as Government Lot 3, in the NENW Sec 6, T9S, R35E. POU 15 is correctly listed in the Proposed Place of Use, shown in Table 4.

6. There is no known supplemental water usage for Statement of Claim 43O 185505-00. Statement of Claim 43O 185300-00 is for stock use direct from the Bozeman Trail Ditch and is owned by Sunlight Ranch Company. Statement of Claim 43O 185505-00 and 43O 185300-00 are associated because they share the same POD and means of conveyance through the Bozeman Trail Ditch. Statement of Claim 43O 30145525-00 is for stock use direct from Brock Coulee and is owned by Sunlight Ranch Company. Statements of Claim 43O 30145525-00 and 43O 185505-00 are overlapping water rights because they both have water usage in the SESE of Section 2, 9S, 34E, but are not supplemental because they are for different purposes. Crow Tribal Water Right has places of use in the S2N2 Section 6, T9S, R35E, and S2SW Section 28, T8S, R35E. Sunlight Ranch owns these POUs and has no intention of using the Crow Tribal Water Right.

CHANGE PROPOSAL

FINDINGS OF FACT

7. The Applicant seeks to change the POD and POU for Statement of Claim 43O 185505-00 as follows:

a. The historical POD from the Bozeman Trail Ditch headgate in the NWSWNE Section 11, T9S, R34E will continue to be used. Table 3.

b. The Applicant proposes to add a second POD in the SENENE Section 32, T8S, R35E at the existing headgate on the Campbell-Belken Ditch. Table 3.

c. The total acres irrigated historically under this water right prior to this change are 348.24 AC. The Applicant proposes to remove 124.94 AC from the historical POU and add 65.7 AC of irrigation outside of the historical POU, to be pivot irrigated by water conveyed through the Campbell-Belken Ditch. Under the proposed change, 223.3 AC within the historical POU will remain. There are 289.0 AC total proposed for irrigation.

d. Historical AC remaining are located in the NWNE, SWNE, and NWSE of Section 21, T8S, R35; the NWNW of Section 28, T8S, R35E; the NENE of Section 29, T9S, R35E; and the NWNE, SWNE, NENW, SENW, SWNW, Section 6, T9S, R35E. These 223.3 AC will be irrigated using the Bozeman Trail Ditch. Table 4.

e. New AC being added through this change are located in the NESW, SWSW, and SESW of Section 28, T8S, R35E, Big Horn County. These 65.7 AC of irrigation outside of the historical POU will be pivot irrigated by water conveyed through the Campbell-Belken Ditch. Table 4.

f. The proposed PODs are in Table 3; the proposed POUs are in Table 4, and the historical and proposed changes are shown in Figure 1.

Table 3: Proposed Point of Diversion for Statement of Claim 43O 185505-00

POD#	Govt Lot	Quarter Sections	Section	Township	Range	County
1	-	NWSWNE	11	9S	34E	Big Horn
2	-	SENENE	32	8S	35E	Big Horn

Table 4: Proposed Place of Use for Statement of Claim 43O 185505-00

POU#	Acres	Govt Lot	Quarter Sections	Section	Township	Range	County
1	4.5	-	NWNE	21	8S	35E	Big Horn
2	29.0	-	SWNE	21	8S	35E	Big Horn
4	21.9	-	NWSE	21	8S	35E	Big Horn
5	36.6	-	NWNW	28	8S	35E	Big Horn
6	10.7	-	NESW	28	8S	35E	Big Horn
7	18.8	-	SWSW	28	8S	35E	Big Horn

8	36.2	-	SESW	28	8S	35E	Big Horn
9	40.8	-	NENE	29	8S	35E	Big Horn
10	26.7	2	NWNE	6	9S	35E	Big Horn
11	16.6	-	SWNE	6	9S	35E	Big Horn
12	7.5	3	NENW	6	9S	35E	Big Horn
13	19.9	-	SENW	6	9S	35E	Big Horn
14	19.8	5	SWNW	6	9S	35E	Big Horn

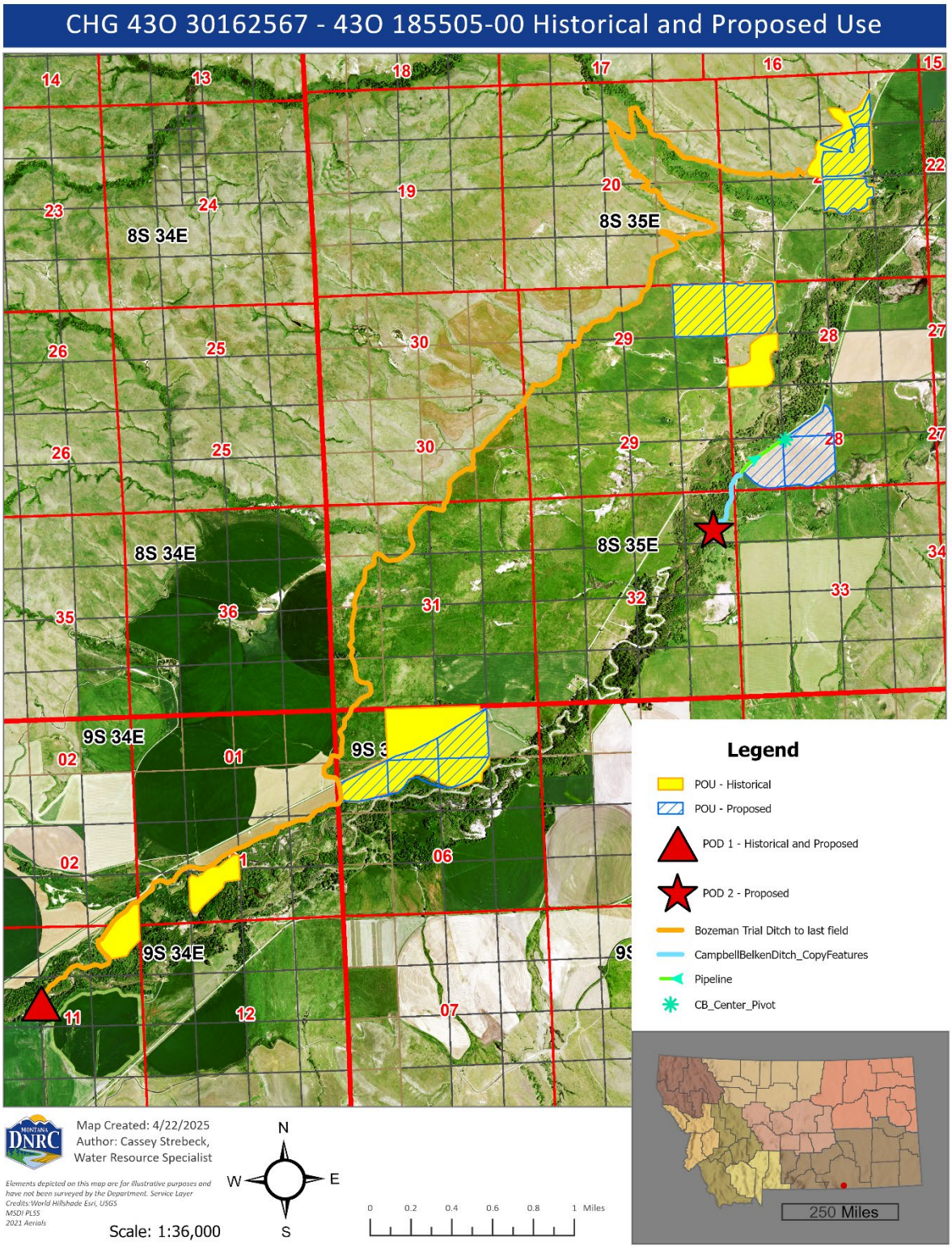

Figure 1. Historic Use and Proposed Appropriation for 43O 185505-00

CHANGE CRITERIA

8. 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.

9. 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).

10. The existing place of use and proposed place of use for Statement of Claim 43O 185505-00 are located in the Little Bighorn River Basin 43O within the boundaries of the Crow Reservation. The Crow Tribe-Montana Compact (Compact) was ratified by the Montana

Legislature on June 22, 1999, the United States Congress in 2010, and the Crow Tribal Council on March 19, 2011. As such, the Applicant's proposed change in use is subject to the applicable provisions of the Crow Compact in addition to the change provisions of the Montana Water Use Act. § 85-20-901 (IV)(D)(2), MCA.

11. The Tribe has a water right for all surface flow, groundwater, and storage in the Little Bighorn River Basin. MCA § 85-20-901 (III)(B)(7) and (IV)(D)(1). The Compact further provides that any water rights Recognized Under State Law with priority date earlier than June 22, 1999 (date Compact ratified by Legislature) in the Little Bighorn River Basin is protected from a claim of senior priority by Crow Tribal Water Rights existing prior to June 22, 1999, and is protected from post-June 22, 1999, new development of the Crow Tribal Water Right. MCA § 85-20-901 (III)(B)(6). While the Little Bighorn River Basin closure prohibits most new water development, the State has the authority to process and approve changes in use to Water Rights Recognized Under State Law that existed prior to June 22, 1999. MCA § 85-20-901 (III)(B)(7)(c).

12. Statement of Claim 43O 185505-00 constitutes a water right recognized under state law pursuant to the Compact. The State of Montana may authorize a change in use of a water right recognized under State law within the reservation, providing that the change does not adversely affect a use of the Crow Tribal Water Right existing at the time. See generally § 85-20-901 (IV)(D)(2), MCA. The Montana Department of Natural Resource and Conservation is required to determine if an adverse effect to the TWR would result from authorizing the change (§ 85-20-901).

HISTORICAL USE

FINDINGS OF FACT

13. Historical consumptive use was calculated by the Department using the methodology in ARM 36.12.1902. The acres within the place of use for this water right were historically flood irrigated. The Department will use 55% efficiency as indicated by the Applicant to evaluate historical consumptive use, per ARM 36.12.115. This efficiency is based on contour ditch irrigation with a 1.5-3.0% design slope. Based on 348.24 acres, an IWR for flood irrigation at the Wyola, MT weather station in Big Horn County of 19.19 inches, and a county management factor of 55.4%, the consumptive use for this right is 308.52 AF (348.24 AC x 19.19 inches / 12 inches/ft x 0.554 = 308.52 AF). The Department adds 5% of field-applied volume to account for irrecoverable losses in flood irrigation systems. Using a 55% efficiency, the field applied volume is 560.94 AF (308.52 AF / 0.55 = 560.94 AF), and the irrecoverable losses are 28.05 AF (308.52

AF / 0.55 x 0.05 = 28.05 AF). The total historical consumptive use, including irrecoverable losses, is 336.57 AF (308.52 AF + 28.05 AF = 336.57 AF). This equals to 0.966489 AF/AC (336.57 AF / 348.24 AC = 0.966489 AF/AC). The historical applied volume is 560.94 AF. This equates to 1.61079 AF/AC. Table 5.

Table 5. Historically consumed volume (HCV) and field application volume for the historical place of use:

Big Horn County IWR Flood Irrigation, Wheeline & Handline Seasonal ET	Management Factor Percentage 1964-1973 (Pre-July 1, 1973, HCU)	Historically Irrigated Acres	HCV (Excluding IL) (AF)	On-Farm Efficiency	Field Application Volume (AF)	Historical Irrecoverable Losses (IL): Flood, 5% (AF)	HCV (Including IL)
19.19 in	55.4%	348.24	308.52	55%	560.94	28.05	336.57

14. Historically, the estimated annual volume of water returning to the stream after flood irrigation practices was 224.37 AF. Water diverted by the historic flood system, which was not consumed, returned and was available for diversion by downstream water users. The Surface Water Change Report by Department hydrogeologist Jack Landers indicates that historic return flows entered either the Little Bighorn River at the eastern boundary of the SENE Section 11, T9S, R34E, Big Horn County and Crazy Creek at the eastern boundary of the NWNESW Section 21, T8S, R35E, Big Horn County.

15. Water from the Little Bighorn River was diverted by a headgate from the historical POD located in the NWSWNE Section 11, T9S, R34E, and conveyed by the Bozeman Trail Ditch to the various POUs along the ditch.

16. The Big Horn County WRS, dated May 1947, states the Bozeman Trail Ditch was constructed at a total distance of 9.79 miles, with a bottom width = 5.0 feet, top width = 14.0 feet, and water depth = 1.5 feet, with a carrying capacity of 65.25 CFS. The Bozeman Trail Ditch was used to convey irrigation water to a maximum of 2,152.87 irrigable acres.

17. Using Manning's equation in the Department's Irrigation and Conveyance Loss Calculator with the parameters from the WRS for the Bozeman Trail Ditch: bottom width = 5.0 feet, top width = 14.0 feet, and water depth = 1.5 feet; and Manning's n = 0.025, with a slope = 1% (0.01); the calculated discharge is 83.78 CFS for the capacity of the Bozeman Trail Ditch.

18. The Post Decree Version of Statement of Claim 43O 185505-00, as stipulated in Water Court Case 43O-208 and described in the Water Masters Report, identifies a flow rate of 13.20 CFS for Statement of Claim 43O 185505-00 (FOF 1(f)). The Department finds the historical flow rate was 13.2 CFS (5,924.2 GPM). This equates to 17.0 GPM/AC, which is the DNRC adjudication standard for statements of claim and is within the ditch's capacity.

19. The original Statement of Claim filing indicated a period of diversion and a period of use from April 1 – October 31. There is no information in the file or application to contradict or refute that the period of diversion and the period of use is April 1 – October 31. The period of diversion and the period of use match the Department standard for climatic area II found in ARM 36.12.112.

20. Per the Applicant, 138 days of irrigation were the number of days necessary to flood irrigate the acreage pre-1973, during the period of diversion, except time utilized for 3 cuttings.

21. Statement of Claim 43O 185505-00 is the only active state-based irrigation water right on the Bozeman Trail Ditch. Therefore, all conveyance losses were assigned to Statement of Claim 43O 185505-00.

22. Conveyance loss is the portion of water diverted at the headgate that does not arrive at the irrigated place of use due to seepage, vegetative loss, and evaporation loss from the ditch. Taking the flow rate of 13.20 CFS divided by 348.24 acres gives 0.038 CFS/AC (17.01 GPM/AC). Based on the historical place of use, fields moving downgradient from the headgate consist of 18.11 acres, 27.48 acres, 132.84 acres, 101.09 acres, and 68.72 acres. The flow rate assigned to each field is quantified by multiplying the acreage by 0.038 CFS/AF, giving 0.67 CFS, 1.04 CFS, 5.04 CFS, 3.83 CFS, and 2.60 CFS, respectively. These flow rates were subtracted from the flow rate in the ditch, for ditch segments below each field, as detailed below.

23. To calculate conveyance loss, according to the Technical Memo for Distributing Conveyance Loss on Multiple Use Ditches, the Department divided the ditch into five segments, as follows:

a. The first segment is 2,381.54 feet long and extends from the headgate in the NWSWNE Section 11 T9S R34E to the SWNENE Section 11 at the start of the first field. Conveyance loss for this segment (1) of the ditch was calculated using the full flow rate of 13.20 CFS.

b. The second segment is 3,858.66 feet long, beginning in the SWNENE of Section 11 running along the north side of the first field in Sections 11 and 02, and ending in the

SWNESW of Section 1 T9S 34E, at the start of the second field. Conveyance loss for this segment (2) of the ditch was calculated using a flow rate of 12.51 CFS.

c. The third segment is 4,559.49 feet long, beginning in the SWNESW of Section 1 T9S R34E, and ending at the start of the third field, in the SWSWNW, known as Government Lot 5, Section 6 T9S R35E. Conveyance loss for this segment (3) of the ditch was calculated using the flow rate of 11.47 CFS.

d. The fourth segment is 19,634.20 feet long, beginning from the SWSWNW of Section 6 T9S R35E, and travels northward to the NWNENWNE of Section 29 T8S 35E. Conveyance loss for this segment (4) of the ditch was calculated using a flow rate of 6.44 CFS.

e. The fifth segment is 15,913.24 feet long and travels from the NWNENWNE of Section 29 T8S 35E to the SWSENW of Section 21 T8S 35E. Conveyance loss for this segment (5) of the ditch was calculated using a flow rate of 2.6 CFS.

f. The total distance from the POD to the last POU is 46,347.1 ft. The remaining portion of the ditch is not used for irrigation and therefore, was not used in the conveyance loss calculation.

24. Conveyance loss is the sum of Seepage Loss, Vegetative Loss, and Ditch Evaporation (ARM 36.12.1902(10)). Parameters used in calculating conveyance loss are as follows: ditch length = 2,381.54 feet (first segment; 0.5410 miles); 3,858.66 (second segment; 0.7308 miles); 4,559.49 feet (third segment; 0.8635 miles); 19,634.20 (fourth segment; 3.7185 miles); and 15,913.24 (fifth segment; 3.01387 miles); wetted perimeter = 14.5 feet; upper width = 14 feet; bottom width = 5; depth = 1.5 feet; flow rate = 13.20 CFS total/adjusted per segment (as mentioned above); days irrigated = 138 (per Applicant, as the number of days necessary to flood irrigate the acreage pre-1973); Adjusted Net Evaporation from the April 1 – October 31 = 1.8 feet (21.6 inches) as taken from the Gridded Monthly NetEvap layer in CONVERGE. To determine the soil type of the Bozeman Trail Ditch, soil profiles were obtained from the Natural Resources Conservation Service Web Soil Survey, at the beginning of the first field in the NESWNENE of Section 11 T9S R34E; and just downgradient of the last field in the SENENWNE of Section 21 T8S R35E. The soil profiles showed silty clay loam as the primary soil type for both locations. As such, seepage loss was calculated at a ditch loss rate (silty clay loam) = 0.7 for each segment. The calculations for Seepage Loss, Vegetative Loss, and Ditch Evaporation are as follows:

a. Historical Seepage Loss is calculated as: (wetted perimeter) x (ditch length) x (loss rate) x (days) / 43560 ft2/acre. For each segment, seepage loss is as follows: (1) 76.51 AF; (2) 123.97 AF; (3) 146.48 AF; (4) 630.78 AF; and (5) 511.24 AF. The total historical seepage loss attributed to Statement of Claim 43O 185505-00 is 1,489 AF (76.51 AF + 123.97 AF + 146.48 AF + 630.78 AF + 511.24 AF = 1488.968 AF).

b. Historical Vegetation Loss is calculated as: (% loss per mile) x (flow in CFS) x (days ditch is flowing) x (ditch length in miles) x 2. Vegetation loss incorporates a 0.75% loss per mile for water taken up by vegetation. For each segment, vegetation loss is as follows: (1) 12.32 AF; (2) 18.93 AF; (3) 20.51 AF; (4) 49.55 AF; (5) 16.25 AF. The total historical vegetation loss attributed to 43O 185505-00 is 117.56 AF (12.32 + 18.93 + 20.51 + 49.55 + 16.25 = 117.558 AF).

c. Historical Ditch Evaporation is calculated as: (surface area of ditch (length x width in ft)) x (evaporation rate in ft/acre/yr, period adjusted) / 43,560 ft2/acre. Ditch evaporation for each segment is as follows: (1) 1.38 AF ; (2) 2.23 AF ; (3) 2.64 AF ; (4) 11.36 AF ; (5) 9.21 AF. The total historical ditch evaporation attributed to 43O 185505-00 is 26.81 AF (1.38 + 2.23 + 2.64 + 11.36 + 9.21 = 26.81 AF).

25. Total Historical Conveyance Loss for Statement of Claim 43O 185505-00 is 1,633.33 AF (1,489 AF + 117.56 AF + 26.81 AF = 1,633.33 AF). The Total Historical Conveyance loss for Statement of Claim is shown in Table 6, and the individual parameters by segment are shown in Table 7.

Table 6. Conveyance Losses for the Bozeman Trail Ditch

[A] Seepage Loss	Ditch Wetted Perimeter (ft)	Ditch Length (ft)	Ditch Loss Rate ($ft^3/ft^2/day$)	Days Irrigated	***Seepage Loss (AF)***
	14.5	46,347.1	0.7	138	1,489
[B] Vegetation Loss	% Loss/Mile	Historical Flow Rate (CFS)	Days Irrigated	Ditch Length (mi)	***Vegetation Loss (×2) (AF)***
	0.75%	13.2	138	8.778	117.56
[C] Ditch Evaporation	Ditch Width (ft)	Ditch Length (ft)	Period Adjusted Evaporation Factor (ft)	***Ditch Evaporation (AF)***	**Seasonal Conveyance Loss (AF) (A+B+C)**
	14	46,347.1	1.8	26.81	1,633.33

Table 7. Apportioned Conveyance Loss Volumes for the Bozeman Trail Ditch

Segment	1	2	3	4	5	Total
Flow Rate Removed at End of Segment	0.686	1.04	5.035	3.831	2.6	**13.2 CFS**
Flow Rate at Field Arrival	13.2	12.51	11.47	6.43	2.60	**N/A**
Acres Remaining – upon arrival	348.24	330.13	302.65	169.81	68.72	**N/A**
Length (Ft)	2,381.54	3,858.66	4,559.49	19,634.17	15,913.24	**46,347.1**
Seepage Loss	76.51	123.965	146.48	630.78	511.24	**1,489 AF**
Vegetation Loss	12.32	18.93	20.51	49.55	16.25	**117.56 AF**
Ditch Evaporation	1.38	2.23	2.64	11.36	9.21	**26.8 AF**
Total Conveyance Loss Per Segment	**90.21**	**145.1**	**169.6**	**691.7**	**536.7**	**1,633.3 AF**

26. The Department uses the following formula to determine the historical diverted volume: Historical Diverted Volume = (Volume historical consumptive use / On-farm efficiency) + Volume conveyance loss. The volume of historical consumptive use divided by on-farm efficiency is the field applied volume. The historical consumptive use, not including irrecoverable losses, is 308.52 AF. Using a flood irrigation efficiency of 55%, the historical field applied volume is 560.94 AF (308.52 AF / 0.55= 560.94 AF). With the historical conveyance loss of 1,633.33 AF, the Department finds the Historical Diverted Volume of Statement of Claim 43O 185505-00 is 2,194.3 AF (560.94 AF + 1633.33 AF = 2194.3 AF). Table 8.

Table 8: Historically diverted volume of Statement of Claim 430-185505

Field Application Volume	Conveyance Loss Volume	Historically Diverted Volume
560.94 AF	1,633.33 AF	2,194.3 AF

27. The Department finds the following historical use, as shown in Table 9.

Table 9. Summary of historical use findings for Statement of Claim 43O 185505-00

Priority Date	Diverted Volume	Flow Rate	Purpose	Total Acres	Consumptive Volume	Place of Use	Point of Diversion
07/19/1920	2,194.3 AF	13.2 CFS	Flood Irrigation	348.24	336.57	See Table 2	NWSWNE Section 11 T09S R34E Big Horn County

ADVERSE EFFECT

FINDINGS OF FACT

28. Originally, the Applicant proposed to retire 112.54 AC from the historical POU and add 65.7 AC of irrigation outside of the historical POU to be pivot irrigated by water conveyed through the Campbell-Belken Ditch. Subsequent to the Technical Report, the Applicant amended the application to retire an additional 12.4 AC, to address an increase of 11.9 AF in the proposed consumptive use as determined by the Department-completed Technical Report, dated January 08, 2025. Under the amended proposed change, 124.94 AC (112.54 AC + 12.4 AC = 124.94 AC) will be retired, and 223.3 AC within the historical POU will remain. There are 289 AC (223.3 AC + 65.7 AC = 289 AC) proposed for irrigation. The historical flow rate is 13.2 CFS; the historical irrigated acres were 348.24; and the historical consumptive volume was 336.57 AF. The proposed flow rate for the portion of water used for flood irrigation and conveyed by the Bozeman Trail Ditch is 12.1 CFS; the proposed flow rate for water that is conveyed by the Campbell-Belken Ditch, to a pipeline, and lastly, a center pivot, is 1.1 CFS, as determined by the pivot capacity; totaling 13.2 CFS for the proposed change to Statement of Claim 43O 185505-00.

29. According to the DNRC Change Manual, the Department will not analyze the change in efficiency for acres within the historical POU because a change authorization is not required to change the method of irrigation.

30. Because the consumed and applied volume for the retain acres are considered unchanged by the Department, the change in consumptive use volume for Statement of Claim 43O 185505-00 can be found by taking the difference between the consumptive use volume for the new 65.7 acres added on the Campbell-Belken Ditch, and the consumptive use volume for the 124.94 retired acres on the Bozeman Trail Ditch. These calculations do not reflect the Technical Report due to the Applicant increasing the retired acres from 112.54 AC to 124.94 AC. The following calculations are based on the retirement of 124.94 AC, as follows:

a. Retired Consumptive Use: The consumptive use for the 124.94 acres retired from the Bozeman Trail portion of this water right is calculated as the number of acres retired multiplied by the AF/AC of historical use: (124.94 AC x 0.966489 AF/AC = 120.75 AF)(FOF 13). The Department finds the retired consumptive use for Statement of Claim 43O 185505-00 is 120.75 AF.

b. Proposed Consumptive Use for the Bozeman Trail Ditch: The proposed consumptive use volume for this portion of the water right is taken as the historical consumptive use volume

minus the volume of the retired consumptive use. The Department finds the Bozeman Trail consumptive use is 215.82 AF (336.57 AF – 120.75 AF = 215.82 AF).

c. Proposed Consumptive Use for the Campbell-Belken Ditch: The Campbell-Belken Ditch proposed consumptive use was calculated by the Department using the methodology in ARM 36.12.1902. The acres proposed for this portion of the water right will be pivot irrigated. The Department will use the Department standard of 70% efficiency based on sprinkler irrigation to evaluate consumptive use on the AC under the Campbell-Belken Ditch. Based on 65.7 acres, an IWR for center pivot irrigation at the Wyola, MT weather station in Big Horn County of 21.89 inches, and a county management factor of 88.10% for the proposed use, the consumptive use for this portion of the water right is 105.59 AF (65.7 AC x 21.89/12 inches/ft x 0.881 = 105.59 AF). The Department adds 10.0% of field-applied volume to account for irrecoverable losses in sprinkler irrigation systems. Using a 70% efficiency for sprinkler systems, the field applied volume is 150.84 AF (105.59 AF/0.7 = 150.84 AF), and the irrecoverable losses are 15.08 AF (105.59 AF/0.7 x 0.1 = 15.08 AF). The Department finds the proposed consumptive use for the Campbell-Belken Ditch, including irrecoverable losses, is 120.67 AF (105.59 + 15.08 = 120.67 AF). This equals 1.84 AF/AC (120.67 AF / 65.7 AC = 1.836 AF/AC).

31. The total proposed consumptive use (volume) for the Bozeman Trail Ditch and Campbell-Belken Ditch is 336.49 AF (215.82 AF + 120.67 AF = 336.49 AF). Table 14.

32. The proposed consumptive use is 0.08 AF less than the historical consumptive use (336.57 - 336.49 AF = 0.08 AF). Table 14.

33. The proposed diverted volume for the Bozeman Trail Ditch was found by the Department using the following formula: Diverted Volume = (Volume consumptive use/On-farm efficiency) + Volume conveyance loss. Because the consumed and applied volume for the retain acres are considered unchanged by the Department, the proposed applied volume is the number of retained acres times the historical AF/AC of applied volume (223.3 AC x 1.61079 AF/AC = 359.69 AF)

34. Conveyance loss for the proposed changes on the Bozeman Trail Ditch is calculated by combining the seepage loss, vegetation loss, and ditch evaporation for the distance water is conveyed to the place of use; and was calculated with the same parameters of the historical conveyance loss with the exception in the number of segments (there were 5 segments in the historical calculations) and their respective distance and flow rate. The Department divided

Bozeman Trail Ditch into three segments. An error was found in the segment distances used in the calculations for vegetation loss and ditch evaporation for the proposed conveyance loss volume for the Bozeman Trail Ditch as presented in the Technical Analysis. The following data are the results given by the correct segment distances and are different from the proposed conveyance loss volume in the Technical Report, dated January 08, 2025. The first, 10,799.69 feet; the second, 19,634.17 feet; and the third, 15,913.23 feet. Conveyance loss for these segments was calculated at the flow rate of 12.1 CFS, 7.45 CFS, and 3.48 CFS, respectively. Seepage loss for each segment was found to be 346.96 AF, 630.77 AF, and 511.24 AF, respectively, totaling 1,488.968 AF for the ditch. Vegetation loss for each segment was found to be 51.23 AF, 57.38 AF, and 21.71 AF, respectively, totaling 130.323 AF for the ditch. Ditch evaporation for each segment was found to be 6.25 AF, 11.36 AF, and 9.21 AF, respectively, totaling 26.81 AF for the ditch. The Department finds the proposed conveyance losses for the Bozeman Trail Ditch total 1,646.1 AF (1,489 AF + 130.32 AF + 26.81 AF = 1,646.13 AF). Table 10.

Table 10. Apportioned Proposed Conveyance Loss Volumes for the Bozeman Trail Ditch

Segment	**1**	**2**	**3**	**Total**
Flow Rate Removed at End of Segment	4.6459	3.9734	3.4806	**12.1**
Flow Rate at Field Arrival	12.1	7.4541	3.4806	**N/A**
Acres Remaining – upon arrival	90.5	77.4	55.4	**223.3**
Length (Ft)	10,799.69	19,634.17	16,913.25	**46,347.10**
Length (Miles)	2.045	3.7186	3.013	**8.777**
Seepage Loss	346.96	630.776	511.24	**1,488.968**
Vegetation Loss	51.23	57.38	21.71	**130.323**
Ditch Evaporation	6.25	11.36	9.21	**26.81**
Total Conveyance Loss Per Segment	**404.43**	**669.5**	**542.2**	**1,646.1**

35. The proposed diverted volume for the Bozeman Trail Ditch is the applied volume plus the diverted volume. With an applied volume of 359.69 AF, the Department finds the total proposed diverted volume for the Bozeman Trail Ditch is 2,005.79 AF (359.69 AF + 1,646.1 AF = 2,005.79 AF, Table 11).

Table 11: Proposed diverted volume for Bozeman Trail Ditch

Field Application Volume	Conveyance Loss Volume	Diverted Volume
359.69 AF	1,646.1 AF	2,005.79 AF

36. The proposed diverted volume for the Campbell-Belken Ditch is 158.42 AF. These values are taken from the Technical Report and will not be altered. The proposed diverted volume for the Campbell-Belken Ditch was found by the Department using the formula: Diverted Volume = (Volume consumptive use/On-farm efficiency) + Volume conveyance loss. The field applied volume is 150.84 AF (FOF 30c).

37. Conveyance loss for the Campbell-Belken Ditch is being calculated because the Applicant proposes to add a second POD in the SENENE Section 32, T8S, R35E at the existing headgate on the Campbell-Belkin Ditch, and use a portion of the Campbell-Belkin Ditch to convey water to pivot irrigate 65.7 AC.

a. The Applicant provides the following conveyance system: from the headgate, water will travel northeast approximately 1,750 feet to a vertical culvert, where a bubbler screen will screen incoming water. Screened water will enter an 8-inch diameter pipeline and travel approximately 1,475 feet to the center point. Due to the lack of conveyance loss in the pipeline, conveyance loss will be calculated using only the portion conveyed through the Campbell-Belkin Ditch.

b. Conveyance loss for the Campbell-Belken Ditch was calculated for one segment at 1,750 ft in length, wetted perimeter = 6.16 feet; upper width = 6 feet; bottom width = 3 feet; depth = 0.5 feet; flow rate = 1.1, as determined by the capacity of the pivot; days irrigated = 40, provided by the Applicant; ditch loss rate (silty clay loam) = 0.7; Adjusted Net Evaporation from the April 1 – October 31 = 1.8 feet (21.6 inches) as taken from the Gridded Monthly NetEvap layer in CONVERGE. Seepage loss is 6.93 AF; vegetation loss is 0.22 AF; and ditch evaporation is 0.43 AF. The Department finds the proposed conveyance losses for the Campbell-Belken Ditch total 7.58 AF (6.93 F + 0.22 AF + 0.43 AF = 7.58 AF). Table 12.

Table 12. Apportioned Proposed Conveyance Loss Volumes for the Campbell-Belken Ditch

	Total
Flow Rate Removed at End of Segment	**1.1**
Flow Rate at Field Arrival	**1.1**
Segment Length (Ft)	**1,750**
Seepage Loss	**6.93**

Vegetation Loss	**0.22**
Ditch Evaporation	**0.43**
Total Conveyance Loss Per Segment	**7.58**

38. The proposed diverted volume for the Campbell-Belken Ditch is the field applied volume plus the conveyance loss volume. With a field applied volume of 150.84 AF, the Department finds the total proposed diverted volume for the Campbell-Belken Ditch is 158.42 AF (150.84 AF + 7.58 AF = 158.42 AF). Table 13.

Table 13: Proposed diverted volume for Campbell-Belken Ditch

Field Application Volume	Conveyance Loss Volume	Diverted Volume
150.84 AF	7.58 AF	158.42 AF

39. The Department finds the total Proposed diverted volume for Statement of Claim 43O 185505-00 is 2,164.2 AF. The proposed diverted volume for Statement of Claim 43O 185505-00 is the proposed diverted volume of the Bozeman Trail Ditch plus the proposed diverted volume of the Campbell-Belken Ditch (2,005.79 AF + 158.41 AF = 2,164.2 AF). Table 14.

40. The Department finds the proposed diverted volume is 23.52 AF less than the historically diverted volume (2,194.3 AF – 2,164.2 AF = 30.1 AF). Table 14. This water will be left instream.

41. Under the proposed changes, Department Hydrologist, Jack Landers, found that 174.04 AF of return flows would accrue to the Little Bighorn River at the eastern boundary of the NWNESW Section 21, T9S, R35E, Big Horn County and Crazy Creek at the eastern boundary of the NWNESW Section 21, T8S, R35E, Big Horn County. Water would be left instream on the Little Big Horn River and return flows on Crazy Creek would accrue at the same location as historically.

42. Statement of Claim 43O 30145518, owned by the Applicant, is a Stock direct water use right for Crazy Creek, with a priority date of May 7, 1868. Since Statement of Claim 43O 30145518 has a senior priority date to Statement of Claim 43O 185505-00, it was not dependent on return flows from 43O 185505-00.

Table 14: Comparison of Historical and Proposed Use Volume

Comparison	Consumptive Use Volume (AF)	Diverted Volume (AF)
Historical	336.57	2,194.3
Proposed	336.49	2,164.2

Difference	0.08 Less	30.1 Less

43. The area of potential impact is from the Bozeman Trail Ditch headgate in the NWSWNE of Section 11, T9S, R34E to the second point of diversion located at the Campbell-Belken Ditch headgate in the SENENE of Section 32, T8S, R35E, a distance of 6.59 miles (34,798.2685 feet).

44. The list of water rights on the Little Bighorn River within the area of potential impact are in Table 15.

Table 15. Water Rights within the area of potential impact

Water Right #	Owners	Purpose	Flow Rate (CFS)	Priority Date
43O 185300-00	SUNLIGHT RANCH CO	STOCK DIRECT	0.00**	07/19/1920
43O 185306-00	SUNLIGHT RANCH CO	STOCK DIRECT	0.3*	05/07/1868
43O 185334-00	CLAREN J NEAL; LYLE M NEAL	STOCK DIRECT	0.00*	05/07/1868
43O 189156-00	JOCELYN J TYLER	STOCK DIRECT	0.00*	12/31/1942
43O 30145513	SUNLIGHT RANCH CO	STOCK DIRECT	0.00*	05/07/1868

* Calculated by DNRC: Flow rate assigned for livestock direct from source as 132.6 GPM (0.3 CFS) for the first right, zeroed out on all others, based upon back calculation of total volume used for the livestock direct from source water rights (214 AF).
**43O 185300-00 is a stock rights from the Bozeman Trail ditch – the flow rate is covered by irrigation claim 43O 185505-00.

45. There will be no adverse effect to water rights between the historical POD and the added POD because 1.1 CFS of water will be left in stream between the PODs.

46. Statement of Claim 43O 185505-00 will divert up to 2,005.79 AF through the Bozeman Trail Ditch at a flow rate of 12.1 CFS to flood irrigate the remaining 223.3 AC within the historical POU; and divert up to 158.42 AF at a flow rate of 1.1 CFS through the Campbell-Belkin Ditch, to pivot irrigate the added 65.7 AC outside of the historical POU.

47. The Applicant proposed to monitor the flow rate and diversion with staff gauges at each point of diversion to ensure that the combined flow rate does not exceed the proposed appropriation.

48. The Department finds that the proposed change will not have an adverse effect on any water users, including the Crow Tribal Water Right, because the diverted volume and consumptive use are decreased, water will be left instream on the Little Bighorn River, and the location of return flows on Crazy Creek will not change.

49. Should this change be authorized, the Department will add the conditions to this change, as follows:

i. THE COMBINED FLOW RATE OF BOTH POINTS OF DIVERSION SHALL NOT EXCEED THE HISTORICAL FLOW RATE OF 13.2 CFS.

ii. ANYTIME AFTER THIS RIGHT IS ISSUED AND COMPETITION FOR WATER ON THE SOURCE BECOMES AN ISSUE, THE DEPARTMENT MAY REQUIRE THE APPROPRIATOR TO INSTALL WATER USE MEASURING DEVICES AND SUBMIT THE RECORDS OF THE FLOW RATE OR VOLUME, OR BIOTH, OF ALL WATER DIVERTED.

BENEFICIAL USE

FINDINGS OF FACT

50. The Applicant proposes to retire 124.94 AC along the Bozeman Trail Ditch, flood irrigate the remaining 223.3 AC, add a second point of diversion at the Campbell-Belken Ditch headgate in the SENENE of Section 32, T8S, R35E, and add 65.7 AC of irrigation outside of the historical POU, to be pivot irrigated by water conveyed through the Campbell-Belken Ditch.

51. The Applicant will divert up to 2,005.79 AF through the Bozeman Trail Ditch at a flow rate of 12.1 CFS to flood irrigate 223.3 AC; and up to 158.42 AF at a flow rate of 1.1 CFS to pivot irrigate the added 65.7 AC outside of the historical POU, with water conveyed through the Campbell-Belken Ditch.

52. The Department finds that irrigation is a beneficial use and that the period of diversion, period of use, flow rate, and volume are reasonably necessary, within the historical use of Statement of Claim 43O 185505-00 and Department standards.

ADEQUATE DIVERSION

FINDINGS OF FACT

53. The Applicant will divert water from the historical POD. The historical POD for Statement of Claim 43O 185505-00 located on the Bozeman Trail Ditch headgate in the NWSWNE Section 11, T9S, R34E will continue to be used. The Bozeman Trail Ditch will convey up to 2,005.79 AF from the Little Bighorn River at a flow rate of 12.1 CFS to flood irrigate 223.3 AC. The Bozeman Trail Ditch has been in use since Bozeman Trail Ditch Company President, Carl W. Gross, filed

a Notice of Appropriation to divert 3400 miner's inches of water (3400 miner's inches x (1 CFS / 40 miner's inches) = 85 CFS) on July 19, 1920. On July 24, 1922, the Bozeman Trail Ditch Company stated that the Bozeman Trail Ditch was constructed at a total distance of 9.79 miles, with a bottom width = 5.0 feet, top width = 14.0 feet, and water depth = 1.5 feet, with a carrying capacity of 65.25 CFS. The Sunlight Ranch Company utilizes the first 8.778 miles to irrigate the POU.

54. The Department finds that the Bozeman Trail Ditch is capable of diverting the 12.1 CFS requested by the Applicant, as it has historically done so at 13.2 CFS.

55. The Applicant proposes to add a second POD in the SENENE Section 32, T8S, R35E at the existing headgate on the Campbell-Belken Ditch. The Applicant will divert up to 158.42 AF at a flow rate of 1.1 CFS to pivot irrigate the added 65.7 AC. From the headgate, water will travel northeast approximately 1,750 feet to a vertical culvert, where a bubbler screen will screen incoming water. Screened water will enter an 8-inch diameter pipeline and travel approximately 1,475 feet to the center point. The 65.7 AC will be irrigated with a Murphy Pivot. Valley Standard Pivot 6000 Percent Timer Data V-Chart shows the Murphy Pivot will run at 450 GPM for center pivot, and 59.9 GPM for the End Gun, totaling 509.9 GPM, or 1.1 CFS (509.9 GPM / 448.8 = 1.136 CFS).

56. The Department finds the Campbell-Belken Ditch and conveyance are capable of diverting 1.1 CFS, as requested by the applicant.

57. The Department finds the existing and proposed diversion means adequate.

POSSESSORY INTEREST

FINDINGS OF FACT

58. 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.

CONCLUSIONS OF LAW

HISTORICAL USE AND ADVERSE EFFECT

59. Montana's change statute codifies the fundamental principles of the Prior Appropriation Doctrine. Sections 85-2-401 and -402(1)(a), MCA, authorize changes to existing water rights, permits, and water reservations subject to the fundamental tenet of Montana water law that one

may change only that to which he or she has the right based upon beneficial use. A change to an existing water right may not expand the consumptive use of the underlying right or remove the well-established limit of the appropriator's right to water actually taken and beneficially used. An increase in consumptive use constitutes a new appropriation and is subject to the new water use permit requirements of the MWUA. *McDonald v. State*, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986) (beneficial use constitutes the basis, measure, and limit of a water right); *Featherman v. Hennessy*, 43 Mont. 310, 316-17, 115 P. 983, 986 (1911) (increased consumption associated with expanded use of underlying right amounted to new appropriation rather than change in use); *Quigley v. McIntosh*, 110 Mont. 495, 103 P.2d 1067, 1072-74 (1940) (appropriator may not expand a water right through the guise of a change – expanded use constitutes a new use with a new priority date junior to intervening water uses); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924) ("quantity of water which may be claimed lawfully under a prior appropriation is limited to that quantity within the amount claimed which the appropriator has needed, and which within a reasonable time he has actually and economically applied to a beneficial use. . . . it may be said that the principle of beneficial use is the one of paramount importance . . . The appropriator does not own the water. He has a right of ownership in its use only"); *Town of Manhattan*, ¶ 10 (an appropriator's right only attaches to the amount of water actually taken and beneficially applied).[1]

60. 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]

61. The cornerstone of evaluating potential adverse effect to other appropriators is the

[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).

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 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]

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[3]A 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

62. 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]

63. 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.

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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 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).

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

> The question of adverse effect under §§ 85-2-402(2) and -408(3), MCA, implicates return flows. A change in the amount of return flow, or to the hydrogeologic pattern of return flow, has the potential to affect adversely downstream water rights. There consequently exists an inextricable link between the "amount historically consumed" and the water that re-enters the stream as return flow. . . .
> An appropriator historically has been entitled to the greatest quantity of water he can put to use. The requirement that the use be both beneficial and reasonable, however, proscribes this tenet. This limitation springs from a fundamental tenet of western water law-that an appropriator has a right only to that amount of water historically put to beneficial use-developed in concert with the rationale that each subsequent appropriator "is entitled to have the water flow in the same manner as when he located," and the appropriator may insist that prior appropriators do not affect adversely his rights.
> This fundamental rule of Montana water law has dictated the Department's determinations in numerous prior change proceedings. The Department claims that historic consumptive use, as quantified in part by return flow analysis, represents a key element of proving historic beneficial use.
> We do not dispute this interrelationship between historic consumptive use, return flow, and the amount of water to which an appropriator is entitled as limited by his past beneficial use.

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

65. 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.

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

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

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

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

68. While evidence may be provided that a particular parcel was irrigated, the actual amount of water historically diverted and consumed is critical. *E.g., In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, DNRC Proposal for Decision adopted by Final Order (2005). The Department cannot assume that a parcel received the full duty of water or that it received sufficient water to constitute full-service irrigation for optimum plant growth. Even when it seems clear that no other rights could be affected solely by a particular change in the location of diversion, it is essential that the change also not enlarge an existing right. *See MacDonald*, 220 Mont. at 529, 722 P.2d at 604; *Featherman*, 43 Mont. at 316-17, 115 P. at 986; *Trail's End Ranch, L.L.C. v. Colorado Div. of Water Resources*, 91 P.3d 1058, 1063 (Colo., 2004).

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

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

71. Based upon the Applicant's evidence of historic use, the Applicant has proven by a preponderance of the evidence the historic use of Statement of Claim 43O 185505-00 to be a diverted volume of 2,194.3 AF, a historically consumed volume of 336.57 AF, and flow rate of 13.2 CFS. (FOF Nos. 13-27)

72. 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.28-49)

BENEFICIAL USE

73. 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 proposed or prohibited from issuing a permit for more water than can be beneficially used).

74. 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 that irrigation is a beneficial use, and 2,164.2 AF of diverted volume and 13.2 CFS flow rate of water requested is the amount needed to sustain the beneficial use and is within the standards set by ARM 36.12.115. Section 85-2-402(2)(c), MCA (FOF Nos. 50-52).

ADEQUATE MEANS OF DIVERSION

75. 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).

76. 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. 53-57)

POSSESSORY INTEREST

77. 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.

78. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. (FOF No. 58).

PRELIMINARY DETERMINATION

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right No. 43O 30162567 be GRANTED subject to the following.

The Applicant may add a second point of diversion in the SENENE Section 32, T8S, R35E in Big Horn County on the Little Bighorn River. The Applicant may retire 124.94 AC from the historical POU and add 65.7 AC, for a total of 289 AC of irrigated lands. The Applicant may divert up to 2,005.79 AF at 12.1 CFS to the Bozeman Trail Ditch and 158.41 AF at 1.1 CFS to the Campbell-Belken Ditch, totaling 2,164.2 AF at 13.2 CFS, under the following conditions:

i. THE COMBINED FLOW RATE OF BOTH POINTS OF DIVERSION SHALL NOT EXCEED THE HISTORICAL FLOW RATE OF 13.2 CFS.

ii. ANYTIME AFTER THIS RIGHT IS ISSUED AND COMPETITION FOR WATER ON THE SOURCE BECOMES AN ISSUE, THE DEPARTMENT MAY REQUIRE THE APPROPRIATOR TO INSTALL WATER USE MEASURING DEVICES AND SUBMIT THE RECORDS OF THE FLOW RATE OR VOLUME, OR BOTH, OF ALL WATER DIVERTED.

NOTICE

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

Dated this 7th day of May, 2025.

Christie J Schweigert for

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 PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 7th day of May, 2025, by first class United States mail.

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07 MAY 2025

DATE