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

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APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 43Q 30164891 BY COUGAR INVESTMENTS, LLC.	)))	**UPDATED DRAFT PRELIMINARY DETERMINATION TO GRANT PERMIT**

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On April 3, 2025, Cougar Investments, LLC. (Applicant) submitted Application for Beneficial Water Use Permit No. 43Q 30164891 to the Billings Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) for 135 GPM, up to 48.01 AF/YR for Commercial and Lawn and Garden uses. The Department published receipt of the application on its website. A preapplication meeting was held between the Department and the Applicant's consultant, Performance Engineering, LLC., on November 20, 2024, in which the Applicant designated that the technical analyses for this application would be completed by the Department. The Applicant returned the completed Preapplication Meeting Form on February 4, 2025, and the Department accepted it on February 6, 2025. The Department delivered the completed Technical Analyses on March 21, 2025. The Application was determined to be correct and complete as of April 18, 2025. The Draft Preliminary Determination to Deny was sent to the Applicant on June 17, 2025. The Applicant submitted a request for extension of time per § 85-2-307(3), MCA on June 30, 2025, to which the Department granted 180 days to submit additional information. The Applicant submitted additional information on July 11, 2025. Following the additional information, the Department revised the Draft Preliminary Determination. This Updated Draft Preliminary Determination to Grant was sent to the Applicant on August 20, 2025. An Environmental Assessment for this application was completed on May 14, 2025.

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:

    - Aquifer Testing Addendum, Form 600-ATA, December 16, 2024
- Aquifer Test Data, Form 633
- Attachments:
    - Montana Well Log Report, Form 603 R2-04; Well ID: 334912 (72nd/Danford); well completed: October 29, 2024; Certified by: American Drilling on October 31, 2024
    - Form 606P: Preapplication Meeting Form, Permit; received February 4, 2025
    - MBMG Open File Report 436: Basic Hydrogeologic Data for West Billings Area by J. L. Olson and J. C. Reiten, Danford Drain, pages 91-92; dated June 2001
- Maps:
    - Exhibit A: Platinum Commercial Park Subdivision, POD Location Exhibit; schematic without aerial; undated
    - Exhibit B: Platinum Commercial Park Subdivision, POD Vicinity Map; draft plans with proposed POD and POU overlaying aerial imagery; undated
- Department-completed technical analyses (DNRC Report). Based on information provided in the Preapplication Checklist, dated March 21, 2025
    - Groundwater Permit Technical Analysis Report – Part A, completed by DNRC Groundwater Hydrologist, Jack Landers
    - Groundwater Permit Technical Analysis Report – Part B, completed by DNRC Water Resource Specialist, Cassey Strebeck

Information Received after Application Filed

- Request for an Extension of Time, received via email on June 30, 2025
- Additional Information received via email on July 11, 2025
    - Draft PD Extension Request – 43Q 30164891; a narrative providing additional information regarding the ZOI, the bounds of the ZOI, and a comparison of the Technical Analysis for Application for Beneficial Water Use Permit No. 43Q 30162249 to the Technical Analysis for this Application for Beneficial Water Use Permit No. 43Q 30164891

Information within the Department's Possession/Knowledge

- Variance Request, Form 653, received December 5, 2024, requesting variance from ARM 36.12.121: (2)(b); (2)(c); (3)(b); (3)(c); (3)(e); (3)(e)(i); (3)(e)(ii); (3)(f); (3)(g)
- Form 653, Additional Variance Request, for ARM 36.12.121: 3(d), received on December 27, 2024

- DNRC Letter to Applicant granting variance request; dated December 30, 2024, granting variance from ARM 36.12.121: (2)(b and c); (3)(b, c, d, e, e(i), e(ii), f, and g)
- Coordinates for proposed well locations; received February 27, 2025
- Environmental Assessment and Community Impact Statement, Platinum Commercial Park Subdivision, dated November 2024, received by DNRC on May 14, 2025. Requested by Cassey Strebeck during the completion of the Department Environmental Assessment.
- Groundwater Permit Technical Analyses Report – Notice of Errata, by Cassey Strebeck, dated June 16, 2025
- Groundwater Permit Technical Analyses Report – Notice of Erratum, by Jack Landers, dated July 11, 2025
- DNRC Water Rights Information System (WRIS)
- National Hydrography Dataset (NHD)
- 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.
    - Department Technical Memorandum: Physical Availability of Surface Water with Gage Data dated November 1, 2019.
    - Department Technical Memorandum: Variance – Yellowstone River Terrace Level 3 Aquifer Properties dated March 1, 2022
    - Department Standard Practice for Area of Potential Impact Analysis
    - Montana DNRC Permit Manual
    - Montana DNRC Water Calculation Guide

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; AF means acre-feet; AC means acres; AF/AC means acre-feet per acre; AF/YR means acre-feet per year; AOPI means area of potential impact, BGS means below ground surface; BTC means below top of casing; CFS means cubic feet per second; GPM means gallons per minute; GWIC means Groundwater Information Center; hp means

horsepower; IRR means irrigation, POD means point of diversion, POU means place of use; SWL means static water level, and ZOI means Zone of Influence.

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert groundwater from January 1 to December 31 for Commercial use, and from April 1 to October 31 for 14.31 AC of Lawn and Garden use. Groundwater will be diverted by means of 14 wells from January 1 to December 31 at a combined flow rate of 135 GPM, up to 48.01 AF/YR, from 14 PODs in the SW of Sec. 30, T1S, R25E, Yellowstone County, to serve the Platinum Commercial Park Subdivision. The proposed place of use for Commercial use is Lots 1-4, Block 1; Lots 1-3, Block 2; and Lots 1-6, Block 3 of Sec. 30, T1S, R25E, Yellowstone County; and the proposed place of use for Lawn and Garden is Lots 1-4, Block 1; Lots 1-3, Block 2; and Lots 1-7, Block 3 of Sec. 30, T1S, R25E, Yellowstone County, of the proposed Platinum Commercial Park Subdivision. The Applicant's proposal is for 13 commercial lots and one (1) park, each served by an individual well. The proposed period of use for the Commercial use is from January 1 to December 31, and the proposed period of use for the Lawn and Garden is from April 1 to October 31. The proposed volume for Commercial use is up to 12.23 AF/YR. The proposed volume for Lawn and Garden irrigation of 14.31 AC at 2.5 AF/AC, is 35.78 AF/YR. The combined proposed consumptive use for this project is 26.3 AF/YR (1.2 AF/YR for Commercial use + 25.1 AF/YR for Lawn and Garden use = 26.3 AF/YR) (Department-completed Technical analysis, hereafter "DNRC Report"). This project is located at the west end of Billings on the NE corner of the intersection of 72nd Street West and Danford Road.

2. This proposed permit is not supplemental to any other water rights and does not share a place of use with any other water rights.

3. The Applicant plans to implement Codes of Covenants and Restrictions (CCRs) that will be filed with the subdivision plat, requiring water meters on all lines coming into the buildings to measure water use.

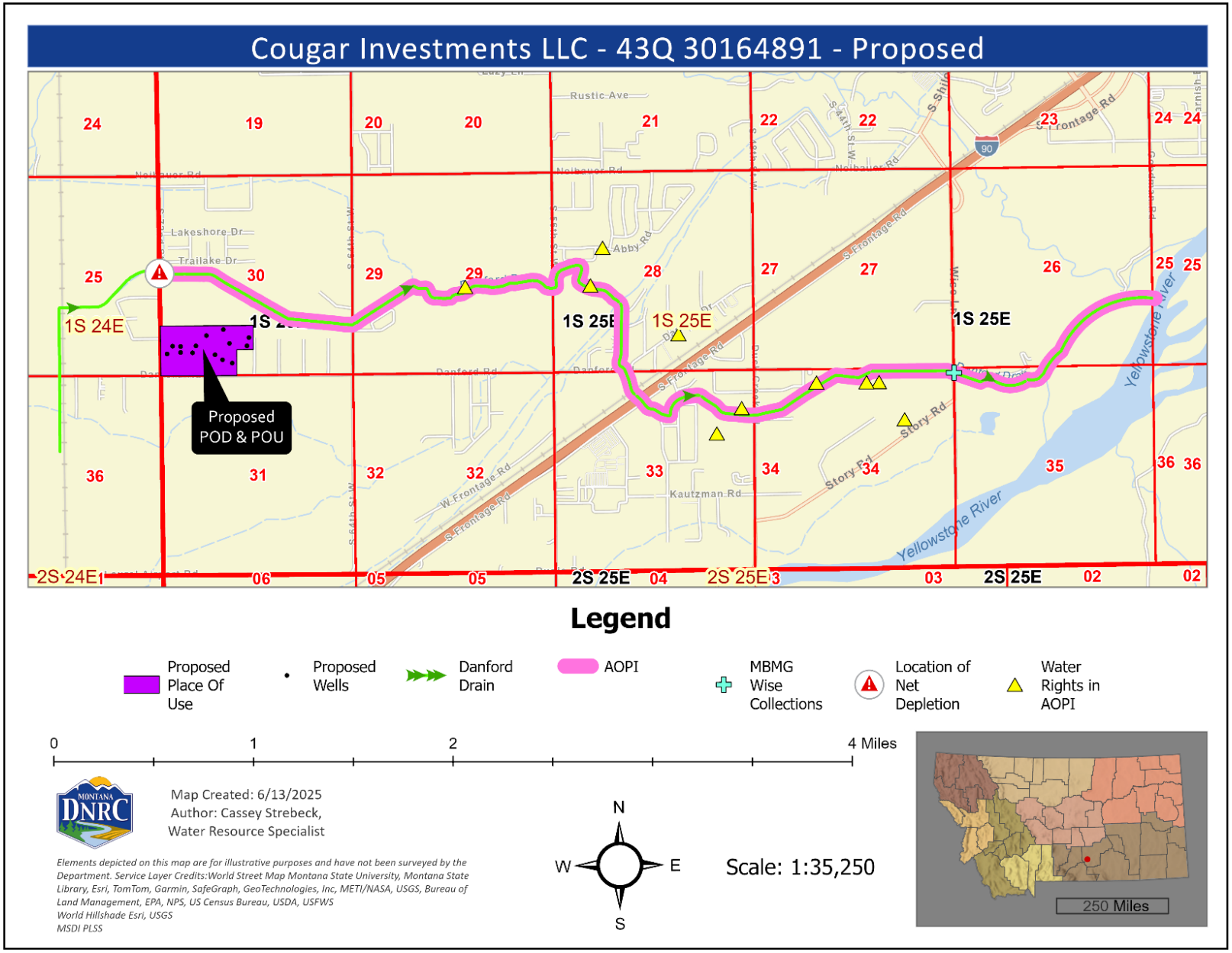

Figure 1. Proposed PODs and POU for 43Q 30164891, Platinum Commercial Park Subdivision

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

GENERAL CONCLUSIONS OF LAW

4. 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 . . .

5. 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.

6. 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.

7. 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).

8. 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.

9. 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

10. The Applicant proposes a flow rate of 135 GPM and up to 48.01 AF volume of groundwater from January 1 to December 31 for Commercial use, and from April 1 to October 31 for Lawn and Garden use, utilizing 14 wells for 14 POUs (FOF 1).

11. One well has been completed (GWIC ID 334912; 38 ft deep) in the SWSW of Sec. 30, T1S, R25E. The remaining 13 wells will be completed as lots are built on.

12. The Applicant submitted a request for variance to waive aquifer testing requirements in Administrative Rule of Montana (ARM) 36.12.121 on December 5, 2024, and December 27, 2025. The Applicant requested the variance because the proposed project meets the parameters defined in DNRC's Yellowstone River Terrace Level 3 (Qat3) Aquifer Properties Memo, which allows the Applicant to forgo the 72-hour aquifer test if the project is within the mapped boundaries of Qat3 and the Applicant agrees to use the aquifer properties as defined in the memo. The Applicant provided an aquifer test for a well (GWIC ID 334912) in the first phase of this subdivision. The Department granted a variance from ARM 36.12.121 (2)(b and c), and ARM 36.12.121 (3)(b, c, d, e, e(i), e(ii), f, and g) aquifer testing requirements on December 30, 2024. The Applicant is still required by the Department to conduct 8-hour pumping tests on all production wells until the total requested flow rate can be demonstrated.

13. The Applicant conducted an 8-hour drawdown and yield test on November 5, 2024, at an average rate of 50 GPM, with a maximum drawdown of 5.02 ft below the static water level

(SWL) of 7.91 ft, below the top of the casing leaving 25.87 ft of water column above the bottom of the well. Department Groundwater Hydrologist, Jack Landers, modeled the results of the 8-hour drawdown and yield test. The wells proposed for this application are within an unconfined hydrologic unit referred to as the Qat3, mapped by Lopez (DNRC Report). The test well (GWIC ID 334912) has 6-feet of clay overlaying a 29-foot-thick sand and gravel aquifer, which is consistent with other wells throughout the Qat3 aquifer. The recommended aquifer properties to analyze groundwater permit criteria include a transmissivity (T) = 6,000 $ft^{2/}$day and specific yield (S_y) = 0.10 identified from the Aquifer Properties Memo, and a groundwater gradient (i) = 0.003 ft/ft (DNRC Report).

14. The 14 proposed wells were modeled as one well using the Theis (DNRC Report) unconfined solution. Using the recommended aquifer properties identified in FOF 13 and a constant pumping rate of 29.83 GPM (flow rate required to produce the requested volume over the proposed period of diversion), the modeled 0.01-foot drawdown contour (zone of influence or ZOI) occurs at 12,200 feet from the proposed wells. The drawdown contour is bound by the Cretaceous shale bedrock unit approximately 5,000 feet to the northwest and terrace scarps approximately 8,000 feet southeast of the proposed wells. The total width of the ZOI (W), which is measured perpendicular to the groundwater flow direction (northeast and east), equals 13,700 feet. The total volume of groundwater flux (Q) each year within the ZOI is given by the equation Q = Twi and is 246,600 ft^3/day (6,000 ft^2/day x 13,700 ft x .003 ft/ft) or 2,066 AF/YR.

15. Should this appropriation be authorized, the Department will add the following condition:

IMPORTANT INFORMATION

THE APPROPRIATOR MUST PERFORM 8-HOUR DRAWDOWN AND YIELD TESTS ON EACH PRODUCTION WELL UNTIL THE REQUESTED FLOW RATE OF 135 GPM HAS BEEN ATTAINED. THE RESULTS OF THE 8-HOUR DRAWDOWN AND YIELD TESTS MUST BE SUBMITTED TO THE DEPARTMENT ON FORM 633 AS THE PRODUCTION WELLS ARE COMPLETED.

16. The Department finds that the amount of groundwater physically available at the proposed point of diversion is 2,066 AF/YR. The Applicant proposes to use 48.01 AF/YR. The Department finds that groundwater is physically available in the amount requested during the proposed period of diversion.

LEGAL AVAILABILITY

FINDINGS OF FACT

17. Department Groundwater Hydrologist Jack Landers modeled the drawdown from the proposed appropriation after five (5) years of pumping. The model predicted that the 0.01-foot drawdown contour or ZOI would occur at a maximum distance of 12,200 feet from the Applicant's PODs. Based on a 0.01-foot drawdown contour at 12,200 ft from the proposed wells, delineated based on the structure of the aquifer and impermeable boundaries, the DNRC Report identified 374 active groundwater rights within the ZOI. A list of these water rights is in the file. Of those water rights, 344 are Groundwater Certificates, two (2) are Exempt Rights, 19 are Statements of Claim, and nine (9) are Provisional Permits. This includes 54 Groundwater Certificates and nine (9) Statements of Claim for which no volume is recorded in the database. The legal demand for the 54 Groundwater Certificates with no recorded volume were each assigned as 3.03 AF/YR, representing the average volume of the 290 Groundwater Certificates for which volumes are recorded. Statements of Claim with no listed volume were assigned volumes based on Department standards. Two (2) Domestic claims were assigned 1.5 AF per household, per adjudication standards. One (1) irrigation claim was calculated based on the Climatic Area 1 for the region and using 60% efficiency for flood irrigation, which results in 3.07 AF/AC per Department standard practice. The remaining six (6) Statements of Claim were stock claims and were assigned 0.034 AF/AU times the number of AU for the period of diversion. The total annual legal demand on groundwater within the zone of influence is 2,011.40 AF/YR. Table 1 below compares the water supply and current legal demands for groundwater.

Table 1: Comparison of physically available groundwater to legal demands

Physically Available (AF/year)	Existing Legal Demands (AF/year)	Physically Available minus Existing Legal Demands (AF/year)
2,066	2,011.40	54.6

18. The amount of groundwater physically available is 2,066 AF/YR, and the existing legal demands of groundwater total 2,011.40 AF/YR, as calculated in FOF 17. The Department finds that the comparison shows that groundwater is legally available in the amount requested by the Applicant (2,066 AF – 2,011.40 AF = 54.6 AF).

19. The ZOI and the respective 374 active groundwater rights mentioned in FOF 17 and FOF 18 do not reflect the Groundwater Permit Technical Analysis Report – Part A dated March 21, 2025. The Draft Preliminary Determination was to Deny based on a lack of legally available groundwater. The Applicant requested an extension of time on June 30, 2025, which was

granted by the Department on June 30, 2025. The Applicant provided additional information on July 11, 2025, suggesting the constant head boundary of the ZOI should be truncated at Canyon Creek, rather than beyond this boundary. The Applicant cited that the ZOI was extended beyond Canyon Creek, the head boundary of Beneficial Water Use Application No. 43Q 30162249, a prior application near this project. As a result, Groundwater Hydrologist Jack Landers determined there was a lack of consistency in the ZOI from Beneficial Water Use Application No. 43Q 30162249 to this Application. Landers completed Groundwater Permit Technical Analyses Report – Notice of Erratum, truncating the ZOI to Canyon Creek, thus reducing the number of active groundwater rights from 472 to 374; subsequently reducing the legal demand from 2,419 AF/YR to 2,011.40 AF/YR. While these changes affected the legal availability, they did not affect the groundwater flux for the physical availability because the groundwater flow is perpendicular to Canyon Creek.

20. The DNRC Report concludes that the proposed appropriation is 3.3 miles west of Danford Drain, a surface water resource that is hydraulically connected to the source aquifer, Qat3 (111ALVM), and would be depleted by this groundwater appropriation. Danford Drain begins in the SENW of Sec. 36, T1S, R24E, Yellowstone County, and extends approximately 7.48 river miles to the confluence with the Yellowstone River located in Sec. 25, T1S, R25E, Yellowstone County. The top of the depleted reach of Danford Drain is located in the NWNWNWSW of Sec. 30, T1S, R25E, Yellowstone County. The estimated 26.3 AF of depletions on Danford drain, and the estimated consumptive use of 1.2 AF/YR for Commercial and 25.1 AF/YR for Lawn and Garden (26.3 AF combined) (FOF 1) are distributed monthly, as shown in Table 2.

Table 2: Modeled monthly depletions in volume (AF) and flow rate (GPM) to Danford Drain

Month	Commercial Consumed Volume (AF)	Lawn and Garden Consumed Volume (AF)	Total Consumed Volume (AF)	Danford Drain Net Depletion (AF)	Danford Drain Net Depletion (GPM)
January	0.1	0.0	0.1	1.2	8.4
February	0.1	0.0	0.1	0.9	7.1
March	0.1	0.0	0.1	0.8	6.2
April	0.1	0.7	0.8	0.8	5.7
May	0.1	3.0	3.1	1.1	8.0
June	0.1	4.9	5.0	2.1	15.7
July	0.1	6.6	6.7	3.4	24.8
August	0.1	5.9	6.0	4.5	32.7
September	0.1	3.0	3.1	4.4	33.2
October	0.1	0.9	1.0	3.5	25.5

November	0.1	0.0	0.1	2.2	16.8
December	0.1	0.0	0.1	1.5	10.9
Total	**1.2**	**25.1**	**26.3**	**26.3**	

21. There are no stream gages on Danford Drain; however, the source was otherwise measured per ARM 36.12.1702(1). *Montana Bureau of Mines and Geology (MBMG) Open-File Report No. 436 – Basic Hydrogeologic Data for: The West-Billings Area (1999-2000),* Yellowstone County, Montana, published June 2001, provides flow data that was collected between January 1999 and April 2001, on Danford Drain. Flow measurements from Danford Drain at Wise Lane were used to estimate water availability in Danford Drain. Danford Drain at Wise Lane is approximately 4.975 river miles downstream from the NW corner of Gov. Lot 3 in Sec. 30, T1S, R25E, Yellowstone County (the location of the start of the depleted reach), north of the NW corner of the proposed POU. The estimated monthly flow rate was determined by taking the average of this data, and the mean monthly volume (AF) was calculated by multiplying the flow rate in CFS by 1.98 (AF/day/1 CFS) times the number of days per month. Table 3.

Table 3: Mean Monthly Flow Rate (CFS) and Volume (AF) Estimates for Danford Drain @ Wise Lane

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mean Monthly Flow Rate	4.1	4.2	3.4	3.8	4.4	30.0	50.2	59.0	64.9	23.9	13.0	6.9
Mean Monthly Volume	251.7	232.8	208.7	225.7	270.1	1782.0	3081.3	3621.4	3855.1	1467.0	770.2	425.6

22. There are 11 water rights between the top of the depleted reach and the location of the MBMG measurements on Danford Drain that utilize Danford Drain for irrigation and stock purposes. Table 4. To determine the physically available water at the top of the depleted reach, the Department will calculate a volume and/or flow rate for rights with no quantified values per Department standard practice. Statement of Claim 43Q 30107340 has a claimed volume but no claimed flow rate; the Department will use the claimed volume and will calculate a flow rate based on standard practice. For those with AUs but without a volume, the Department standard practice to calculate volume is to multiply the number of animal units (AU) by 0.034 AF/AU (30 GPD/AU) for year-round use, or AUs x 0.034 AF/AU x 1/365 yr/day x the number of days in the period of use. Flow rate in GPM is back-calculated by taking the annual volume in AF, multiplying it by 325,851 gallons/AF, then dividing by the number of days in the period of diversion and by 1,440 minutes/day.

Table 4: Water Rights on Danford Drain Above Wise Lane

Water Right No.	Owners	Purposes	Flow rate (GPM)	Flow rate (CFS)	Volume (AF)	Acres	Period of diversions
43Q 30107340	Gene J Klamert; Ronna J Klamert	STOCK	5.2[2]	0.01[2]	8.4[2]	0	01/01 - 12/31
43Q 14939 00	Kevin D Anthony; Deanna C Brunn	IRR	41.99	0.093	10.13[1]	2.47	03/01 - 11/04
43Q 42699 00	Shirley M Wagner	IRR	150	0.33	32	8.0	05/01 - 10/15
43Q 195892 00	Daniel J Hickey; Joseph D Hickey; Kelly R Hickey; Lindalee E Hickey; Gene J Klamert; Ronna J Klamert	STOCK	2.12[2]	0.0047[2]	3.42[2]	0	03/01 - 10/31
43Q 206797 00	Arland Y Gleason; John F Thielen	IRR	25	0.0557	16.40[1]	4.0	04/01 - 10/04
43Q 208180 00	Kristin Anderson; Kurt Anderson	IRR	208.42	0.46	50.27[1]	12.26	06/01 - 09/04
43Q 208181 00	Dale D Maxwell; Valerie Maxwell; Neil Nistler; Tanya Nistler	IRR	125.12	0.278	30.18[1]	7.36	06/01 - 09/04
43Q 208801 00	JTL Group Inc	IRR	758.52	1.69	184.50[1]	45	04/01 - 10/31
43Q 195891 00	Daniel J Hickey; Joseph D Hickey; Kelly R Hickey; Lindalee E Hickey; Gene J Klamert; Ronna J Klamert	IRR	2244.15	5.0	426.52[1]	104.03	05/01 - 09/19
43Q 45860 00	Kyle A Kindsfather; Sarah F Kindsfather; Lorenz Construction LLC; Marsich Investments Inc	IRR	1795.32	4.0	438.70[1]	107	04/01 - 10/19
43Q 102615 00	Samm LLC	STOCK	21.078[2]	0.047[2]	34.0[2]	0	01/01 - 12/31
Stock Direct Standard			35.00[2]	0.0780[2]			

[1]Calculated by DNRC in Application 43Q 30157960; [2]Differs from the March 21, 2025, Technical Analysis; see June 12, 2025, Groundwater Permit Technical Analyses Report – Notice of Errata

23. The flow rates for stock direct in Table 4 have been corrected to Department standards and do not match the values in the DNRC Report. The flow rate and volume of stock rights 43Q 30107340, 43Q 195892-00, and 43Q 102615-00 have been recalculated to meet Department Standard, as follows: the volume for 43Q 30107340 was taken as the claimed volume of 8.4 AF, and the flow rate was back-calculated to 5.2 GPM (8.4 AF x 325,851 gallons / 365 days / 1,440 minutes per day = 5.2 GPM); the volume of 43Q 195892-00 was calculated as 3.42 AF based on 150 AU and 245 days in the period of use (150 AU x 0.034 AF/AU/YR / 365 * 245 days = 3.42 AF) , and the flow rate was back-calculated to 2.12 GPM (3.42 AF x 325,851 gallons / 365 days / 1,440 minutes per day = 2.12 GPM); the volume of 43Q 102615-00 was calculated as 34 AF based on 1,000 AU and a year-round period of use (1,000 AU x 0.034 AF/AU/YR = 34 AF), and the flow rate was back-calculated to 21.07 GPM (34 AF x 325,851 gallon / 365 days / 1,440 minutes per day = 21.07 GPM); lastly, 35 GPM was added to the flow rate as this is the standard practice for calculating the flow rate for stock direct from source. A flow rate of 63.4 GPM (28.39 GPM + 35 GPM = 63.4 GPM) and a volume of 45.8 AF/YR (8.4 AF + 3.42 AF + 34

AF = 45.8 AF) represent all water rights for livestock drinking directly from Danford Drain between the top of the depleted reach and the Wise Lane collection site. These corrections are reflected in the Groundwater Permit Technical Analyses Report – Notice of Errata dated June 16, 2025.

24. The volume amounts for Statements of Claim 43Q 14939-00, 43Q 42699-00, 43Q 206797-00, 43Q 208180-00, 43Q 208181-00, 43Q 208801-00, 43Q 195891-00, and 43Q 45860-00 were calculated for Provisional Permit 43Q 30157960 and their values were taken for this Application, as Provisional Permit 43Q 30157960 was the last water right issued with depletions to Danford Drain, prior to this Application.

25. The existing legal demands between the MBMG collection site and the top of the depleted reach were added to the mean monthly flow at the collection site to determine the physical availability of water on Danford Drain at the top of the depleted reach. Volume was calculated as mean monthly flow times 1.98 times the number of days in a month. The breakdown of these legal demands by month is in the file under the Processing Materials flag. Tables 5 and 6.

Table 5: Physically Available Flow Rate in Danford Drain (CFS)

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mean Monthly Flow Rate at Top of Depleted Reach	4.1	4.2	3.4	3.8	4.4	30.0	50.2	59.0	64.9	23.9	13.0	6.9
Legal Demands Between Measurement and Top of Depleted Reach	0.1[1]	0.1[1]	0.2[1]	6.0[1]	11.3[1]	12.1[1]	12.1[1]	12.1[1]	12.1[1]	6.3[1]	0.2[1]	0.1[1]
Physically Available (mean flow rate plus legal demands)	**4.2[1]**	**4.3[1]**	**3.6[1]**	**9.8[1]**	**15.7[1]**	**42.1[1]**	**62.3[1]**	**71.1[1]**	**77.0[1]**	**30.2[1]**	**13.2[1]**	**7.0[1]**

[1]Differs from the March 21, 2025, DNRC Report; see June 12, 2025, Groundwater Permit Technical Analyses Report – Notice of Errata

26. Changes made in the flow rate and volume shown in Table 4 have affected the physically available flow rate in Danford Drain shown in Table 5. These changes altered the flow rate for the legal demands between the measurement and the top of the depleted reach and the physically available flow rate; thus, Table 5 does not match the DNRC Report. Refer to the Groundwater Permit Technical Analyses Report – Notice of Errata, by Cassey Strebeck, dated June 16, 2025, for more information.

Table 6: Physically Available Volume in Danford Drain (AF)

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mean Monthly Volume	251.7	232.8	208.7	225.7	270.1	1782	3081.3	3621.4	3855.1	1467	772.2	423.5
Legal Demands Between Measurement and Top of Depleted Reach	3.6[1]	3.3[1]	5.3[1]	72.9[1]	107.3[1]	219.0[1]	225.1[1]	226.3[1]	164.9[1]	76.5[1]	3.6[1]	3.6[1]
Physically Available Volume (mean volume plus legal demands)	255.3[1]	236.1[1]	214.0[1]	298.6[1]	377.4[1]	2001.0[1]	3306.4[1]	3847.7[1]	4020.0[1]	1543.5[1]	775.8[1]	427.1[1]

[1]Differs from the March 21, 2025, DNRC Report; see June 12, 2025, Groundwater Permit Technical Analyses Report – Notice of Errata

27. Changes made to the flow rate and volume in Table 4 are reflected in Table 6. Table 6 does not match the DNRC Report. Refer to the Groundwater Permit Technical Analyses Report – Notice of Errata, by Cassey Strebeck, dated June 16, 2025, for more information.

28. The Area of Potential Impact (AOPI), for Danford Drain is from the top of the depleted reach to the confluence with the Yellowstone River, located in the NWSW of Section 25, T1S, R25E, Yellowstone County. There are 11 water rights on Danford Drain between the top of the depleted reach and the confluence with the Yellowstone River. This is an acceptable AOPI as the reach includes all Danford Drain water users. Table 7.

Table 7: Water Rights in the AOPI

Water Right No.	Owners	Purposes	Flow rate (GPM)	Flow rate (CFS)	Volume (AF)	Acres	Period of diversions
43Q 30107340	Gene J Klamert; Ronna J Klamert	STOCK	5.2[2]	0.01[2]	8.4[2]	0	01/01 - 12/31
43Q 14939 00	Kevin D Anthony; Deanna C Brunn	IRR	41.99	0.093	10.13[1]	2.47	03/01 - 11/04
43Q 42699 00	Shirley M Wagner	IRR	150	0.33	32	8.0	05/01 - 10/15
43Q 195892 00	Daniel J Hickey; Joseph D Hickey; Kelly R Hickey; Lindalee E Hickey; Gene J Klamert; Ronna J Klamert	STOCK	2.12[2]	0.0047[2]	3.42[2]	0	03/01 - 10/31
43Q 206797 00	Arland Y Gleason; John F Thielen	IRR	25	0.0557	16.40[1]	4.0	04/01 - 10/04
43Q 208180 00	Kristin Anderson; Kurt Anderson	IRR	208.42	0.46	50.27[1]	12.26	06/01 - 09/04
43Q 208181 00	Dale D Maxwell; Valerie Maxwell; Neil Nistler; Tanya Nistler	IRR	125.12	0.278	30.18[1]	7.36	06/01 - 09/04
43Q 208801 00	JTL Group Inc	IRR	758.52	1.69	184.50[1]	45	04/01 - 10/31
43Q 195891 00	Daniel J Hickey; Joseph D Hickey; Kelly R Hickey; Lindalee E Hickey; Gene J Klamert; Ronna J Klamert	IRR	2244.15	5.0	426.52[1]	104.03	05/01 - 09/19
43Q 45860 00	Kyle A Kindsfather; Sarah F Kindsfather; Lorenz Construction LLC; Marsich Investments Inc	IRR	1795.32	4.0	438.70[1]	107	04/01 - 10/19
43Q 102615 00	Samm LLC	STOCK	21.078[2]	0.047[2]	34.0[2]	0	01/01 - 12/31
Stock Direct Standard			35.00[2]	0.0780[2]			

[1]Calculated by DNRC in Application 43Q 30157960; [2]Differs from the March 21, 2025, DNRC Report; see June 12, 2025, Groundwater Permit Technical Analyses Report – Notice of Errata

29. The flow rate and volume for stock direct in Table 7 have been corrected to Department standards and do not match the DNRC Report. Table 7 has been updated as described in FOF

23. Refer to the Groundwater Permit Technical Analyses Report – Notice of Errata, by Cassey Strebeck, dated June 16, 2025, for more information.

30. The legal demands between the top of the depleted reach and the confluence with the Yellowstone River (Table 7) were subtracted from the physically available water at the top of the depleted reach (Tables 5 and 6) to determine if water was legally available on Danford Drain. Tables 8 and 9.

Table 8: Legally Available Flow Rate in Danford Drain, CFS

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Physically Available Flow Rate (Table 5)	4.2[1]	4.3[1]	3.6[1]	9.8[1]	15.7[1]	42.1[1]	62.3[1]	71.1[1]	77.0[1]	30.2[1]	13.2[1]	7.0[1]
Existing Legal Demands	0.1[1]	0.1[1]	0.2[1]	6.0[1]	11.3[1]	12.1[1]	12.1[1]	12.1[1]	12.1[1]	6.3[1]	0.2[1]	0.1[1]
Legally Available Flow Rate	**4.1[1]**	**4.2[1]**	**3.4[1]**	**3.8[1]**	**4.4[1]**	**30.0[1]**	**50.2[1]**	**59.0[1]**	**64.9[1]**	**23.9[1]**	**13.0[1]**	**6.9[1]**

[1]Differs from the March 21, 2025, DNRC Report; see June 12, 2025, Groundwater Permit Technical Analyses Report – Notice of Errata

31. Changes made to the flow rate and volume in Table 7 are reflected in Table 8. Table 8 does not match the DNRC Report.

Table 9: Legally Available Volume in Danford Drain, AF

Month	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
Physically Available Volume (Table 7)	255.3[1]	236.1[1]	214.0[1]	298.6[1]	377.4[1]	2001.0[1]	3306.4[1]	3847.7[1]	4020.0[1]	1543.5[1]	775.8[1]	427.1[1]
Existing Legal Demands	3.6[1]	3.3[1]	5.3[1]	72.9[1]	107.3[1]	219.0[1]	225.1[1]	226.3[1]	164.9[1]	76.5[1]	3.6[1]	3.6[1]
Legally Available Volume	251.7[1]	232.8[1]	208.7[1]	225.7[1]	270.1[1]	1782.0[1]	3081.3[1]	3621.4[1]	3855.1[1]	1467.0[1]	772.2[1]	423.5[1]

[1]Differs from the March 21, 2025, DNRC Report; see June 12, 2025, Groundwater Permit Technical Analyses Report – Notice of Errata

32. Changes made to the flow rate and volume in Table 7 are reflected in Table 9. Table 9 does not match the DNRC Report. Refer to the Groundwater Permit Technical Analyses Report – Notice of Errata, by Cassey Strebeck, dated June 16, 2025, for more information.

33. The flow rate and volume of water physically available minus all legal demands within the AOPI for Danford Drain exceed modeled depletions in all months. The Department finds that water is legally available on Danford Drain within the AOPI, in excess of modeled monthly depletions, during the proposed period of diversion.

34. Based on a physical availability of 2,066 AF/YR of groundwater and legal demands of 2,011.40 AF/YR of groundwater, the Department finds that the physical availability exceeds the legal demands by 54.6 AF/YR as shown in Table 1 (FOF 17, 18).

35. The Department finds that the proposed flow rate of 135 GPM and up to 48.01 AF volume per year of groundwater is legally available during the proposed period of diversion (FOF 18, 34).

ADVERSE EFFECT

FINDINGS OF FACT

36. The Applicant's plan to prevent adverse effect is to shut down their pumps and cease diversion if a valid call is made by a senior water user.

37. The Applicant proposes to install flow meters on all pipelines going into buildings and on the pipeline at the park. The flow meters would measure the total diverted volume from the POD for the respective location (FOF 3).

38. The Applicant's data from aquifer testing and Department modeling demonstrate that the requested flow rate and volume are physically available in the amount that the Applicant proposes to divert (FOF 16).

39. The comparison of physically available groundwater to existing legal demands demonstrates that groundwater is legally available in the flow rate and volume requested, as shown in Table 1 (FOF 17, 18). A list of water rights within the ZOI is in the file under the Processing Materials flag.

40. As discussed in the Legal Availability section, Danford Drain is considered hydraulically connected to the source aquifer. Table 2 (FOF 20) shows the modeled monthly depletions to Danford Drain by flow rate and volume. Physical availability of water in the depleted reach of Danford Drain exceeds all legal demands for surface water and the modeled depletions in all months within the proposed period of diversion (Tables 8 & 9; FOF 34).

41. Department Groundwater Hydrologist, Jack Landers, modeled drawdown in existing wells using aquifer properties from the Applicant's aquifer test and Billings Aquifer Variance Memo (DNRC Report). Using the Applicant's proposed monthly pumping schedule identified in Table 10 below, and the associated annual volume, the potential impact to existing water rights is evaluated by modeling drawdown in nearby wells and net depletions to surface waters. The maximum modeled drawdown is 1.45 feet at the Park POD (POD 14 in the DNRC Report) located in the SWSESW of Sec. 30 in T1S R25E, Yellowstone County, Platinum Commercial Park Subdivision, Lot 7, Block 3; park L&G well at the end of August of the fifth year. The 1-ft drawdown contour extends 100 feet from Park POD (POD 14 in the DNRC Report).

42. Groundwater modeling indicates no water rights would experience drawdown equal to or in excess of one foot. See Figure 7 in TA Part A (DNRC Report)

43. The Department finds that the proposed appropriation of 135 GPM, up to 48.01 AF/YR of volume for Commercial and Lawn and Garden use, will not cause an adverse effect on any existing water rights or water reservations.

44. Should this appropriation be authorized, the Department will add the following condition:

IMPORTANT INFORMATION

THE APPROPRIATOR SHALL INSTALL DEPARTMENT APPROVED WATER USE MEASURING DEVICES ON ALL WELLS AS THEY ARE INSTALLED. WATER MUST NOT BE DIVERED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCE REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

ADEQUATE MEANS OF DIVERSION

FINDINGS OF FACT

45. The proposed means of diversion consists of 14 wells. One well has been completed (GWIC ID 334912; 38 ft deep) in the SWSW of Sec. 30, T1S, R25E, Yellowstone County; consisting of an eight-inch (8-in) diameter borehole from a depth of zero to thirty-eight feet (0-38 ft), with steel welded 250 casing a quarter inch (0.25-in) thick having a diameter of six and five-eighths inch (6 5/8-in) from a depth of one-and-a-half feet to thirty-seven feet (1.5-37 ft). No other wells have been completed as of May 19, 2025. This project has an expected project completion time of 20 years, and wells are to be constructed as lots are purchased and built for commercial use. If Beneficial Water Use Application No. 43Q 30164891 is granted, the Department will require the Applicant to report new wells and to conduct eight-hour (8-hr) drawdown tests on each well until the cumulative requested flow rate is achieved.

46. A licensed water well contractor completed the well and conducted an 8-hour drawdown and yield test with a four-inch (4-in) well pump and two-inch (2-in) water piping. The constructed well and the wells yet to be completed are in the Qat3, an aquifer bound by the Cretaceous shale bedrock unit approximately 5,000 feet to the northwest and terrace scarps approximately 8,000 feet southeast. Thirteen of the proposed wells will pump groundwater into 13 commercial facilities using independent pipes, which will connect to the constructed piping in the designated building. Thirteen of the proposed wells will pump groundwater to 13 commercial lots, and the 14th well will pump water to one (1) park lot for Lawn and Garden purposes, to irrigate a total of 14.31 AC.

47. All diversion structures are proposed to include a 6-inch well drilled a minimum of 25 feet deep. Each well will contain a four-inch (4-in) well pump, a well pitless adapter, and 2-inch water service pipeline. Of the 13 commercial pipelines, water will enter each commercial building for use; the 14th well and pump will pipe water through a service line that will enter a sprinkler control box that will control the sprinkler zones of the park.

48. Department Groundwater Hydrologist Jack Landers modeled adequacy of diversion using the Theis (DNRC Report) solution with a T= 6,000 ft^2/day and Sy = 0.1 (DNRC Report). Predicted theoretical drawdown for the proposed wells were modeled for the period of diversion using the monthly pumping schedule identified in Table 10. The Applicant proposes to irrigate 14.31 AC of Lawn and Garden, up to 35.78 AF from April 1 to October 31; the proposed irrigation volume was apportioned April through October according to the monthly percent of the total net irrigation requirement (NIR) for pasture grass calculated for the Billings Water Plant weather station listed in the Irrigation Water Requirement (IWR) program (DNRC Report). Pasture grass is used as a proxy for turf grass (DNRC Report). Additionally, the Applicant proposes 12.23 AF year-round for Commercial use; the proposed volume was based on a system designed for 24 employees per lot and 35 gallons per day per employee. The proposed Commercial volume of 12.23 AF was distributed evenly from January through December based on days in the month. Based on Department modeling, the assumed monthly pumping schedule would vary from 7.6 GPM to 76.6 GPM, due to increases during the irrigation season between April and October, as shown in Table 10.

Table 10. Assumed monthly pumping schedule for the proposed uses

Month	IWR NIR+ (inches)	Lawn and Garden Diverted Volume (AF)	Commercial Diverted Volume (AF)	Total Diverted Volume (AF)	Total Diverted Flow Rate (GPM)	Total Diverted Flow Rate (CFS)
January	0.0	0.0	1.0	1.0	7.6	0.016934

February	0.0	0.0	0.9	0.9	7.6	0.016934
March	0.0	0.0	1.0	1.0	7.6	0.016934
April	0.71	1.0	1.0	2.0	15.3	0.034091
May	3.01	4.3	1.0	5.4	39.1	0.087121
June	4.88	7.0	1.0	8.0	60.5	0.134804
July	6.58	9.4	1.0	10.5	76.6	0.170677
August	5.84	8.4	1.0	9.4	68.8	0.153298
September	3.00	4.3	1.0	5.3	40.1	0.089349
October	0.94	1.3	1.0	2.4	17.4	0.03877
November	0.0	0.0	1.0	1.0	7.6	0.016934
December	0.0	0.0	1.0	1.0	7.6	0.016934
Total	**24.96**	**35.8**	**12.2**	**48.0**		

[+]According to the monthly net irrigation requirements for the Billings Water Plant Weather Station.

49. The Applicant provided data from an 8-hour drawdown and yield test on the existing well was used to model the remaining available water column in that well and predict the drawdown in the additional 13 wells. As identified in Table 11, total drawdown is the sum of interference drawdown and predicted drawdown with well loss. Well loss is calculated by dividing the predicted theoretical maximum drawdown by a well efficiency value. Well efficiency is calculated by dividing the modeled maximum drawdown for the pumping test by the maximum observed drawdown of the pumping test. The proposed site plan was used to model interference drawdown from the additional wells. The remaining available water column for GWIC ID 334912 is equal to the available drawdown above the bottom of the well minus total drawdown, equal to 29.7 ft. The remaining 13 wells would exhibit similar drawdown based on comparable pumping schedules, volumes, and well construction.

Table 11: Remaining available water column for the Production Well, GWIC ID 334912.

Drawdown Estimate	**Well 1**
Total Depth at Bottom of Perforated Interval (ft.)	38.8
Pre-Test Static Water Level (ft. BTC)	7.9
Available Drawdown Above Bottom of Well (ft.)	30.9
Observed Drawdown of Aquifer Test (ft.)	5.0
Modeled Drawdown Using Mean Aquifer Test Rate (ft.)	2.0
Well Efficiency (%)	39%
Predicted Theoretical Maximum Drawdown (ft.)	0.3
Predicted Drawdown with Well Loss (ft.)	0.7
Interference Drawdown (ft.)	0.5
Total Drawdown (ft.)	1.2
Remaining Available Water Column (ft)[1]	29.7

[1]The total well depth measuring point (ft. BGS) was adjusted to the top of the well casing based on a 1.8 ft. well casing stickup reported on the well log.

50. An 8-hour drawdown and yield test was submitted by the Applicant for a production well within the proposed subdivision. The Department was able to model the adequacy of diversion using the data from the Applicant's test and the Yellowstone River Terrace 3 Memo. The Department finds that the Applicant has demonstrated adequacy of diversion. Because the Applicant tested the production well at 50 GPM and they are requesting 135 GPM, the Applicant will be required to conduct 8-hour drawdown and yield tests on additional production wells until they have pumped a cumulative 135 GPM. Therefore, the following condition will be added to the permit if it is granted:

IMPORTANT INFORMATION

THE APPROPRIATOR MUST PERFORM 8-HOUR DRAWDOWN AND YIELD TESTS ON EACH PRODUCTION WELL UNTIL THE REQUESTED FLOW RATE OF 135 GPM HAS BEEN ATTAINED. THE RESULTS OF THE 8-HOUR DRAWDOWN AND YIELD TESTS MUST BE SUBMITTED TO THE DEPARTMENT ON FORM 633 AS THE PRODUCTION WELLS ARE COMPLETED.

51. All wells will be drilled by a licensed well contractor in accordance with current regulations and will be placed as designated on the subdivision plat approved by the Montana Department of Environmental Quality (DEQ). The lot owner will be responsible for installation and proper connection to the well for Commercial and Lawn and Garden use according to the system design and current regulations.

52. The entire system was designed by a professional engineer. The current consultant is Performance Engineering, LLC, of Billings, MT. The Department finds that the proposed means of diversion and conveyance are capable of diverting the proposed volume and flow rate.

BENEFICIAL USE

FINDINGS OF FACT

53. The Applicant requests a 135 GPM flow rate, and up to a total volume of 48.01 AF for Commercial (12.23 AF) use, year-round; and Lawn and Garden (35.78 AF) use, from April 1 to October 31. Commercial, and Lawn and Garden are recognized as beneficial uses under the Montana Water Use Act §85-2-102(5). MCA.

54. The Applicant proposes Commercial use for 13 commercial lots and Lawn and Garden use for 14 lots, one of which is a park. Water demand for 13 Commercial use lots was

calculated with an estimated average of 24 employees per lot at 35 gallons per person per day. Over one year, this amounts to 12.23 AF total (13 lots x 24 employees x 35 GPD/employee x 365 days = 3,985,800 gallons/325,851 gallons/AF = 12.23 AF) or 0.94 AF per lot for Commercial use. The DNRC Water Calculation Guide lists 35 gallons per person per shift for Factory Workers, which is consistent with the requested volume, assuming one (1) shift. The Applicant proposes 14.31 AC total for Lawn and Garden irrigation. The Department standard for Lawn and Garden irrigation is 2.5 AF/AC, and 14.31 AC requires 35.78 AF of water (14.31 x 2.5 = 35.775 AF). The total required volume is 48.01 AF (12.23 AF + 35.78 AF = 48.01 AF), and the Applicant requests 48.01 AF (FOF 1).

55. The Applicant requests a maximum flow rate of 135 GPM for the proposed subdivision. The maximum flow rate of 135 GPM requested is based upon predicted peak flows assuming a flow rate of 5 GPM per lot utilized over the 13 Commercial lots, resulting in a commercial flow rate of 65 GPM for Commercial use. Based on calculated watering intervals for Lawn and Garden use over an 8-hour period during the 180-day watering season, the peak flow is 70 GPM for Lawn and Garden use. Based on predicted peak flows, the total flow rate to support the commercial and lawn and garden uses is 135 GPM (65 + 70 = 135 GPM).

56. The Department finds the proposed Commercial and Lawn and Garden uses are beneficial, and the requested volume of 48.01 AF, up to 135 GPM flow rate, are reasonably justified per ARM 36.12.1801(3).

POSSESSORY INTEREST

FINDINGS OF FACT

57. The Applicant signed the application form affirming that 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

PHYSICAL AVAILABILITY

58. 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."

59. 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).

60. 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).

61. 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 10-16)

LEGAL AVAILABILITY

62. 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).

63. 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.

64. Pursuant to *Montana Trout Unlimited v. DNRC*, 2006 MT 72, 331 Mont. 483, 133 P.3d 224, the Department recognizes the connectivity between surface water and ground water and the effect of pre-stream capture on surface water. *E.g., Wesmont Developers v. DNRC*, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 7-8; *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 by Utility Solutions LLC* (DNRC Final Order 2006) (mitigation of depletion required), *affirmed*, *Faust v. DNRC et al.*, Cause No. CDV-2006-886, Montana First Judicial District (2008); *see also Robert and Marlene Takle v. DNRC et al.*, Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994) (affirming DNRC denial of Applications for Beneficial Water Use Permit Nos. 76691-76H, 72842-76H, 76692-76H and 76070-76H; underground tributary flow cannot be taken to the detriment of other appropriators including surface appropriators and ground water appropriators must prove unappropriated surface water, *citing Smith v. Duff*, 39 Mont. 382, 102 P. 984 (1909), and *Perkins v. Kramer*, 148 Mont. 355, 423 P.2d 587 (1966)); *In the Matter of Beneficial Water Use Permit No. 80175-s76H by Tintzman* (DNRC Final Order 1993)(prior appropriators on a stream gain right to natural flows of all tributaries in so far as may be necessary to afford the amount of water to which they are entitled, *citing Loyning v. Rankin* (1946), 118 Mont. 235, 165 P.2d 1006; *Granite Ditch Co. v. Anderson* (1983), 204 Mont. 10, 662 P.2d 1312; *Beaverhead Canal Co. v. Dillon Electric Light & Power Co.* (1906), 34 Mont. 135, 85 P. 880); *In the Matter of Beneficial Water Use Permit No.* 63997-*42M by Joseph F. Crisafulli* (DNRC Final Order 1990) (since there is a relationship between surface flows and the ground water source proposed for appropriation, and since diversion by Applicant's well appears to influence surface flows, the ranking of the proposed appropriation in priority must be as against all rights to surface water as well as against all groundwater rights in the drainage).

65. Because the Applicant bears the burden of proof as to legal availability, the Applicant must prove that the proposed appropriation will not result in prestream capture or induced infiltration and cannot limit its analysis to ground water. Section 85-2-311(a)(ii), MCA. Absent such proof, the Applicant must analyze the legal availability of surface water in light of the proposed ground water appropriation. *In the Matter of Application for Beneficial Water Use Permit No. 41H*

30023457 By Utility Solutions LLC (DNRC Final Order 2007) (permit denied); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009); *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 ; *Wesmont Developers v. DNRC*, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12.

66. Where a proposed ground water appropriation depletes surface water, Applicant must prove legal availability of amount of depletion of surface water throughout the period of diversion either through a mitigation /aquifer recharge plan to offset depletions or by analysis of the legal demands on, and availability of, water in the surface water source. *Robert and Marlene Takle v. DNRC*, Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994); *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 by Utility Solutions LLC* (DNRC Final Order 2006) (permits granted), *affirmed*, *Faust v. DNRC et al.*, Cause No. CDV-2006-886, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit 41H 30019215 by Utility Solutions LLC* (DNRC Final Order 2007 *)*(permit granted)*, affirmed*, *Montana River Action Network et al. v. DNRC*, Cause No. CDV-2007-602, Montana First Judicial District (2008); *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 analyze legal availability outside of irrigation season (where mitigation applied)); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 by Utility Solutions LLC* (DNRC Final Order 2008); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009)(permit denied in part for failure to analyze legal availability for surface water depletion); *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 (Court affirmed denial of permit in part for failure to prove legal availability of stream depletion to slough and Beaverhead River); *Wesmont Developers v. DNRC*, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12 ("DNRC properly determined that Wesmont cannot be authorized to divert, either directly or indirectly, 205.09 acre-feet from the Bitterroot River without establishing that the water does not belong to a senior appropriator"; Applicant failed to analyze legal availability of surface water where projected surface water depletion from groundwater pumping); *In the Matter of Application for Beneficial Water Use Permit No. 76D-30045578 by GBCI Other Real Estate, LLC* (DNRC Final Order 2011) (in an open basin, Applicant for a new water right can show legal availability by using a mitigation/aquifer recharge plan or by showing that any

depletion to surface water by groundwater pumping will not take water already appropriated; development next to Lake Koocanusa will not take previously appropriated water). Applicant may use water right claims of potentially affected appropriators as a substitute for "historic beneficial use" in analyzing legal availability of surface water under § 85-2-360(5), MCA. *Royston, supra*.

67. In analyzing legal availability for surface water, Applicant was required to evaluate legal demands on the source of supply throughout the "area of potential impact" by the proposed use under § 85-2-311(1)(a)(ii), MCA, not just within the "zone of influence." *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 6.

68. 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 17-35)

ADVERSE EFFECT

69. 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.

70. 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).

71. 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).

72. 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).

73. 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.

74. 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).

75. 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 36-44)

ADEQUATE DIVERSION

76. 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.

77. 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.

78. Water wells must be constructed according to the laws, rules, and standards of the Board of Water Well Contractors to prevent contamination of the aquifer. *In the Matter of Application for Beneficial Water Use Permit No.* 41I-105511 *by Flying J Inc.* (DNRC Final Order 1999).

79. 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).

80. 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 45-52).

BENEFICIAL USE

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

82. 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).

83. 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).

84. 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*.

85. Applicant proposes to use water for Commercial and Lawn and Garden use, which are recognized as beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a

preponderance of the evidence that Commercial and Lawn and Garden use are a beneficial use and that a combined diverted volume of 48.01 AF and a combined flow rate of 135 GPM are the amounts needed to sustain the beneficial use. Section 85-2-311(1)(d), MCA. (FOF 53-56)

POSSESSORY INTEREST

86. 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.

87. 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.

88. 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 57)

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. 43Q 30164891 should be GRANTED.

The Department determines the Applicant may divert groundwater from January 1 to December 31, at a combined flow rate of 135 GPM, and a combined volume up to 48.01 AF/YR, from 14 PODs in the SW of Sec. 30, T1S, R25E, Yellowstone County, to serve the Platinum Commercial Park Subdivision, for Commercial use (12.23 AF; at 13 commercial lots) year round, and Lawn and Garden use (35.78 AF; at 13 commercial lots and 1 park) from April 1 to October 31. The proposed place of use for Commercial use is Lots 1-4, Block 1; Lots 1-3, Block 2; and Lots 1-6, Block 3 of Sec. 30, T1S, R25E, Yellowstone County; and the proposed place of use for Lawn and Garden is Lots 1-4, Block 1; Lots 1-3, Block 2; and Lots 1-7, Block 3 of Sec. 30, T1S, R25E, Yellowstone County, of the proposed Platinum Commercial Park Subdivision.

The application will be subject to the following conditions, limitations, or restrictions:

IMPORTANT INFORMATION

i. THE APPROPRIATOR SHALL INSTALL DEPARTMENT APPROVED WATER USE MEASURING DEVICES ON ALL WELLS AS THEY ARE INSTALLED. WATER MUST NOT BE DIVERED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCE REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

ii. THE APPROPRIATOR MUST PERFORM 8-HOUR DRAWDOWN AND YIELD TESTS ON EACH PRODUCTION WELL UNTIL THE REQUESTED FLOW RATE OF 135 GPM HAS BEEN ATTAINED. THE RESULTS OF THE 8-HOUR DRAWDOWN AND

YIELD TESTS MUST BE SUBMITTED TO THE DEPARTMENT ON FORM 633 AS THE PRODUCTION WELLS ARE COMPLETED.

NOTICE

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

Dated this 20th day of August 2025.

Christine Schweigert
Acting Regional Manager
Billings Regional Office,
Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the UPDATED DRAFT PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 20th day of August, 2025, by first class United States mail.

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DATE