

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

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APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 76LJ 30159069 BY THE MEADOW LAKE COUNTY WATER AND SEWER DISTRICT	} }	PRELIMINARY DETERMINATION TO GRANT PERMIT
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The Meadow Lake County Water and Sewer District (Applicant) submitted Groundwater Application for Beneficial Water Use Permit No. 76LJ 30159069 to the Kalispell Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC) on December 12, 2022. The Department published receipt of the Application on its website on December 22, 2022. The Applicant proposes diverting up to 66.24 acre-feet (AF) of volume annually at a flow rate of 475.0 gallons per minute (GPM) from three wells for multiple domestic, commercial, and lawn and garden irrigation uses. The DNRC sent the Applicant a deficiency letter on May 6, 2023, to which the Applicant's consultant, Water & Environmental Technologies, responded with a letter and accompanying Amendment to Application form received on June 5, 2023. The DNRC deemed the Application to be correct and complete on December 29, 2023. An Environmental Assessment was completed on February 9, 2024.

INFORMATION

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

Application as filed:

- Groundwater Application for Beneficial Water Use Permit, Form 600-GW
- Aquifer Testing Addendum, Form 600-ATA
- Attachments:
 - Appendix A. Well Log Reports – Public Water Supply Wells
 - Appendix B. Geocodes for Place of Use

- Appendix C. Water Right Abstract – 76LJ 28809-00
- Appendix D. Notice of Receipt of Water Right Application – 76LJ 30158802
- Appendix E. Water Right Abstract – 76LJ 71015-00
- Appendix F. Well Log Reports – Aquifer Test Wells
- Appendix G. Aquifer Test Data (Form 633 w/ CD)
- Appendix H. Water System Site Plan
- Appendix I. Proposed/Planned Developments
- Appendix J. 2021 Sanitary Survey – PWSID #MT0000914
- Appendix K. ML #3 Pump Specification
- Appendix L. Irrigation Water Requirements Calculations
- Appendix M. Business Entity Report
- Figures:
 - Figure 1. Site Location Topographic Map
 - Figure 2. Site Map
 - Figure 3. Aquifer Test Map

Information received after Application Filed

- A letter from the Applicant’s consultant, Water and Environmental Technologies, to the DNRC received June 5, 2023. This letter was in response to the Department’s May 6, 2023 deficiency letter. This letter also requested a variance from ARM 36.12.121(3)(a).
- Amendment to Application form to add the Commercial purpose to this permit. The DNRC deemed the amendment to be minor.

Information within the Department’s Possession/Knowledge

- Letter from DNRC to Water and Environmental Technologies approving their requested variance from ARM 36.12.121(3)(a), dated July 11, 2023.
- Groundwater Permit Report by DNRC Water Sciences Bureau (WSB) Groundwater Hydrologist Evan Norman, dated October 30, 2023.
- Mean monthly stream flow data from United States Geological Survey (USGS) Gaging Station No. 12363000, Flathead River at Columbia Falls, MT. Period of record: October 1951 – June 2023.

- Mean monthly stream flow data from USGS Gaging Station No. 12372000, Flathead River near Polson, MT. Period of record: October 1938 – May 2023.
- List of existing water rights on the Flathead River from USGS Gaging Station No. 12363000 down to the inlet of Flathead Lake.
- List of existing water rights on the Flathead River from the inlet of Flathead Lake down to USGS Gaging Station No. 12372000.
- List of existing groundwater rights in the source aquifer that are expected to experience drawdown greater than one foot.

The following information is routinely considered by the Department. It is not included in the administrative file for this application but is available upon request. Please contact the Kalispell Regional Office at 406-752-2288 to request copies of the following documents:

- DNRC Technical Memorandum: Legal Availability of Groundwater in the Flathead Deep Aquifer (2019).
- DNRC Technical Memorandum: Consumptive Use Methodology- Turf Grass (2010).

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).

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert groundwater at 475.0 GPM up to 66.24 AF annually by means of three production wells, ML #1 (GWIC ID: 85280), ML #2 (GWIC ID: 125958), and ML #3 (GWIC ID: 319658) from January 1 – December 31 for multiple domestic and commercial uses and from April 20 – October 10 for lawn and garden irrigation. The maximum proposed flow rates of ML #1, ML #2, and ML #3 will be 181.0 GPM, 169.0 GPM, and 125.0 GPM, respectively. The Applicant proposes to use a volume of 50.13 AF to supply the multiple domestic needs for 179 households, and 16.11 AF to irrigate 8.95 acres of lawn and garden. No volume is requested with this application for commercial uses, only flow rate from the new well ML #3. The volume needed

for the existing and planned commercial uses in this development is provided by existing Provisional Permit 76LJ 28809-00 and pending Provisional Permit Application 76LJ 30158802.

2. The three points of diversion (PODs) are in the SESESW (ML #1), NENESW (ML #2), and SESWSE (ML #3) of Section 6, Township 30N, Range 20W, Flathead County, Montana (Figure 1). The multiple domestic, commercial, and lawn and garden purposes requested in this permit application are to be distributed across several subdivisions (collectively referred to as the Meadow Lakes) within the Meadow Lake County Water and Sewer District (District) boundary. The Meadow Lakes, which will include the proposed uses if this permit is granted, are served by the District's Public Water Supply (PWS) system. The places of use of these proposed purposes in the Meadow Lakes are in Flathead County, Montana, within the following legally described locations (Figure 1):

- W2E2 Section 6, Township 30N, Range 20W
- E2W2 Section 6, Township 30N, Range 20W
- E2W2NW Section 6, Township 30N, Range 20W
- N2NWSW Section 6, Township 30N, Range 20W
- E2SWNWSW Section 6, Township 30N, Range 20W
- W2SWNESE Section 6, Township 30N, Range 20W
- W2NWSESE Section 6, Township 30N, Range 20W

The points of diversion are in the Flathead River Basin (to and including Flathead Lake) (76LJ) in an area that is not subject to water right basin closures or controlled groundwater area restrictions.

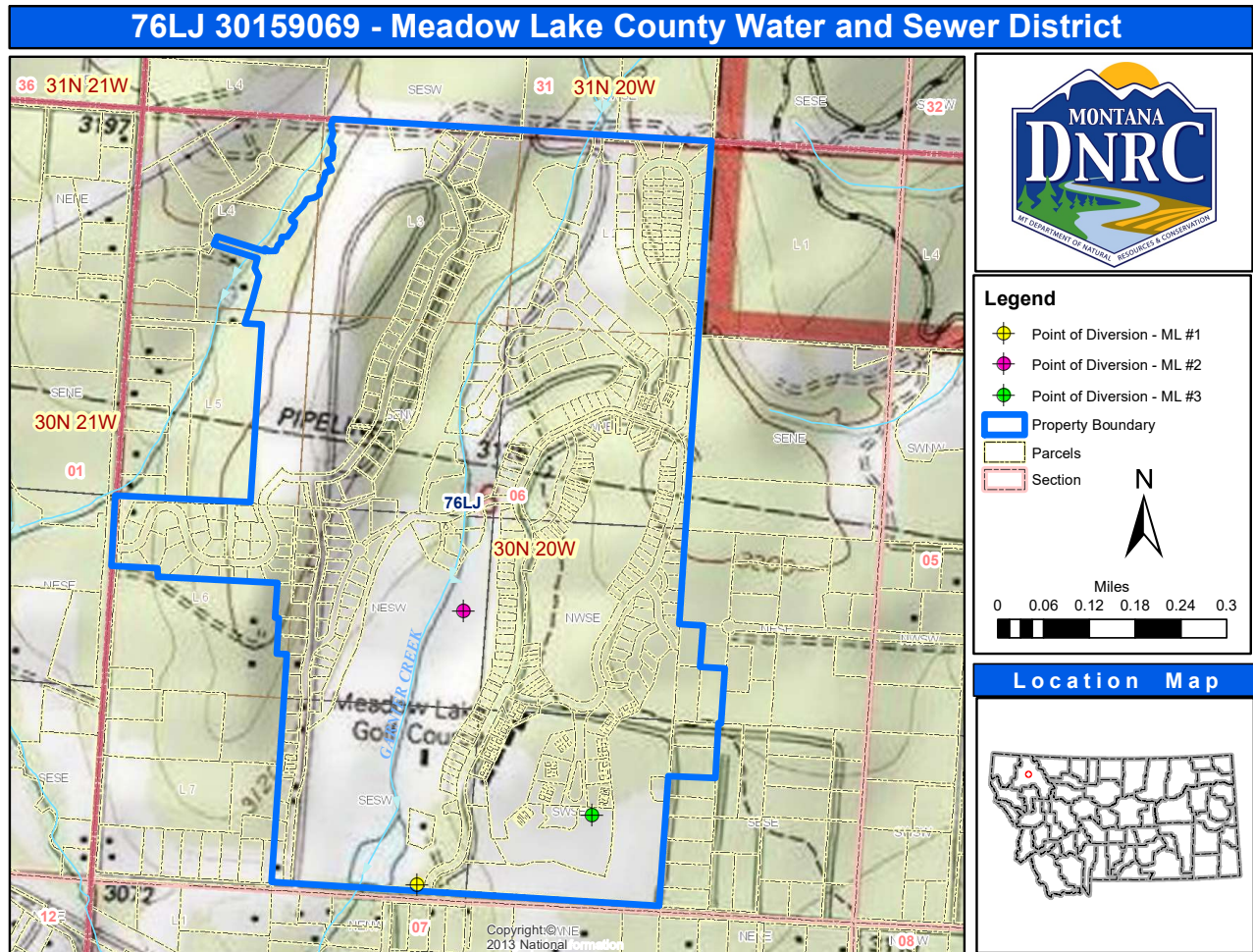


Figure 1: Map of proposed place of use and points of diversion

3. The Applicant currently serves this PWS system using the two existing PWS wells (ML #1 and ML #2) under Provisional Permit 76LJ 28809-00. An additional permit application, 76LJ 30158802, has been submitted and is currently pending. Between the existing provisional permit (76LJ 28809-00) and pending application (76LJ 30158802), the District either has or has applied for water rights with sufficient flow rate and volume to serve the 481 residential connections, lawn and garden irrigation, and commercial uses that the District is currently obligated to serve. This permit request is intended to add a new well to the PWS system and to serve additional multiple domestic and lawn and garden irrigation uses beyond those that the District is currently obligated to serve.

4. DNRC requires water right holders to file a Project Completion Notice upon completing a permitted project. DNRC granted the District's predecessor and holder of Provisional Permit 76LJ 28809-00, Meadow Lake Development Corporation, several extensions with the final extension expiring December 31, 1996. Although Meadow Lake Development Corporation regularly filed project status reports, no Project Completion Notice or extension request was filed prior to the December 31, 1996 deadline. The DNRC terminated Provisional Permit 76LJ 28809-00 for failing to comply with the deadline August 11, 1997. On November 27, 2002, Meadow Lake Development Corporation submitted a request to reinstate Provisional Permit 76LJ 28809-00. The DNRC allows reinstatement of a water right that has been terminated; however, reinstatements are limited to the amount of development at the time the Project Completion Notice was originally due. Provisional Permit 76LJ 28809-00 was reinstated on July 31, 2003 and is restricted to the actual use of water occurring on or before December 31, 1996. The annual progress report submitted by Meadow Lake Development Corporation to the DNRC on November 30, 1996 indicates that the development consisted of 51 single family homes, 68 condominium units, 48 townhomes (167 total), a restaurant, golf shop, and recreation center with pool.

5. Although the full 150.0 AF was reinstated by DNRC on July 31, 2003, the Applicant did not actually perfect that volume by December 31, 1996. Only the amount of water truly appropriated prior to December 31, 1996 is currently authorized under Provisional Permit 76LJ 28809-00. Water use associated with approximately 224 residences (including lawn and garden) and commercial uses that connected after that date are not authorized under Provisional Permit 76LJ 28809-00. An evaluation of the District's water use associated with Provisional Permit 76LJ 28809-00 in 1994 and 1995 supports an extrapolated maximum diversion of 33.99 acre-feet per year in 1996. Additionally, pumping ML #1 and ML #2 at the tested rates of 181.0 GPM and 169.0 GPM, respectively, exceeds the currently permitted rate of 165.0 GPM. A Petition to Modify (Form 651) Provisional Permit 76LJ 28809-00 was submitted concurrently with this permit application to correct that permit to its true completed volume of 33.99 AF as of December 31, 1996. Water Right Permit Application 76LJ 30158802 (currently pending) is intended to supplement 76LJ 28809-00. Those two permits combined will satisfy the demands of the uses that the District is currently obligated to serve. The proposed permit will be supplemental to Provisional

Permit 76LJ 28809-00 and pending Water Right Permit Application 76LJ 30158802 because they share two points of diversion (ML #1 and ML #2) and they serve the same place of use (the District PWS service area).

6. Provisional Permit 76LJ 71015-00 is owned by Meadow Lake Investments LLC, the owners and operators of Meadow Lake Golf Course. Historically, the golf course and residential/commercial developments associated with the golf course were owned and operated by the same entity, the Meadow Lake Development Corporation. The primary source of irrigation water for Meadow Lake Golf Course has historically been Garnier Creek (Statement of Claim 76LJ 131493-00). However, during the time when the golf course and PWS system were owned by the same entity, supplemental irrigation water rights for the golf course were obtained for diversions from ML #1 and ML #2. Provisional Permit 76LJ 71015-00 allows water to be diverted from ML #1 and ML #2 for irrigation of up to 114.4 acres of the Meadow Lake Golf Course. Water can be diverted from the two wells and stored in off-stream reservoirs, where it is then diverted for irrigation use at the golf course. ML #1 and ML #2 can be pumped simultaneously at a maximum combined diversion rate of 320.0 GPM under Provisional Permit 76LJ 71015-00. Water can be diverted for irrigation use between June 1 and September 30 up to a volume of 29.20 AF. Provisional Permit 76LJ 71015-00 has a priority date of February 24, 1989 and is junior to Provisional Permit 76LJ 28809-00. Although they are associated by shared points of diversion, the proposed permit is not supplemental to Provisional Permit 76LJ 71015-00, as they do not share any overlapping place of use.

7. As of September 2022, the Applicant provides water service to a total of 391 residential connections. This number has steadily increased from 285 at the beginning of 2008. Again, only 167 residential connections existed as of the original completion deadline of December 31, 1996. This application requests a water right for multiple domestic, commercial, and lawn and garden irrigation to serve the full development within the Applicant's current service area. In addition to the commercial use, the Applicant has committed to serving a total of 481 residential connections with associated lawn and garden irrigation. The Applicant is requesting the amount of water required to serve these commitments at full build-out, less the volume of water already perfected under 76LJ 28809-00.

8. This Application seeks to permit additional flow rate from the new well (ML #3) for all uses served by the PWS system and sufficient volume from all three wells (ML #1, #2, and #3) to accommodate the planned development of the largest remaining tracts within the District. In total, 179 additional residential connections with associated lawn and garden irrigation are anticipated (103 single family dwellings and 76 multi-family units). This addition will bring the District's total to 660 residential connections.

9. The total annual consumption for the diverted volume associated with this permit request is 13.79 AF (assuming 5% consumption for the multiple domestic uses ($50.13 \text{ AF} \times 0.05 = 2.51 \text{ AF}$) and 70% consumption for the lawn and garden use ($16.11 \text{ AF} \times 0.7 = 11.28 \text{ AF}$) for a total of 13.79 AF).

10. To satisfy the Adverse Effect criterion, the proposed provisional permit will be subject to the following condition upon issuance:

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR UNTIL A FORM 617 PROJECT COMPLETION NOTICE IS SUBMITTED. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE PERMIT. THE RECORDS MUST BE SENT TO THE KALISPELL REGIONAL WATER RESOURCES OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

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

GENERAL CONCLUSIONS OF LAW

11. 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 . . .

12. 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.” § 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.

13. 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.

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

15. 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. § 85-2-311(6), MCA.

16. 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

17. Physical availability for this application was evaluated pursuant to the Memorandum to the Water Resources Division Administrator dated December 12, 2019, entitled Technical Memorandum: Legal Availability of Groundwater in the Flathead Deep Aquifer (Memo). As described in the Memo, groundwater levels in the Deep Aquifer (and physical availability of groundwater in the context of a legal availability analysis) are effectively controlled by the stage of the Flathead River and Flathead Lake. Therefore, physical and legal availability for this application was evaluated for the Flathead River and Flathead Lake based on the surface water depletion analysis performed by the DNRC Water Sciences Bureau as part of their Groundwater Permit Report.

18. The DNRC Water Sciences Bureau (WSB) determined the following surface water reaches will be depleted year-round by the proposed groundwater use:

- i. The Flathead River east of the project area downstream of Columbia Falls, evaluated from United States Geological Survey (USGS) Gaging Station No. 12363000 at Columbia Falls, MT to the Flathead Lake inlet; and,
- ii. Flathead Lake from the inlet down to USGS Gaging Station No. 12372000 near Polson, MT.

19. Flathead River – Physical Availability (quantified for the purpose of analyzing physical availability of the Deep Aquifer): Physical availability of the Flathead River from USGS Gaging Station No. 12363000 to the Flathead Lake inlet was quantified monthly. The Department used the Flathead River at Columbia Falls, MT USGS Gaging Station No. 12363000 (period of record: October 1951 – June 2023) and the method below to quantify physically available monthly flows and volumes in this reach during the period of groundwater diversion and resulting surface water depletion (year-round). DNRC WSB determined that the Flathead River downstream of Columbia Falls would be depleted. USGS Gaging Station No. 12363000 is located on the Flathead River where it flows through Columbia Falls, therefore this gage marks the upstream extent of the depleted reach of the Flathead River for this application. The date range used includes the entire period of record for this gage.

20. The Department calculated median of the mean monthly flow rates in cubic feet per second (CFS) for the Flathead River using USGS Gaging Station No. 12363000 records for each month of the year (Table 1, column B). Those flows were converted to monthly volumes in AF (Table 1, column C) using the following equation found on DNRC Water Calculation Guide (formerly Form 615): median of the mean monthly flow (CFS) \times 1.98 (AF/day/1 CFS) \times days per month = AF/month. Since the gaging station marks the upstream extent of the depleted reach, the gage values represent the physical quantity of water flowing through the depleted reach, and thus the Deep Aquifer.

Table 1: Physical Availability Analysis of Flathead River from USGS Gage #12363000 at Columbia Falls, MT to the Flathead Lake Inlet		
A	B	C
Month	Median of the Mean Monthly Flow at Gage 12363000 / Physically Available Water (CFS)	Median of the Mean Monthly Volume at Gage 12363000 / Physically Available Water (AF)
January	5,149.0	316,045.6
February	4,851.0	268,939.4
March	4,805.0	294,930.9
April	10,680.0	634,392.0
May	22,660.0	1,390,870.8
June	24,680.0	1,465,992.0
July	11,415.0	700,652.7
August	5,444.0	334,152.7
September	4,440.5	263,765.7
October	4,955.0	304,137.9
November	4,565.0	271,161.0
December	5,499.0	337,528.6

21. *Flathead Lake – Physical Availability (quantified for the purpose of analyzing physical availability of the Deep Aquifer)*: Physical availability of Flathead Lake from the lake inlet to USGS Gaging Station No. 12372000 was quantified monthly. The Department used the Flathead River near Polson, MT USGS Gaging Station No. 12372000 (period of record: October 1938 – May 2023) and the method below to quantify physically available monthly flows and volumes in this reach during the period of groundwater diversion and resulting surface water depletion (year-round). USGS Gaging Station No. 12372000 is approximately 0.6 miles downstream of the Séliš Ksanka Qlispè Dam (formerly known as Kerr Dam). This gage is representative of the amount of water leaving Flathead Lake because it is the closest gage downstream of the Séliš Ksanka Qlispè Dam and depletions to the Flathead River and Flathead Lake will reduce the total volume of water flowing down the river and leaving the lake (passing over/through the dam). The date range used includes the entire period of record for this gage.

22. The Department calculated median of the mean monthly flow rates in CFS for the Flathead River (Flathead Lake) using USGS Gaging Station No. 12372000 records for each month of the proposed period of depletion (Table 2, column B). Those flows were then converted to monthly volumes in AF (Table 2, column C).

23. The Department calculated the monthly flows appropriated by existing users upstream of the gage on the source (Table 2, column D) by:

- i. Generating a list of existing surface water rights from the Flathead Lake inlet to USGS Gaging Station No. 12372000 (list is included in the application file and available upon request);
- ii. Designating irrigation and lawn and garden uses as occurring from April 1 to October 31 while designating all other water uses as year-round uses;
- iii. Assigning a single combined flow rate of 0.08 CFS to all livestock direct from source rights without a designated flow rate (per DNRC adjudication standards); and,
- iv. Assuming that the flow rate of each existing right is continuously diverted throughout each month of its period of diversion. This assumption is necessary due to the difficulty of differentiating the distribution of appropriated volume over the period of diversion. This leads to an overestimation of legal demands on the physical volume of water. The Department finds this method an appropriate measure of assessing existing rights as it protects existing water users.

24. The Department added the flow rates of the existing rights between Flathead Lake inlet and USGS Gaging Station No. 12372000 (Table 2, column D) to the median of the mean monthly gage values (Table 2, column B) to determine physical availability in this depleted reach, and thus the Deep Aquifer (Table 2, columns E-F).

Table 2: Physical Availability Analysis of Flathead Lake from the Flathead Lake Inlet to USGS Gage #12372000 near Polson, MT					
A	B	C	D	E	F
Month	Median of the Mean Monthly Flow at Gage 12372000 (CFS)	Median of the Mean Monthly Volume at Gage 12372000 (AF)	Existing Rights from Flathead Lake Inlet to Gage 12372000 (CFS)	Physically Available Water in Depleted Reach (CFS)	Physically Available Water in Depleted Reach (AF)
January	10,380.0	637,124.4	105.7	10,485.7	643,610.8
February	9,166.0	508,163.0	105.7	9,271.7	514,021.7
March	7,778.0	477,413.6	105.7	7,883.7	483,900.1
April	9,223.0	547,846.2	176.5	9,399.5	558,332.0
May	18,570.0	1,139,826.6	176.5	18,746.5	1,150,661.9
June	25,820.0	1,533,708.0	176.5	25,996.5	1,544,193.8
July	12,745.0	782,288.1	176.5	12,921.5	793,123.4
August	6,180.0	379,328.4	176.5	6,356.5	390,163.7
September	6,022.0	357,706.8	176.5	6,198.5	368,192.6
October	7,277.0	446,662.3	176.5	7,453.5	457,497.6
November	8,556.0	508,226.4	105.7	8,661.7	514,503.6
December	9,883.0	606,618.5	105.7	9,988.7	613,105.0

25. Stream flow data analysis of the Flathead River and Flathead Lake shows physically available monthly flows and volumes in those sources exceeding the flow rate and volume of the proposed appropriation. Therefore, the Department finds that the amount of groundwater the Applicant seeks to appropriate, 475.0 GPM (1.06 CFS) up to 66.24 AF, is physically available in the aquifer and hydraulically connected surface water sources.

CONCLUSIONS OF LAW

26. 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.”

27. 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).

28. 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).

29. Applicant has proven that water is physically available at the proposed points of diversion in the amount the Applicant seeks to appropriate. § 85-2-311(1)(a)(i), MCA. (Findings of Fact (FOF) No. 17-25)

Legal Availability

FINDINGS OF FACT

30. DNRC Technical Memorandum: Legal Availability of Groundwater in the Flathead Deep Aquifer (2019) states that groundwater within the Deep Aquifer is controlled by the stage of the Flathead River/Flathead Lake, therefore these two sources were evaluated for legal availability. No other surface water sources were identified as being hydraulically connected to the Deep Aquifer in the vicinity of the project area, so the Flathead River/Flathead Lake were the only surface water sources considered for Legal Availability.

31. The areas of potential impact for this Application, which are based on the surface water depletion analysis performed by the DNRC Water Sciences Bureau are:

- i. The Flathead River east of the project area downstream of Columbia Falls, evaluated from United States Geological Survey (USGS) Gaging Station No. 12363000 at Columbia Falls, MT to the Flathead Lake inlet; and,
- ii. Flathead Lake from the inlet down to USGS Gaging Station No. 12372000 near Polson, MT.

32. Flathead River – Legal Availability (quantified for the purpose of analyzing legal availability of the Deep Aquifer): The Department determined that the proposed use of groundwater from the Deep Aquifer will deplete the hydraulically connected reach of the Flathead River, reducing the total volume of water in this reach of the Flathead River. The Department quantified legal

availability of this reach of the Flathead River during the period of surface water depletion (year-round) using the method below.

33. The Department quantified physically available monthly flows and volumes (Table 3, columns B-C) for the depleted reach of the Flathead River. The Department calculated the monthly flows appropriated by existing users (legal demands) on the source within the area of potential impact (Table 3, columns D) by:

- i. Generating a list of existing surface water rights from USGS Gaging Station No. 12363000 at Columbia Falls, MT to the Flathead Lake inlet (list is included in the application file and available upon request);
- ii. Designating irrigation and lawn and garden uses as occurring from April 1 to October 31 while designating all other water uses as year-round uses;
- iii. Assigning a single combined flow rate of 0.08 CFS to all livestock direct from source rights without a designated flow rate (per DNRC adjudication standards); and,
- iv. Assuming that the flow rate of each existing right is continuously diverted throughout each month of its period of diversion. This assumption is necessary due to the difficulty of differentiating the distribution of appropriated volume over the period of diversion. This leads to an overestimation of legal demands on the physical volume of water. The Department finds this an appropriate measure of assessing existing rights as it protects existing water users.

34. The Department subtracted the flow rates of the existing legal demands (Table 3, column D) within the area of potential impact from the physically available water (Table 3, column B) to determine legal availability within the area of potential impact (Table 3, columns E-F).

Table 3: Legal Availability Analysis of Flathead River from USGS Gage # 12363000 at Columbia Falls, MT to the Flathead Lake Inlet					
A	B	C	D	E	F
Month	Physically Available Water in the Depleted Reach (CFS)	Physically Available Water in the Depleted Reach (AF)	Existing Legal Demands from Gage 12363000 to Flathead Lake Inlet (CFS)	Physically Available Water Minus Existing Legal Demands (CFS)	Physically Available Water Minus Existing Legal Demands (AF)
January	5,149.0	316,045.6	3,508.3	1,640.7	100,704.9
February	4,851.0	268,939.4	3,508.3	1,342.7	74,438.2
March	4,805.0	294,930.9	3,508.3	1,296.7	79,590.2
April	10,680.0	634,392.0	6,814.1	3,865.9	229,637.0
May	22,660.0	1,390,870.8	8,289.1	14,370.9	882,088.5
June	24,680.0	1,465,992.0	8,289.1	16,390.9	973,622.0
July	11,415.0	700,652.7	5,566.1	5,848.9	359,008.1
August	5,444.0	334,152.7	3,664.1	1,779.9	109,252.9
September	4,440.5	263,765.7	3,664.1	776.4	46,120.7
October	4,955.0	304,137.9	3,664.1	1,290.9	79,238.1
November	4,565.0	271,161.0	3,508.3	1,056.7	62,766.8
December	5,499.0	337,528.6	3,508.3	1,990.7	122,187.9

35. *Flathead Lake – Legal Availability (quantified for the purpose of analyzing legal availability of the Deep Aquifer)*: Sèliš Ksanka Qlispè Dam near Polson is the control structure for Flathead Lake and depletions from groundwater pumping will reduce the total volume of water leaving the Lake (passing over/through the dam). USGS Gaging Station No. 12372000 near Polson, MT is approximately 0.6 miles downstream of the dam. Legal availability of Flathead Lake was quantified monthly using the method below.

36. The Department quantified physically available monthly flows and volumes (Table 4, columns B-C) for the depleted reach of Flathead Lake. The Department calculated the monthly flows appropriated by existing users (legal demands) on the source within the area of potential impact (Table 4, columns D) by:

- i. Generating a list of existing surface water rights from the Flathead Lake inlet to USGS Gaging Station No. 12372000 (list is included in the application file and available upon request);
- ii. Designating irrigation and lawn and garden uses as occurring from April 1 to October 31 while designating all other water uses as year-round uses;

- iii. Assigning a single combined flow rate of 0.08 CFS to all livestock direct from source rights without a designated flow rate (per DNRC adjudication standards); and,
- iv. Assuming that the flow rate of each existing right is continuously diverted throughout each month of its period of diversion. This assumption is necessary due to the difficulty of differentiating the distribution of appropriated volume over the period of diversion. This leads to an overestimation of legal demands on the physical volume of water. The Department finds this an appropriate measure of assessing existing rights as it protects existing water users.

37. The Department subtracted out the flow rates of the existing legal demands (Table 4, column D) within the area of potential impact from the physically available water (Table 4, column B) to determine legal availability in the depleted reach (Table 4, columns E-F).

Table 4: Legal Availability Analysis of Flathead Lake from the Flathead Lake Inlet to USGS Gage # 12372000 near Polson, MT					
A	B	C	D	E	F
Month	Physically Available Water in the Depleted Reach (CFS)	Physically Available Water in the Depleted Reach (AF)	Existing Legal Demands in Flathead Lake (CFS)	Physically Available Water Minus Existing Legal Demands (CFS)	Physically Available Water Minus Existing Legal Demands (AF)
January	10,485.7	643,610.8	105.7	10,380.0	637,124.4
February	9,271.7	514,021.7	105.7	9,166.0	508,163.0
March	7,883.7	483,900.1	105.7	7,778.0	477,413.6
April	9,399.5	558,332.0	176.5	9,223.0	547,846.2
May	18,746.5	1,150,661.9	176.5	18,570.0	1,139,826.6
June	25,996.5	1,544,193.8	176.5	25,820.0	1,533,708.0
July	12,921.5	793,123.4	176.5	12,745.0	782,288.1
August	6,356.5	390,163.7	176.5	6,180.0	379,328.4
September	6,198.5	368,192.6	176.5	6,022.0	357,706.8
October	7,453.5	457,497.6	176.5	7,277.0	446,662.3
November	8,661.7	514,503.6	105.7	8,556.0	508,226.4
December	9,988.7	613,105.0	105.7	9,883.0	606,618.5

38. The Confederated Salish & Kootenai Tribes own the hydropower water rights for S̓el̓iš Ksanka Q̓l̓isp̓e Dam. Statements of Claim 76L 94408-00 and 76L 94409-00 for S̓el̓iš Ksanka Q̓l̓isp̓e Dam are for 14,540 CFS up to 614,200 AF for power generation, and a volume of 614,700 second foot days for storage for power generation (equivalent to 1,217,106 AF), respectively. A

second foot day is the volume of water represented by a flow of one cubic foot per second for 24 hours. The term is used extensively as a unit of runoff volume or reservoir capacity. The total volume from the two claimed rights is 614,200 AF plus 1,217,106 AF which equals 1,831,306 AF. Flathead Lake is managed to keep a full pool of water during the late spring and summer months. At the combined claimed flow rate of 14,540 CFS flowing 24 hours per day, the direct flow hydropower right and storage for hydropower water right, can be fulfilled over a period of 64 days.

39. Sèliš Ksanka Q́lispè Dam operations are complex and must accommodate many management factors including, but not limited to federal licensing (Flathead Lake levels required by FERC (Federal Energy Regulatory Commission)) for fish and recreation, instream flow requirements, flood control, and irrigation needs. These factors fluctuate seasonally and from year to year. The average yearly flow of water through Flathead Lake is approximately 11,437 CFS as measured at the USGS gauge at Polson (12372000), for the period of 1939-2006 (USGS, 2009). Even though hydropower water rights at Sèliš Ksanka Q́lispè Dam require 1,831,306 AF, to meet the hydropower water rights claimed in the adjudication, the records show that Sèliš Ksanka Q́lispè Dam's reservoir, Flathead Lake, consistently obtains a full pool status each year.

40. Pending an adjudication of Confederated Salish & Kootenai Tribes hydropower water rights and completion of a water availability study that shows otherwise, the Department finds that water in the Flathead River and Flathead Lake can reasonably be considered legally available during the period in which the Applicants seek to appropriate. This finding is based on the records of the Department and other evidence provided to the Department.

41. The proposed wells are approximately 200 feet, 6,100 feet, and 11,400 feet from Garnier Creek, Trumbull Creek, and Flathead River, respectively. Shallow wells were queried from the Groundwater Information Center, and existing hydrologic and hydrogeologic information was used to determine the absence of hydraulic connection of Garnier Creek, Trumbull Creek, and local tributaries to groundwater. The Flathead River between Columbia Falls and Flathead Lake, and the lake itself, are identified in DNRC Technical Memorandum: Legal Availability of Groundwater in the Flathead Deep Aquifer (2019) as hydraulically connected to the Deep Aquifer. Therefore, surface water depletion was calculated for the Flathead River downstream of Columbia Falls to and including Flathead Lake.

42. Following DNRC standards for systems with disposal via central treatment facility, total consumption for the multiple domestic and lawn and garden irrigation uses is estimated to be 13.79 AF. This is equivalent to 5% of the total multiple domestic demand of 50.13 AF and 70% of the total lawn and garden demand of 16.11 AF. Table 5 summarizes the anticipated monthly net depletions (volume and flow) from hydraulically connected surface waters.

Table 5: Total Consumed Volume and Net Depletion to the Flathead River/Flathead Lake			
Month	Consumed Volume (AF)	Net Depletion to Flathead River/Flathead Lake (AF)	Net Depletion to Flathead River/Flathead Lake (GPM)
January	0.2	1.2	8.5
February	0.2	1.1	8.5
March	0.2	1.2	8.5
April	0.2	1.1	8.5
May	1.6	1.2	8.5
June	2.4	1.1	8.5
July	3.5	1.2	8.5
August	3.2	1.2	8.5
September	1.5	1.1	8.5
October	0.2	1.2	8.5
November	0.2	1.1	8.5
December	0.2	1.2	8.5
TOTAL	13.8	13.8	---

43. Net surface water depletion caused by pumping from the Deep Aquifer will primarily occur through propagation of drawdown through the overlying confining layer to the Flathead River downstream of Columbia Falls (including Flathead Lake). The depth of the wells and the propagation of drawdown through the overlying confining layer will cause depletion effects to be dampened resulting in a constant year-round depletion of 8.5 GPM (equivalent to the total consumed volume of 13.79 AF) (Table 5) even though consumption from the requested appropriation is concentrated in the summer months. The variation in the monthly depletion volume in Table 5 is a result of the months having different numbers of days. Refer to Tables 1 through 4 in the Physical and Legal Availability sections for the water availability data pertaining to these depleted sources.

44. The physical and legal availability analyses for the Flathead River and Flathead Lake found that water is both physically and legally available in both sources during the period of resulting

depletion in amounts exceeding the constant year-round net depletions (see Physical and Legal Availability sections of this document).

45. The stream flow data analysis of the Flathead River and Flathead Lake shows legally available monthly flows and volumes in those sources exceeding the flow rate and volume of the proposed appropriation. Therefore, the Department finds that the amount of groundwater the Applicant seeks to appropriate, 475.0 GPM (1.06 CFS) up to 66.24 AF, is legally available in the aquifer and hydraulically connected surface water sources.

CONCLUSIONS OF LAW

46. 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).

47. 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.

48. 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.) 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. § 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.

49. 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 et al., 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 et al., 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.

50. 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. § 85-2-311(1)(a)(ii), MCA. (FOF 30-45)

Adverse Effect

FINDINGS OF FACT

51. The Applicant provided a plan showing they can regulate their water use. To satisfy the water rights of senior appropriators during water shortages, the Applicant will:

- Reduce irrigation by 50-percent;
- Cease irrigation except for trees and shrubberies;
- Initiate domestic/commercial water rationing to 50-percent during extreme shortage; and
- Upon a valid call from a senior water holder, the owner will turn off the water supply.

If a call on the proposed permit has been made, the Applicant will rely on their existing Provisional Permit 76LJ 28809-00 to serve domestic and commercial water at a reduced rate if their priority date allows.

52. Drawdown in existing wells in the Deep Aquifer was modeled for proposed conditions using the Hantush-Jacob (1955) solution, an aquifer Transmissivity (T) = 356 ft²/day, an aquifer

Storativity (S) = 3.9×10^{-4} , and the monthly pumping schedule identified in Table 5 for a period of five years. Drawdown is the largest at the end of the fifth July of the monthly pumping schedule. Drawdown greater than 1.0 foot occurs within 13,600-feet of the production well. The DNRC identified 794 water rights within 13,600-feet of the production well. Of those 794 water rights, 576 have wells with a known depth of at least 100 feet that are predicted to experience drawdown greater than 1.0 foot. The remaining 218 water rights either did not provide well depth information to the DNRC upon filing (139 water rights) or were completed to a depth less than 100 feet (79 water rights). All wells with a known depth will have remaining water column available. A list of these water rights is included in the application file and is available upon request.

Table 6: Assumed Volumes and Monthly Pumping Schedule for the Proposed Wells					
Month	IWR (inches) - West Glacier	Diverted Volume per Well (AF)	Monthly Pumping Schedule per Well (GPM)	Total Diverted Volume (AF)	Total Monthly Pumping Schedule (GPM)
January	0.0	1.4	10.4	4.3	31.1
February	0.0	1.3	10.4	3.8	31.1
March	0.0	1.4	10.4	4.3	31.1
April	0.1	1.4	10.5	4.2	31.5
May	1.9	2.1	15.3	6.3	46.0
June	3.0	2.4	18.3	7.3	54.8
July	4.5	3.0	21.9	9.0	65.8
August	4.0	2.8	20.7	8.5	62.0
September	1.8	2.0	15.1	6.0	45.2
October	0.0	1.4	10.4	4.3	31.1
November	0.0	1.4	10.4	4.1	31.1
December	0.0	1.4	10.4	4.3	31.1
TOTAL	15.1	22.1	---	66.2	---

53. To ensure that the permitted volume is not exceeded and that senior water users are not adversely affected, the provisional permit will be subject to the following measurement condition upon issuance:

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE

APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR UNTIL A FORM 617 PROJECT COMPLETION NOTICE IS SUBMITTED. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE PERMIT. THE RECORDS MUST BE SENT TO THE KALISPELL REGIONAL WATER RESOURCES OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

54. The Department finds there will be no adverse effect to senior surface or groundwater appropriators on the potentially affected surface and groundwater sources resulting from the Applicant's proposed use of water based on:

- i. The Applicant's proposal to regulate their water use to satisfy the water rights of senior appropriators;
- ii. The analysis of potential drawdown in neighboring wells demonstrating that all wells will have remaining water column;
- iii. The Department's findings that water is legally available in the aquifer; and,
- iv. The Department's finding that water is legally available in the hydraulically connected reaches of the Flathead River and Flathead Lake.

CONCLUSIONS OF LAW

55. 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. (1984), 211 Mont. 91, 685 P.2d 336 (purpose of the Water Use Act is to protect senior appropriators from encroachment by junior users); Bostwick Properties, Inc. ¶ 21.

56. 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).

57. 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*, (2011) Pg. 4.

58. 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 (1991), 249 Mont. 425, 816 P.2d 1054.

59. 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*, (2011) Pg. 7 (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). (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.

60. 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*, (2011) Pg. 8.

61. 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. § 85-2-311(1)(b), MCA. (FOF 51-54)

Adequate Diversion

FINDINGS OF FACT

62. Well ML #3 (GWIC ID: 319658) was evaluated with a 72-hour aquifer test at an average flow rate of 125.1 GPM. The maximum drawdown in ML #3 was 193.35 feet below the static water level (SWL) of 158.81 feet below top of casing (BTC), leaving 302.84 feet of available water column above the bottom of the well's screened interval. The observation wells (GWIC ID: 85280 and 288602) experienced a maximum drawdown of 4.95 feet and 7.03 feet, respectively.

63. An evaluation of adequacy of diversion was modeled using the Hantush-Jacob (1955) solution with a T of 356 ft²/day and S of 3.9×10^{-4} . Predicted theoretical drawdown for the proposed well was modeled for the period of diversion using the monthly pumping schedule identified in Table 5. The requested irrigation volume was apportioned April through September according to the monthly net irrigation requirement for West Glacier listed in the Irrigation Water Requirement (IWR) program. The total diverted volume is the sum of the constant year-round multiple domestic use and irrigation diverted volume from April through September.

64. The diverted volumes from existing Provisional Permit No. 76LJ 28809-00 for 33.9 AF per annum and Provisional Permit No. 76LJ 71015-00 for 29.2 AF per annum was modeled as additional drawdown between wells ML #1 and ML #2 (GWIC IDs: 85280 and 125958, respectively), and interference drawdown on ML #3 (GWIC ID: 319658).

65. As identified in Table 7, 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 aquifer test by the maximum observed drawdown of the aquifer test. Table 7 identifies the maximum observed drawdown for the 72-hour aquifer test at 125.1 GPM (GWIC ID 319658), the 72-hour aquifer test at 181.6 GPM (GWIC ID 85280) and the 8-hour drawdown and yield test at 169.2 GPM (GWIC ID 125958). The aquifer adjacent to the proposed wells would experience a predicted theoretical maximum drawdown of 17.3 feet at the end of July the first year with the monthly pumping schedule identified in Table 6. The remaining available water column for the proposed wells is equal to the available drawdown above the bottom of the perforations minus total drawdown including any interference drawdown.

Table 7: Remaining Available Water Column for the Proposed Production Wells				
Proposed Well		ML #3 (GWIC ID: 319658)	ML #1 (GWIC ID: 85280)	ML #2 (GWIC ID: 125958)
Perforated Interval Depth	(ft)	655.00	734.00	719.00
Pre-Test Static Water Level	(ft btc)	158.81	135.29	120.24
Available Drawdown Above Bottom of Perforations	(ft)	496.19	598.71	598.76
Aquifer Test Observed Drawdown	(ft)	193.35	231.61	210.92
Modeled Drawdown Using Mean Aquifer Test Rate	(ft)	84.40	122.00	98.00
Well Efficiency	(%)	44	53	46
Predicted Theoretical Maximum Drawdown from Assumed Monthly Pumping Schedule	(ft)	17.30	17.30	17.30
Predicted Drawdown with Well Loss	(ft)	39.32	32.64	37.61
Interference Drawdown	(ft)	7.00	6.80	7.00
76LJ 28809-00 and 76LJ 71015-00 Additional Drawdown (including Interference Drawdown)	(ft)	13.50	68.28	77.62
Total Drawdown	(ft)	59.82	107.72	122.23
Remaining Available Water Column	(ft)	436.40	491.00	476.50

66. The Meadow Lake County Water and Sewer District's PWS system consists of:
- i. Well ML #1 (GWIC ID: 85280; completed with an open-hole bottom to a depth of 734.0 feet below ground surface (BGS) by Liberty Drilling and Pump Co. (WWC-52) on July 22, 1983 in the Deep Aquifer. The well was perforated between 714.0 and 734.0 feet BGS in 2018);
 - a. Equipped with a 50-HP Goulds submersible pump that was installed by MWC Viking Pump Company in 2018. This pump is controlled by an ABB variable frequency drive (VFD) which responds to changing water levels in the PWS system's 250,000-gallon storage tank.
 - ii. Well ML #2 (GWIC ID: 125958; completed to a total depth of 743.0 feet BGS (with perforations between 570.0 and 719.0 feet BGS) by Liberty Drilling and Pump Co. (WWC-52) on March 8, 1991 in the Deep Aquifer);
 - a. Equipped with a 40-HP submersible pump that was installed when the well was originally brought online in 1991. The exact make and model of the pump is

not currently known. This pump is regulated by changing water levels in the PWS system's 250,000-gallon storage tank.

- iii. Well ML #3 (GWIC ID: 319658; drilled to a total depth of 765.0 feet BGS and completed to 655.0 feet BGS (screened from 638.0 to 655.0 feet BGS) by O'Keefe Drilling Co. (WWD-718 on March 30, 2022 in the Deep Aquifer);
 - a. To be equipped with a 30-HP Goulds model 120L submersible pump (or approved equivalent) with a variable frequency drive (VFD) to ensure the source capacity of 125.0 GPM is not exceeded. This pump will be regulated by changing water levels in the PWS system's 250,000-gallon storage tank.
 - iv. A 250,000-gallon steel storage tank with pressure transducer;
 - v. A 199,000-gallon steel storage tank (installed but not yet online);
 - vi. A booster pump station associated with the 199,000-gallon storage tank;
 - a. Two 7.5-HP and one 20.0-HP centrifugal booster pumps with Wessels pressure tank regulated by VFDs and controlled by a Pacoflo 500 pump control panel.
 - vii. Three pump houses (one for each well, containing pump controls and volumetric flow meters);
 - viii. Assorted PVC distribution piping ranging from 3.0-10.0-inch diameter;
67. This proposed water right permit will require connecting ML #3 to the existing PWS system and extending water mains to service the new developments within the District. Modifications to the water system are being designed by Tom Cowan of Carver Engineering, a licensed Professional Engineer in the state of Montana.
68. The District's water system is operated based on the demands of the water users. The well pumps are controlled by the water level in the 250,000-gallon storage tank located at the far north end of the water system. The well pumps operate on an alternating lead-lag schedule. When the water level in the tank (or pressure in the system) reaches a set level, the pressure transducer in the tank will trigger one of the wells to pump until the water level is replenished. If the demand in the system continues to draw the water level down in the tank, a second well starts pumping, followed by a third if the level in the tank requires. All three wells can pump simultaneously at the combined maximum diversion rate of 475.0 GPM (ML #1 at 181.0 GPM, ML #2 at 169.0 GPM, and ML #3

at 125.0 GPM) to replenish the tank. The flow rates of 181.0 GPM, 169.0 GPM, and 125.0 GPM for wells ML #1, ML #2, and ML #3, respectively, are the maximum flow rates that these wells will divert in service of all existing and pending water rights supplied by these wells.

69. Water from the wells is pumped directly into the distribution system and the tank is back-fed water, meaning water can be provided to the end user from the wells in addition to being gravity fed from the 250,000-gallon storage tank. The 199,000-gallon storage tank and associated booster pump station will help supply fire flows and peak demand and will maintain water pressure in the upper portions of the water system.

70. Discharge from the system occurs as lawn and garden irrigation water infiltrating back to shallow groundwater, and as wastewater from the multiple domestic and commercial uses entering the Flathead River via the City of Columbia Falls wastewater treatment plant outfall.

71. The water system is a registered Montana Public Water Supply under the regulation of the Montana Department of Environmental Quality (DEQ). All changes and updates to the existing permitted system must be designed by a licensed professional engineer and approved by the Montana DEQ PWS Section, as is required for public water supply systems in Montana.

72. Based on the results of the 72-hour constant-rate aquifer tests on ML #1 and ML #3, the 8-hour yield and drawdown test on ML #2, and the system specifications, the Department finds that the diversion and conveyance system is adequate to supply the requested flow rate of 475.0 GPM and annual volume of 66.24 AF.

CONCLUSIONS OF LAW

73. 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.

74. 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.

75. 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).

76. 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).

77. 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. § 85-2-311(1)(c), MCA. (FOF 62-72)

Beneficial Use

FINDINGS OF FACT

78. The Applicant seeks this beneficial water use permit to serve the increased water demands associated with continued development within the District service area. The planned Tamarack Meadows development in the northwest portion of the District includes 103 single-family residential lots. The planned Glacier Village development in the southeast portion of the District (near ML #3) includes up to 76 multi-family residential connections. In total, 179 additional residential connections are planned (103 single family dwellings and 76 multi-family units), bringing the District's total to 660 residential connections (481 residential connections are already covered by existing and pending water rights).

79. The Applicant calculated their multiple domestic water needs for the 179 connections by assuming 250.0 gallons per day (GPD) per connection, which is reasonable when compared to DEQ and Flathead County wastewater design flow estimates. At 250.0 GPD, the annual multiple domestic demand for 179 connections is 50.13 AF (179 connections x 250.0 GPD/connection x 365 days/year ÷ 325,851 gallons/AF = 50.13 AF/year).

80. The Applicant estimates approximately 0.05 acres of lawn and garden area per residential connection. This equates to a total of 8.95 acres of lawn and garden area for the 179 connections. The Applicant requests 16.11 AF to irrigate 8.95 acres of lawn and garden based on Department

guidelines from the 2010 technical memorandum “DNRC Consumptive Use Methodology – Turf Grass.” Using the United States Department of Agriculture - Natural Resources and Conservation Service (USDA-NRCS) Irrigation Water Requirements (IWR) software and the West Glacier Weather Station climate data, the Applicants identified an irrigation requirement of 21.54 inches, or 1.80 AF per acre per year ($15.08 \text{ inches/acre} \div 0.70 \text{ efficiency factor} = 21.54 \text{ inches} \div 12.00 \text{ inches/foot} = 1.80 \text{ AF/acre}$). Thus, the requested annual irrigation volume is 16.11 AF for 8.95 acres of lawn and garden area ($1.80 \text{ AF/acre} \times 8.95 \text{ acres} = 16.11 \text{ AF}$).

81. The Applicant has included the commercial purpose on this permit request for additional flow from well ML #3 only; no additional volume for the commercial purpose is requested. Water diverted from any of the three production wells may be used for commercial purposes because the wells are manifolded by the PWS system infrastructure and thus all water is comingled. This application does not request any additional volume for the commercial purpose because all volume needed for the existing and planned commercial uses in this development is already provided by existing Provisional Permit 76LJ 28809-00 and pending Provisional Permit 76LJ 30158802 which are served by wells ML #1 and ML #2.

82. The District’s PWS system will use its two storage tanks to sustain water supplies during periods of peak demand. The source capacities of ML #1, ML #2, and ML #3 are 181.0 GPM, 169.0 GPM, and 125.0 GPM, respectively (equivalent to 260,640 GPD, 243,360 GPD, and 180,000 GPD, respectively). During periods of peak demand (July and August), maximum water use is anticipated at 372,800 GPD (including the uses covered by existing Provisional Permit 76LJ 28809-00 and pending Provisional Permit 76LJ 30158802). In combination, ML #1, ML #2, and ML #3 can produce 684,000 gallons per day at 475.0 GPM, which is sufficient to satisfy peak demands while also maintaining the water levels in the storage tanks throughout the period of diversion. As described in the Adequacy of Diversion section of this preliminary determination, all three wells can operate simultaneously during periods of peak water demand.

83. Based on the Applicant-provided information and comparison to DNRC and DEQ water use standards and requirements, the Department finds the proposed appropriation is a beneficial use of water and the requested flow rate of 475.0 GPM and volume of 66.24 AF is reasonably justified.

CONCLUSIONS OF LAW

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

85. 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, supra; 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 et al*, 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).

86. 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*, (2011) Pg. 3 (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).

87. It is the applicant's burden to produce the required evidence. 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.

88. Applicant proposes to use water for multiple domestic, commercial, and lawn and garden purposes, which are recognized as beneficial uses. § 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence that multiple domestic, commercial, and lawn and garden water uses are beneficial uses and that up to 66.24 AF of volume diverted at 475.0 GPM is the amount needed to sustain the beneficial use. § 85-2-311(1)(d), MCA. (FOF 78-83)

Possessory Interest

FINDINGS OF FACT

89. This application is for distribution in which water is supplied to another. It is clear that the ultimate user will not accept the supply without consenting to the use of water. 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.

CONCLUSIONS OF LAW

90. 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.

91. 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.

92. 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. § 85-2-311(1)(e), MCA. (FOF 89)

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. 76LJ 30159069 should be GRANTED.

The Department determines the Applicant may divert groundwater at a flow rate of 475.0 GPM up to 66.24 AF annually by means of three production wells, ML #1, ML #2, and ML #3. The maximum flow rates of ML #1, ML #2, and ML #3 will be 181.0 GPM, 169.0 GPM, and 125.0 GPM, respectively. Diversion may occur from January 1 – December 31 for multiple domestic and commercial uses and from April 20 – October 10 for lawn and garden irrigation. The Applicant may divert up to a volume of 50.13 AF to supply the multiple domestic needs for 179 households, and 16.11 AF to irrigate 8.95 acres of lawn and garden. No volume is requested with this application for commercial uses, only flow rate from the new well ML #3. The volume needed for the existing and planned commercial uses in this development is already provided by existing Provisional Permit 76LJ 28809-00 and pending Provisional Permit Application 76LJ 30158802.

The three points of diversion are in the SESESW (ML #1), NENESW (ML #2), and SESWSE (ML #3) of Section 6, Township 30N, Range 20W, Flathead County, Montana. The multiple domestic, commercial, and lawn and garden uses will occur within the Meadow Lake County Water and Sewer District boundary. The places of use for this permit are in Flathead County, Montana, within the following legally described locations:

- W2E2 Section 6, Township 30N, Range 20W
- E2W2 Section 6, Township 30N, Range 20W
- E2W2NW Section 6, Township 30N, Range 20W
- N2NWSW Section 6, Township 30N, Range 20W
- E2SWNWSW Section 6, Township 30N, Range 20W
- W2SWNESE Section 6, Township 30N, Range 20W
- W2NWSESE Section 6, Township 30N, Range 20W

To satisfy the Adverse Effect criterion, the proposed provisional permit will be subject to the following condition upon issuance:

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR UNTIL A FORM 617 PROJECT COMPLETION NOTICE IS SUBMITTED. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE PERMIT. THE RECORDS MUST BE SENT TO THE KALISPELL REGIONAL WATER RESOURCES OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

NOTICE

This 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 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, the application and objection will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If valid objections to an application are received and withdrawn with stipulated conditions and the department preliminarily determined to grant the permit or change in appropriation right, the department will grant the permit or change subject to conditions necessary to satisfy applicable criteria.

DATED this 13th Day of February 2024.

/Original signed by James Ferch/
James Ferch, Regional Manager
Kalispell Regional Water Resources 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 13th Day of February 2024, by first class United States mail.

MEADOW LAKE COUNTY WATER AND SEWER DISTRICT
PO BOX 2366
COLUMBIA FALLS MT 59912-2366

WATER & ENVIRONMENTAL TECHNOLOGIES
ATTN: BRAD BENNETT
102 COOPERATIVE WAY, STE 100
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TRAVIS WILSON
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DATE