

THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

GOVERNOR GREG GIANFORTE



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06/27/2025

BIG MOUNTAIN WATER COMPANY
PO BOX 1400
WHITEFISH, MT 59937

Subject: Draft Preliminary Determination to Grant Beneficial Water Use Permit Application No. 76LJ 30164348

Dear Applicant,

The Department of Natural Resources and Conservation (Department or DNRC) has completed a preliminary review of your application. This review consists of an evaluation of the criteria for issuance of a permit authorization found in §85-2-311, MCA. The Department has preliminarily determined that the criteria are met, and this application should be granted. A copy of the Draft Preliminary Determination to Grant your application is attached.

You have the opportunity to request an extension of time to submit additional information for the Department to consider in the decision, within 15 business days of the date of this letter. If no response is received by 7/21/2025, the Department will prepare a notice of opportunity to provide public comment per §85-2-307(4), MCA.

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



DNRC.MT.GOV

Please let me know if you have any questions.

Best,

Joseph L. Howerton

Joseph Howerton
Water Resources Specialist
Kalispell Regional Office
655 Timberwolf Pkwy, Ste. 4
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CC:

Brad Bennett
Senior Hydrologist
Water & Environmental Technologies
102 Cooperative Way, Suite 100
Kalispell, MT 59901



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

* * * * *

APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 76LJ 30164348 BY BIG MOUNTAIN WATER COMPANY	} } }	DRAFT PRELIMINARY DETERMINATION TO GRANT PERMIT
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On April 9, 2025, Big Mountain Water Company submitted Application for Beneficial Water Use Permit No. 30164348 to the Kalispell Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) for 100 GPM and to supplement their existing permitted multiple domestic and lawn & garden purposes. No additional volume is requested. The Department published receipt of the application on its website on April 14, 2025. A preapplication meeting was held between the Department and the Applicant on August 27, 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 August 30, 2024. The Department delivered the Technical Analyses to the Applicant on October 11, 2024. The application was determined to be correct and complete as of April 30, 2025. An Environmental Assessment for this application was completed on June 27, 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
- Attachments:
 - Attachment A – Signed Form 600 (Received 4/9/25)
 - Attachment B – Site Maps
 - Attachment C – Existing Water Right Abstracts
 - Attachment D – Geocodes in Place of Use
 - Attachment E – BMWC Water System Schematics
 - Attachment F – Schematic of Connection to Water System
 - Attachment G – BMWC 6 Design Report
 - Attachment H – Well Log Reports for Sunrise Area Water System
 - Attachment I – Plat Maps with POU

- DNRC Technical Analysis Report Part A (generated by the Water Sciences Bureau), dated October 9, 2024.
- DNRC Technical Analysis Report Part B (generated by the Kalispell Regional Office), dated October 11, 2024.
- Form 600P – Preapplication Meeting Form (Received 8/30/24)
- Form 600–ATA – Aquifer Testing Addendum
- Form 653 – Variance Request (Received 8/30/24)
- Figures
- Attachment A – Montana Well Log Reports, dates completed: August 19, 2021; October 22, 1982; March 18, 2007
- Attachment B – Form 633 (Electronic)
- Attachment C – Place of Use Geocodes
- Maps:
 - Figure 1: Big Mountain Water Company Sunrise Area Water System Place of Use Map, dated August 28, 2024
 - Figure 2: Big Mountain Water Company Sunrise Area Water System Well Location Map, dated August 28, 2024
 - BMWC Water System Schematics Sheets 1-4, dated October 11, 2024
 - Schematic of Connection to Water System: Well #6 – Site Plan & Details
 - Plat Maps with POU, dated October 11, 2024

Information within the Department’s Possession/Knowledge

- Letter from DNRC to Water and Environmental Technologies approving their requested variances from ARM 36.12.121(3)(a) and (g), dated September 26, 2024.
- List of existing groundwater rights in the source aquifer that are expected to experience drawdown greater than 0.01 feet.
- List of existing groundwater rights in the source aquifer that are expected to experience drawdown greater than one foot.
- WSB’s Aquifer Code Request Response – Analysis performed by WSB Groundwater Hydrologist Jack Landers
- 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 Kalispell Regional Office at 406-752-2288 to request copies of the following documents.

- DNRC Technical Memorandum: *Use of the Irrigation Water Requirements (IWR) Program*, dated February 4, 2013
- DNRC Technical Memorandum: *Physical and Legal Availability of Ground Water*, dated April 22, 2019.
- DNRC Technical Memorandum: *Legal Availability of Groundwater in the Flathead Deep Aquifer*, dated December 12, 2019.

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 and Conservation	
DEQ means Department of Environmental Quality	
AF means acre-feet	BGS means below ground surface
BTC means below top of casing	FOF means finding(s) of fact
GPM means gallons per minute	HP means horsepower
IWR means Irrigation Water Requirements	POD means point of diversion
PWS means Public Water Supply	

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert water from the Whitefish Mountain Belt Supergroup Fractured Bedrock Aquifer, by means of a well drilled to a depth of 740 feet below the ground surface, from January 1 to December 31 at 100 GPM, from a point in the NWSENW Section 2 Township 31N Range 22W, for Lawn & Garden use from April 15 to October 15 and Multiple Domestic use from January 1 to December 31. The Applicant proposes to irrigate Lawn & Garden on 16.03 acres. The place of use is generally located in W2 Section 2 Township 31N Range 22W and NE Section 3 Township 31N Range 22W.
2. The Applicant proposes to divert 100 GPM out of a proposed well (POD 1 BMWC 6, GWIC ID: 316598) to supplement additional flow into the BMWC's Sunrise Area PWS system multiple domestic and lawn and garden purposes. All of the volume necessary for these uses is already permitted by existing Provisional Permit 76LJ 104047-00. Provisional Permit 76LJ 30063777 also supplements additional flow only (no permitted volume) to the BMWC Sunrise Area PWS system. In combination, Provisional Permits 76LJ 104047-00 and 76LJ 30063777 authorize up to 105 AF and 180 GPM (Table 1) for the multiple domestic and lawn and garden uses associated with the BMWC Sunrise Area PWS system.

Table 1: Summary of Existing and Proposed Water Rights for BMWC's Sunrise Area PWS system

Water Right #	Water Right Type	Priority Date	Well ID	GWIC ID	Flow (GPM)	Volume (AF)	Place of Use (Acres)
76LJ 30164348	Provisional Permit	Pending	BMWC 6 (POD 1)	316598	100	*	16.03
76LJ 104047-00	Provisional Permit	May 8, 1998	BMWC 3	209330	100	105	16.03
76LJ 30063777	Provisional Permit	August 3, 2012	BMWC 5	234814	80	*	16.03

**Provisional Permits 76LJ 30164348 & 76LJ 30063777 are only supplementing flow rate.*

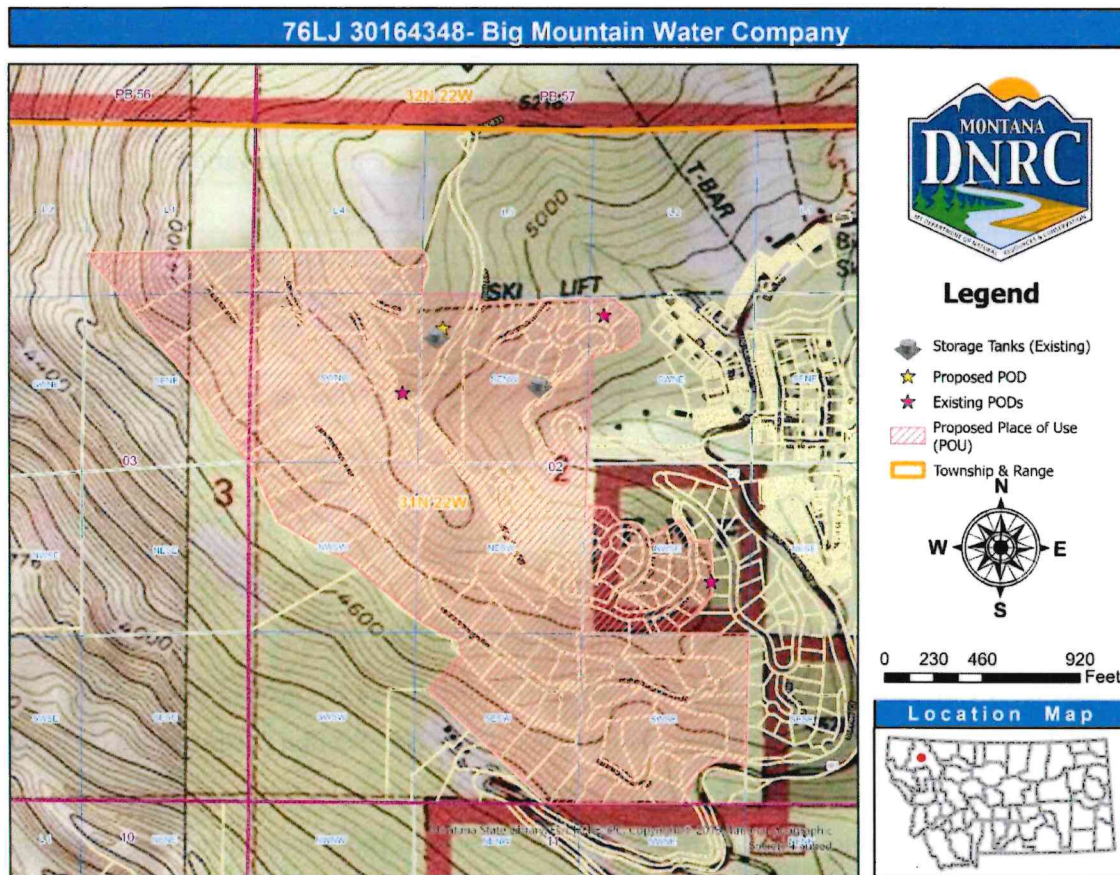


Figure 1-Map of the Applicant's proposed POD on the source and proposed place of use.

3. The two existing wells (Well Nos. 3 & 5), along with the existing 300,000-gallon reservoir, have sufficient capacity to meet the demands of all current and proposed users; however, the Big Mountain Water Company proposes to add redundant supply to the Sunrise Area system and to be able to fill the 300,000-gallon reservoir more quickly should an unexpected event cause the water level in the reservoir to drop to an unacceptable level. Such an event occurred two winters ago when sustained temperatures of -15°F and lower broke piping in a couple pressure reducing stations. The leaking water almost drained the 300,000-gallon reservoir and it took more than a day to refill the reservoir.

§ 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, Starnier*, 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 to divert 100 GPM (no additional volume requested) out of a proposed well (POD 1) to supplement additional flow into the BMWC's Sunrise Area PWS system multiple domestic and lawn and garden purposes. All of the volume necessary for these uses is already permitted by existing Provisional Permit 76LJ 104047-00. Provisional Permit 76LJ 30063777 also supplements additional flow only to the BMWC Sunrise Area PWS system. In combination, Provisional Permits 76LJ 104047-00 and 76LJ 30063777 authorize up to 105 AF and 180 GPM for the multiple domestic and lawn and garden uses associated with the BMWC Sunrise Area PWS system.

11. No additional volume is being requested under the proposed appropriation; therefore, physical groundwater availability has been demonstrated under the Applicant's existing Provisional Permit 76LJ 104047-00.

12. Per Application file 76LJ 104047-00: A well log and test pumping results were submitted and both show water availability in excess of the amount being requested. The recharge of the aquifer was discussed and it is assumed at least 800 acre-feet of recharge could be expected on an annual basis which is sufficient to satisfy all existing appropriations. The physical water supply exceeds the existing legal uses making water physically and legally available. The Department models physical availability of groundwater based on the volume diverted from the source. As all wells divert from the local bedrock aquifer, and no additional volume is being appropriated, no further modeling was conducted to prove the physical availability criterion.

13. Based on the physical availability findings for Provisional Permit 76LJ 104047-00 and the fact that no new volume is requested by this permit application, the Department finds that groundwater is physically available during the proposed period of diversion.

LEGAL AVAILABILITY

FINDINGS OF FACT

14. The Applicant proposes to divert groundwater from a well at 100.0 GPM (no volume requested, flow rate only) for multiple domestic and lawn and garden uses associated with the BMWC Sunrise Area PWS system.

15. No additional volume is being requested under the proposed appropriation; therefore, legal availability of groundwater has been demonstrated under the Applicant's existing Provisional Permit 76LJ 104047-00. The Department models physical availability of groundwater based on the volume diverted from the source. Since no new volume is requested, no additional legal demand will be placed on the system.

16. Because there is no new volume appropriated, no new surface water depletion will occur therefore, hydraulically connected surface waters were not analyzed.

17. No additional volume is requested for Application No. 76LJ 30164348; therefore, hydraulically connected surface waters were not analyzed.

18. Based on the legal availability findings for Provisional Permit 76LJ 104047-00 and the fact that no new volume is requested by this permit application, the Department finds the proposed appropriation of 100 GPM to be legally available during the proposed period of diversion.

ADVERSE EFFECT

FINDINGS OF FACT

19. The Applicant will regulate their water use as required to respond to the call of senior appropriators. Existing Provisional Permit 76LJ 104047-00 appropriates an adequate volume of water. The Applicant has stated the well pumps can be turned off or water rationing could be implemented in response to call.

20. For purposes of modeling depletions from drawdown, a recommended aquifer Transmissivity (T) of 194.0 ft² per day, fracture hydraulic conductivity (K) of 3.2 f per day and Storativity (S) of 6.0×10^{-4} per day was derived from the Moench (1984) solution and Agarwal (1980) method applied to the recovery data from the POD 1 (GWIC ID 316598) aquifer test. The 72-hour aquifer test started on October 4, 2021, and ended October 7, 2021. The test maintained a constant discharge of 100 GPM. Groundwater recovery data levels were monitored for 72 hours in the Production and Observation wells from October 7, 2021 through October 10, 2021.

21. To determine if the proposed water use will not cause adverse effects to other water users, the Department considered the available drawdown of groundwater appropriations with listed well depth and static water level that are projected to experience a drawdown of 1 foot or more. The drawdown in existing bedrock wells was modeled for proposed conditions using the following inputs: Moench (1984) solution for recovery data using Agarwal (1980), a T value equal to 194.0 ft²/day from the fracture K of 3.2 ft/day, S' of 6.0×10^{-4} , and the monthly pumping schedule identified in **Table 2** for a period of five years. Modeling of the proposed flow rate of 100 GPM produces the largest drawdown at the end of the fifth year of pumping. There are 26 groundwater rights within the fault-truncated one-foot drawdown

contour that are predicted to experience at least one foot of additional drawdown as a result of the proposed increase in flow rate (**Figure 2**). All of these rights with known well depth and static water level are predicted to have remaining available water column.

Figure 2 – Groundwater Rights within Area of Potential Adverse Effect

Water Right No.	Distance (ft)	Well Depth (ft)	Static Water Level (ft)	Drawdown (ft)	Available Water Column (ft)
76LJ 77480 00	3261.9	200	131	26.2	304.8
76LJ 71795 00	8331.2	*	*	9.5	N/A
76LJ 85721 00	7585.2	540	*	11.0	529.0
76LJ 68879 00	6044.0	*	*	15.0	N/A
76LJ 71802 00	7970.6	*	*	10.2	N/A
76LJ 104047 00	1019.2	425	195	41.0	579.0
76LJ 30013642	1523.2	420	120	37.0	503.0
76LJ 30104499	10219.6	997	731.20	6.5	1721.7
76LJ 30110457	5761.6	263	137	15.9	384.1
76LJ 30006538	5812.4	430	140	15.7	554.3
76LJ 52646 00	1523.2	1131	253	37.0	1347.0
76LJ 80284 00	7585.2	321	42	11.0	352.0
76LJ 30158191	7585.2	*	*	11.0	N/A
76LJ 80315 00	6937.4	800	550	12.5	1337.5
76LJ 84244 00	6876.1	535	119	12.7	641.3
76LJ 61969 00	9791.3	988	774	7.1	1754.9
76LJ 65535 00	6044.0	*	*	15.0	N/A
76LJ 67898 00	6984.7	512	180	12.4	679.6
76LJ 73552 00	9791.3	*	*	7.1	N/A
76LJ 5480 00	3645.6	496	39	24.2	510.8
76LJ 30063777	3071.6	1027	248	27.2	1247.8
76LJ 30110553	6984.7	420	138	12.4	545.6
76LJ 106782 00	5005.1	160	105	18.5	246.5
76LJ 30155385	3439.2	778	444	25.2	1196.8

76LJ 82452 00	3562.1	506	190	24.6	671.4
76LJ 73016 00	7213.3	324	50	11.9	362.1

* Missing values indicate a lack of well data for a given water right.

22. No additional volume is requested for Application No. 76LJ 30164348; therefore, net depletions to hydraulically connected surface waters was not analyzed.

23. 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:

- a. The Applicant's plan to regulate their water use to satisfy the water rights of senior appropriators;
- b. The analysis of potential drawdown in neighboring wells demonstrating that all wells (with known available water columns) anticipated to experience drawdown greater than 1.0 foot will have remaining water column (**Figure 2**);
- c. The fact that no new volume is requested on this permit. Since there is no new volume, no additional depletions will manifest in hydraulically connected surface waters.

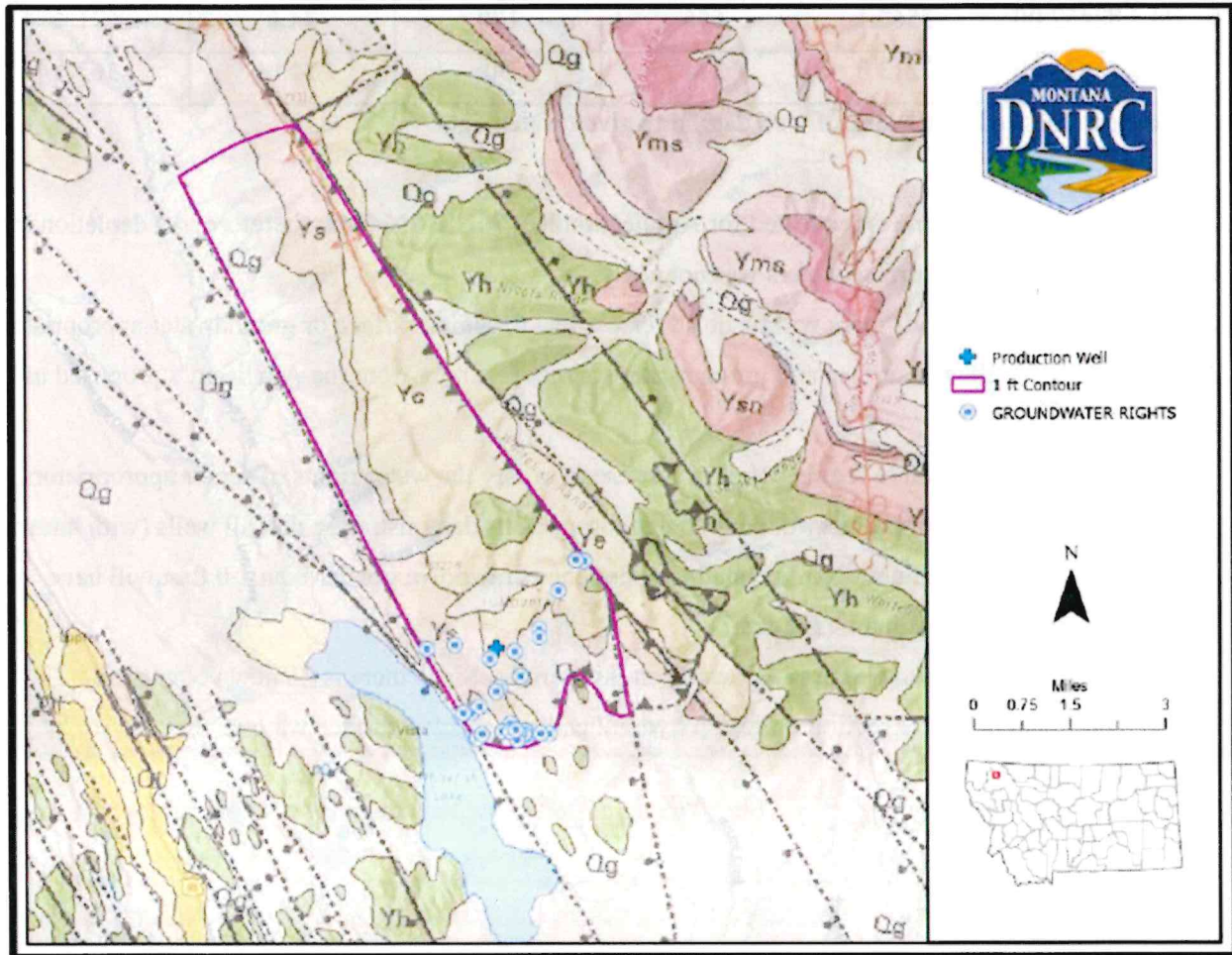


Figure 3 – Groundwater Rights Within 1 Ft Drawdown Contour Area

ADEQUATE MEANS OF DIVERSION

FINDINGS OF FACT

24. The proposed project will utilize a well (GWIC ID 316598) completed in the Whitefish Mountain Belt Supergroup Fractured Bedrock Aquifer. The well, POD 1 is drilled to a depth of 740.0 ft BGS and is screened from 720.0 feet BGS. The static water level in the well is 306.9 feet BTOC.

25. For purposes of modeling depletions from drawdown, a recommended aquifer Transmissivity (T) of 194.0 ft² per day and Storativity (S) of 6.0×10^{-4} was derived from the Moench (1984) solution applied to the drawdown data from the Production Well aquifer test. Predicted theoretical drawdown (**Table 3**) for the proposed well is modeled for the period of diversion derived from the monthly diverted volume schedule in **Table 2**.

26. The existing multiple domestic volume authorized by provisional permit 76LJ 104047-00 was apportioned monthly throughout the year based on the number of days in each month. The existing

irrigation volume was apportioned monthly April 15 through October 15 according to a seasonal net irrigation requirement of 17.2 inches per acre, which represents the 80% dry year NIR estimate for the Whitefish weather station.

Table 2: Assumed Monthly Diverted Volume Schedule for the Production Well				
Month	Whitefish Weather Station, IWR (in)	Irrigation and Lawn & Garden Diverted Volume (AF)¹	Multiple Domestic Diverted Volume (AF)	Total Diverted Flow Rate (GPM)
January	0.0	0.0	6.15	45.0
February	0.0	0.0	5.56	40.6
March	0.0	0.0	6.15	45.0
April	0.3	0.0	5.95	48.3
May	2.1	0.6	6.15	74.6
June	4.0	4.0	5.95	99.4
July	3.9	7.6	6.15	99.6
August	3.9	7.5	6.15	99.4
September	2.7	7.4	5.95	81.5
October	0.2	5.2	6.15	46.1
November	0.0	0.1	5.95	43.5
December	0.0	0.0	6.15	45.0
Total	17.2	32.6	72.4	

¹Irrigated volume for July and August was proportioned to June and September, respectively, to not exceed 100 GPM in any month.

27. The remaining available water column for the proposed production wells is calculated in **Table 3**. The remaining available water column above the bottom of the well (or above the perforated interval) (row K) is equal to the available drawdown above the bottom of the well or perforated interval (row C) minus the total drawdown (row J). Total drawdown is the sum of interference drawdown (drawdown from the 100 GPM flow rate authorized by Provisional Permit No. 76LJ 104047-00) (row I) and predicted drawdown with well loss (row H). Well loss is calculated by dividing the predicted theoretical maximum drawdown (row G) by a well efficiency percentage (row F). Well efficiency is calculated by dividing the modeled drawdown using the mean aquifer test rate (row E) by the observed maximum drawdown of the aquifer test (row D).

Table 3: Remaining Available Water Column for the Production Well		
	Drawdown Estimate	Proposed Well (GWIC 316598)
A	Total Depth at Bottom of Perforated Interval (ft BTC)	740.0
B	Pre- Test Static Water Level (ft BTC)	306.9
C	Available Drawdown Above Bottom of Well (ft)	433.1
D	Observed Drawdown of Aquifer Test (ft)	115.4
E	Modeled Drawdown Using Mean Aquifer Test Rate (ft)	51.7
F	Well Efficiency (%)	44.8
G	Predicted Theoretical Maximum Drawdown (ft)	87.8
H	Predicted Drawdown with Well Loss (ft)	145.6
I	Interference Drawdown (Provisional Permit No. 76LJ 104047-00) (ft)	0.0
J	Total Drawdown (ft)	145.6
K	Remaining Available Water Column (ft)	287.5

Update the language below to describe the specifications of the new pump and maybe add some language about the existing pump and discuss that the existing flow rate, proposed flow rate, and total flow rate can be achieved by the system

28. Per the applicant, which the Departments deems credible information: The pump and connection to the water system was designed by Carver Engineering and approved by DEQ. The well was pump tested for 72 hours at a flow rate of 100 GPM. A Goulds model 95L 15 pump with a 20 hp motor has been installed in the well. The well pump is set on three-inch drop pipe to a depth of 520 feet. Based on the hydraulic analysis completed by Carver Engineering, the well will deliver 99.5 GPM at a total dynamic head of 435.4 feet. This includes a pumping water level of 408 feet, and is based on the water level in the tank (elevation of 5,157 feet). As shown, the pump is capable or producing 100 GPM under the design conditions.

29. Per the applicant, which the Departments deems credible information: The Sunrise Are Water System is designed to supply a total of 154 single-family lots. The water system is a permitted public water supply under the regulation of the Montana DEQ (PWS ID MT000060). The distribution and storage system has designed by Carver Engineering in accordance with waterworks standards established by the State of Montana DEQ. Water is pumped from the wells via three-inch drop pipe and is metered prior to entering the water system. Water from the wells is connected to the existing water system that is dominantly comprised of 6-, 8-, and 10-inch water main. A booster pump station is utilized to provide water to the lots associated with Northern Lights West, Phase 3. The water delivery system is expected to be well maintained with a delivery efficiency nearing 100 percent.

30. Per the applicant, which the Department deems credible information: The Sunrise Area water system consists of three wells, a 300,000-gallon storage tank, supply lines from the wells to the system, and from the system to the tank. In total, the maximum rate of diversion will be 280 GPM from the three wells. The wells are designed to feed directly into the water system, but are controlled by the water level in the 300,000-gallon storage tank. The water system is designed to meet a peak demand and fire flows in excess of the 1,500 GPM. The storage tank is relied upon to ensure adequate water supply during periods of peak demand. Water from the wells is pumped directly into the water system of 6-, 8-, and 10-inch water mains to maintain the water level in the tank.

31. Per the applicant, which the Department deems credible information: Water diversion is controlled by demand in the subdivision. A pressure transducer in the 300,000-gallon reservoir sends a 4-20 mA signal, proportional to the water level in the reservoir to remote telemetry units in the wells (BMWC 3, BMWC 5, and BMWC 6). The respective well pumps are started and stopped based on preset reservoir levels. When the water level in the reservoir falls to 19.0 feet the “pumps” start. When the water level rises to 21.8 feet the pumps shut off. A copy of the design report was provided to (and approved by) DEQ to address connection of well BMWC 6 to the water system.

32. The Department finds that the proposed means of diversion and conveyance are capable of diverting and conveying the proposed flow rate and volume.

BENEFICIAL USE

FINDINGS OF FACT

33. The Applicant is proposing to supplement their existing Provisional Permit Nos. 76LJ 104047-00 and 76LJ 30063777, which authorize a combined flow rate of 180 GPM up to a volume of 105 AF, with an additional flow rate of 100 GPM from a new well (POD 1). The increased flow rate will allow the Applicant to more efficiently manage the water level in their reservoirs to ensure adequate flow and pressure within the water system and meet demands of the Sunrise Area within the Big Mountain Water Company’s service area, particularly during periods of peak water use.

34. The Department finds the proposed water use is beneficial, and that the requested flow rate of 100 GPM and annual volume of 105 AF are reasonably justified per ARM 36.12.1801(3). While no new volume is requested or appropriated through this application, per Department policy, a volume equivalent to the appropriated volume will be assigned to this permit because a new point of diversion is requested in this application. This permit will be associated with permits 76LJ 104047-00 and 76LJ 30063777 to ensure no additional volume is appropriated.

POSSESSORY INTEREST

FINDINGS OF FACT

35. 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

PHYSICAL AVAILABILITY

36. 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.”

37. 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).

38. 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).

39. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. § 85-2-311(1)(a)(i), MCA. (FOF 10-13)

LEGAL AVAILABILITY

40. 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).

41. 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.

42. 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; DRAFT Preliminary Determination to Grant Application for Beneficial Water Use Permit No. 76LJ 30164348

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).

43. 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.

44. 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*.

45. 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 14-18)

ADVERSE EFFECT

46. 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.

47. 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).

48. 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).

49. 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).

50. 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.

51. 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).

52. 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 19-23)

ADEQUATE DIVERSION

53. 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.

54. 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.

55. Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. Section 85-2-311(1)(c), MCA (FOF 24-32).

BENEFICIAL USE

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

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

58. Amount of water to be diverted must be shown precisely. *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, 3 (2011) (citing *BRPA v. Siebel*, 2005 MT 60, and rejecting Applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet).

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

60. Applicant proposes to use water for multiple domestic and lawn and garden uses, which are recognized beneficial uses. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence the request for additional flow rate is a beneficial use and that 100 GPM is the amount needed to sustain the beneficial use. Section 85-2-311(1)(d), MCA. (FOF 33-34)

POSSESSORY INTEREST

61. Pursuant to § 85-2-311(1)(e), MCA, an Applicant must prove by a preponderance of the evidence that it has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion,

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

62. Pursuant to ARM 36.12.1802:

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

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

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

(2) If a representative of the Applicant signs the application form affidavit, the representative shall state the relationship of the representative to the Applicant on the form, such as president of the corporation, and provide documentation that establishes the authority of the representative to sign the application, such as a copy of a power of attorney.

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

63. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. Section 85-2-311(1)(e), MCA. (FOF 35)

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 30164348 should be GRANTED.

The Department determines the Applicant may divert groundwater at 100 GPM up to 105 AF (no new volume appropriated) annually by means of the proposed production well POD 1: BMWC 6 (GWIC ID 316598) from January 1 to December 31 for multiple domestic and from April 15 to October 15 for lawn & garden irrigation. The flow rate will be 100 GPM. The Applicant may divert a volume of 105 AF (in combination with 76LJ 104047-00 and 76LJ 30063777) to supply the multiple domestic needs for 154 dwelling units and 16.03 acres of lawn & garden.

The point of diversion is located in the:

- NWSENW of Section 2, Township 31N, Range 22W, Flathead County

The place of use is located in the:

- W2 of Section 2, Township 31N, Range 22W, Flathead County
- W2SE of Section 2, Township 31N, Range 22W, Flathead County
- NWSWNE of Section 2, Township 31N, Range 22W, Flathead County
- E2NE of Section 3, Township 31N, Range 22W, Flathead County

NOTICE

The Department will provide a notice of opportunity for public comment on this application and the Department's Draft Preliminary Determination to Grant pursuant to § 85-2-307, MCA. The Department will set a deadline for public comments to this application pursuant to §§ 85-2-307, and -308, MCA. If this application receives public comment 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 27th day of June, 2025.



James Ferch, Regional Manager
Kalispell Regional Water Resources Office
MT 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 27th day of June, 2025, by first class United States mail.

BIG MOUNTAIN WATER COMPANY
PO BOX 1400
WHITEFISH, MT 59937

and:

BRAD BENNET
WATER & ENVIRONMENTAL TECHNOLOGIES
102 COOPERATIVE WAY, SUITE 100
KALISPELL, MT 59901



JOSEPH HOWERTON
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