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

* * * * * * *

APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 76LJ 30170796 BY OLD APOSTOLIC LUTHERAN CHURCH OF LAKESIDE, MONTANA	)))	**DRAFT PRELIMINARY DETERMINATION TO GRANT PERMIT**

* * * * * * *

On October 10, 2025, Old Apostolic Lutheran Church of Lakeside, Montana (Applicant) submitted Application for Beneficial Water Use Permit No. 76LJ 30170796 to the Kalispell Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) for 94.0 gallons per minute (GPM) up to 10.37 acre-feet annually for year-round Institutional use and Lawn and Garden irrigation from April 20th to October 10th. The Department published receipt of the application on its website on October 20, 2025. A preapplication meeting was held between the Department and the Applicant's consultant, Water and Environmental Technologies, on April 22, 2025, in which the Applicant designated that the technical analyses for this application would be completed by the Department. The Applicant returned the completed Preapplication Meeting Form May 30, 2025. The Department delivered the Department Completed Technical Analyses on July 21, 2025. The application was determined to be correct and complete as of October 31, 2025. An Environmental Assessment for this application was completed on December 30, 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- GW
- Maps and Figures:
    - Site Vicinity Map, Dated April 21,2025
    - Building Utility Plan, Dated February 14, 2025
    - General Notes & Details, Dated February 14, 2025
    - Old Apostolic Lutheran Church of Lakeside, Montana – Irrigated Area Exhibit, Undated

- Attachments
    - Attachment A: Pump and Motor Specifications
    - Attachment B: Total Dynamic Head Calculations
    - Attachment C: Water Use Calculations and Irrigated Area
    - Attachment D: Documentation of Possessory Interest
- Department completed technical analyses based on information provided in the Preapplication Meeting Form, dated July 21, 2025

Preapplication as Filed:

- Preapplication for Beneficial Water Use Permit, Form 600P - A & B
- Addenda:
    - Aquifer Testing Addendum, Form 600-ATA
    - Variance Request Form 653, received May 29, 2025
    - Variance Request Approval, dated May 29. 2025
- Attachments:
    - Attachment A: Water Usage and Flow Rate Calculations
    - Attachment B: ATA and Variance Request
    - Attachment C: Additional Hydraulically Connected Source Sheet (600P) – Blaine Creek

Information within the Department's Possession/Knowledge

- 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 – March 2025.
- Mean monthly stream flow data from DNRC Gaging station No. 76LJ 07500, Mill Creek below Creston Hatchery. Period of record: August 2016 – September 2024.
- Bathymetric data of Lake Blaine - Map created by MT Dept of Fish, Wildlife, and Parks in 1961.
- 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 Mill Creek from the point of depletion on down to the confluence with Flathead River.
- List of existing water rights on Lake Blaine.
- Aerial photographs of Lake Blaine taken between 1978 – 2015. The aerial photograph taken in May 2004 was used to establish low pool

- 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: Physical Availability of Surface Water With Gage Data, Dated November 1, 2019
    - DNRC Technical Memorandum: Net Surface Water Depletion from Ground Water Pumping, Dated July 16, 2018
    - Department Standard Practice for Determining Physical Availability of Surface Water
    - Department Standard Practice for Determining Area of Potential Impact

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	
NRCS means the Natural Resource Conservation Service	
DEQ means the Montana Department of Environmental Quality	
AF means acre-feet	**AOPI** means Area of Potential Impact
ARM means Administrative Rules of Montana	**BGS** means below ground surface
BTC means below top of casing	**CFS** means cubic feet per second
FOF means finding(s) of fact	**GPD** means gallons per day
GPM means gallons per minute	**POD** means point of diversion
IWR means Irrigation Water Requirements	**VFD** means variable frequency drive
MCA means Montana Code Annotated	**ZOI** means zone of influence
TDH means total dynamic head	**USDA** United States Department of Agriculture
WSB means the Water Sciences Bureau	

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert groundwater from the Flathead Valley Basin-Fill aquifer system by means of a production well. The production well, originally GWIC No. 334409, was constructed 260 ft deep but was deepened by GWIC No. 335305 to a depth of 400 feet. The applicant proposes to divert 1.62 AF of water from January 1st to December 31st for Institutional use and 8.75 AF from April 20th to October 10th for irrigation of 3.5 acres of Lawn and Garden. The applicant proposes to divert water at a flow rate of 94.0 GPM up to 10.37 AF annually. The proposed system will be a public water supply that will be regulated by the Montana DEQ. The proposed point of diversion is in the NE ¼ SE ¼ SW ¼ Section 33,

Township 29 North, Range 20 West, Flathead County, Montana (Figure 1). The place of use is generally located in the SE ¼ SW ¼ Section 33, Township 29 North, Range 20 West, Flathead County, Montana (Figure 1). The POD is in Water Right Basin 76LJ (Flathead River, to and including Flathead Lake) in an area that is not subject to water right basin closures or controlled groundwater area restrictions.

2. The WSB identified Mill Creek, Lake Blaine, and Flathead River as hydraulically connected surface water sources. The proposed point of diversion is located 3.2 miles northwest of Mill Creek, 2.2 miles southwest of Lake Blaine, and 2.45 miles east of Flathead River.

3. The total consumptive use annually is 6.3 AF, with 6.13 AF being consumed by Lawn and Garden and 0.16 AF being consumed by institutional uses.

4. There are no supplemental rights that will overlap or share the proposed place of use.

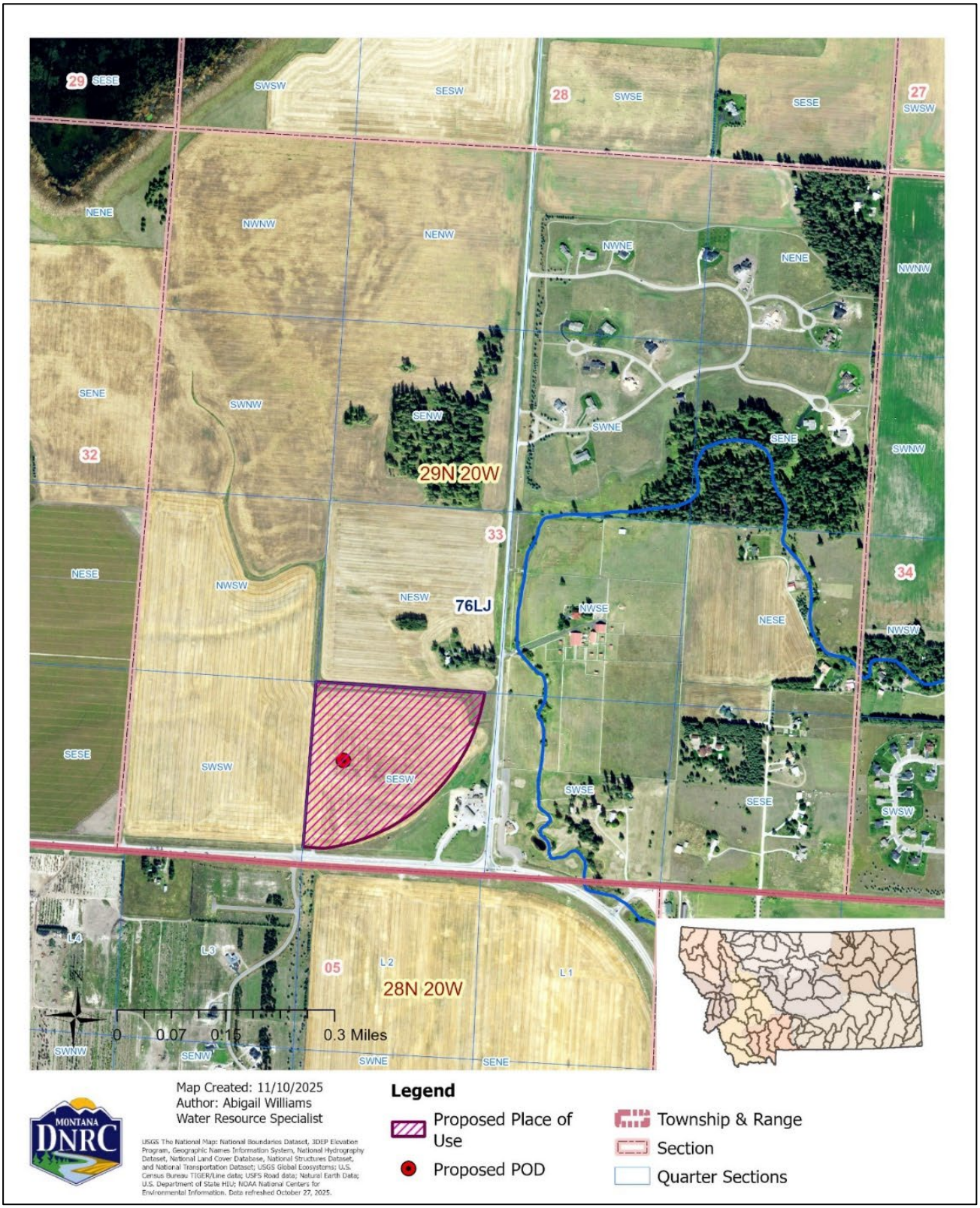

Figure 1: Map of the applicants proposed point of diversion and place of use

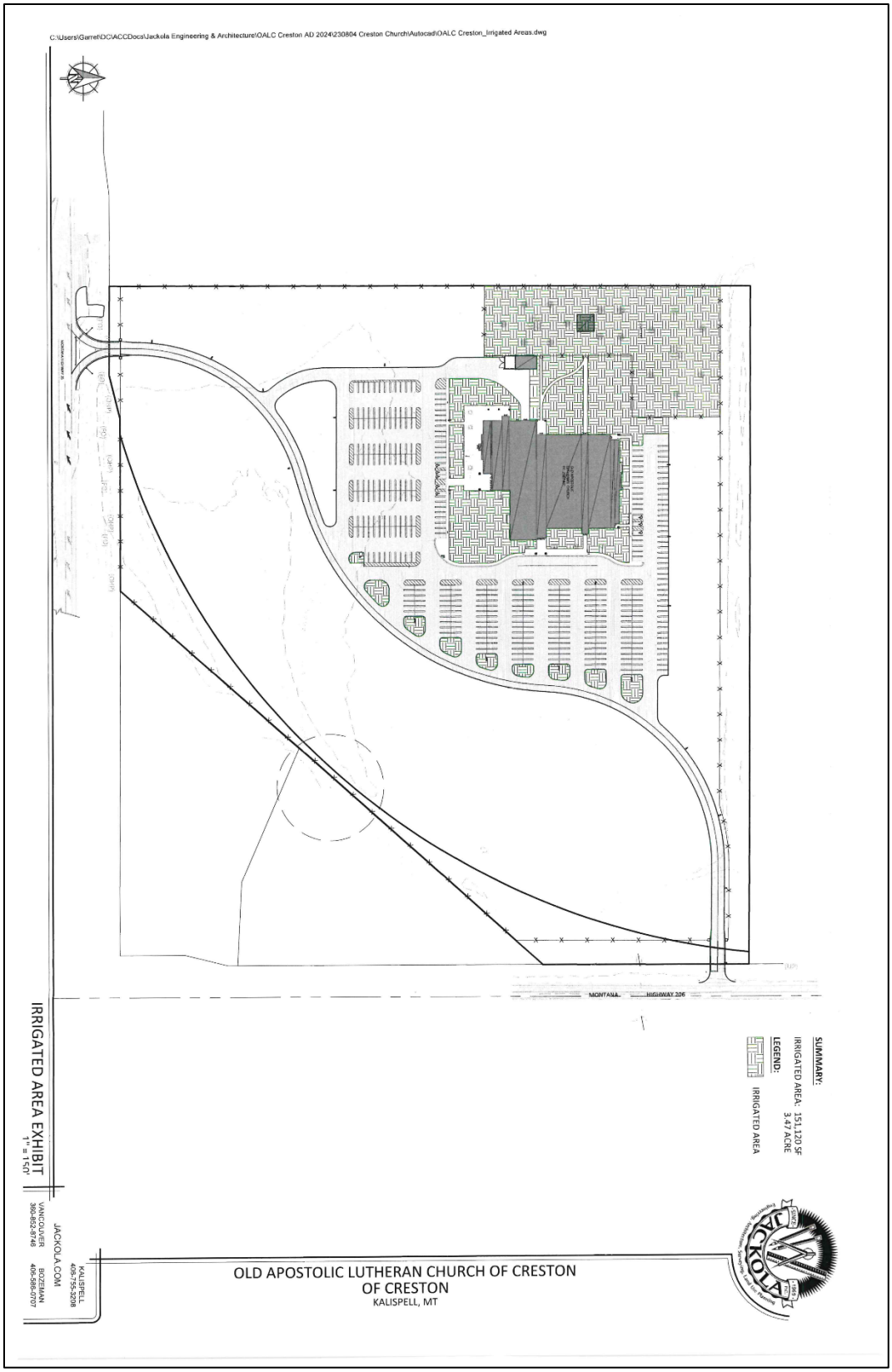

Figure 2: Applicant supplied map of institutional and irrigated areas

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

GENERAL CONCLUSIONS OF LAW

5. 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 . . .

6. 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.

7. 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.

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

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

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

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

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

9. 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.

10. 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

11. The Applicant proposes to divert groundwater from a well (GWIC ID Nos. 334409/335305) at a rate of 94.0 GPM up to 1.62 AF/year for institutional use and up to 8.75 AF/year for irrigation of 3.5 acres of lawn and garden (10.37 AF/year total). The well was originally constucted with an 8-inch diameter steel casing to a depth of 260 feet BGS (logged as GWIC ID No. 334409) and was later deepened with a 6-inch casing extending from 260 ft to its full depth of 400 feet BGS (deepening logged under GWIC ID No. 335305). The production well lays in the Flathead Valley basin-fill aquifer system. The surface of the alluvial aquifer is mapped at approximately 200 feet BGS near the project location (Smith 2004[1]; Rose, 2018[2]) which is corroborated by the lithography of GWIC ID Nos. 334409/335305. The Production Well is within an area of ablation till, an area reworked by glacial melt waters which leaves behind coarse grained sediments (Bergland et al., 2024[3]). Along the mountain front east of the project location, the shallow and deep aquifers are generally interconnected, with decreasing connection towards the middle of the basin (Bergland et al., 2024[3]).

[1] *Smith, Larry N., 2004, Thickness of shallow alluvium, Flathead Lake Area, Flathead, Lake, Missoula, and Sanders counties, Montana : Montana Bureau of Mines and Geology Montana Ground-Water Assessment Atlas 2-B-11, 1 sheet, scale 1:100,000.*

[2] *Rose, J. 2018. Three-dimensional hydrostratigraphic model of the subsurface geology, Flathead Valley, Kalispell, Montana: Montana Bureau of Mines and Geology Open-File Report 703, 44 p., 1 sheet.*

[3] *Berglund, J., Bobst, A., and Gebril, A., 2024, A groundwater flow model for the East Flathead Valley, Flathead County, Montana: Montana Bureau of Mines and Geology Report of Investigation 36, 110 p.*

VARIANCES

12. A variance from Aquifer Testing Requirements in ARM 36.12.121(3)(a) for the pumping rate departing from the average pumping rate by more than +/- 5% was requested and granted by the Department. During the startup of testing on February 27, 2025, specifically the first 2 minutes, as the pump was ramping up to the targeted flow rate, the initial flow rate was below the maintained average of 145.1 GPM and was outside the 5% limit. The variance was granted since the quality of the data derived from the pump test was sufficient for modeling.

AQUIFER TESTING

13. The Department evaluated the volume of water that is physically available from the source aquifer using Applicant supplied data from constant rate 24-hour pumping test (aquifer test) of the proposed POD. Department Groundwater Hydrologist Melissa Brickl used data from said tests to produce the July 21, 2025, Groundwater Permit Report affiliated with this application. This report is in the Application file and is available upon request.

14. The applicant conducted a 24-hour aquifer test on the Production Well (GWIC Nos. 335305/334409) at an average flow rate of 145.1 GPM. Three Observation Wells: Gerwin (GWIC No. 296587), Siderius (GWIC No. 83796), and Warden (GWIC No. 313497)) were monitored, and are 1,977.7 ft, 3,918.9 ft and 1,300 ft from the Production Well, respectively. Pumping was observed in Observation Wells GWIC Nos. 83796, 313497, and 296587 during the test. Table 1 identifies the maximum drawdown and available water column above the bottom of the well or perforated interval for the Production and Observation Wells at the end of the 24-hour aquifer test. Available water column was quantified by adding 2 ft to the bottom of the perforated interval or bottom of well depth, to reflect the measurement point for static water levels (top of casing).

Table 1: Available water column at the end of the 24-hour aquifer test for the Production and Observation Wells.

GWIC ID Nos.	Static Water Level (ft BTC)	Maximum Observed Drawdown (ft)	Available Water Column (ft)
335305/334409	26.72	50.41	285
83796	31.51	3.70	136
313497	25.00	0.55	291
296587	30.53	2.85	174

15. The DNRC utilized the AQTESOLV® modeling software program to analyze drawdown data from the aquifer test and obtain estimates of aquifer properties. Aquifer properties were used in forward modeling

to evaluate the available water column in the well, quantity of water available in the source aquifer, and potential impacts to groundwater and surface water rights. Drawdown data and measured flow rates from the aquifer test, and the spatial location of each well are input into the model to identify aquifer properties including Transmissivity (T) and Storativity (S) based on a best-fit visual and statistical match between the observed and theoretical drawdown data.

16. Observation Well GWIC ID No. 83796 drawdown data was unusable due to frequent pump cycling in the well during the test. No drawdown was observed in GWIC ID No. 313497 within the first 60 minutes of the test, while mid-to-late time data resulted in a poor (visual) and statistical match between observed and theoretical drawdown. As such, data from these wells were not used to derive aquifer properties.

17. The DNRC WSB determined the Neuman-Witherspoon (1969) solution model resulted in the best-fit visual and statistical match between the observed and theoretical drawdown data. The aquifer properties recommended for use in forward modeling were a T of 581 ft^2/day and a S value of 2.0 x 10^{-4} for the pumped aquifer, a T2 = 1,299 ft^2/day and S2 = 0.04

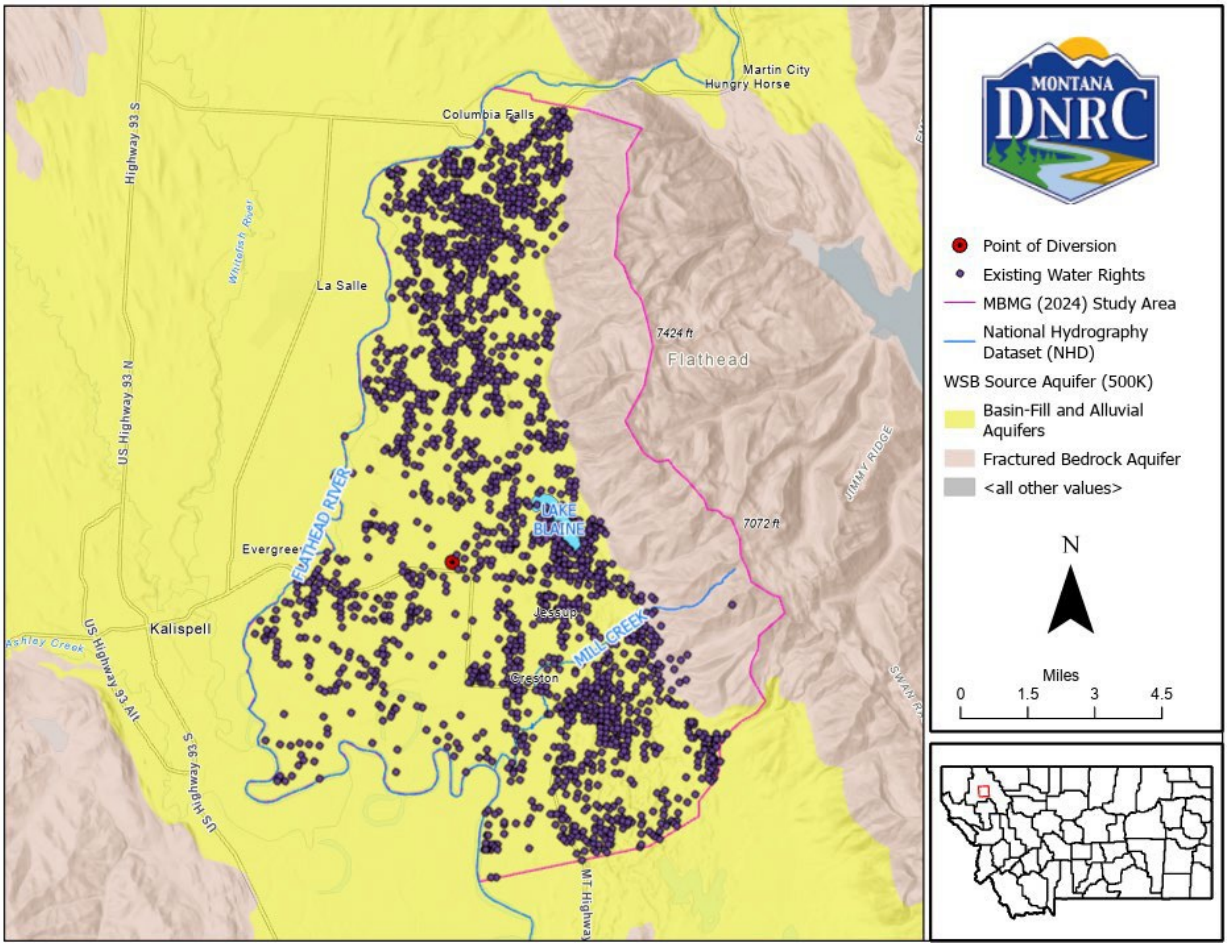

Figure 3: Extent of the east Flathead Valley basin-fill aquifer system.

18. Based on the estimated average annual groundwater recharge value 57,137 AF/year from Berglund et al., (2024), the Department finds that the amount of groundwater that the Applicant seeks to appropriate, 10.37 AF/year diverted at 94 GPM, is physically available in the aquifer.

LEGAL AVAILABILITY

FINDINGS OF FACT

19. The Applicant proposes to divert groundwater from a well (GWIC ID Nos. 334409/335305) at a rate of 94.0 GPM up to 1.62 AF/year for institutional use and up to 8.75 AF/year for irrigation of 3.5 acres of lawn and garden (10.37 AF/year total). Legal availability for this application will be based on analyses of both the east Flathead Valley basin-fill aquifer system (the source aquifer) and the AOPI of any potentially depleted surface water source(s). Flathead River, Mill Creek, and Lake Blaine were identified as the potentially depleted surface water sources which will be analyzed for legal availability.

GROUNDWATER

20. The physical groundwater availability value of 57,137 AF/year is the average annual recharge value for the east Flathead Valley basin-fill aquifer system as estimated in Berglund et al., (2024). This average annual recharge value will be compared to existing legal demands within the Berglund et al., (2024) study area (Figure 3). Berglund et al., (2024) suggest the Deep Aquifer is semi-confined in areas with regional hydraulic connection to the shallower aquifer and bedrock of the Swan Mountain Range. Therefore, all groundwater rights (active, severed) within the Berglund et al., (2024) study area were evaluated as legal demands. The Department queried the existing groundwater rights within this study area and found 2,973 water rights, which are summarized in Table 2. A list of these water rights is included in the application file and is available upon request.

Table 2: Summary of Groundwater Legal Demands

Water Right Type	Number of Rights	Total Volume (AF)
Exempt Notice	69	173.44
Ground Water Certificate	2530	11,502.71
Provisional Permit	91	14,978.73
Statement of Claim	282	8,171.66
Total Legal Demands	**2,973**	**34,827**

21. The water rights in the source aquifer with unquantified volumes were quantified with the following steps to sum legal demand on the source aquifer;

a. Stock Statements of Claim were quantified by summing the animal units historically claimed and calculating volume with the equation; 0.034 AF x #AU (30 GPD/AU);

b. Irrigation Statements of Claim were calculated by assigning the low range of irrigation efficiency in appropriate climatic regions. If the area of potential impact crosses a boundary of climatic regions the lower numbered region value was used;
    i. Determined the appropriate climate region
    ii. Quantify the irrigation type at 60% efficiency on the low range
    iii. Multiply the AF determined by the efficiency by the claimed acres
c. Groundwater Certificates with unquantified volumes were assigned 10 AF.

Between the claimed volume and calculated volumes using the parameters above, the greater of the two was used for legal demand. The Department finds this an appropriate measure of assessing existing rights as it protects existing water users.

Table 3: Legal Availability of Groundwater in the Source Aquifer

Physically Available Groundwater within the ZOI (AF)	Total Volume of Existing Groundwater Legal Demands within the ZOI (AF)	Legally Available Groundwater within the ZOI (AF)
57,137	34,827	**22,310**

22. The Department calculated the sum of the water rights annual volumes in Table 2, which was then subtracted from the physically available volume (annual aquifer flux in the east Flathead Valley basin-fill aquifer system), to determine the legally available water in the source aquifer. The volume of water legally available in the source aquifer is 22,310 AF shown in Table 3.

SURFACE WATER

23. Lake Blaine, Mill Creek, and the main stem of the Flathead River are the surface water sources that will be depleted by the proposed groundwater use. Lake Blaine is 14,400 ft, Mill Creek is 16,200 ft, and Flathead River is 14,000 ft from the Applicant's proposed well. Net surface water depletion is equal to the consumed volume of the proposed groundwater use and is described as the calculated volume, rate, timing, and location of reductions to surface water that are not offset by non-consumed water. Surface water depletion resulting from the Applicant's proposed wells pumping from the source aquifer would primarily occur from propagation of drawdown through the source aquifer to Lake Blaine, Mill Creek and the Flathead River resulting in constant year-round rates of depletion. The year-round constant rates of depletion are shown in Table 4. The total consumed flow rate and volume for these depletions are 3.9 GPM and 6.3 AF, respectively. To determine legal availability in the hydraulically connected sources, both the physical and legal availability of water were evaluated for Lake Blaine, Mill Creek, and the main stem of the Flathead River.

Table 4: Consumed volume and net depletion to Lake Blaine, Flathead River, and Mill Creek.							
Month	**Consumed Volume (AF)**	**Lake Blaine Net Depletion (AF) (35%)**	**Lake Blaine Net Depletion (GPM)**	**Mill Creek Net Depletion (AF) (28%)**	**Mill Creek Net Depletion (GPM)**	**Flathead River Net Depletion (AF) (37%)**	**Flathead River Net Depletion (GPM)**
January	0.01	0.19	1.4	0.15	1.1	0.2	1.4
February	0.01	0.17	1.4	0.14	1.1	0.18	1.4
March	0.01	0.19	1.4	0.15	1.1	0.2	1.4
April	0.11	0.18	1.4	0.14	1.1	0.19	1.4
May	0.79	0.19	1.4	0.15	1.1	0.2	1.4
June	1.19	0.18	1.4	0.14	1.1	0.19	1.4
July	1.75	0.19	1.4	0.15	1.1	0.2	1.4
August	1.58	0.19	1.4	0.15	1.1	0.2	1.4
September	0.75	0.18	1.4	0.14	1.1	0.19	1.4
October	0.05	0.19	1.4	0.15	1.1	0.2	1.4
November	0.01	0.18	1.4	0.14	1.1	0.19	1.4
December	0.01	0.19	1.4	0.15	1.1	0.2	1.4
Total	**6.3**	**2.2**		**1.76**		**2.33**	

Mill Creek – Physical Availability

24. Depletions to Mill creek begin at the eastern edge of the SE ¼ SE ¼ of Section 10, Township 28N Range 20W and extend downstream to Mill Creek's confluence with the Flathead River. Physical availability of Mill Creek from the SE ¼ SE ¼ of Section 10, Township 28N, Range 20W downstream to its confluence with the Flathead River was quantified monthly. The Department used the Mill Creek below Creston Hatchery DNRC Gaging Station No. 76LJ 07500 (period of record: August 2016 – September 2024) to quantify physically available monthly flow rates and volumes in this reach during the period of groundwater diversion and resulting surface water depletion (year-round). DNRC WSB determined that depletion effects due to groundwater pumping are expected to first manifest in Mill Creek in the SE ¼ SE ¼ of Section 10, Township 28N, Range 20W. DNRC Gage 76LJ 07500 is the closest gage to the depleted reach and is located approximately 1,075-feet downstream of the SE ¼ SE ¼ of Section 10.

25. Physically available monthly flow rates and volumes at the start of the depleted reach on Mill Creek were quantified during the period of surface water depletion using the following method:

a. The Department calculated mean monthly flow rates in CFS for Mill Creek using DNRC Gaging Station No. 76LJ 07500 records for each month of the proposed period of depletion (year-round) (Table 6, column B). Those flow rates were then converted to monthly volumes in AF (Table 6, column C) using the following equation found in the DNRC Water Calculation Guide:

i. *median of the mean monthly flow (CFS) * 1.98 (AF/day/CFS) * # days per month = AF/month*

b. The Department calculated the monthly flows appropriated by existing users between the start of the depleted reach downstream to DNRC Gaging Station No. 76LJ 07500 on Mill Creek (Table 6, column D) by:

   i. Generating a list of existing water rights from the initial point of depletions downstream to DNRC Gaging Station No. 76LJ 07500 (Table 5);

   ii. Designating their uses as occurring during their recorded periods of diversion;

   iii. Assigning a single combined flow rate of 0.08 CFS to all livestock direct from source rights without a designated flow rate per Department adjudication standards (quantification of said water rights is not a re-adjudication or historical use analysis); 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.

c. Since the gage used is downstream of the start of the depleted reach, the Department added in the flow rates of the existing legal demands (Table 6, column D) between the start of the depleted reach and DNRC Gaging Station No. 76LJ 07500 to the mean monthly gage values (Table 6, column B) to determine physically available monthly flows at the start of the depleted reach (Table 6, column E). Physically available monthly flows were then converted to monthly volumes (Table 6, column F).

Table 5: Mill Creek Existing Water Rights

Water Right Number	Water Right Type	Purposes	Flow Rate (CFS)
76LJ 188243 00	STATEMENT OF CLAIM	INSTITUTIONAL	24.25
76LJ 188244 00	STATEMENT OF CLAIM	FISH AND WILDLIFE	20
76LJ 148983 00	STATEMENT OF CLAIM	DOMESTIC	0.01
76LJ 188245 00	STATEMENT OF CLAIM	STOCK	*0.08
76LJ 188246 00	STATEMENT OF CLAIM	FISH AND WILDLIFE	**0.5
76LJ 211498 00	STATEMENT OF CLAIM	STOCK	0.02

*In order to account for livestock direct from source rights, Department practice is to assign one combined total flow rate of 35 GPM (0.08 CFS) for all stock rights without a designated flow rate.
**State of Montana Department of Fish, Wildlife, and Parks instream flow water rights.

Table 6: Physical Availability of Mill Creek at the upstream extent of the depleted reach (eastern boundary of SESE of Sec 10, T28N, R20W)					
A	**B**	**C**	**D**	**E**	**F**
Month	**Mean monthly flow at DNRC gage 76LJ 07500 (CFS)**	**Mean monthly volume at DNRC gage 76LJ 07500 (AF)**	**Existing legal demands from DNRC gage 76LJ 07500 up to the beginning of the depleted reach (CFS)**	**Physically Available Flow at the beginning of the depleted reach (CFS)**	**Physically Available Volume at the beginning of the depleted reach (AF)**
January	25.93	1,591.30	44.86	70.79	4,344.80
February	25.09	1,390.93	44.86	69.95	3,877.97
March	24.63	1,512.03	44.86	69.49	4,265.53
April	25.18	1,495.71	44.86	70.04	4,160.39
May	26.27	1,612.30	44.86	71.13	4,365.81
June	30.29	1,799.38	44.86	75.15	4,464.06
July	28.12	1,726.03	44.86	72.98	4,479.53
August	25.50	1,565.11	44.86	70.36	4,318.62
September	24.54	1,457.79	44.86	69.40	4,122.48
October	25.06	1,538.42	44.86	69.92	4,291.93
November	24.56	1,459.08	44.86	69.42	4,123.77
December	25.08	1,539.22	44.86	69.94	4,292.73

Mill Creek – Legal Availability

26. The Department determined that the proposed use of groundwater will deplete Mill Creek starting in the SE ¼ SE ¼ of Section 10, Township 28N, Range 20W, thus reducing the total volume of water in Mill Creek downstream of this point. Therefore, the Department identified an AOPI for Mill Creek from the SE¼ SE¼ of Section 10, T28N, R20W, Flathead County, Montana (the start of the depleted reach) downstream to the confluence of Mill Creek with the Flathead River in the NE ¼ of Section 28, T20N, R20W, Flathead County, Montana. There are 23 water rights on Mill Creek within the AOPI (Table 7). The Department quantified legally available monthly flow rates and volumes within the AOPI during the period of surface water depletion (year-round) using the following method:

a. The Department quantified physically available monthly flow rates and volumes (Table 8, columns B-C) at the point of initial depletion to Mill Creek. The Department calculated the monthly flow rates appropriated by existing users (legal demands) on the source within the area of potential impact (Table 8, column D) by:
    i. Generating a list of existing water rights on Mill Creek from the point of initial depletion downstream to Mill Creek's confluence with the Flathead River (Table 7);
    ii. Designating uses as occurring during their recorded periods of diversion;

iii. Assigning a single combined flow rate of 0.08 CFS to all livestock direct from source rights without a designated flow rate per Department adjudication standards (quantification of said water rights is not a re-adjudication or historical use analysis); 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.

b. The Department subtracted out the flow rates of the existing legal demands (Table 8, column D) within the area of potential impact from the physically available water (Table 8, column B) to determine legally available flow and volume in the depleted reach (Table 8, columns E-F).

Table 7: Mill Creek Existing Water Rights

Water Right Number	Water Right Type	Purposes	Flow Rate (CFS)
76LJ 188243 00	STATEMENT OF CLAIM	INSTITUTIONAL	24.25
76LJ 188244 00	STATEMENT OF CLAIM	FISH AND WILDLIFE	20
76LJ 148983 00	STATEMENT OF CLAIM	DOMESTIC	0.01
76LJ 188245 00	STATEMENT OF CLAIM	STOCK	*0.08
76LJ 188246 00	STATEMENT OF CLAIM	FISH AND WILDLIFE	**0.5
76LJ 211498 00	STATEMENT OF CLAIM	STOCK	0.02
76LJ 107274 00	STATEMENT OF CLAIM	IRRIGATION	0.75
76LJ 118138 00	STATEMENT OF CLAIM	STOCK	*0.08
76LJ 103252 00	STATEMENT OF CLAIM	IRRIGATION	1.52
76LJ 118139 00	STATEMENT OF CLAIM	IRRIGATION	0.86
76LJ 103343 00	STATEMENT OF CLAIM	IRRIGATION	2.23
76LJ 9108 00	STATEMENT OF CLAIM	IRRIGATION	2.01
76LJ 143780 00	STATEMENT OF CLAIM	IRRIGATION	0.49
76LJ 9460 00	STATEMENT OF CLAIM	IRRIGATION	1.78
76LJ 9143 00	STATEMENT OF CLAIM	IRRIGATION	1.11
76LJ 30013813	EXEMPT RIGHT	STOCK	*0.08
76LJ 124149 00	STATEMENT OF CLAIM	IRRIGATION	0.22
76LJ 9142 00	STATEMENT OF CLAIM	STOCK	*0.08
76LJ 128926 00	STATEMENT OF CLAIM	IRRIGATION	0.75
76LJ 118140 00	STATEMENT OF CLAIM	IRRIGATION	1.11
76LJ 118136 00	STATEMENT OF CLAIM	DOMESTIC	0.01
76LJ 147064 00	STATEMENT OF CLAIM	STOCK	0.03
76LJ 162703 00	STATEMENT OF CLAIM	IRRIGATION	2.01

*In order to account for livestock direct from source rights, Department practice is to assign one combined total flow rate of 35 GPM (0.08 CFS) for all stock rights without a designated flow rate.
**State of Montana Department of Fish, Wildlife, and Parks instream flow water rights.

Table 8: Legal Availability within the AOPI to Mill Creek					
A	**B**	**C**	**D**	**E**	**F**
Month	**Physically Available Flow at the beginning of the depleted reach (CFS)**	**Physically Available Volume at the beginning of the depleted reach (AF)**	**Existing legal demands within the AOPI (CFS)**	**Legally Available Flow (CFS)**	**Legally Available Volume (AF)**
January	70.79	4,344.80	44.98	25.81	1,583.93
February	69.95	3,877.97	44.98	24.97	1,384.28
March	69.49	4,265.53	47.21	22.28	1,367.78
April	70.04	4,160.39	49.44	20.60	1,223.65
May	71.13	4,365.81	58.30	12.83	787.35
June	75.15	4,464.06	58.30	16.85	1,001.04
July	72.98	4,479.53	59.82	13.16	807.78
August	70.36	4,318.62	59.82	10.54	646.87
September	69.40	4,122.48	59.82	9.58	569.17
October	69.92	4,291.93	51.57	18.35	1,126.56
November	69.42	4,123.77	47.21	22.21	1,319.49
December	69.94	4,292.73	44.98	24.96	1,531.86

Flathead River – Physical Availability

27. The DNRC WSB determined that depletions to the Flathead River begin in the NW ¼ SE ¼ of Section 35, Township 29N Range 21W and extend downstream to the Flathead Lake inlet. To simplify the analysis of this depleted reach, the Department analyzed the physical availability of the entire reach of the Flathead River from USGS Gaging Station No. 12363000 Flathead River at Columbia Falls, MT downstream to the Flathead Lake Inlet. The Department finds this appropriate because this reach of the Flathead River is well characterized. USGS Gaging Station No. 12363000 is approximately 11.5 river miles upstream of the location of initial depletion. This gage has a long-established period of record (October 1951 – March 2025) and there are no control structures between the location of depletion and the gage, making it the appropriate data source for this analysis.

28. Physical availability of the Flathead River from USGS Gaging Station No. 12363000 downstream to the Flathead Lake Inlet was quantified monthly. The DNRC used the method below to quantify physically available monthly flow rates and volumes in the depleted reach during the period of surface water depletion:

a. The Department calculated median of the mean monthly flow rates in CFS for the Flathead River using USGS Gaging Station No. 12363000 records for each month of the proposed year-round period of depletion (Table 9, column B). The flow rates were then converted to monthly volumes in AF (Table 9, column C).

b. Since the gage used marks the upstream extent of the reach of the Flathead River that contains the depleted reach, the median of the mean monthly values calculated using data from USGS Gaging Station No. 12363000 represent the amount of water physically available in the depleted reach (Table 9, column B). Physically available monthly flows were then converted to monthly volumes (Table 9, column C).

Table 9: Physical Availability of the Flathead River from USGS Gaging Station No. 12363000 downstream to Flathead Lake (the Depleted Reach)

A	B	C
Month	**Median of the mean monthly flow at USGS gage 12363000 / Physically Available Flow (CFS)**	**Median of the mean monthly volume at USGS gage 12363000 / Physically Available Volume (AF)**
January	5,074.00	311,442.12
February	4,750.00	263,340.00
March	4,739.00	290,879.82
April	10,535.00	625,779.00
May	22,645.00	1,389,950.10
June	24,615.00	1,462,131.00
July	11,280.00	692,366.40
August	5,403.50	331,666.83
September	4,423.50	262,755.90
October	4,903.00	300,946.14
November	4,527.00	268,903.80
December	5,498.00	337,467.24

Flathead River – Legal Availability

29. The Department determined that the proposed use of groundwater will deplete the Flathead River starting in the NW ¼ SE ¼ of Section 35, Township 29N Range 21W, thus reducing the total volume of water in the Flathead River downstream of this point. Therefore, the Department identified an AOPI for the Flathead River from the NW ¼ SE ¼ of Section 35, Township 29N Range 21W, downstream to the Flathead Lake inlet in Section 34, T27N, Range 20W, Flathead County, Montana. There are 198 water rights on the Flathead River (including hydraulically connected sloughs) within the AOPI. A list of these

water rights is included in the application file and is available upon request. The Department quantified legally available monthly flow rates and volumes within the AOPI during the period of surface water depletion (year-round) using the following method:

a. The Department quantified physically available monthly flow rates and volumes (Table 10, columns B-C) for the depleted reach of the Flathead River. The Department calculated the monthly flow rates appropriated by existing users (legal demands) on the source from USGS Gaging Station No. 12363000 downstream to the Flathead Lake Inlet (this reach includes the AOPI) (Table 10, columns D-E) by:
    i. Generating a list of existing water rights on the Flathead River from USGS Gaging Station No. 12363000 downstream to the Flathead Lake Inlet. This list is available in the administrative file;
    ii. Designating uses as occurring during their recorded periods of diversion;
    iii. Assigning a single combined flow rate of 0.08 CFS to all livestock direct from source rights without a designated flow rate per Department adjudication standards (quantification of said water rights is not a re-adjudication or historical use analysis); 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.
b. The Department subtracted out the flow rates of the existing legal demands (Table 10, column D-E) within the depleted reach from the physically available water (Table 10, column B) to determine legally available flow and volume in the depleted reach (Table 10, columns F-G).

Table 10: Legal Availability of the Flathead River at the downstream extent of the depleted reach (Flathead Lake inlet)						
A	**B**	**C**	**D**	**E**	**F**	**G**
Month	**Physically Available Flow (CFS)**	**Physically Available Volume (AF)**	**Existing legal demands from USGS gage 12363000 down to the Flathead Lake inlet (CFS)**	**MT FWP Instream Flow legal demands (CFS)**	**Legally Available Flow (CFS)**	**Legally Available Volume (AF)**
January	5,074.00	311,442.12	3.81	3,500.00	1,570.19	96,378.26
February	4,750.00	263,340.00	3.81	3,500.00	1,246.19	69,088.77
March	4,739.00	290,879.82	4.47	3,500.00	1,234.53	75,775.45
April	10,535.00	625,779.00	77.60	6,650.00	3,807.40	226,159.56
May	22,645.00	1,389,950.10	152.18	8,125.00	14,367.82	881,896.79
June	24,615.00	1,462,131.00	166.23	8,125.00	16,323.77	969,631.94
July	11,280.00	692,366.40	166.23	8,125.00	2,988.77	183,450.70
August	5,403.50	331,666.83	165.23	3,500.00	1,738.27	106,695.01
September	4,423.50	262,755.90	150.24	3,500.00	773.26	45,931.64
October	4,903.00	300,946.14	75.41	3,500.00	1,327.59	81,487.47
November	4,527.00	268,903.80	3.87	3,500.00	1,023.13	60,773.92
December	5,498.00	337,467.24	3.81	3,500.00	1,994.19	122,403.38

Lake Blaine – Physical Availability

30. Lake Blaine's physical availability was quantified for a previous permit, 76LJ 30112580, by using the low pool method to calculate capacity. The historic aerial photographs were reviewed, and the May 2004 Google Earth Pro US Geological Survey Image was selected as it was the lowest observed lake level. Using low pool to calculate lake capacity provides a conservative estimate which protects water users. The Department georeferenced the Montana Fish, Wildlife, and Parks 1961 bathymetric map of Lake Blaine to a 1978 Water Resource Survey (WRS) photo to establish water level and define the contours. The contour map displaying the depths that were used to calculate capacity is shown in Figure 4. According to MTFWP, the surface area and depth of the lake at full pool are 382 acres with an average depth of 51 feet with a maximum depth of 141 feet. Since the lake was evaluated at low pool to be conservative, the MTFWP calculation was used but a surface area of 236 acres and an average depth of 31 feet were used. The DNRC standard equation for calculating the volume of a natural pond or lake where bathymetric survey data is not available is:

surface area (acres) x average depth (feet) = physical volume

Applying Lake Blaine's surface area and depth at low pool to this equation results in a physically available volume of 7,316 AF, as shown in Table 11, (236 acres x 31 feet = 7,316 AF).

Table 11: Physical Availability (Volume Capacity) of Lake Blaine	
Surface Area (acres)	236.00
Maximum Depth (feet)	141.00
Average Depth (feet)	31.00
Volume (AF)	**7,316**

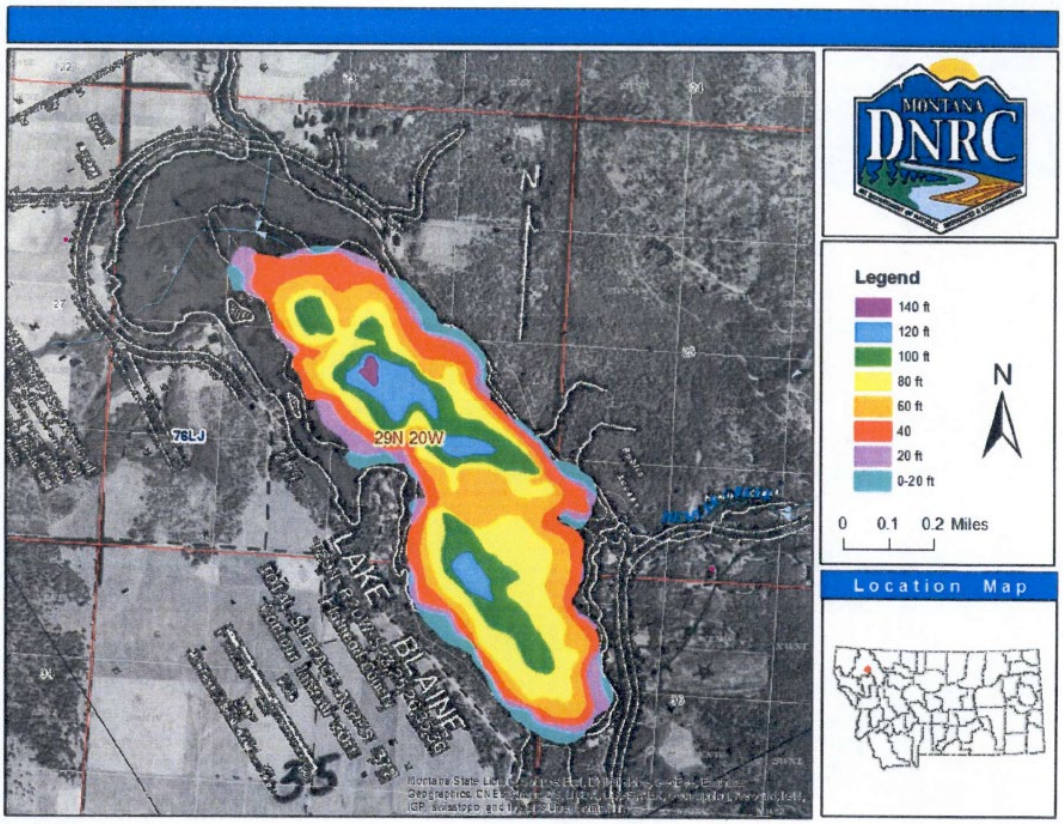

Figure 4: Contour map of Lake Blain depth based on May 2004 aerial photo of Lake Blaine at low pool, and overlaid on a 1978 WRS photo, used to quantify low pool volume

Lake Blaine – Legal Availability

31. Lake Blaine has surface inlets but is mostly recharged via subsurface springs that are fed from creeks that originate in the Swan Mountains then percolate into the ground water system via porous glacial deposits. Lake Blaine does not regularly flow into Blaine Creek and as such, it is appropriate to consider the AOPI of Lake Blaine to be the entire volume of Lake Blaine. There are 24 water rights (legal demands) on Lake Blaine with a total of 2,029.24 AF (Table 12).

Table 12: Lake Blaine Legal Demands		
Water Right Type	**Number of rights**	**Total Volume (AF)**
Provisional Permit	6	656.38
Statement of Claim	18	1,372.86
Total Legal Demands	**24**	**2,029.24**

32. The Department calculated the sum of the water rights annual volumes on Lake Blaine (Table 12) to get the legal demand, which was then subtracted from the physically available volume, to determine the legally available water in the source (Table 13). The volume of water legally available in the source is 5,286.76 AF.

Table 13: Legal Availability of Lake Blaine		
Physically Available Volume (AF)	**Total Legal Demands (AF)**	**Legally Available Volume (AF)**
7,316.0	2,029.24	5,286.76

33. The Department finds that 10.37 AF/year and 94 GPM is legally available in the aquifer based on the comparison of the annual average recharge volume for the east Flathead Valley basin-fill aquifer system to the volume of existing legal demands within the source aquifer. Additionally, the department finds that the 1.4 GPM (2.2 AF/year), 1.1 GPM (1.76 AF/year), and 1.4 GPM (2.33 AF/year) that the proposed groundwater appropriation will deplete from Lake Blaine, Mill Creek and Flathead River, respectively, is legally available in those sources.

ADVERSE EFFECT

FINDINGS OF FACT

34. The Applicant proposes to divert groundwater from a well (GWIC ID Nos. 334409/335305) at a rate of 94.0 GPM up to 1.62 AF/year for institutional use and up to 8.75 AF/year for irrigation of 3.5 acres of lawn and garden (10.37 AF/year total). The Applicant provided a plan showing they can regulate their water use during times of shortage to ensure senior appropriator's water rights are met. The Applicant's plan is as follows;

a. Reduce irrigation application to 50 percent during shortage;
b. Reduce irrigation application to 25 percent during times of intense shortage;
c. The pump will be turned off if a valid call is made by a senior appropriator and water for institutional use can be purchased in the event of extreme water shortage

Groundwater

35. The Department used the proposed monthly pumping schedule (Table 14, under FOF 41) and the annual diverted and consumed volume to evaluate potential impacts to existing water right users. The Neuman-Witherspoon (1969) solution with a T of 581 ft^2/day and S of 2.0 x 10^{-4} was used to model drawdown in existing wells along with the proposed pumping schedule over a period of five years to model drawdown in nearby wells and net depletions to hydraulically connected surface water sources. Based on the aquifer transmissivity (T) and storativity (S) and using the proposed pumping schedule in Table 14, the 1-foot contour extends 900 ft from the proposed well (GWIC ID Nos. 335305/334409) at the end of the first of July of the proposed annual pumping schedule. There are no water rights within the 900 ft extent of the 1-foot contour extending from the proposed well and zero ground water rights are expected to experience drawdown equal to a foot or more.

Surface Water

36. The Department found that the 10.37 AF annually proposed groundwater appropriation will result in a net depletion of Lake Blaine up to 2.2 AF (1.4 GPM), the Flathead River up to 2.33 AF (1.4 GPM), and Mill Creek up to 1.76 AF (1.1 GPM) yearly. The Department found that the flows and volumes of expected depletions are legally available in those sources (FOF 33). As such the proposed appropriation of groundwater will not adversely affect the existing water rights of the sources that will experience depletion.

37. The Department finds there will be no adverse effects to senior surface water or groundwater users resulting from the Applicant's proposed diversion of 10.37 AF annually at a rate of 94 GPM. The following were used to justify this finding.

a. The Applicant's plan to regulate their water and cease use for a valid call on the source;
b. The Department's finding that water is legally available in the source aquifer;
c. The Department's finding that water is legally available in the hydraulically connected surface sources, Lake Blaine, Flathead River, and Mill Creek;
d. The analysis of drawdown in nearby wells completed in the source aquifer.

38. The Department finds the proposed diverted volume of 10.37 AF and consumed volume of 6.3 AF annually at a flow rate of 94 GPM will not have an adverse effect on existing surface and groundwater water right holders.

ADEQUATE MEANS OF DIVERSION

FINDINGS OF FACT

39. The Applicant proposes to divert groundwater from a well (GWIC ID Nos. 334409/335305) at a rate of 94.0 GPM up to 1.62 AF/year for institutional use and up to 8.75 AF/year for irrigation of 3.5 acres of lawn and garden (10.37 AF/year total).

REMAINING AVAILABLE WATER COLUMN (WELL ADEQUACY)

40. The Applicant's production well (GWIC ID Nos. 3355305/334409) was tested with a 24-hour aquifer test at an average flow rate of 145.1 GPM, the Applicant will use a Variable Frequency Drive (VFD) and two pressure tanks to maintain the 94 GPM requested for the proposed system. The production well has two GWIC ID Nos, 334409 is the original ID No. and 335305 was created on February 4, 2025, as it deepened the existing well to 400 ft BGS. GWIC ID No. 334409 was constructed with an 8-inch diameter steel casing extending to 260 feet below ground surface (BGS) with the casing perforated from 230 ft BGS to 260 feet BGS with 4 rows of 1/8-inch by 1-inch Holte perforator slots. The production well was deepened with GWIC ID No. 335305 from 260 ft BGS to 400 ft BGS with a 6-inch steel casing that is perforated from 260 ft to 360 ft BGS with 4 rows of 1/8-inch by 1-inch Holte perforator slots.

41. An evaluation of the potentially available water column remaining in the proposed well was modeled in AQTESOLV® using the monthly pumping schedule for the proposed well (Table 14) for the period of diversion and the 24-hour aquifer test average pumping rate of 145.1 GPM. Predicted theoretical drawdown for the proposed well was modeled for the period of diversion. The Applicant requests 8.75 AF for lawn and garden irrigation, which was apportioned monthly according to the monthly percent of total consumed volume for pasture grass using the USDA Natural Resources Conservation Service Irrigation Water Requirements (IWR) program for the Creston weather station. The proposed institutional use of 1.62 AF was apportioned monthly based on a year-round period of use. The modeled maximum drawdown for the aquifer test was modeled using the 24-hour aquifer test average pumping rate, time associated with the test (1,440 minutes), and the derived aquifer properties presented in FOF 17.

Table 14: Assumed monthly pumping schedule for GWIC ID 334409/335305.					
Month	**Consumed - NIR IWR 80% Dry Year (in/ac)**	**Monthly % of Total Consumed**	**Allocation of Lawn/Garden Diverted Volume using IWR Monthly % of Total Consumed (AF)**	**Diverted Institutional Year-Round Use (AF/month)**	**Diverted Flow Rate (GPM)**
January	0	0	0	0.14	1
February	0	0	0	0.12	1
March	0	0	0	0.14	1
April	0.25	0	0.13	0.13	2
May	2.07	10	1.11	0.14	9.1
June	3.14	20	1.69	0.13	13.8
July	4.61	30	2.48	0.14	19.1
August	4.15	30	2.23	0.14	17.3
September	1.96	10	1.05	0.13	9
October	0.1	0	0.05	0.14	1.4
November	0	0	0	0.13	1
December	0	0	0	0.14	1
Total	**16.28**		**8.75**	**1.62**	

42. As identified in Table 15, total drawdown is the sum of interference drawdown and predicted drawdown with well loss. Because only one well is proposed, no interference drawdown was modeled. 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. The aquifer adjacent to GWIC ID Nos. 334409/335305 would experience a predicted total drawdown of 5.4 ft at the end of the first year, with a remaining available water column of 330 ft. The remaining available water column for the proposed well is equal to the available drawdown above the bottom of the perforations minus total drawdown including any interference drawdown and is 328 feet (Table 15).

Table 15: Remaining available water column in proposed well.	
Drawdown Estimate	**GWIC ID 334409/335305**
Total Depth at Bottom of Perforated Interval (ft BTC)[1]	362
Pre-Test Static Water Level (ft BTC)	26.72
Available Drawdown Above Bottom of Perforations(ft)	335
Aquifer Test Observed Drawdown (ft)	50.41
Modeled Drawdown Using Average Aquifer Test Rate (ft)	64.0
Well Efficiency (%)	100
Predicted Theoretical Maximum Drawdown from assumed monthly pumping schedule (ft)	6.9
Predicted Drawdown with Well Loss (ft)	6.9
Interference Drawdown (ft)	0.0
Total Drawdown (ft)	6.9
Remaining Available Water Column (ft)	**328**
[1]The total well depth measuring point (BGS) was adjusted to the top of well casing based on a 2.0 ft well casing stickup reported on the well log. 2.0 ft was added.	

WATER SYSTEM DESIGN AND SPECIFICATIONS

43. The Applicant proposes to divert water from the well via a Grundfos Model 150S200-9 submersible pump equipped with a Grundfos MS600QFT40 submersible motor that is set 225 ft BGS. The remaining available water column shown in Table 15 estimated that there will be 328 ft of remaining available water column and the pump will be located at 225 ft BGS which would allow ample water column for the pump to function year-round. The submersible pump flow rate will be controlled to the requested flow rate of 94 GPM using a VFD and 2 pressure tanks. The water will be diverted via a 3-inch galvanized drop pipe into a buried 3-inch HDPE that will convey the water to the maintenance building. From the maintenance building water will be conveyed via buried pipelines to the church building and via another 3-inch HDPE connection to the sprinkler system. No losses are expected with the conveyance through the system. They will have a fire suppression system that utilizes a 30,000 gallon in-ground storage tank that will be drained and refilled yearly. The volume for the fire suppression system tank is included in the institutional purpose.

44. The system is designed to operate at a total dynamic head of 402.55 ft as calculated by Jackola Engineering. This includes the maximum pumping water level of 220 feet. The aquifer testing indicated that this depth was significantly deeper than the water level that the well will experience during runtime.

45. Applicant has indicated that the project is subject to DEQ requirements for PWS and they will comply with the associated requirements. Wastewater will be managed via the proposed onsite septic system.

46. Based on the aquifer test conducted on the production well, the positive remaining available water column for the well, and the Applicants system design and plan of operation, the Department finds the system is capable of supplying the requested flow rate of 94 GPM and an annual volume of 10.37 AF.

BENEFICIAL USE

FINDINGS OF FACT

47. The Applicant proposes to divert grounwater from a well (GWIC ID Nos. 334409/335305) at a rate of 94.0 GPM up to 1.62 AF/year for institutional use and up to 8.75 AF/year for irrigation of 3.5 acres of lawn and garden (10.37 AF/year total).

48. The Applicant provided an estimate of the peak instantaneous demand of 94 GPM based on the separate fixture unit count using Standards from the American Society for Plumbing Engineers for a calculation produced for Water and Environmental Technologies (consultant) by Garret Muonio of Jackola Engineering. The well was tested at 145.1 GPM but is controlled to a flow rate of 94 GPM by a VFD and two pressure tanks. The Applicant calculated their institutional use by assuming a consumption of 5.0 gallons per person for Church service with 970 attendees, 5.0 gallons per person for weddings and funerals with 700 attendees, and 3.0 gallons per person for Thursday School with 400 people expected. The Applicant is estimating one event of each type (Church service, Thursday school, and wedding/funeral) per week. The institutional use was calculated using the values from the DEQ Circular with the 5.0 gallons estimate due to meals being provided and restroom use, and the 3.0 gallon estimate for Thursday School due to no meals but the bathrooms being used.

a. The total flow needed weekly for Church happening once a week with an expected number of 970 attendees would use 4,850 gal/week.
b. The total flow needed weekly for Thursday school happening once a week with an expected number of 400 attendees would use 1,200 gal per week
c. The total flow needed weekly for Weddings or Funerals happening once a week with an expected number of 700 attendees would use 3,500 gal per week
d. The weekly sum of all uses with one of each event occurring is 9,550 gallons per week which is equivalent to 1.52 AF/year (9,550 gal/week x 52 weeks/year ÷ 325,851 gal/AF = 1.524 AF/year).

49. The Applicant proposes a 30,000-gallon cistern for a fire suppression system. The volume for this tank will be 0.092 AF annually and is included in the institutional use volume for a total of 1.62 AF/year (1.524 AF + 0.092 AF = 1.62 AF). The tank will be tested and maintained yearly, which will require draining

and refilling the cistern once per year. The fire storage system will be plumbed into the church via 8-inch and 6-inch pipes then dispersed through the building with sprinkler heads attached.

50. The Applicant's request for 8.75 AF to irrigate 3.5 acres of lawn and garden from April 20th to October 10th is based on the DNRC water use standard for lawn and garden irrigation of 2.5 AF/acre found in ARM 36.12.115(2) (3.5 acres x 2.5 AF/acre = 8.75 AF). The in-ground sprinkler system is designed to operate at a flow rate of < 94 GPM and will not run concurrently with institutional use, ensuring the flow rate needed for the systems to operate. The sprinkler system will predominately water grass around the church and concrete planters for grass at the ends of the parking aisles in the parking lot.

51. The Department finds the proposed water use is beneficial, and that the requested flow rate of 94 GPM and annual volume of 10.37 AF is reasonable.

POSSESSORY INTEREST

FINDINGS OF FACT

52. The Applicant signed the application form affirming that the Applicant has possessory interest or the written consent of the person with possessory interest, in the property where the water is to be put to beneficial use.

CONCLUSIONS OF LAW

PHYSICAL AVAILABILITY

53. 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."

54. 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).

55. 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).

56. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. Section 85-2-311(1)(a)(i), MCA. (FOF 11-18)

LEGAL AVAILABILITY

57. 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).

58. 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.

59. 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).

60. 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.

61. 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*.

62. 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 19-33)

ADVERSE EFFECT

63. 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.

64. 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).

65. 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).

66. 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).

67. 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.

68. 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).

69. 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 34-38)

ADEQUATE DIVERSION

70. 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.

71. 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.

72. 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 39-46).

BENEFICIAL USE

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

74. 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).

75. 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).

76. 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*.

77. Applicant proposes to use water for Institutional use and Lawn and Garden use, which are recognized beneficial uses. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence that Institutional and Lawn and Garden uses are beneficial uses and that 10.37 AF of diverted volume and 94.0 GPM is the amount needed to sustain the beneficial use. Section 85-2-311(1)(d), MCA. (FOF 47-51)

POSSESSORY INTEREST

78. 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.

79. 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.

80. 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 52])

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 30170796 should be granted.

The Department determines the Applicant may divert groundwater at a flow rate of 94.0 GPM up to 10.37 AF annually by means of a production well (GWIC ID Nos. 335305/334409) drilled to a depth of 400 ft, from January 1st to December 31st for institutional use and from April 20th to October 10th to irrigate lawn and garden. The Applicant may use up to 1.62 AF annually for institutional use and up to 8.75 AF to irrigate 3.5 acres of lawn and garden. The point of diversion is in the NE ¼ SE ¼ SW ¼ Section 33, Township 29 North, Range 20 West, Flathead County. The place of use is located SE ¼ SW ¼ Section 33, Township 29 North, Range 20 West, 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 30th day of December, 2025.

James Ferch, Manager
Kalispell Regional Office
Montana Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the DRAFT PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 30th day of December, 2025, by first class United States mail.

OLD APOSTOLIC LUTHERAN CHURCH OF LAKESIDE, MONTANA
PO BOX 854
KALISPELL MT 59903-0854
****
VIA EMAIL:
WATER & ENVIRONMENTAL TECHNOLOGIES
ATTN: JAMIE GRAHAM

ABIGAIL WILLIAMS
Kalispell Regional Office, (406) 752-2288