

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

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APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 76M 30170833 BY CIRCLE H INVESTMENTS LLC	)))	DRAFT PRELIMINARY DETERMINATION TO GRANT PERMIT
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On March 2, 2026, Circle H Ranch Investments (Applicant) submitted Application for Beneficial Water Use Permit No. 76M 30170833 to the Missoula Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) for 110 GPM and 49.53 AF for multiple domestic use. The Department published receipt of the application on its website. The Department sent the Applicant a deficiency letter under § 85-2-302, Montana Code Annotated (MCA), dated March 20, 2026. The Applicant responded with information dated May 19, 2026. A preapplication meeting was held between the Department and the Applicant on April 29, 2025, in which the Applicant designated that the technical analyses for this application would be completed by the Department. On behalf of the Department, staff members Alex Dalgleish, Benjamin Thomas, Jim Nave and Melissa Brickl met with the Applicants consultants Patrick Doyle and Kyle Mace of WGM Group. The Applicant returned the completed Preapplication Meeting Form on October 23, 2025. The Department delivered the completed technical analyses on December 12, 2025. The application was determined to be correct and complete as of June 9, 2026. An Environmental Assessment for this application was completed on June 9, 2026.

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:

- Water & Well Line Easement
- Maps:
 - Proposed Use Map, dated October 3, 2025
 - Water System Diagram, dated November 11, 2025
- Department-completed technical analyses based on information provided in the Preapplication Meeting Form, dated December 12, 2025
- Production well log (GWIC ID 336214)
- Observation well log (GWIC ID 214761)
- Observation well log (GWIC ID 214758)
- Email correspondence between the Department (Melissa Brickl, Jim Nave) and consulting firm employee Kyle Mace, dated May 5, 2025, RE: Circle H pre app question
- Email correspondence between consultant (Patrick Doyle) and the Department (Alex Dalglish), dated June 3, 2025, RE: Circle H Form 633 Question
- Email correspondence between consultant (Patrick Doyle) and the Department (Alex Dalglish), dated December 16, 2025, RE: Circle H Ranch Permit 76M 30170833 TA
- Letter from Department to consultant dated June 27, 2025, granting variance to aquifer testing rules found in Administrative Rules of Montana (ARM) 36.12.121(3)(a), ARM 36.12.121(3)(d), and ARM 36.12.121(3)(g)
- Department aquifer testing addendum (ATA) – Review, dated April 29, 2025
- Aquifer testing addendum
- Variance request from requirements of ARM 36.12.121, dated April 29, 2025
- Consultant Water Design Report and water use data
- DEQ Public Water Supply System ID #MT0004446

Information Received after Application Filed

- Deficiency response, dated May 19, 2026, received by the Department May 19, 2026
- Pump performance curve for Grundfos 30 HP Pump End

- Email correspondence between consultant (Patrick Doyle) and Department (Alex Dalglish), dated April 27, 2026, RE: Circle H Applications 76M 30170833 and 76M 30170836
- Department of Environmental Quality (DEQ) Certificate of Subdivision Plat Approval (CS #0698456) for West Pointe Phase IV-A (EQ #25-2252), dated October 16, 2025

Information within the Department's Possession/Knowledge

- 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. The memos below can also be found in the DNRC Permit Manual. Please contact the Missoula Regional Office at 406-721-4284 to request copies of the following documents.
 - Department Standard Practice for Determining Area of Potential Impact Analysis
 - Technical Memorandum: Physical and Legal Availability of Ground Water, dated April 22, 2019
 - Technical Memorandum: Physical Availability of Surface Water with Gage Data, dated November 1, 2019
 - Department Memorandum dated June 9, 2008, from John E. Tubbs, Administrator, regarding Permitting in the Open Clark Fork and Flathead Basins
 - Department Memorandum dated May 1, 2009, from John E. Tubbs, Administrator, regarding Permitting in the Open Clark Fork and Flathead Basins; Follow up to June 9, 2008, Memorandum
 - DNRC Permit Manual, updated February 14, 2025

The Department has fully reviewed and considered the evidence and argument submitted in this application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, MCA).

For the purposes of this document, Department or DNRC means the Department of Natural Resources & Conservation; CFS means cubic feet per second; GPM means gallons per minute; AF means acre-feet; AC means acres; and AF/YR means acre-feet per year.

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert water from the Missoula Valley Aquifer by means of a 117-foot well at rate of 110 gallons per minute (GPM) up to 49.53 AF, from a point in the NWSESW Section 26, T14N, R20W, Missoula County. The Applicant proposes to use water from January 1 through December 31 for multiple domestic purposes. The multiple domestic use would provide water to 127 lots, with 42 proposed in the Circle H Ranch Subdivision and 85 in the West Pointe subdivision. The requested place of use (POU) is located in the E2 Section 26 and all of Section 25, T14N, R20W, Missoula County. Table 1 below provides a summary of the proposed use.

Table 1: Summary of Proposed Use

Flow Rate (GPM)	Volume (AF)	Purpose	Period Of Use	Place Of Use	Point Of Diversion	Priority Date
110	49.53	Multiple domestic	1/1 – 12/31	E2 Sec. 26, Sec. 25, T14N, R20W, Missoula County	NWSESW, Sec. 26, T14N, R20W, Missoula County	3/2/2026

2. The proposed point of diversion (POD) is located approximately 3.5 miles northeast of the Clark Fork River, approximately 0.06 miles west of Bulter Creek and approximately 0.20 miles east of La Valle Creek. The Department determined that the source aquifer from which the Application proposes to divert water from is hydraulically connected to the Clark Fork River (a perennial surface water source) and hydraulically disconnected from Butler and La Valle Creeks (intermittent surface water sources).

3. Consumptive use was calculated using DNRC standards for systems with disposal to wastewater treatment facilities and individual drain fields. The 85 homesites in West Pointe will use the City's municipal treatment facility while the 42 sites in Circle H Ranch will have individual wastewater drain fields. The municipal facility uses wastewater for Poplar-tree-farm irrigation, resulting in a higher consumptive use during part of the year. The consumptive use is 25% of the volume diverted for multiple domestic use May through September and 5% October through April. In its Groundwater Permit Technical Analyses Report- Part A, the Department determined that the total consumptive use from this proposed appropriation is 6.07 AF/YR. Depletions from the proposed groundwater pumping are expected to accrue to the Clark Fork River beginning in the NENWNE Section 8, T13N, R20W, Missoula County.

4. The Applicant owns existing groundwater Provisional Permit 76M 30013295 (priority 12/3/2004), currently authorizing up to 64.0 AF for multiple domestic (113 units/households) and 50.0 AF for 29.6 acres of lawn and garden from two groundwater wells (GWIC IDs 214761 and 214758). Permit 76M 30013295 has been serving as a Public Water Supply (PWS) for the Circle H Ranch and West Pointe subdivisions.

5. Permit 76M 30013295 currently has a POU across the W2 of Section 25 and the E2 of Section 26, T 14N, R20W, Missoula County. In conjunction with this permit application, the Applicant also submitted Change Application 76M 30170836. This change requests to expand the place of use of Permit 76M 30013295 to include all of Section 25 (with Section 26 remaining in the E2) and to change the purpose of use by shifting the authorized volumes for multiple domestic (64.0 AF) and lawn and garden (50.0 AF), to 63.18 AF and 41.57 AF, respectively.

6. If approved, the Applicant's proposed permit would provide supplemental flow rate and volume for multiple domestic use for future developmental phases of the subdivisions. The total combined flow rate and volume from this proposed permit and the proposed change to 76M 30013295 would be 290 GPM (110 GPM under this permit and 180 GPM under permit 76M 30013295) and 154.28 AF (49.53 AF for multiple domestic use under this permit and 63.18 AF and 41.57 AF for multiple domestic and lawn and garden purposes under 76M 30013295 via proposed Change Application 76M 30170836).

7. The proposed POD is in the Clark Fork, between Blackfoot and Flathead Rivers Basin (76M) in an area that is not subject to water right basin closures or controlled ground water area restrictions.

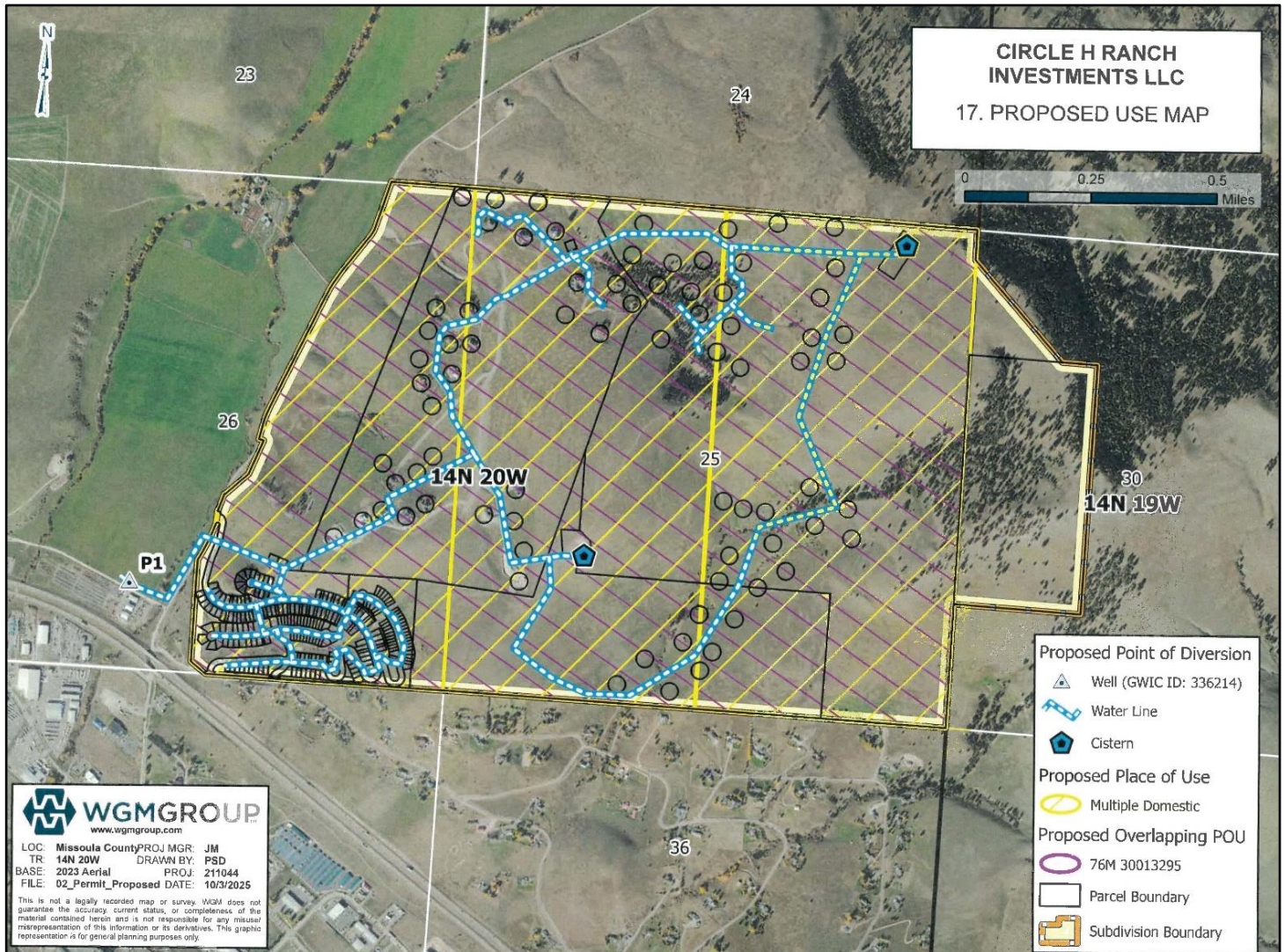


Figure 1. Map of Proposed Use Under Permit No. 76M 30170833

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

GENERAL CONCLUSIONS OF LAW

8. 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 . . .

9. 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.

10. 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.

11. The Montana Supreme Court further recognized in *Matter of Beneficial Water Use Permit Numbers 66459-76L, Ciotti: 64988-G76L, Starnner*, 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).

12. 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.

13. 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

14. The Applicant proposes to divert up to 49.53 AF of groundwater from the Missoula Valley Aquifer via a single well, at a flow rate of 110 GPM for multiple domestic use. The proposal would include a total of 127 units/lots, with 42 in the Circle H Ranch subdivision and 85 in the West Pointe subdivision.

15. To meet the aquifer testing requirements in Administrative Rules of Montana (ARM) 36.12.121, the Applicant performed a 76-hour aquifer pump test on the proposed production well (GWIC ID 336214). The average pumping rate from this test was 110 GPM, which is Applicant's requested flow rate.

16. On April 29, 2025, the Department received a variance request from the Applicant (Form 653) on behalf of ARM 36.12.121(3)(a), 36.12.121(3)(d), and 36.12.121(3)(g). The variances were requested because the generator used during the test was vandalized approximately 18 hours into the test, the pumping rate was not consistently measured with a reliable device according to the schedule on Aquifer Test Form 633, and background water levels in the observation wells were not monitored at frequent intervals for the required 48 hours prior to the pump test. The variances were reviewed by Department groundwater hydrologist David Parmelee. The Department sent a letter to the Applicant dated June 27, 2025, granting all requested variances.

17. The Department determined that the proposed groundwater appropriation will divert water from the Missoula Valley Aquifer. Using the Moench (1997) solution for unconfined aquifers, and the data submitted from the Applicant's 76-hour aquifer test, the Department determined a transmissivity (T) value of 4,712 ft²/day with a specific yield of 0.1 (Lohman, 1972). Based on the Applicant's requested diverted volume (49.53 AF/YR), water for domestic use was distributed equally throughout the year and the pumping schedule for the proposed well was determined to be a constant rate of 30.71 GPM.

18. Physical groundwater availability in the aquifer was evaluated by calculating the groundwater flux through the Zone of Influence (ZOI) determined by the 0.01-foot drawdown contour surrounding the POD. With the constant pumping rate of 30.71 GPM, the ZOI has a modeled distance of 10,100 feet from the proposed well at the end of the first year of pumping.

19. The calculated groundwater flux through the ZOI totaled 11,166 AF/year (1.332.554 ft³/day). The applicant is requesting a total diverted volume of 49.53 AF.

20. The Department determined that groundwater is physically available at the requested annual diverted volume of 49.53 AF during the proposed period of diversion.

LEGAL AVAILABILITY

FINDINGS OF FACT

Legal Availability of Groundwater

21. Legal availability of water in the source aquifer was determined by subtracting the legal demands of existing water rights within the ZOI of the proposed point of diversion from the amount of water physically available in the source aquifer.

22. As determined by the Department in the Groundwater Permit Technical Analyses Report – Part A, the ZOI was defined to be the area within which existing wells would experience a drawdown of 0.01 feet or more as a result of the proposed diversion. This was calculated to be approximately 10,100 feet from the proposed well. There are 150 groundwater rights within the ZOI that were evaluated for legal demands (this list of water rights can be found in Groundwater Permit Technical Analyses – Part B, Appendix A).

23. Of the 150 groundwater rights in the ZOI, there are 110 with assigned volumes and 40 without. The combined legal demands of water rights with assigned volumes is 5,890.04 AF.

24. The area of proposed water use is not within a controlled groundwater area. Currently under § 85-2-306, MCA, the maximum volume allowed under a Groundwater Certificate outside of a controlled groundwater area is 10 AF. For those Groundwater Certificates in the ZOI without specified volumes, the Department assigned a volume of 10 AF to each. For those Statement of Claims (Claims) in Appendix A without assigned volumes, the Department allocated the volume listed on the original claim form, if it was reasonable with the Department's standards for that purpose found in ARM 36.12.115. If the claimed volume was not reasonable, the Department calculated the volume based on the standards in ARM 36.12.115. For irrigation Claims without assigned volumes, the Table in ARM 36.12.115(2)(e) was used, based on the appropriate irrigation method (sprinkler vs flood) efficiency and the lower number of the range given for that efficiency in the appropriate climatic area/region. The Claims with unassigned volumes are all in

Climatic Area III. If the purpose was not described in ARM 36.12.115 (e.g., fire protection), the Department assigned the claimed volume.

25. Those groundwater rights within the ZOI were calculated to have a total annual appropriation of 6,321.42 AF/year. Subtracting the legal demands of 6,321.42 AF from the calculated groundwater flux of 11,166 AF/year yields 4,844.58 AF (11,166 AF/year – 6,321.42 AF/year).

26. The Department finds groundwater to be legally available at the requested annual volume of 49.53 AF.

Legal Availability of Surface Water

27. The Department determined in its Technical Analyses – Part A that the perennial flowing Clark Fork River (located roughly 3.5 miles southwest of the proposed production well) is hydraulically connected to the source aquifer from which the Applicant proposes to appropriate water. The amount of water depleted from the Clark Fork River by the Applicant's appropriation is equal to the calculated 6.07 AF of consumed volume.

28. The location where depletions begin to accrue was identified as the NENWNE of Section 8, T13N, R20W, Missoula County. The timing of net depletions to the Clark Fork was modeled in the Department's Technical Analyses – Part A and are also shown in Table 2 below. The Clark Fork River will be depleted year-round by the proposed groundwater appropriation, and the depletions were modeled to occur simultaneously with the Applicant's consumption of groundwater.

Table 2. Monthly net depletions to the Clark Fork River.

Month	Consumed Volume (AF)	Clark Fork River Net Depletion (AF)	Clark Fork River Net Depletion (GPM)
January	0.28	0.52	3.77
February	0.25	0.47	3.77
March	0.28	0.52	3.77
April	0.27	0.50	3.77
May	0.84	0.52	3.77
June	0.82	0.50	3.77

July	0.84	0.52	3.77
August	0.84	0.52	3.77
September	0.82	0.64	3.77
October	0.28	0.52	3.77
November	0.27	0.50	3.77
December	0.28	0.52	3.77
Total	6.07	6.07	

29. The Department determined the area of potential impact to be the reach of the Clark Fork River between the beginning point of depletions and ending at the western edge of the Missoula valley near Huson, MT, in Section 34, T15N, R22W. Physical availability in this reach of the Clark Fork River was assessed using USGS Gage #12353000 (Clark Fork River below Missoula MT). This gage is appropriate to use for physical availability in the depleted reach because it is located approximately 3.14 miles upstream from the beginning point of depletions. Table 3 below represents the median of the mean monthly flow rates and volumes at Gage # 12353000, which were used to quantify physical availability of surface water at the location of depletions:

Table 3. Clark Fork River Below Missoula – USGS Gage # 12353000

Month	Median of the Mean Monthly Flow at Gage 12353000 (CFS)	Median of the Mean Monthly Volume at Gage 12353000 (AF)
January	2,059	126,351
February	2,255	125,017
March	2,951	181,132
April	5,893	350,044
May	14,540	892,465
June	15,860	942,084
July	5,205	319,483
August	2,124	130,371

September	2,110	125,334
October	2,545	156,181
November	2,614	155,272
December	2,243	137,675

30. To assess if water is physically and legally available in the locally depleted reach of the Clark Fork River in excess of modeled depletions, the Department conducted a legal availability analysis of the Clark Fork River from USGS Gage #12353000 "Clark Fork below Missoula" downstream to the western end of the Missoula Valley (near Huson, MT in Section 34, Township 15N, Range 22W). This reach of the Clark Fork fully encompasses the location where depletions will occur from the proposed groundwater appropriation. The legal availability of water in the locally depleted reach is represented in Table 4 below.

Table 4. Clark Fork River Legal Availability in Locally Depleted Reach

Month	Physical Availability at Effective Reach (CFS)	Physical Availability at Effective Reach (AF)	Existing Legal Demands Effected Reach (CFS)	Existing Legal Demands Effected Reach to Huson (AF)	Physical Availability - Legal Demands (CFS)	Physical Availability - Legal Demands (AF)
January	2,059	126,350.73	5.36	329.21	2,053.14	126,021.52
February	2,255	125,017.20	5.36	297.35	2,249.64	124,719.85
March	2,951	181,132.38	5.59	342.89	2,945.41	180,789.49
April	5,893	350,044.20	11.06	657.13	5,881.94	349,387.07
May	14,540	892,465.20	22.35	1371.91	14,517.65	891,093.29
June	15,860	942,084.00	25.72	1527.84	15,834.28	940,556.16
July	5,205	319,482.90	25.72	1578.76	5,179.28	317,904.14
August	2,124	130,371.12	25.50	1565.09	2,098.50	128,806.03
September	2,110	125,334.00	25.50	1514.60	2,084.50	123,819.40
October	2,545	156,181.41	9.09	558.16	2,535.41	155,623.25
November	2,614	155,271.60	5.36	318.59	2,608.64	154,953.01
December	2,243	137,675.34	5.36	329.21	2,237.64	137,346.13

31. The Department finds the proposed appropriation of 110 GPM and up to 49.53 AF of groundwater to be legally available during the proposed period of diversion and use.

32. The Department finds that surface water is legally available in the depleted reach in the amount and timing that depletions will occur.

ADVERSE EFFECT

FINDINGS OF FACT

Groundwater Adverse Effects

33. To determine if the requested groundwater appropriation would impact other water users, the Department modeled whether any existing wells near the proposed POD would experience drawdown of 1 foot or more in its Groundwater Permit Technical Analyses Report – Part A. Based on the modeling, at the end of the fifth year of pumping, drawdown greater than one foot occurs within 98 feet of the proposed POD. There are no groundwater rights within the one-foot drawdown contour and the Department determined that no groundwater rights will be adversely affected by drawdown from the proposed diversion.

34. The Applicant is the only water user on the PWS supplying water to the Circle H Ranch and West Pointe subdivision. The Applicant has complete control over their diversion and in the event a valid call is made from a senior water user, the Applicant can shut off their electric well pump and curtail diversions. The Applicant also stated that the water distribution system includes service lines to the homesites with curb stop valves that can be individually closed if necessary.

35. The Department finds that the proposed use of groundwater will not adversely affect other groundwater appropriators.

Surface Water Adverse Effects

36. The groundwater proposed for appropriation is hydraulically connected to the Clark Fork River. The Applicant's total consumptive use of 6.07 AF is considered to deplete the Clark Fork River in every month of the year.

37. The Department's analysis shows that surface water in the Clark Fork River within the locally depleted reach is physically and legally available in excess of the modeled depletion in each month of the year. When comparing the physical availability and the legal demands on the

Clark Fork River in the local reach, the Department demonstrated that water is always available for the appropriation in the Clark Fork River in this area (see Table 3 in Finding of Fact No. 29).

38. Downstream hydropower rights owned by Avista Corporation at Noxon Dam were addressed in a policy memorandum dated June 9, 2008, titled: Permitting in the open Clark Fork and Flathead basins. A subsequent policy memorandum dated May 1, 2009 titled: Permitting in the Open Clark Fork and Flathead Basins Follow-up to June 9, 2008, Memorandum states that for groundwater appropriations, the Thompson River Lumber Company decision is not considered as precedent for appropriations when net depletion to the Clark Fork River is calculated to be 35 GPM or less and 10 acre-feet per year. The calculated net-depletion to the Clark Fork River for the proposed appropriation is 3.77 GPM and 6.07 AF per year.

39. The net depletions to the Clark Fork River resulting from this proposal are 6.07 AF per year. As a result, this proposal falls under the guidance provided in the May 1, 2009 policy memo.

40. The Department finds the proposed use of 110 GPM, 49.53 AF of diverted volume and 6.07 AF of consumed volume will not have adverse effects on existing surface water users on the Clark Fork River.

ADEQUATE MEANS OF DIVERSION

FINDINGS OF FACT

41. The proposed means of diversion consists of a single 8-inch well (GWIC ID 336214) drilled to a total depth of 117 feet below ground surface. According to the Applicant, the motor in the proposed well is a Franklin 30 HP 460-volt 3 phase pump with a Grundfos pump end.

42. Under existing Provisional Permit 76M 30013295, two Public Water Supply (PWS) wells distribute water to the Circle H Ranch and West Pointe subdivisions for multiple domestic and lawn and garden purposes. The Department of Environmental Quality (DEQ) permitted the original PWS under system ID # MT0004446. The two wells in the existing system distribute water through a buried 12-inch ductile iron main pipeline (class 350). Each current homesite across the two subdivisions has an individual service line from the 12-inch mainline. The existing system also integrates a 500,000 gallon (1.53 acre-foot) buried cistern/concrete reservoir, located in the

Circle H Ranch Subdivision. This underground storage tank provides water via gravity to the current homes in both subdivisions.

43. If this permit application is approved, the proposed well will be manifold into the current PWS system with the two wells under permit 76M 30013295. The DEQ approved the addition of a third well to the current PWS under EQ #25-1769. The existing 12-inch mainline would be extended throughout the Circle H Ranch subdivision to accommodate the future expansion. A second underground tank may be incorporated in the Circle H Ranch subdivision to help facilitate water delivery to those future homesites via gravity. For the proposed homesites in the West Pointe Subdivision, an 8-inch Class 350 line will branch off the current 12-inch mainline. Individual service lines will diverge from the respective 12-inch and 8-inch mainlines in the Circle H Ranch and West Pointe subdivisions to provide water for each household/unit. The extensions to the existing public water and sewer systems associated with this application were reviewed and approved by DEQ under EQ# 25-2576.

44. With the addition of this permit, the combined flow rate of the PWS will be 290 GPM (110 from under this application and 180 GPM under existing provisional permit 76M 30013295).

45. The Applicant completed a 76-hour aquifer pump test on the proposed well. The requested flow rate of 110 GPM is equivalent to the average pumping rate from the pump test.

46. The Department's analysis of drawdown within the Applicant's well found that after one year of pumping, drawdown in the Applicant's well will be 7.19 feet, leaving 31.4 feet of water above the bottom of the perforated interval.

47. 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

48. The Applicant proposes to divert groundwater from a single well drilled in the Missoula Valley aquifer from January 1 to December 31 annually at a maximum flow rate of 180 GPM up to 49.53 AF, with a consumptive use of 6.07 AF.

49. The Applicant's proposed total volume for multiple domestic use is 49.53 AF, and this is based on the Department's volume standards for a 4-bedroom household described in ARM 36.12.115(2)(a). A 4-bedroom home equates to 350 gallons per day, or 0.39 AF per homesite. The Applicant's consultant stated that all future 127 homesites proposes will be an average of 4 bedrooms, which equates to the requested volume of 49.53 AF (127 homesites* 0.39 AF = 49.53 AF).

50. The Department's domestic period of diversion and use permitting standards are described in ARM 36.12.112(1)(a), and the Applicant is adhering to the year-round period of use for domestic use.

51. The Applicant owns existing groundwater Provisional Permit 76M 30013295 for multiple domestic and lawn and garden purposes. A separate change application was submitted to the Department (Change Application No. 76M 30170836), requesting to change the purpose and place of use. Provisional Permit 76M 30013295 is unperfected and the Applicant seeks to reassign the authorized volumes between the two uses (from 64.0 AF for multiple domestic and 50.0 AF for lawn and garden to 63.18 AF and 41.57 AF respectively). If both this permit application and change application 76M 30170836 are authorized, the total multiple domestic volume would be 112.71 AF (63.18 AF + 49.53 AF), and the total volume would be 154.28 AF (112.71 AF for multiple domestic and 41.57 for lawn and garden irrigation). As proposed, full build out of the subdivisions would entail a total of 289 homesites (76 in the Circle H Ranch subdivision and 213 in West Pointe), which remains congruent with DNRC's standard of 0.39 AF/homesite (112.71 AF/289 lots) for a 4-bedroom home. Provisional permit 76M 30013295 was authorized with a multiple domestic volume up to 64.0 AF for 113 homesites and is equivalent to 0.56 AF/site (64.0 AF/113 units).

52. The Department finds the proposed use is beneficial, and that the requested flow rate of 110 GPM and annual volume of 49.53 AF are reasonably justified per ARM 36.12.1801(3).

POSSESSORY INTEREST

FINDINGS OF FACT

53. The Applicant currently owns the parcels where water is proposed to be put to beneficial use, which demonstrates possessory interest in the proposed POU. The existing PWS system under permit 76M 30013295 provides water to current homesites in the Circle H Ranch and West Pointe subdivisions. Under this proposed permit the Applicant proposes to incorporate a third well into the PWS system. The existing homesites in the Circle H Ranch and West Pointe subdivisions within the POU are covered under Permit 76M 30013295 and the Applicant does not need to re-prove possessory interest. The Department finds the possessory interest criterion to be met.

CONCLUSIONS OF LAW

PHYSICAL AVAILABILITY

54. 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.”

55. 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).

56. 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).

57. The Applicant has proven that water is physically available at the proposed point of diversion in the amount the Applicant seeks to appropriate. Section 85-2-311(1)(a)(i), MCA. (FOF 14-20).

LEGAL AVAILABILITY

58. 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).

59. 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.

60. 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).

61. 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.

62. 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 resulted 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*.

63. 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 21-32).

ADVERSE EFFECT

64. 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.

65. 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).

66. 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).

67. 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).

68. 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.

69. 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).

70. 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 33-40).

ADEQUATE DIVERSION

71. 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.

72. 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.

73. Whether party presently has easement not relevant to determination of adequate means of diversion. *In the Matter of Application to Change a Water Right No. G129039-76D by Keim/Krueger* (DNRC Final Order 1989).

74. Water wells must be constructed according to the laws, rules, and standards of the Board of Water Well Contractors to prevent contamination of the aquifer. *In the Matter of*

Application for Beneficial Water Use Permit No. 41I-105511 by Flying J Inc. (DNRC Final Order 1999).

75. Information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies, based upon project complexity design by licensed engineer adequate. *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002).

76. 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 41-47).

BENEFICIAL USE

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

78. 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).

79. 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).

80. 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*.

81. Applicant proposes to use water for multiple domestic which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence multiple domestic is a beneficial use and that 49.53 AF of diverted volume and 110 GPM is the amount needed to sustain the beneficial use. Section 85-2-311(1)(d), MCA. (FOF 48-52).

POSSESSORY INTEREST

82. 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.

83. 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.

84. 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 53).

PRELIMINARY DETERMINATION

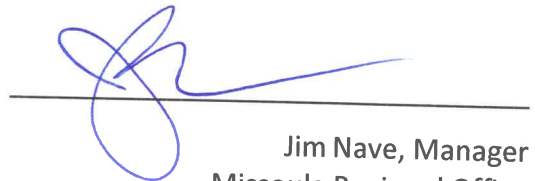
Subject to the terms and analysis, and conditions in this Order, the Department preliminarily determines that this Application for Beneficial Water Use Permit No. 76M 30170833 should be GRANTED.

The Department determines the Applicant may divert groundwater, by means of a 117-foot-deep well, from January 1 to December 31 at 110 GPM up to 49.53 AF, from a point in the NWSESW, Sec. 26, T14N, R20W, for multiple domestic use from January 1 to December 31. The place of use is in the E2 Sec. 26 and all of Sec. 25, both in T14N, R20W, Missoula 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 10th day of August 2026.



Jim Nave, Manager
Missoula 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 10th day of August, 2026, by first class United States mail.

CIRCLE H INVESTMENTS LLC
4800 GRANT CREEK RD
MISSOULA, MT 59808

and

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