

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

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APPLICATION TO CHANGE WATER RIGHT NO. 76M 30170836 BY CIRCLE H INVESTMENTS LLC	}	DRAFT PRELIMINARY DETERMINATION TO GRANT CHANGE
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On March 2, 2026, Circle H Investments LLC (Applicant) submitted Application to Change Water Right No. 76M 30170836 to change Provisional Permit No. 76M 30016295 to the Missoula Regional Office of the Department of Natural Resources and Conservation (Department or DNRC). The Department published receipt of the application on its website. The Department sent 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. The Applicant returned the completed Preapplication Meeting Form on October 23, 2025. The Department delivered the Department-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 to Change a Water Right, Form 606
- Maps
 - Historical Use Map, dated November 12, 2025
 - Proposed Use Map, dated November 12, 2025
 - Water System Diagram, dated November 12, 2025

- Circle H Ranch Investments LLC ATA.2.a Wells in Aquifer Testing, dated May 19, 2025
- Department- completed Technical Analyses Report based on information provided in the Preapplication Meeting Form, dated December 12, 2025
- Email correspondence between consultant (Patrick Doyle and Kyle Mace) and the Department (Alex Dagleish), dated November 25, 2025, RE: Circle H 606
- Well log for GWIC ID 214761
- Well log for GWIC ID 214758
- DEQ subdivision approval and water use estimate document, dated October 17, 2025
- WGM Engineer's Water Main Extension Engineering Design Report prepared for DEQ, dated May 27, 2025
 - Appendix A – Vicinity Map, dated March 2025
 - Appendix B – Water Availability Letter & Owner Certification
 - Appendix C – Existing sewer & Water Delivery System Map
 - Appendix D – NRCS Soil Report
 - Appendix E – Proposed Water Routing
 - Appendix F – Fire Hydrant Approval & Fire Flow Calculations
 - Appendix G – Blowoff Sizing Calculations
 - Appendix H – Prv Vault Detail
- Email correspondence between consultant (Patrick Doyle) and the Department (Jim Nave, Alex Dagleish), dated June 27, 2025, RE: Circle H Ranch LLC Change Application Follow Up
- Email correspondence between consultant (Patrick Doyle and Kyle Mace) and the Department (Alex Dagleish), dated June 3, 2025, RE: Circle H Form 633 Question
- Email correspondence between Department employees (Melissa Brickl and Jim Nave), dated between April 30 and May 5, 2025, RE: Circle H pre app question

Information Received after Application Filed

- Email correspondence between Department (Alex Dalglish) and consultant (Patrick Doyle) dated April 6, 2026, RE: Notice of Erratum for Change Application 76M 30170836
 - 76M 30170836 Erratum Cover Letter
 - 76M 30170836_TA_Notice_of_Erratum
- Email correspondence between consultant (Patrick Doyle) and Department (Alex Dalglish), dated April 27, 2026, RE: Circle H Applications 76M 30170833 and 76M 30170836
- Deficiency Response, dated May 19, 2026, received by the Department on May 19, 2026
- Pump performance curve for Grundfos 30 HP Pump End

Information within the Department's Possession/Knowledge

- Provisional Permit 76M 30013295 File
- The Department also routinely considers the following information. The following information is not included in the administrative file for this Application, but is available upon request. Please contact the Missoula Regional Office at 406-721-4284 to request copies of the following documents. The Technical Memorandum: Net Surface Water Depletion from Ground Water Pumping, dated July 6, 2018 and DNRC Consumptive Use Methodology – Turf Grass (New Projects), dated March 23, 2010 can also be found in the DNRC Change Manual.
 - Technical Memorandum: Net Surface Water Depletion from Ground Water Pumping, Dated July 6, 2018
 - Department Memorandum: Permitting in the Open Clark Fork and Flathead Basins, dated June 9, 2008
 - Department Memorandum: Permitting in the Open Clark Fork and Flathead Basins Follow up to June 9, 2008, Memorandum, dated May 1, 2009
 - DNRC Change Manual, updated February 14, 2025

- Technical Memorandum: Net Surface Water Depletion from Ground Water Pumping, Dated July 6, 2018
- DNRC Consumptive Use Methodology – Turf Grass (New Projects), dated March 23, 2010

The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, part 4, 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; and AF/YR means acre-feet per year.

WATER RIGHTS TO BE CHANGED

FINDINGS OF FACT

1. The Applicant proposes to change the place of use (POU) and purpose of use of unperfected Provisional Permit No. 76M 30013295. Permit 76M 30013295 allows a flow rate of 180 GPM and a total diverted volume of 114.0 AF from groundwater by means of two wells (GWIC ID 214761 and GWIC ID 214758) for multiple domestic and lawn and garden purposes. The multiple domestic use currently authorizes a total of 64.0 AF for 113 units in the Circle H Ranch and West Pointe Subdivisions while the lawn and garden use authorizes 50.0 AF for 29.60 acres. The periods of use for multiple domestic and lawn and garden are January 1 through December 31 and April 1 through October 15, respectively. The two wells each have an 8-inch casing and are drilled to 120 feet deep in the NWSESW Section 26, T14N, R20W, Missoula County. Water is conveyed to the place of use by water mains and incorporates a 1.53 AF underground storage reservoir (cistern) that distributes water via gravity for use in the subdivisions.

Table 1: Water Right Proposed for Change

Water Right Number	Flow Rate (GPM)	Volume (AF)	Purpose	Period Of Use	Place Of Use	Points Of Diversion	Priority Date
76M 30013295	180	64.0	Multiple domestic	1/1 – 12/31	W2 Section 25, E2 Section 26, T14N, R20W, Missoula County	NWSESW Section 26, T14N, R20W, Missoula County	12/3/2004
		50.0	Lawn and garden	4/1 – 10/15	9.90 acres in the W2 Section 25, 19.70 acres in the E2 Section 26, both in T14N, R20W, Missoula County		
Total		114.0					

2. Currently, there are no other overlapping or supplemental water rights. However, future phases of the Circle H Ranch and West Pointe subdivisions will require additional volume and flow rate for the multiple domestic purpose. Concurrently with this change application, the Applicant has applied for a new Provisional Permit (Application No. 76M 30170833) requesting to add a singular new well (GWIC ID 336214) to the Public Water System (PWS). Pending permit 76M 30170833 will provide up to 110 GPM and 49.53 AF of water for multiple domestic purpose, serving a total of 127 lots (42 in the Circle H Ranch subdivision and 85 in the West Pointe subdivision). Water right 76M 30013295 proposed for change will provide 63.18 AF of water for multiple domestic use (162 lots, with 34 in Circle H Ranch and 128 in West Pointe), and 41.57 AF for lawn and garden irrigation. Between the new permit and proposed change for right 76M 30013295, there will be a total volume of 112.71 AF (49.53 AF + 63.18 AF) for multiple domestic use for 289 lots/units upon full build out. The multiple domestic place of use under the proposed change for permit 76M 30013295 and pending permit 76M 30170833 will be the same; in the E2 Section 26 and all of Section 25, T14N, R20W, Missoula County. Table 2 represents the elements of the Applicant's proposed water right permit 76M 30170833.

Table 2: Supplemental Water Right to Provisional Permit 76M 30013295

Proposed Water Right Number	Proposed Flow Rate (GPM)	Proposed Volume (AF)	Proposed Purpose	Proposed Place of Use	Proposed Point of Diversion	Priority date
76M 30170833	110	49.53	Multiple domestic	E2 Sec. 26, Sec. 25, T14N, R20W, Missoula County	NWSESW, Sec. 26, T14N, R20W, Missoula County	3/2/2026

3. On November 23, 2016, the Department received an Application for Extension of Time (Form 607) from the Applicant on behalf of right 76M 30013295 proposed for change. Originally, a Project Completion Notice (Form 617) was due by December 31, 2016. The Applicant cited the prior owner losing the property to foreclosure in 2015 as reason for the extension and requested a period of 25 years to complete the project. The Department granted the extension request in 2017, and now the project completion notice is due by December 31, 2042.

4. Provisional Permit 76M 30013295 is unperfected and therefore the department will analyze adverse effect by comparing the originally authorized diverted and consumed volumes to those proposed.

CHANGE PROPOSAL

FINDINGS OF FACT

5. The Applicant proposes to change the place of use (POU) and purpose of use for Provisional Permit 76M 30013295. The current multiple domestic and lawn and garden POU, described as the W2 Section 25 and E2 Section 26, T20N, R14W, will be refined and generally expanded to include all of Section 25. Permit 76M 30013295 authorizes use from two wells for 113 multiple domestic units and 64.0 AF (0.56 AF/unit) and lawn and garden irrigation up to 29.60 acres and 50.0 AF (1.69 AF/acre). The multiple domestic purpose will be increased from 113 units to 162 units, maintaining the multiple domestic purpose volume up to 64.0 AF by reducing the amount of water allocated per domestic unit. The Applicant's proposed diverted volume for multiple domestic use is 63.18 AF (0.39 AF/unit), which is based on an average household size of

4-bedrooms using Department's volume standards for described in ARM 36.12.115(2)(a). Currently the lawn and garden use consists of 9.90 acres in the W2 of Section 25 and 19.70 acres in the E2 of Section 26, both in T14N, R20W, Missoula County. The lawn and garden purpose will be changed to encompass the 9.9 acres across all of Section 25 (from the W2 currently) while the E2 Section 26 will be reduced by 5 acres (for a total of 14.7 acres in the E2 of this Section). The proposed irrigation purpose volume of 41.57 AF on a total of 24.6 acres results in the same 1.69 AF/AC as currently authorized under permit 76M 30013295 proposed for change (41.57 AF/ 24.6 acres and 50 AF / 29.6 acres).

6. The Applicant has applied for pending Provisional Permit 76M 30170833 which will provide supplemental flow rate and volume for the multiple domestic purpose across future phases of the Circle H Ranch and West Point subdivisions. Under the new permit, groundwater will be diverted from a single 117-foot-deep well. The current Public Water Supply (PWS) system for the subdivisions uses two 120-foot-deep wells under existing permit 76M 30013295. The third well proposed by pending permit 76M 30170833 was drilled adjacent to the existing wells and will be manifold into the present water distribution system. Permit 76M 30170833 requests to divert up to 110 GPM and a total volume of 49.53 AF for use in 127 units (42 in the Circle H Ranch subdivision and 85 in the West Pointe subdivision). The multiple domestic volume proposed under Permit 76M 30170833 is consistent with the multiple domestic volume under this change application (0.39 AF/unit). The water use under permit 76M 30170833 does not include flow rate or volume for the lawn and garden use authorized under Provisional Permit 76M 30013295 in this change application.

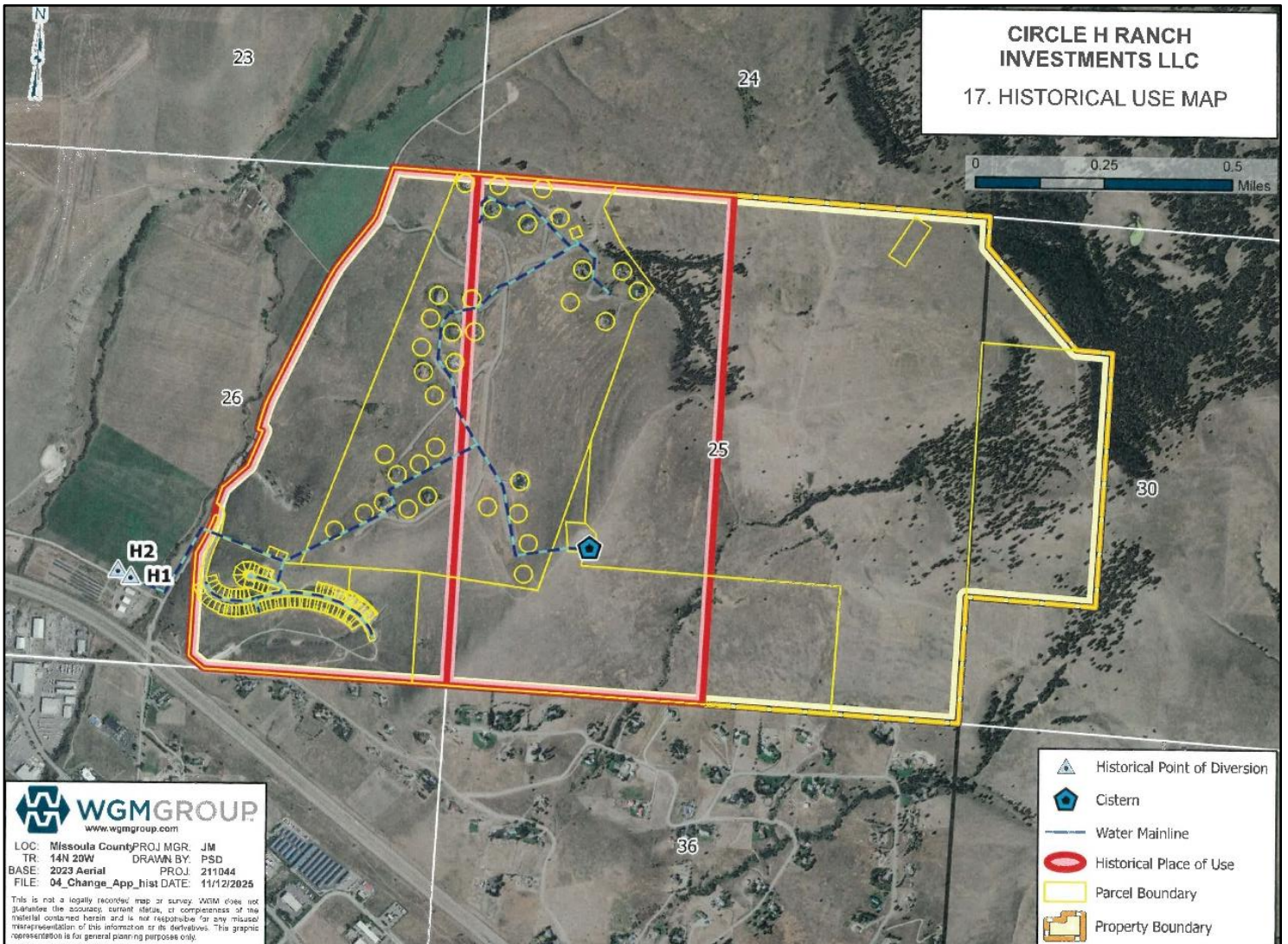


Figure 1. Map of Historical Place of Use

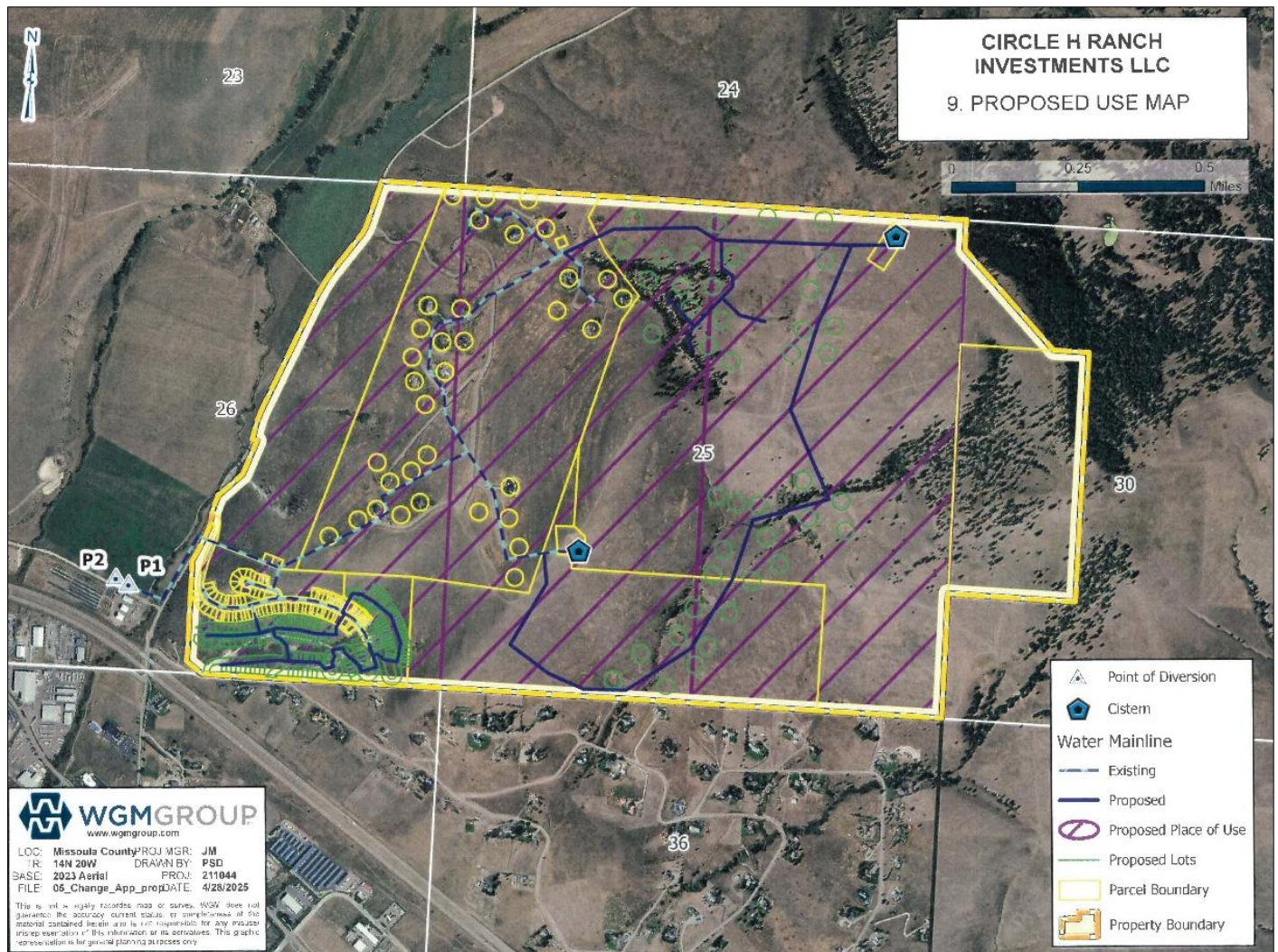


Figure 2. Map of Proposed Place of Use

CHANGE CRITERIA

7. The Department is authorized to approve a change if the Applicant meets its burden to prove the applicable § 85-2-402, MCA, criteria by a preponderance of the evidence. *Matter of Royston*, 249 Mont. 425, 429, 816 P.2d 1054, 1057 (1991); *Hohenlohe v. DNRC*, 2010 MT 203, ¶¶ 33, 35, and 75, 357 Mont. 438, 240 P.3d 628 (an Applicant's burden to prove change criteria by a preponderance of evidence is "more probable than not."); *Town of Manhattan v. DNRC*, 2012 MT 81, ¶ 8, 364 Mont. 450, 276 P.3d 920. Under this Preliminary Determination, the relevant change criteria in § 85-2-402(2), MCA, are:

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if

applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) 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 change involves 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. This subsection (2)(d) does not apply to: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

8. The evaluation of a proposed change in appropriation does not adjudicate the underlying right(s). The Department's change process only addresses the water right holder's ability to make a different use of that existing right. *E.g., Hohenlohe*, ¶¶ 29-31; *Town of Manhattan*, ¶ 8; *In the Matter of Application to Change Appropriation Water Right No.41F-31227 by T-L Irrigation Company* (DNRC Final Order 1991).

WATER RIGHT CHANGE CRITERIA (§ 85-2-402, MCA)

9. The Department is authorized to approve a change if the Applicant meets its burden to prove the applicable § 85-2-402, MCA, criteria by a preponderance of the evidence. *Matter of Royston*, 249 Mont. 425, 429, 816 P.2d 1054, 1057 (1991); *Hohenlohe v. DNRC*, 2010 MT 203, ¶¶ 33, 35, and 75, 357 Mont. 438, 240 P.3d 628 (an Applicant's burden to prove change criteria by a preponderance of evidence is "more probable than not."); *Town of Manhattan v. DNRC*, 2012

MT 81, ¶ 8, 364 Mont. 450, 276 P.3d 920. Under this Preliminary Determination, the relevant change criteria in § 85-2-402(2), MCA, are:

(2) Except as provided in subsections (4) through (6), and, if applicable, subject to subsections (1)(c) and (15), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) 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 change involves 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. This subsection (2)(d) does not apply to: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

10. The evaluation of a proposed change in appropriation does not adjudicate the underlying right(s). The Department's change process only addresses the water right holder's ability to make a different use of that existing right. *E.g., Hohenlohe*, ¶¶ 29-31; *Town of Manhattan*, ¶ 8; *In the Matter of Application to Change Appropriation Water Right No.41F-31227 by T-L Irrigation Company* (DNRC Final Order 1991).

HISTORICAL USE FOR ADVERSE EFFECT

FINDINGS OF FACT

11. Provisional Permit 76M 30013295 has a priority date of December 3, 2004. This water right is unperfected and after an extension was granted in 2017, the Project Completion Notice

for Permitted Water Development (form 617) is due to the Department by December 31, 2042. Due to the unperfected nature of the right, the Department cannot make calculable findings of fact regarding the historical use as the Applicant is still in the process of fully developing their permitted appropriation, and the elements of this permit have yet to be finalized.

12. The existing POU of right 76M 30013295, described as the W2 Section 25 and E2 Section 26, T20N, R14W, will be refined and generally expanded to include all of Section 25. Water right 76M 30013295 currently authorizes up to 114.0 AF (64.0 AF for multiple domestic and 50.0 AF for lawn and garden purposes). The multiple domestic use equates to a diverted volume of 0.56 AF/unit (64.0 AF/113 units) and the lawn and garden use has a volume of 1.69 AF/acre (50.0 AF/29.6 acres). The Department's original analysis of permit 76M 30013295 justified the 114.0 AF since the volume of water applied for was less than DNRC's standards. The Applicant's proposed diverted volume for multiple domestic use is 63.18 AF (0.39 AF/unit), which is based on an average household size of 4-bedrooms using Department's volume standards for described in ARM 36.12.115(2)(a). The proposed irrigation purpose volume of 41.57 AF on a total of 24.6 acres results in the same diverted volume of 1.69 AF/AC as currently authorized under permit 76M 30013295 proposed for change.

13. Provisional Permit No. 76M 30013295 authorizes diversion from two 120-foot-deep wells (GWIC ID 214761 and GWIC ID 214758), both located in the NWSESW Section 26, T14N, R20W, Missoula County. The wells are situated on property owned by the Hanson family and a recorded well and waterline license agreement with the Hansons was executed on behalf of the wells in 2002 prior to their completion in 2004.

ADVERSE EFFECT

FINDINGS OF FACT

14. The Applicant proposes to change the POU and purpose of use for Provisional Permit 76M 30013295. The POU will be expanded to include all of Section 25, and the Applicant will not increase their historically diverted volume beyond the maximum 114.0 AF that was originally permitted (64.0 AF for multiple domestic and 50.0 AF for lawn and garden). The change in purpose of use will shift the multiple domestic volume from 64.0 AF to 63.18 AF and the lawn and garden volume from 50.0 AF to 41.57 AF, for a total proposed diverted volume of 104.75 AF.

The Applicant stated that the diversions can be controlled at the pump house located near the wells and the water distribution system includes service lines to the homes with curb stop valves that can be closed individually if necessary.

15. During times of water shortage, the wells could be shut off and the lawn and garden irrigation purpose could be curtailed, followed by reductions in domestic use.

16. In the Groundwater Change Technical Analyses Report – Part B, Department Hydrologist Dave Parmelee evaluated the impacts of the proposed change to existing surface water rights by comparing net depletions to surface water based on appropriating the full diverted volume of water under the original permit (114.0 AF) and the total diverted volume under the proposed change (104.75 AF).

17. The Department determined that the source aquifer from which the two wells under 76M 30013295 divert from is hydraulically disconnected from nearby Butler and La Valle Creeks.

18. The Department found that the wells under permit 76M 30013295 are hydraulically connected to the Clark Fork River.

19. The wells are approximately 3.34 miles north/northeast of the Clark Fork River and the depletions from the proposed change occur year-round. Based on the Department's modelling, the total consumed volume, or net depletion, from the originally permitted use is 40.45 AF and the total calculated net depletion from the proposed use is 37.11 AF, resulting in a difference of 3.34 AF. The complete breakdown in the difference between the historical and proposed net depletions to the Clark Fork River is represented in Table 1 of the Department's Groundwater Change Technical Analyses Report – Part B. The hydrologic modelling showed there will be no change in location or timing or amount of depletions to the Clark Fork River resulting from the proposed change in POU and purpose of use. The amount of depletions decreased by 3.34 AF from the originally permitted volume to the proposed volume. Therefore, no surface water rights will be adversely affected as a result of this change.

20. The Department also did not model impacts to nearby wells from the proposed change, as the location, timing and amount of water diverted from the source aquifer is not changing.

21. The Department finds that no water rights will be adversely affected by the proposed change in place of use and purpose of use.

22. The existing water measurement condition will remain on Permit 76M 30013295.

BENEFICIAL USE

FINDINGS OF FACT

23. Provisional permit 76M 30013295 is used as a public water supply (PWS) system for multiple domestic and lawn and garden purposes in the Circle H Ranch and West Pointe subdivisions. The Department considers both purposes to be beneficial uses of water.

24. The Applicant is proposing to change the POU and purpose of use. The POU will be expanded to include all of Section 25, T14N, R20W. The lawn and garden period of use and diversion is currently authorized from April 1 through October 15. The lawn and garden POU lies within Climatic Area III and the Applicant is proposing to use the Department's standard period of use and diversion (April 15 through October 15) found in ARM 36.12.112(1)(c)(iii). The Applicant will maintain the standard period of use diversion and use for domestic purposes from January 1 through December 31, as described in ARM 36.12.112(1)(a).

25. Through the Applicant's request to change the purpose of use, the volumes permitted for lawn and garden and multiple domestic purposes, 50.0 AF and 64.0 AF respectively, will be reduced to 41.57 AF and 63.18 AF. Under permit 76M 30013295, the lawn and garden purpose currently authorizes 9.9 acres in the W2 Section 25 and the 19.7 acres in the E2 Section 26, T14N, R20W, Missoula County. If this proposal is authorized, the lawn and garden irrigation in the E2 Section 26 will be reduced by 5 acres (for a total of 14.7 acres) while the place of use for the remaining 9.9 acres would be expanded to encompass all of Section 25.

26. In their application materials, the Applicant's consultant stated that the proposed diverted volume per acre for the lawn and garden purpose was 1.69 AF. With 24.6 acres of lawn and garden irrigation, the total diverted volume is 41.57 AF (1.69 AF * 24.6 acres). Using the NRCS Irrigation Water Requirement (IWR) program, adjusted or turf grass per the Department's Consumptive Use Methodology – Turf Grass (New Projects) dated March 23, 2010, the Department verified these volumes. More specifically, with the IWR program, the Net Irrigation

Requirement (NIR) of 1.69 AF/acre was affirmed using the Missoula WSO AP weather station, sprinkler irrigation, a default temperature and grow data from the IWR database (45 degrees, grow dates from April 14 – October 13, 1-inch net irrigation depth applied each irrigation, 0.25 inches of carryover moisture at the beginning and end of season), pasture grass and dry year estimates, which were adjusted for turf grass. The Department standard is to use a 70% efficiency factor for lawn and garden irrigation, and with the diverted volume of 41.57 AF, the consumed volume is 29.1 AF/YR (41.57×0.7).

27. The Applicant is proposing to increase the number of housing units from 113 to 162 across the Circle H Ranch and West Pointe subdivisions, with an additional 49 new homes to 113 under existing permit 76M 30013295 proposed for change. The Applicant stated that the diverted volume for multiple domestic use was determined based on an average home size of 4 bedrooms as described in ARM 36.12.115(2)(a). Using the Department's volume standard for a 4-bedroom home, each homesite will use 350 gallons per day (GPD). With 162 units in total, the water usage will be 56,700 GPD ($162 \text{ units} \times 350 \text{ GPD}$), or 0.39 AF/year/unit ($56,700 \text{ GPD} \times 365 \text{ days} / 325,851 \text{ gallons/AF} / 162 \text{ units}$).

28. The volume of water consumed by multiple domestic purpose is a result of the wastewater treatment method. The consumptive use coefficient for a public water supply with treatment through individual drainfields is 10% and 5% for a central treatment facility. According to the Applicant, of the 162 homes proposed, the 34 homes in Circle H Ranch subdivision will have individual drain fields and the other 128 homes in the West Pointe subdivision will go to the City of Missoula's wastewater treatment facility. The Applicant identified a consumed volume of 1.326 AF for the 34 lots and the Department agrees with this figure ($34 \text{ lots} \times 0.39 \text{ AF} = 13.26 \text{ AF} \times 0.10 = 1.326 \text{ AF}$, rounded to 1.33 AF). The City of Missoula's municipal treatment facility is unique in that it applies wastewater to irrigate a Poplar-tree-farm from May to September (5 months or 41.7 % of the year), with a 25% consumption. The other 7 months of the year (October through April, or 58.3% of the year), the standard 5% of diverted volume is consumed. The Applicant applied the 25% consumption throughout the entire year and stated the consumed volume was 12.48 AF for those 128 homes using the City's wastewater treatment facility ($128 \text{ units} \times 0.39 \text{ AF} \times 0.25$). Since the City's wastewater is not consumed at a constant 25% throughout

the year, the Department determined the total volume consumed for the homes using the City's facility to be 6.66 AF/YR ($63.18 \text{ AF} - 13.26 \text{ AF} = \text{remaining } 49.92 \text{ AF}$; $49.92 \text{ AF} * 0.25 = 12.48 \text{ AF}$; $12.48 \text{ AF} * 0.417 = 5.2 \text{ AF}$, and $49.92 \text{ AF} * 0.05 = 2.5 \text{ AF}$; $2.5 \text{ AF} * 0.583 = 1.46 \text{ AF}$). Due to rounding, the total consumed volume for the 128 homes using the City's wastewater treatment facility was determined to be 6.68 AF in the Department's Technical Analyses - Part B. The total consumed volume for the multiple domestic use is 8.01 AF (1.33 AF from the 34 units using individual drainfields and 6.68 AF from the City's facility).

29. The Department finds that the proposed use of 104.75 AF for multiple domestic and lawn and garden purposes is beneficial, and that the requested volumes for the change in purpose and the proposed extension of the POU, are both reasonably justified.

ADEQUATE DIVERSION

FINDINGS OF FACT

30. Through this change, the Applicant requests to continue diverting groundwater at a rate up to 180 GPM and proposes to divert a total volume of 104.75 AF (63.18 AF for multiple domestic and 41.57 AF for lawn and garden). The two wells serve as a Public Water Supply (PWS) for the existing and proposed phases of the West Pointe and Circle H Ranch subdivisions.

31. Provisional permit 76M 30013295 proposed for change authorizes two 8-inch wells (GWIC ID's 214761 and 214758) that are both drilled to 120 feet. These two existing wells will use the same pumps (Goulds Models 5CLC with a 30 HP Grundfos Pump End and 5WAHC 70 GPM) as originally permitted. The wells are located west of Butler Creek and north of Interstate 90 in the NWSESW Section 26, T14N, R20W.

32. The two existing wells are manifold together and a single 12-inch ductile iron pipe Class 350 serves as the distribution mainline throughout the current Circle H Ranch subdivision. This mainline will be extended to provide water for the proposed POU expansion of this subdivision. For the next phase of the West Pointe subdivision, a Standard Dimension Ratio (SDR) 35 Class 350 8-inch line branches off the 12" mainline. Individual service lines with curb stop valves will provide water to the future homesites in each subdivision. The wells fill an existing 500,000-gallon buried concrete reservoir/cistern, which is located at the upper end of the current Circle

H subdivision and provides water via gravity to both subdivisions. A secondary cistern may be incorporated for the future homesites in the Circle H Ranch subdivision. Pursuant to ARM 36.12.113(6)(c), water tanks and cisterns that are part of a water system are not considered water storage as long as the flow rate and volume of a water right is not being increased as a result.

33. In addition to this change application, the Applicant has also submitted pending permit application No. 76M 30170833. Under this permit, a new well will be added to the PWS system, and an additional flow rate of 110 GPM and volume of 49.53 AF will be provided for supplemental multiple domestic use. Permit 76M 30170833 will provide water for up to 127 homesites (85 in West Pointe the subdivision and 42 in the Circle H subdivision).

POSSESSORY INTEREST

FINDINGS OF FACT

34. The Applicant currently owns the parcels where water is proposed to be put to beneficial use, which demonstrates possessory interest in the new/expanded POU.

35. The existing phases of the Circle H Ranch and West Pointe subdivision within the current POU are owned by various private parties. The Applicant operates the existing PWS system, providing water to those current homesites under permit 76M 30013295. The Applicant does not need to provide proof of possessory interest for those places of use that currently exist on 76M 30013295. The Department finds the possessory interest criterion to be met.

CONCLUSIONS OF LAW

HISTORICAL USE AND ADVERSE EFFECT

36. Montana's change statute codifies the fundamental principles of the Prior Appropriation Doctrine. Sections 85-2-401 and -402(1)(a), MCA, authorize changes to existing water rights, permits, and water reservations subject to the fundamental tenet of Montana water law that one may change only that to which he or she has the right based upon beneficial use. A change to an existing water right may not expand the consumptive use of the underlying right or remove the well-established limit of the appropriator's right to water actually taken and beneficially used. An increase in consumptive use constitutes a new appropriation and is subject to the new water

use permit requirements of the MWUA. *McDonald v. State*, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986) (beneficial use constitutes the basis, measure, and limit of a water right); *Featherman v. Hennessy*, 43 Mont. 310, 316-17, 115 P. 983, 986 (1911) (increased consumption associated with expanded use of underlying right amounted to new appropriation rather than change in use); *Quigley v. McIntosh*, 110 Mont. 495, 103 P.2d 1067, 1072-74 (1940) (appropriator may not expand a water right through the guise of a change – expanded use constitutes a new use with a new priority date junior to intervening water uses); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924) (“quantity of water which may be claimed lawfully under a prior appropriation is limited to that quantity within the amount claimed which the appropriator has needed, and which within a reasonable time he has actually and economically applied to a beneficial use. . . . it may be said that the principle of beneficial use is the one of paramount importance . . . The appropriator does not own the water. He has a right of ownership in its use only”); *Town of Manhattan*, ¶ 10 (an appropriator’s right only attaches to the amount of water actually taken and beneficially applied).¹

37. Sections 85-2-401(1) and -402(2)(a), MCA, codify the prior appropriation principles that Montana appropriators have a vested right to maintain surface and ground water conditions substantially as they existed at the time of their appropriation; subsequent appropriators may insist that prior appropriators confine their use to what was actually appropriated or necessary for their originally intended purpose of use; and, an appropriator may not change or alter its use in a manner that adversely affects another water user. *Spokane Ranch & Water Co. v. Beatty*, 37 Mont. 342, 96 P. 727, 731 (1908); *Quigley*, 110 Mont. at 505-11, 103 P.2d at 1072-74; *Matter of Royston*, 249 Mont. at 429, 816 P.2d at 1057; *Hohenlohe*, ¶¶ 43-45.²

38. The cornerstone of evaluating potential adverse effect to other appropriators is the

¹ DNRC decisions are available at: <https://dnrc.mt.gov/Directors-Office/HearingOrders>

² See also *Holmstrom Land Co., Inc., v. Newlan Creek Water District*, 185 Mont. 409, 605 P.2d 1060 (1979); *Lokowich v. Helena*, 46 Mont. 575, 129 P. 1063 (1913); *Thompson v. Harvey*, 164 Mont. 133, 519 P.2d 963 (1974) (plaintiff could not change his diversion to a point upstream of the defendants because of the injury resulting to the defendants); *McIntosh v. Graveley*, 159 Mont. 72, 495 P.2d 186 (1972) (appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909) (successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes); and, *Gassert v. Noyes*, 18 Mont. 216, 44 P. 959 (1896) (change in place of use was unlawful where reduced the amount of water in the source of supply available which was subject to plaintiff’s subsequent right).

determination of the “historic use” of the water right being changed. *Town of Manhattan*, ¶10 (recognizing that the Department’s obligation to ensure that change will not adversely affect other water rights requires analysis of the actual historic amount, pattern, and means of water use). A change Applicant must prove the extent and pattern of use for the underlying right proposed for change through evidence of the historic diverted amount, consumed amount, place of use, pattern of use, and return flow because a statement of claim, permit, or decree may not include the beneficial use information necessary to evaluate the amount of water available for change or potential for adverse effect.³ A comparative analysis of the historic use of the water right to the proposed change in use is necessary to prove the change will not result in expansion of the original right, or adversely affect water users who are entitled to rely upon maintenance of conditions on the source of supply for their water rights. *Quigley*, 103 P.2d at 1072-75 (it is necessary to ascertain historic use of a decreed water right to determine whether a change in use expands the underlying right to the detriment of other water user because a decree only provides a limited description of the right); *Royston*, 249 Mont. at 431-32, 816 P.2d at 1059-60 (record could not sustain a conclusion of no adverse effect because the Applicant failed to provide the Department with evidence of the historic diverted volume, consumption, and return flow); *Hohenlohe*, ¶ 44-45; *Town of Manhattan v. DNRC*, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, *Order Re Petition for Judicial Review*, Pgs. 11-12 (proof of historic use is required even when the right has been decreed because the decreed flow rate or volume establishes the maximum appropriation that may be diverted, and may exceed the historical pattern of use, amount diverted or amount consumed through actual use); *Matter of Application For Beneficial Water Use Permit By City of Bozeman*, *Memorandum*, Pgs. 8-22 (Adopted by DNRC *Final Order* January 9, 1985)(evidence of historic use must be compared to the proposed change in use to give effect to the implied limitations read into every decreed right that an appropriator has no right to expand his appropriation or change his use to the detriment of

³A claim only constitutes *prima facie* evidence for the purposes of the adjudication under § 85-2-221, MCA. The claim does not constitute *prima facie* evidence of historical use in a change proceeding under § 85-2-402, MCA. For example, most water rights decreed for irrigation are not decreed with a volume and provide limited evidence of actual historic beneficial use. Section 85-2-234, MCA

juniors).⁴

39. An Applicant must also analyze the extent to which a proposed change may alter historic return flows for purposes of establishing that the proposed change will not result in adverse effect. The requisite return flow analysis reflects the fundamental tenant of Montana water law that once water leaves the control of the original appropriator, the original appropriator has no right to its use and the water is subject to appropriation by others. *E.g., Hohenlohe*, ¶ 44; *Rock Creek Ditch & Flume Co. v. Miller*, 93 Mont. 248, 17 P.2d 1074, 1077 (1933); *Newton v. Weiler*, 87 Mont. 164, 286 P. 133 (1930); *Popham v. Holloron*, 84 Mont. 442, 275 P. 1099, 1102 (1929); *Galiger v. McNulty*, 80 Mont. 339, 260 P. 401 (1927); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909); *Spokane Ranch & Water Co.*, 37 Mont. at 351-52, 96 P. at 731; *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185; ARM 36.12.101(56) (Return flow - that part of a diverted flow which is not consumed by the appropriator and returns underground to its original source or another source of water - is not part of a water right and is subject to

⁴ Other western states likewise rely upon the doctrine of historic use as a critical component in evaluating changes in appropriation rights for expansion and adverse effect: *Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy District*, 717 P.2d 955, 959 (Colo. 1986) (“[O]nce an appropriator exercises his or her privilege to change a water right ... the appropriator runs a real risk of requantification of the water right based on actual historical consumptive use. In such a change proceeding a junior water right ... which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historic use of the right.”); *Santa Fe Trail Ranches Property Owners Ass'n v. Simpson*, 990 P.2d 46, 55 -57 (Colo.,1999); *Farmers Reservoir and Irr. Co. v. City of Golden*, 44 P.3d 241, 245 (Colo. 2002) (“We [Colorado Supreme Court] have stated time and again that the need for security and predictability in the prior appropriation system dictates that holders of vested water rights are entitled to the continuation of stream conditions as they existed at the time they first made their appropriation”); *Application for Water Rights in Rio Grande County*, 53 P.3d 1165, 1170 (Colo. 2002); Wyo. Stat. § 41-3-104 (When an owner of a water right wishes to change a water right ... he shall file a petition requesting permission to make such a change The change ... may be allowed provided that the quantity of water transferred ... shall not exceed the amount of water historically diverted under the existing use, nor increase the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators.); *Basin Elec. Power Co-op. v. State Bd. of Control*, 578 P.2d 557, 564 -566 (Wyo,1978) (a water right holder may not effect a change of use transferring more water than he had historically consumptively used; regardless of the lack of injury to other appropriators, the amount of water historically diverted under the existing use, the historic rate of diversion under the existing use, the historic amount consumptively used under the existing use, and the historic amount of return flow must be considered.)

appropriation by subsequent water users).⁵

40. Although the level of analysis may vary, analysis of the extent to which a proposed change may alter the amount, location, or timing return flows is critical in order to prove that the proposed change will not adversely affect other appropriators who rely on those return flows as part of the source of supply for their water rights. *Royston*, 249 Mont. at 431, 816 P.2d at 1059-60; *Hohenlohe*, at ¶¶ 45-46 and 55-6; *Spokane Ranch & Water Co.*, 37 Mont. at 351-52, 96 P. at 731.

41. In *Royston*, the Montana Supreme Court confirmed that an Applicant is required to prove lack of adverse effect through comparison of the proposed change to the historic use, historic consumption, and historic return flows of the original right. 249 Mont. at 431, 816 P.2d at 1059-60. More recently, the Montana Supreme Court explained the relationship between the fundamental principles of historic beneficial use, return flow, and the rights of subsequent appropriators as they relate to the adverse effect analysis in a change proceeding in the following manner:

The question of adverse effect under §§ 85-2-402(2) and -408(3), MCA, implicates return flows. A change in the amount of return flow, or to the hydrogeologic pattern of return flow, has the potential to affect adversely downstream water rights. There consequently exists an inextricable link between the “amount historically consumed” and the water that re-enters the stream as return flow. . .

An appropriator historically has been entitled to the greatest quantity of water he can put to use. The requirement that the use be both beneficial and reasonable, however, proscribes this tenet. This limitation springs from a fundamental tenet of western water law-that an appropriator has a right only to that amount of water historically put to beneficial use-developed in concert with the rationale that each subsequent appropriator “is entitled to have the water flow in the same manner as when he located,” and the appropriator may insist that prior appropriators do not affect adversely his rights.

This fundamental rule of Montana water law has dictated the Department’s determinations in numerous prior change proceedings. The Department claims that historic consumptive use, as quantified in part by return flow analysis, represents a key element of proving historic beneficial use.

⁵ The Montana Supreme Court recently recognized the fundamental nature of return flows to Montana’s water sources in addressing whether the Mitchell Slough was a perennial flowing stream, given the large amount of irrigation return flow which feeds the stream. The Court acknowledged that the Mitchell’s flows are fed by irrigation return flows available for appropriation. *Bitterroot River Protective Ass’n, Inc. v. Bitterroot Conservation Dist.*, 2008 MT 377, ¶¶ 22, 31, 43, 346 Mont. 508, 198 P.3d 219,(citing *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185).

We do not dispute this interrelationship between historic consumptive use, return flow, and the amount of water to which an appropriator is entitled as limited by his past beneficial use.

Hohenlohe, at ¶¶ 42-45 (internal citations omitted).

42. The Department's rules reflect the above fundamental principles of Montana water law and are designed to itemize the type of evidence and analysis required for an Applicant to meet its burden of proof. ARM 36.12.1901 through 1903. These rules forth specific evidence and analysis required to establish the parameters of historic use of the water right being changed. ARM 36.12.1901 and 1902. The rules also outline the analysis required to establish a lack of adverse effect based upon a comparison of historic use of the water rights being changed to the proposed use under the changed conditions along with evaluation of the potential impacts of the change on other water users caused by changes in the amount, timing, or location of historic diversions and return flows. ARM 36.12.1901 and 1903.

43. Based upon the Applicant's comparative analysis of historic water use and return flows to water use and return flows under the proposed change, the Applicant has proven that the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued. Section 85-2-402(2)(a), MCA. (FOF Nos. 14 - 22).

BENEFICIAL USE

44. A change Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. Sections 85-2-102(4) and -402(2)(c), MCA. Beneficial use is and has always been the hallmark of a valid Montana water right: "[T]he amount actually needed for beneficial use within the appropriation will be the basis, measure, and the limit of all water rights in Montana . . ." McDonald, 220 Mont. at 532, 722 P.2d at 606. The analysis of the beneficial use criterion is the same for change authorizations under § 85-2-402, MCA, and new beneficial permits under § 85-2-311, MCA. ARM 36.12.1801. The amount of water that may be authorized for change 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 (Mont. 1st Jud. Dist. Ct.) (2003) (*affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518); *Worden v. Alexander*, 108 Mont. 208, 90 P.2d 160 (1939); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924); *Sitz Ranch v. DNRC*, DV-10-13390,, *Order Affirming DNRC Decision*, Pg. 3 (Mont. 5th Jud. Dist. Ct.) (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); *Toohey v. Campbell*, 24 Mont. 13, 60 P. 396 (1900) ("The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses. He is restricted in the amount that he can appropriate to the quantity needed for such beneficial purposes."); § 85-2-312(1)(a), MCA (DNRC is statutorily prohibited from issuing a permit for more water than can be beneficially used).

45. Applicant proposes to use water for multiple domestic and lawn and garden purposes which are both recognized beneficial uses. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence multiple domestic and lawn and garden are beneficial uses and that 63.18 AF and 41.57 AF of diverted volume respectively, and 180 GPM of water requested is the amount needed to sustain the beneficial use and is within the Departments standards for the uses. Section 85-2-402(2)(c), MCA (FOF Nos. 23-29).

ADEQUATE MEANS OF DIVERSION

46. Pursuant to § 85-2-402 (2)(b), MCA, the Applicant must prove by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. This codifies the prior appropriation principle that the means of diversion must be reasonably effective for the contemplated use and may not result in a waste of the resource. *Crowley v. 6th Judicial District Court*, 108 Mont. 89, 88 P.2d 23 (1939); *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002) (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).

47. Pursuant to § 85-2-402 (2)(b), MCA, 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. (FOF Nos. 30—33).

POSSESSORY INTEREST

48. Pursuant to § 85-2-402(2)(d), MCA, the 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. See also ARM 36.12.1802.

49. 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. (FOF Nos. 34-35).

PRELIMINARY DETERMINATION

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right No. 76M 30170836 should be Granted subject to the following.

The Applicant is authorized to change the place of use and purpose of use for water right 76M 30013295. The POU will be expanded from the W2 Section 25 and the E2 Section 26, both in T14N, R 20 W, to include all of Section 25 and the E2 Section 26. The purpose of use will change by shifting the current authorized volumes of 50.0 AF and 64.0 AF for lawn and garden and multiple domestic uses, to 41.57 AF and 63.18 AF, respectively. Presently, the lawn and garden use consists of 9.90 acres in the W2 Section 25 and 19.70 acres in the E2 Section 26, both in T14N, R20W, Missoula County. The lawn and garden acres will be reduced by 5 acres in the E2 Section 26 (for a total of 14.7 acres in this Section), requiring a proposed volume of 41.57 AF.

The Department determines the Applicant may divert water from the groundwater, by means of a two 120-foot wells, from January 1 to December 31 for multiple domestic and April 1 through October 15 for lawn and garden, at 180 GPM, up to a total volume of 104.75 AF, from points in the NWSESW Section 26, T14N, R 20W, Missoula County. The place of use is in Section 25 and E2 Section 26, T14N, R20W. Applicant may irrigate a total of 24.6 acres of lawn and garden, with 9.90 acres in Section 25 and 14.70 acres in E2 Section 26, 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, 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

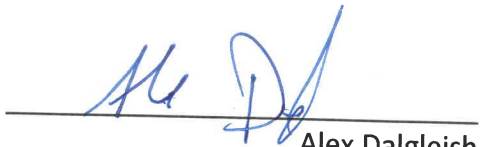
CERTIFICATE OF SERVICE

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.

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