Water Resources Division – Kalispell Regional Office
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(406) 752-2288
DNRCKalispellWater@mt.gov

December 16, 2025

SALISH SHORES UTILITY CORP., INC.
PO BOX 1030
THOMPSON FALLS MT 59873-1030

Subject: Draft Preliminary Determination to Grant Change Application No. 76N 30165123

Dear Applicant,

The Department of Natural Resources and Conservation (Department) has completed a preliminary review of your application. This review consists of an evaluation of the criteria for issuance of a change found in §85-2-402, MCA. The Department has preliminarily determined that the criteria are met, and this application should be granted. A copy of the Draft Preliminary Determination to Grant your application is attached.

You have the opportunity to request an extension of time to submit additional information for the Department to consider in the decision within 15 business days of the date of this letter. If no response is received by January 8, 2026, the Department will prepare a notice of opportunity to provide public comment per §85-2-307(4), MCA.

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

Please contact me at (406) 752-2746 or Travis.Wilson@mt.gov if you have any questions.

Sincerely,

Travis Wilson
Water Resource Specialist
Kalispell Regional Office

Encl.: Draft Preliminary Determination to Grant Change Application No. 76N 30165123

Cc via email: Bryan Gartland, Aspect Consulting

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

* * * * * * *

APPLICATION TO CHANGE WATER RIGHT NO. 76N 30165123 BY SALISH SHORES UTILITY CORP., INC.	**)** **)** **)**	**DRAFT PRELIMINARY DETERMINATION TO GRANT CHANGE**

* * * * * * *

The Salish Shores Utility Corp., Inc. (Applicant) submitted Application to Change an Existing Water Right No. 76N 30165123 to change Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 to the Kalispell Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) on July 28, 2025. The Department published receipt of the application on its website on August 7, 2025. The Department sent Applicant a deficiency letter under §85-2-302, Montana Code Annotated (MCA), dated August 18, 2025. The Applicant responded with information dated September 18, 2025. A preapplication meeting was held between the Department and the Applicant's consultant, Aspect Consulting, on January 8, 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 January 31, 2025. The Department delivered the Department-completed technical analyses on March 20, 2025. The Application was determined to be correct and complete as of October 17, 2025. An Environmental Assessment for this application was completed on December 16, 2025.

INFORMATION

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

Application as filed:

- Change Preapplication Meeting Form, Form 606P.
    - Attachments:
        - Attachment A: Historic Use Map

        - Attachment B: Proposed Use Map
        - Attachment C: Historic Use – Supporting Municipal Use Information
        - Attachment D: Aquifer Testing Addendum and Aquifer Test Data, Forms 606-ATA and 633, respectively.

- Application to Change a Water Right, Form 606.
    - Attachments:
        - Attachment A: Preapplication and Technical Analyses Information
            - Attachment A.1: Application to Change a Water Right Technical Analyses Addendum, Form 606-TAA
            - Attachment A.2: Department-completed Groundwater Change Technical Analyses Report based on information provided in the Preapplication Meeting Form, dated March 20, 2025.
        - Attachment B: Maps
            - Attachment B.1: Existing (Historical) Use Map
            - Attachment B.2: Proposed Use Map
        - Attachment C: Points of Diversion and Place of Use
            - Attachment C.1: Existing and Proposed Points of Diversion
            - Attachment C.2: Proposed Municipal Place of Use Details
        - Attachment D: Adverse Effect
            - Attachment D.1: Diversion Control
            - Attachment D.2: Existing Water Right Protection
            - Attachment D.3: Calls for Water
        - Attachment E: Adequate Means of Diversion and Operation
            - Attachment E.1: Diversion Capacity
            - Attachment E.2: System Conveyance
            - Attachment E.3: Easements
            - Attachment E.4: Plan of Operation
        - Attachment F: Proposed Beneficial Use
            - Attachment F.1: Municipal Beneficial Use

Information Received after Application Filed

- A memorandum from the Applicant's consultant was received by the Department on September 18, 2025. This memorandum contained information in response to the Department's deficiency letter, dated August 18, 2025.

Information within the Department's Possession/Knowledge

- Administrative file for Provisional Permit No. 76N 81519-00.
- Administrative file for Provisional Permit No. 76N 85780-00.
- Administrative file for Provisional Permit No. 76N 97278-00.
- Administrative file for Provisional Permit No. 76N 30016270.

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:

AF means acre-feet	**BGS** means below ground surface
BTC means below top of casing	**CFS** means cubic feet per second
Department or **DNRC** means the Department of Natural Resources and Conservation	
DEQ means Department of Environmental Quality	**FOF** means finding of fact
GPM means gallons per minute	**NHD** means the National Hydrographic Dataset
POD means point of diversion	**PVC** means polyvinyl chloride
PWS means Public Water Supply	**S** means Storativity
SWL means static water level	**T** means Transmissivity
USGS means the United States Geological Survey	**VFD** means variable frequency drive

WATER RIGHTS TO BE CHANGED

FINDINGS OF FACT

1. The Applicant proposes to change Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270, which serve the municipal uses of the Salish Shores PWS system. The current active versions of all of these water rights is version 2 – change authorization version. The details of these existing water rights are summarized in **Tables 1 and 2**. These water

rights were previously changed by unperfected water right Change Authorization No. 76N 30027719. Provisional Permit Nos. 76N 81519-00, 76N 85780-00, and 76N 97278-00 are perfected permits, while Provisional Permit No. 76N 30016270 is unperfected. Provisional Permit No. 76N 81519-00 was perfected on December 31, 2003, and Provisional Permit Nos. 76N 85780-00 and 76N 97278-00 were both perfected on June 19, 2007.

Table 1: Summary of Water Rights Proposed for Change

Water Right Number	Priority Date	Purpose	Flow Rate (GPM)	Volume (AF)	Period of Diversion & Use	Means of Diversion	Points of Diversion & Places of Use
76N 81519-00	May 14, 1992	Municipal	110.00	48.90	01/01 – 12/31	Seven Wells	See Table 2
76N 85780-00	June 1, 1993		210.00	104.32			
76N 97278-00	May 17, 1996		440.00	25.98			
76N 30016270	August 19, 2005		688.50	198.10			

Table 2: Summary of the Points of Diversion and Places of Use for the Water Rights Proposed for Change

The four provisional permit water rights proposed for change are the only four water rights that serve a manifold system and share all of the same points of diversion and places of use.

Points of Diversion

Well ID	GWIC ID	1/4	1/4	1/4	Section	Township	Range	County
H1	135335	SW	NE	SE	16	21 N	29 W	Sanders
H2	131977	SW	NE	SE	16	21 N	29 W	Sanders
H3	139319	SW	SW	SE	15	21 N	29 W	Sanders
H4	139318	SW	SW	SE	15	21 N	29 W	Sanders
H5	175584	NE	SW	NW	15	21 N	29 W	Sanders
H6	175632	NE	SW	NW	15	21 N	29 W	Sanders
H7	175585	NW*	SE*	NW	15	21 N	29 W	Sanders

Places of Use

POU ID	---	1/4	1/4	1/4	Section	Township	Range	County
1	---	---	---	---	15	21 N	29 W	Sanders
2	---	---	---	E2	16	21 N	29 W	Sanders
3	---	---	W2	SW	13	21 N	29 W	Sanders
4	---	---	---	---	14	21 N	29 W	Sanders
5	---	---	N2	N2	22	21 N	29 W	Sanders
6	---	---	N2	N2	23	21 N	29 W	Sanders

*The Applicant pointed out that the legal land description quarter sections of this well should be the "NWSENW" but has been erroneously coded on previous water right versions as "NESWNW." The Department will present the true and correct legal land description quarter sections for this well in this document and will work with the Applicant to correct this error on all previous water right versions as well.

CHANGE PROPOSAL

FINDINGS OF FACT

2. The Applicant proposes adding an eighth point of diversion (well GWIC ID No. 76372) to Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 and changing their place of use to include the entire projected service area of the Salish Shores PWS system as part of the Montana Public Service Commission's Master Development Plan. The proposed new well will divert water at 167.5 GPM, though no additional flow rate or volume for the overall Salish Shores PWS system is requested in this application. The locations of the proposed new POD and places of use are detailed in **Tables 3 and 4**, respectively. The full details of the proposed change are displayed in **Tables 5 – 7**.

3. No changes to the purpose of use are proposed in this change and there is no storage component to these water rights. The project is in Water Right Basin 76N (Clark Fork River, Below Flathead River) in an area that is not subject to water right basin closures or controlled groundwater area restrictions.

Table 3: Proposed New Point of Diversion for the Water Rights Proposed for Change

GWIC ID	1/4	1/4	1/4	Section	Township	Range	County
76372	NE	NW	NW	15	21 N	29 W	Sanders

Table 4: Proposed New Places of Use for the Water Rights Proposed for Change

1/4	1/4	1/4	Section	Township	Range	County
---	E2	SW	9	21 N	29 W	Sanders
---	W2	SE	9	21 N	29 W	Sanders
---	SE	SE	9	21 N	29 W	Sanders
---	SW	SW	10	21 N	29 W	Sanders
---	NE	NW	14	21 N	29 W	Sanders
---	---	NE	14	21 N	29 W	Sanders
---	SE	NW	14	21 N	29 W	Sanders
---	NE	SE	14	21 N	29 W	Sanders
---	N2	NE	15	21 N	29 W	Sanders

Note: The legal land descriptions in this table represent only the proposed new places of use. The overall places of use for the subject provisional permits are summarized in their most simplified form in Table 7. See Figure 2 for a visual representation of the existing and proposed places of use.

Table 5: Summary of the Proposed Changes (Bold underlined text identifies the water right elements proposed for change)							
Water Right Number	Priority Date	Purpose	Flow Rate (GPM)	Volume (AF)	Period of Diversion & Use	Means of Diversion	Points of Diversion & Places of Use
76N 81519-00	May 14, 1992	Municipal	110.00	48.90	01/01 - 12/31	Eight Wells	**See Tables 6 & 7**
76N 85780-00	June 1, 1993		210.00	104.32			
76N 97278-00	May 17, 1996		440.00	25.98			
76N 30016270	August 19, 2005		688.50	198.10			

Table 6: Points of Diversion for the Water Rights Proposed for Change (Bold underlined text identifies the water right elements proposed for change)							
GWIC ID	**1/4**	**1/4**	**1/4**	**Section**	**Township**	**Range**	**County**
135335	SW	NE	SE	16	21 N	29 W	Sanders
131977	SW	NE	SE	16	21 N	29 W	Sanders
139319	SW	SW	SE	15	21 N	29 W	Sanders
139318	SW	SW	SE	15	21 N	29 W	Sanders
175584	NE	SW	NW	15	21 N	29 W	Sanders
175632	NE	SW	NW	15	21 N	29 W	Sanders
175585	NW	SE	NW	15	21 N	29 W	Sanders
76372	**NE**	**NW**	**NW**	**15**	**21 N**	**29 W**	**Sanders**

Table 7: Places of Use for the Water Rights Proposed for Change (Bold underlined text identifies the water right elements proposed for change)						
1/4	**1/4**	**1/4**	**Section**	**Township**	**Range**	**County**
---	**E2**	**SW**	**9**	**21 N**	**29 W**	**Sanders**
---	**W2**	**SE**	**9**	**21 N**	**29 W**	**Sanders**
---	**SE**	**SE**	**9**	**21 N**	**29 W**	**Sanders**
---	**SW**	**SW**	**10**	**21 N**	**29 W**	**Sanders**
---	W2	SW	13	21 N	29 W	Sanders
---	---	---	**14**	**21 N**	**29 W**	**Sanders**
---	---	---	**15**	**21 N**	**29 W**	**Sanders**
---	---	E2	16	21 N	29 W	Sanders
---	N2	N2	22	21 N	29 W	Sanders
---	N2	N2	23	21 N	29 W	Sanders

4. To ensure that adding an eighth POD does not adversely affect existing water users by increasing the diverted flow rate or volume from combined use of eight PODs, this change will be subject to the following condition:

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

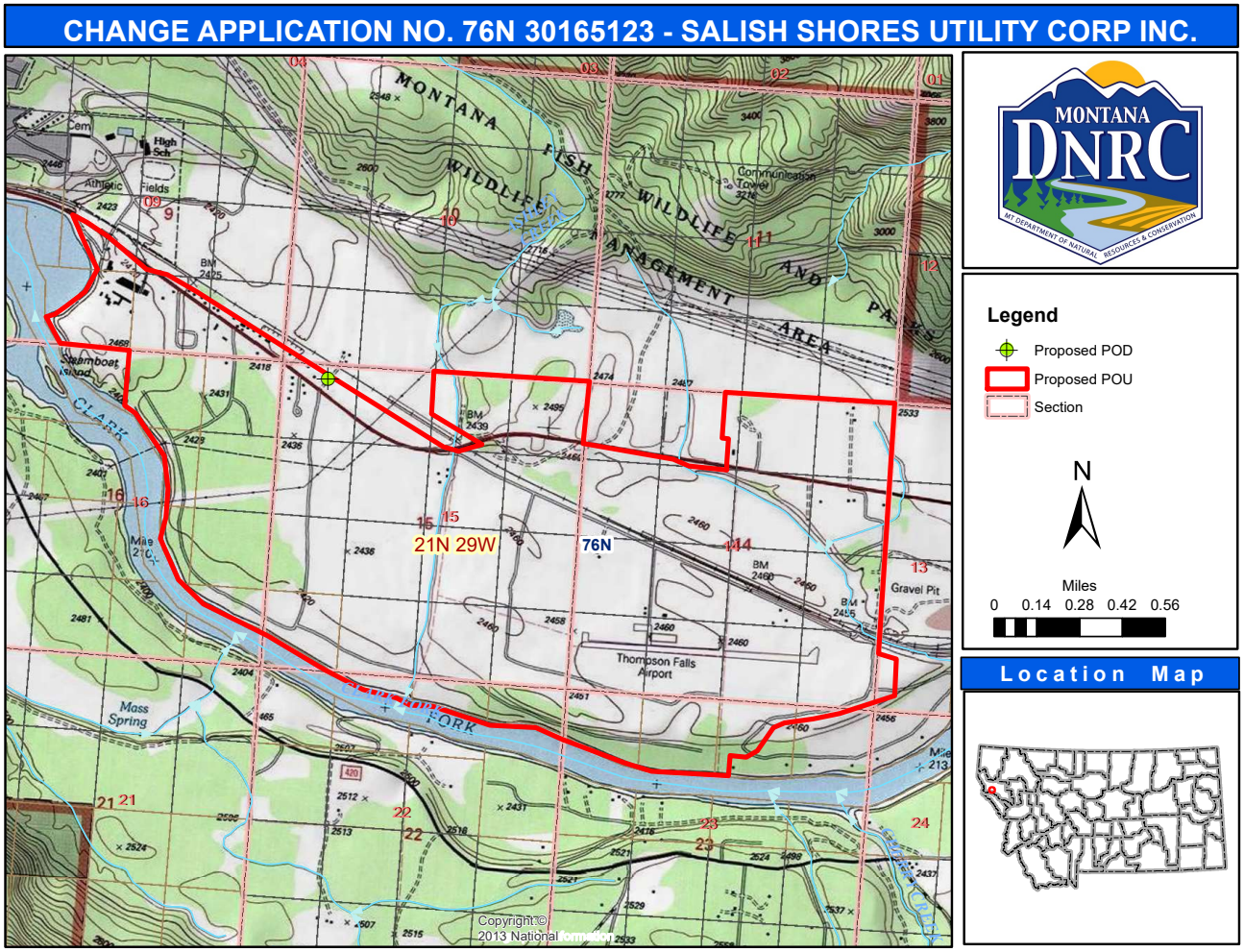

Figure 1: Applicant's proposed point of diversion and place of use.

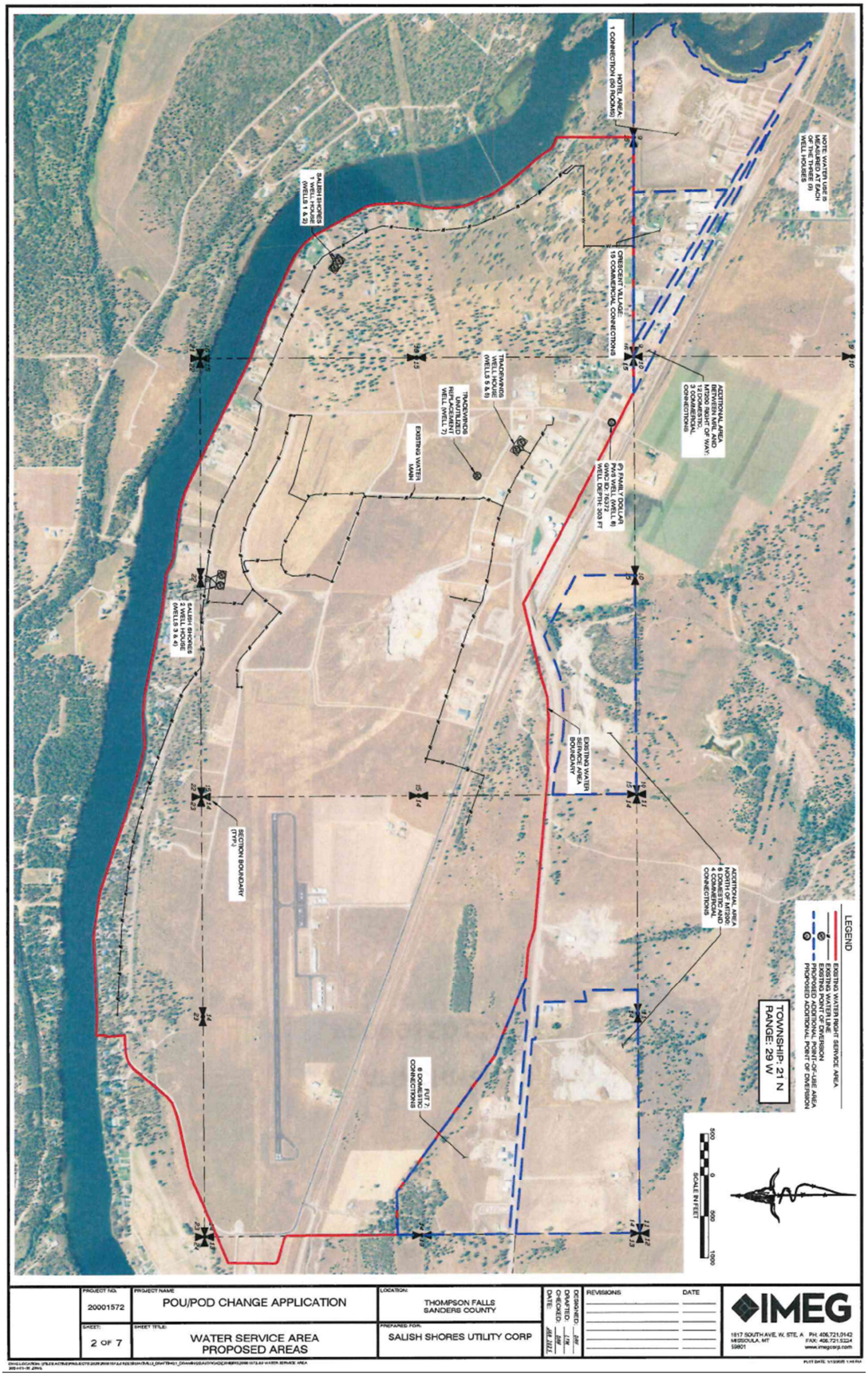

Figure 2. Map of the Applicant's proposed point of diversion, proposed place of use, existing/historical points of diversion, and historical place of use. The solid red outline delineates the existing place of use, while the dashed blue outlines delineate the proposed new places of use.

CHANGE CRITERIA

5. 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.

6. 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

FINDINGS OF FACT

7. The Applicant proposes adding an eighth POD (GWIC ID No. 76372) to Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 and changing their place to include the entire projected Salish Shores PWS system service area. Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 were previously changed by unperfected Change Authorization No. 76N 30027719. The changes authorized under unperfected Change Authorization No. 76N 30027719 were to add an additional POD (well), change the purpose to municipal, manifold all wells into the PWS system, add a place of use, and make the place of use on all permits match the Salish Shores PWS system service area. As with the subject change authorization application, no additional flow or volume was required to accomplish the requested changes.

8. Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 are supplemental because they all share the same points of diversion and places of use. The historical use of these water rights was proven by the applicant and quantified by the DNRC in Change Authorization No. 76N 30027719. The applicant did not submit additional addenda or information with this application contradicting the Department's previous findings, therefore the DNRC will use the findings from the previous historical use analysis for this application. Provisional Permit Nos. 76N 81519-00, 76N 85780-00, and 76N 97278-00 are perfected permits. Provisional Permit No. 76N 30016270 is unperfected and therefore carries forward its full flow rate and volume to this change application. The historical use of these water rights, as proven in Change Authorization No. 76N 30027719, is summarized in **Table 8**.

9. The Department did not make findings on the historically consumed volume in Change Authorization No. 76N 30027719. The Department standard for consumption for domestic or institutional purposes (or municipal use not associated with a Municipality) using individual drainfields for water treatment is 10-percent. Employing DNRC standards, the total consumed

volume is 37.73 AF/year (48.90 AF + 104.32 AF + 25.98 AF + 198.10 AF = 377.30 AF x 0.10 = 37.73 AF).

Table 8: Summary of the Historical Use of the Water Rights Proposed for Change							
Water Right Number	Historical Purpose	Historical Period of Diversion & Use	Historical Places of Use	Historical Points of Diversion	Maximum Historical Flow Rate (GPM)	Historically Consumed Volume (AF)	Historically Diverted Volume (AF)
76N 81519-00	Multiple Domestic	01/01 - 12/31	See Table 2		110.00	4.89	48.90
76N 85780-00	Multiple Domestic				210.00	10.43	104.32
76N 97278-00	Commercial; Lawn and Garden				440.00	2.60	25.98
76N 30016270	Municipal				688.50	19.81	198.10
Total					1,448.50	37.73	377.30

10. The Department will rely on its previous findings of historical use for Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 from Change Authorization No. 76N 30027719 as presented in **Table 8** for analysis of this application.

ADVERSE EFFECT

FINDINGS OF FACT

11. The Applicant proposes adding an eighth POD (GWIC ID No. 76372) to Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 and changing their place to include the entire projected Salish Shores PWS system service area. The historical diverted and consumed volumes of 377.30 AF/year and 33.73 AF/year, respectively, were found for the municipal use.

12. The Applicant asserted in their application that during times of water shortage, senior appropriators will be satisfied prior to the Applicant's diversion of water from the source aquifer. Should a call for water be made on the source aquifer by a senior appropriator, the Applicant will promptly reduce pumping from the source aquifer and will implement water conservation practices for the system and its users. They further assert that since complete cessation of this municipal water supply could create significant public health and safety issues to its end users, the Applicant would contact senior appropriators to identify water saving methods that may

reduce the Applicant's cumulative impact on the source aquifer while maintaining the basic needs of Salish Shores PWS system water users.

13. Potential adverse effect resulting from the proposed change was evaluated by using the Applicant's proposed pumping schedule and associated volume to model drawdown in nearby wells and changes in net depletions to hydraulically connected surface water sources.

GROUNDWATER

14. Information provided by the Applicant shows that four of the seven existing wells are the primary Production Wells for the service area (GWIC ID Nos. 135335, 131977, 175584, and 175632). Therefore, the existing (historical) pumping schedule was apportioned to four wells (**Table 9**), while the proposed pumping schedule was apportioned to five wells (GWIC ID Nos. 135335, 131977, 175584, 175632, and 76372 [proposed well]) (**Table 10**). The three redundant wells (GWIC ID Nos. 139319, 139318, and 175585) were not assigned proportions of historical or proposed pumping volumes. The list of wells, including well depth and estimated capacity is shown in **Table 11**. The total flow rate and volume proposed for change is 1,448.5 GPM and 377.3 AF/year for municipal purpose with a period of diversion and period of use from January 1 to December 31.

15. Drawdown in existing wells was modeled for existing (four wells) and proposed (five wells) conditions with the Hantush (1960[1]) leaky-confined early-time solution, a T of 6,750 ft^2/day, S of 1.7×10^{-4}, β (leakage parameter) of 0.14, and the monthly pumping schedules identified in **Tables 9 and 10** for a period of five years. The Applicant provided water use records for 2023 and 2024 which reflects approximate monthly use shown in **Table 9 and 10**.

16. Due to the proximity of GWIC ID Nos. 135335 and 131977, and GWIC ID Nos. 175584 and 175632, the monthly pumping schedules were modeled as centroids between each well pair. The maximum drawdown at the end of August of the fifth year of pumping under existing conditions (**Table 9**) show maximum drawdown at the centroid of the well pairs. The maximum drawdown at the end of August of the fifth year of pumping under proposed conditions (**Table 10**) show maximum drawdown at the centroid of the well pairs and the proposed well (GWIC ID No. 76372).

[1] Hantush, M.S. 1960. Modification of the theory of leaky aquifers, Jour. of Geophys. Res., vol. 65, no. 11, pp. 3713-3725.

Table 9: Monthly pumping schedules for existing wells				
Month	GWIC ID 135335 and 131977 (GPM)	GWIC ID 175584 and 174632 (GPM)	Total pumping schedule (GPM)	Total pumping volume (AF)
January	71.6	24.4	95.9	13.1
February	95.7	32.6	128.3	15.9
March	100.3	34.2	134.5	18.4
April	151.1	51.5	202.6	26.9
May	211.3	71.9	283.2	38.8
June	302.8	103.1	405.9	53.8
July	242.8	82.7	325.4	44.6
August	362.2	123.3	485.5	66.5
September	198.8	67.7	266.5	35.3
October	178.7	60.8	239.5	32.8
November	103.1	35.1	138.2	18.3
December	70.3	23.9	94.2	12.9
Total				**377.3**

Table 10: Monthly Pumping Schedules for Proposed Wells					
Month	GWIC ID 135335 and 131977 (GPM)	GWIC ID 175584 and 174632 (GPM)	GWIC ID 76372 (GPM)	Total pumping schedule (GPM)	Total pumping volume (AF)
January	70.0	23.8	2.1	95.9	13.1
February	93.6	31.9	2.8	128.3	15.9
March	98.1	33.4	3.0	134.5	18.4
April	147.8	50.3	4.5	202.6	26.9
May	206.6	70.3	6.3	283.2	38.8
June	296.1	100.8	9.0	405.9	53.8
July	237.4	80.8	7.2	325.4	44.6
August	354.2	120.6	10.7	485.5	66.5
September	194.5	66.2	5.9	266.5	35.3
October	174.7	59.5	5.3	239.5	32.8
November	100.8	34.3	3.1	138.2	18.3
December	68.7	23.4	2.1	94.2	12.9
Total					**377.3**

Table 11: Well Information		
GWIC ID	Well Depth (feet BTC)	Estimated Capacity (GPM)
135335	121.0	246.0
131977	141.0	245.0
139319	240.0	427.0
139318	246.0	307.0
175584	367.0	160.0
175632	355.0	240.0
175585	423.0	75.0
76372 (proposed)	303.0	167.5

17. Using the Applicant-provided monthly pumping schedule, the one-foot drawdown contour for well pair GWIC ID 135335 and 131977 extends approximately 50 feet from the centroid of the two wells. The one-foot drawdown contour for well pair GWIC ID 175584 and 175632 extends approximately 15 feet from the centroid of the two wells. No existing water rights are within the modeled one-foot contour for either existing well pair.

18. With the addition of the proposed well and using the Applicant provided monthly pumping schedule, the one-foot drawdown contour for well pair GWIC ID 135335 and 131977 reduces to approximately 40 feet from the centroid of the proposed wells. The one-foot drawdown contour reduces to approximately 10 feet from well pair GWIC ID 175584 and 175632. The proposed well, GWIC ID No. 76372, has a maximum drawdown extent of approximately 0.3 feet. No water rights are within the modeled one-foot contour for either existing well pair or the proposed well.

SURFACE WATER

19. Net surface water depletion is equal to the consumed volume for a proposed groundwater use and is described as the calculated volume, rate, timing, and location of reductions to surface water that are offset by return flows (non-consumed water) from the place of use. Net depletion is evaluated by:

i. Quantifying the consumed volume associated with the proposed use;

ii. Identifying hydraulically connected surface waters; and,

iii. Calculating the monthly rate and timing of depletions to affected surface water(s).

20. Consumed groundwater does not return to the source aquifer. Consumed volume depends on the proposed use and its associated percentage of known consumption. Depletion is assumed

to be equivalent to consumption on an annual basis unless return flows do not accrete to the potentially affected surface water. The Department found a total annual consumed volume of 33.73 AF/year for the municipal use associated with the Salish Shores PWS system.

21. Net depletions to surface water depend on propagation of drawdown to locations where surface water is hydraulically connected to groundwater, the hydraulic properties of an aquifer, and is not a function of groundwater flow rate or direction (Theis, 1938[2]; Leake, 2011[3]). Hydraulic connection depends on the depth to groundwater beneath the beds of surface waters and can vary along a reach and with time of year. Drawdown from pumping can propagate through the entire thickness of the confining layer to overlying aquifers or surface waters (Konikow and Neuzil, 2007[4]).

22. Per DNRC (2018[5]) hydraulic connection of individual stream reaches to groundwater is evaluated by comparing streambed elevations to static groundwater elevations measured in wells less than 50 feet deep and within 1,000 feet of surface water or from published water table maps. Surface water within that area is considered hydraulically connected to the unconfined aquifer if static groundwater elevations are above or within 10 feet of the elevation of the stream bed. Hydraulic connection of a confined aquifer to surface water is based on information such as the continuity and thickness of a confining layer and whether overlying shallow unconfined aquifers are connected to surface water (DNRC, 2018).

23. The Clark Fork River near the proposed and existing wells is classified as perennial per the USGS NHD and is approximately 600 feet from the Applicant's PODs. Shallow wells near the project location north of the Clark Fork River that meet the criteria for DNRC (2018) include GWIC ID No. 134163 in Section 23, Township 21 N, Range 29 W (**Figure 3**) and GWIC ID Nos. 76359 and 132636 in Section 9, Township 21 N, Range 29 W. Based on information from well logs with shallow static water levels upgradient and downgradient of the proposed wells, the adjacent terraces and steep banks which may cause a greater river incision depth into sediments of the shallow alluvium, and the ability of the aquitard to transmit water under the known vertical

[2] Theis, C.V. 1938. The significance and nature of the cone of depression in ground water bodies. Economic Geology 38,889–902.
[3] Leake, S.A. 2011. Capture – rates and direction of groundwater flow don't matter! Groundwater, Vol. 49, No. 4, p. 456 – 458.
[4] Konikow, L. F. and C. E. Neuzil, 2007. A method to estimate groundwater depletion from confining layers, Water Resources Research., 43, W07417, doi:10.1029/2006WR005597.
[5] DNRC Technical Memorandum: Net Surface Water Depletion from Groundwater Pumping, dated July 6, 2018.

hydraulic conductivity, the Clark Fork River is considered hydraulically connected to the source aquifer. The Clark Fork River was identified as hydraulically connected and had depletions due to groundwater pumping modeled for it in Provisional Permit No. 76N 30016270.

24. Ashley Creek, another nearby surface water body, is approximately 3,100 feet from proposed well GWIC ID No. 76372. Ashley Creek is noted as intermittent in NHD and aerial imagery shows no defined stream channel. No wells less than 50 feet deep with shallow static groundwater elevations are mapped within the vicinity of Ashley Creek. As such, Ashley Creek was not considered a hydraulically connected source.

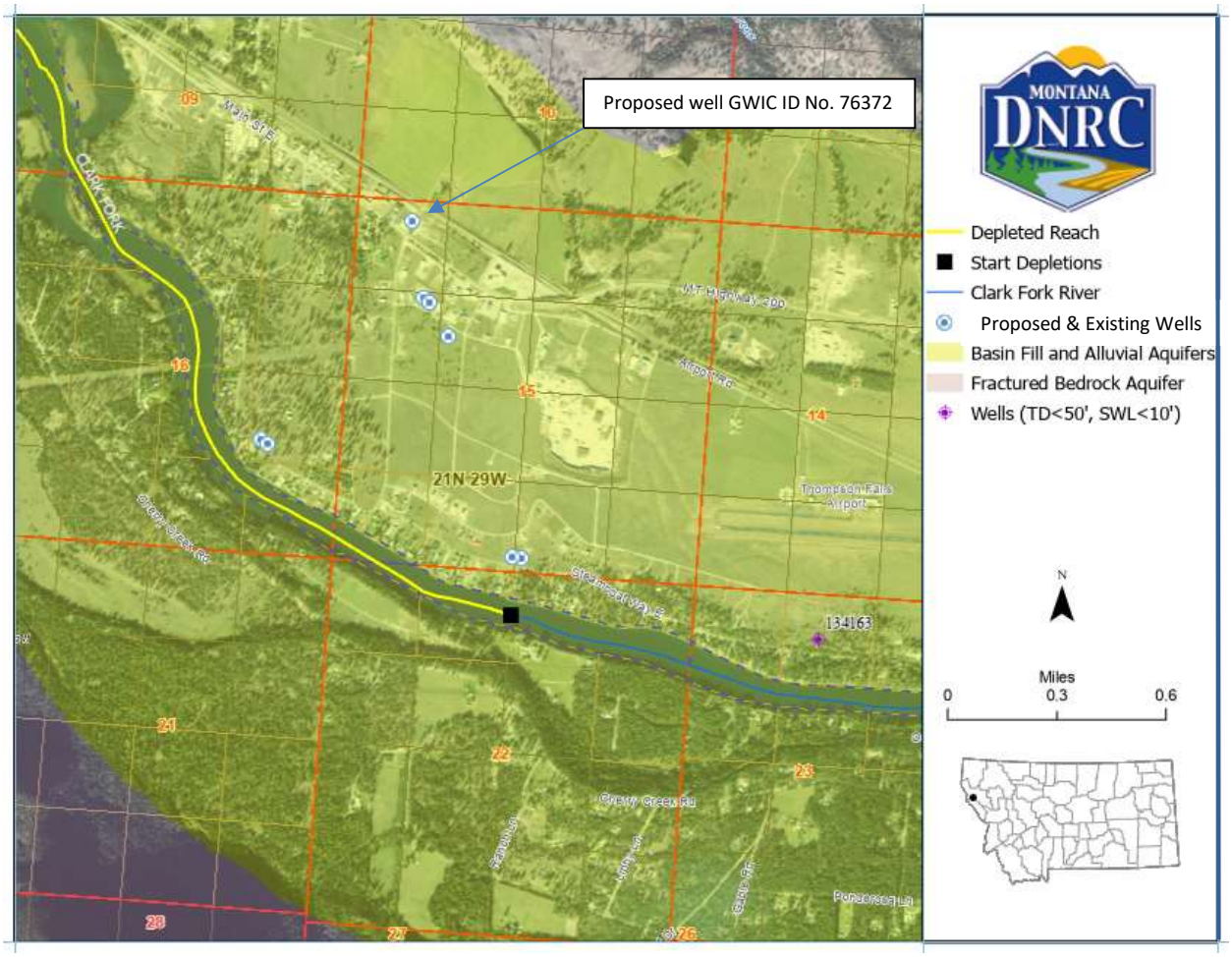

Figure 3: Proposed/existing wells and the historical and proposed starting point of net depletions on the Clark Fork River.

25. Net depletion caused by pumping the source aquifer primarily occurs as propagation of drawdown through the overlying confining layer to the affected reach of the Clark Fork River. As identified in **Table 12**, net depletion effects are expected to be dampened resulting in a constant

year-round rate of depletion to Clark Fork River downstream of the eastern boundary of the NENW of Section 22, Township 21 N, Range 29 W (**Figure 3**).

26. The distance of the historical and proposed wells from the Clark Fork River, the similar distances along the length of the river, and similar completion depth of the existing wells and the proposed well results in no change to the location or timing of net depletions (constant year-round). As identified in **Table 12**, the calculated historical and proposed annual net depletion volume of 37.7 AF to the Clark Fork River will result in a monthly net depletion rate of 23.4 GPM.

Table 12: Net Depletion to the Clark Fork River under Historical and Proposed Conditions and Net Effect from the Proposed Change

Month	Historical and Proposed Consumed Volume (AF)	Historical Net Depletion (GPM)	Proposed Net Depletion (GPM)	Net Effect (GPM)
January	3.2	23.4	23.4	0.0
February	2.9	23.4	23.4	0.0
March	3.2	23.4	23.4	0.0
April	3.1	23.4	23.4	0.0
May	3.2	23.4	23.4	0.0
June	3.1	23.4	23.4	0.0
July	3.2	23.4	23.4	0.0
August	3.2	23.4	23.4	0.0
September	3.1	23.4	23.4	0.0
October	3.2	23.4	23.4	0.0
November	3.1	23.4	23.4	0.0
December	3.2	23.4	23.4	0.0
Total	**37.7**	**---**		

27. To ensure that adding an eighth POD does not adversely affect existing water users by increasing the diverted flow rate or volume from combined use of eight PODs, this change will be subject to the following condition:

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES

DURING THE YEAR UNTIL A PROJECT COMPLETION NOTICE (FORM 617) IS SUBMITTED. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THE PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE KALISPELL WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

28. The Department determines that the proposed change will not increase the amount of flow or volume diverted or consumed, nor will it change the timing and location of the manifestation of net depletions to any hydraulically connected surface water source. The Department finds that the proposed change will not adversely effect existing water users within the area of potential adverse effect.

BENEFICIAL USE

FINDINGS OF FACT

29. The Applicant proposes adding an eighth POD (GWIC ID No. 76372) to Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 and changing their place to include the entire projected Salish Shores PWS system service area. The historically diverted and consumed municipal volumes were quantified in the Historical Use section above (**Table 8**). The proposed beneficial use is to continue to provide municipal water to the Salish Shores PWS system end users within the historical place of use and within additional areas that the Salish Shores PWS system will expand into. The total number of connections proposed for service by the Salish Shores PWS system is 604 (485 residential and 119 commercial).

30. The Applicant stated in their application that this project requires 110.0 GPM, 210.0 GPM, 440.0 GPM, and 688.5 GPM for Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270, respectively. The maximum authorized combined flow rate of these four provisional permits is 1,448.5 GPM (3.23 CFS), however, the system will rarely if ever be required to pump the full permitted flow rate under all four provisional permits simultaneously. The Applicant used the American Water Works Association Manual M22 to calculate a projected peak instantaneous water demand for all 604 connections. This exercise found that in the unlikely scenario that all 485 residential and 119 commercial connections were to simultaneously require their full flow demands, the peak demand would be 1,399.0 GPM, which is within the 1,448.5

GPM permitted under all four provisional permits. Each provisional permit could still divert its full individually permitted flow rate on its own. The purpose of the addition of a new POD is for increased redundancy and operational flexibility and will not increase the total diverted flow rate or volume of Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270.

31. The Salish Shores PWS system is currently authorized to serve 569 total connections comprised of 477 residential and 92 commercial connections. As of 2024, 144 of the 569 authorized connections have been completed (117 residential and 27 commercial). Between 2007 and 2024, the highest annual water volume diverted by the Salish Shores PWS system occurred in 2023, when a total of 52.98 AF was diverted. This equates to an average of 0.37 AF/connection/year (52.98 AF ÷ 144 connections = 0.37 AF/connection). The proposed expansion of the Salish Shores PWS system service area would add 35 new connections comprised of eight residential and 27 commercial connections, increasing the total connections from 569 to 604. Assuming an average use of 0.37 AF/connection, the total annual volume demand for all 604 connections is 223.48 AF/year, which is less than the 377.3 AF/year currently authorized under Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270. Provisional Permit No. 76N 30016270 has 198.1 AF of unperfected volume available to appropriate. The volume demand gap between the total annual volume demand for all 604 connections (223.48 AF/year) and the 2023 annual water volume (52.98 AF/year) is 170.5 AF/year. The unperfected volume under Provisional Permit No. 76N 30016270 (198.1 AF) is sufficient to provide the remaining volume needed for full build out of the Salish Shores PWS system service area with a buffer of 27.6 AF of additional volume.

32. The Department finds that the proposed change in point of diversion and place of use supports the continuation of the historically proven municipal purpose at the historically proven flow rates and volumes.

ADEQUATE MEANS OF DIVERSION

FINDINGS OF FACT

33. The Applicant proposes adding an eighth POD (GWIC ID No. 76372) to Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 and changing their place of use to include the entire projected Salish Shores PWS system service area.

VARIANCES

34. No variances were required from ARM 36.12.121.

AQUIFER TEST ANALYSIS

35. In lieu of submitting a new aquifer test on the proposed well to provide data to model aquifer properties, the Applicant submitted aquifer testing and aquifer property information from Provisional Permit No. 76N 30016270 and Geomatrix Consultants, Inc. (2005[6]). An evaluation of the potentially available water column remaining in the Production Well (GWIC ID No. 76372) was modeled using the Hantush (1960) leaky-confined early-time solution with a T of 6,750 ft^2/day, S of 1.7 x 10^{-4}, and β of 0.14. Predicted theoretical drawdown for the proposed well was modeled for the period of diversion using the monthly pumping schedule identified in **Table 13**. The Applicant proposes that a volume of 8.3 AF/year of the total 377.3 AF/year will be diverted from the proposed well. Applicant-provided water use records were used to distribute the volume to the proposed well and existing wells.

[6] Geomatrix Consultants, Inc. 2005. Hydrogeologic Summary Report Salish Shores Public Water Supply. 24 p.

Table 13: Applicant-provided Monthly Pumping Schedule for Municipal Purposes for the Proposed Well and for All Wells				
Month	Proposed Well Diverted Volume (AF)	Proposed Well Diverted Flow Rate (GPM)	All Wells Diverted Volume (AF)	All Wells Diverted Flow Rate (GPM)
January	0.3	2.1	13.1	95.9
February	0.4	2.8	15.9	128.3
March	0.4	3.0	18.4	134.5
April	0.6	4.5	26.9	202.6
May	0.9	6.3	38.8	283.2
June	1.2	9.0	53.8	405.9
July	1.0	7.2	44.6	325.4
August	1.5	10.7	66.5	485.5
September	0.8	5.9	35.3	266.5
October	0.7	5.3	32.8	239.5
November	0.4	3.1	18.3	138.2
December	0.3	2.1	12.9	94.2
Total	**8.3**	**---**	**377.4**	**---**

REMAINING AVAILABLE WATER COLUMN

36. The Applicant provided data from an 8.1-hour drawdown and yield test performed on well GWIC ID No. 76372 to demonstrate adequacy of diversion. The test had an average discharge of 167.5 GPM, with minimum and maximum discharge rates of 161.0 and 176.0 GPM, respectively. The maximum drawdown in GWIC ID No. 76372 was 32.91 feet below the SWL of 44.55 feet BTC, leaving approximately 226.7 feet above the bottom of the well.

37. As identified in **Table 14**, total drawdown is the sum of interference drawdown and predicted drawdown with well loss. Well loss is calculated by dividing the predicted theoretical maximum drawdown by a well efficiency value. Well efficiency is calculated by dividing the modeled maximum drawdown for the aquifer test by the maximum observed drawdown of the drawdown and yield test. The aquifer adjacent to the proposed well would experience a predicted total drawdown of 0.3 feet at the end of August of the first year of pumping the proposed well. The remaining available water column for the proposed well is 256.8 feet and is equal to the available drawdown above the bottom of the well minus total drawdown.

Table 14: Remaining Available Water Column for the Proposed Well	
Drawdown Estimate	**Proposed Well (GWIC ID 76372)**
Total Depth at Bottom of Well (feet BTC)[1]	304.00
Pre-Test Static Water Level (feet BTC)	44.35
Available Drawdown Above Bottom of Well (feet)	259.70
Observed Drawdown of Aquifer Test (feet)	32.90
Modeled Drawdown Using Mean Aquifer Test Rate (feet)	3.10
Well Efficiency (%)	9.40
Predicted Theoretical Maximum Drawdown (feet)	0.30
Predicted Drawdown with Well Loss (feet)	2.90
Interference Drawdown (feet)	0.00
Total Drawdown (feet)	2.90
Remaining Available Water Column (feet)	**256.8**

[1]The total well depth measuring point (BGS) was adjusted to the top of well casing based on a 1-foot well casing stickup reported on the well log.

WATER SYSTEM DESIGN AND SPECIFICATIONS

38. Change Authorization No. 76N 30027719 consolidated Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 into a single system as required by the Public Service Commission Master Development Plan. Since that change, the permits have been operated in a supplemental fashion with all seven wells being physically manifold into one system capable of serving the entire Salish Shores PWS service area. The system has primarily relied on four of the seven wells as the primary PODs (wells H1, H2, H5, and H6 in **Table 2**) with the other three serving as redundant backup wells. The proposed POD (GWIC ID No. 76372) will primarily serve the Family Dollar store in addition to providing redundancy to the Salish Shores PWS system once it is connected to the distribution infrastructure.

39. Specifications of the proposed POD:

    i. GWIC ID No. 76372; drilled to 303.0 feet BGS and completed with an open bottom at a depth of 303.0 feet BGS by Kane Well Drilling and Pump Service (WWC-23) on December 12, 1979.

        a. Equipped with a Goulds 5CHC010 submersible pump capable of diverting up to 180.0 GPM at an engineer-estimated total dynamic head of 158 feet.

40. The Salish Shores PWS system is a registered PWS regulated by the Montana DEQ as Water System No. MT0003911. All modifications to the PWS system are being designed by Montana licensed professional engineers with IMEG Engineering Consultants and will be reviewed and approved by the Montana DEQ prior to their implementation. This PWS system expansion is being undertaken as part of the Montana Public Service Commission's Master Development Plan for the Salish Shores PWS system. The existing and proposed Salish Shores PWS system water conveyance infrastructure consists of approximately 30,000 feet of 3- to 6-inch Class 200 PVC distribution. The system capacity is designed to accommodate the maximum permitted combined flow rate of 1,448.5 GPM.

41. The Department finds that the new POD is capable of diverting, conveying, and distributing the proposed flow rate of 167.5 GPM which will supplement the seven existing wells in diverting and conveying up to 1,448.5 GPM and up to 377.3 AF/year.

POSSESSORY INTEREST

FINDINGS OF FACT

42. This application is for municipal use in which water is supplied to another. It is clear that the ultimate user will not accept the supply without consenting to the use of water. The Applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

CONCLUSIONS OF LAW

HISTORICAL USE AND ADVERSE EFFECT

43. 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).[7]

44. 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.[8]

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

[7] DNRC decisions are available at: https://dnrc.mt.gov/Directors-Office/HearingOrders

[8] *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.[9] 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

[9]A 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).[10]

46. 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 appropriation by subsequent water users).[11]

47. 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

[10] 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)("Once 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.)

[11] 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).

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.

48. 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.
>
> 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).

49. 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.

50. Based upon the Applicant's evidence of historic use, the Applicant has proven by a preponderance of the evidence the historic use of Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 to be diverted volumes of 48.9 AF, 104.32 AF, 25.98 AF, and 198.1 AF, respectively, historically consumed volumes of 4.89 AF, 10.43 AF, 2.6 AF, and 19.81 AF, respectively, and flow rates of 110.0 GPM, 210.0 GPM, 440.0 GPM, and 688.5 GPM, respectively. (FOF Nos. 7-10)

51. Based upon the Applicant's comparative analysis of historical 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)(b), MCA. (FOF Nos. 11-28)

BENEFICIAL USE

52. 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).

53. Applicant proposes to use water for municipal use which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence that municipal use is a beneficial use and that 377.3 AF of diverted volume and 1,448.5 GPM flow rate of water requested is the amount needed to sustain the beneficial use and is within the standards set by DNRC Rule. Section 85-2-402(2)(c), MCA (FOF Nos. 29-32)

ADEQUATE MEANS OF DIVERSION

54. 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).

55. 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. 33-41)

POSSESSORY INTEREST

56. 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.

57. 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 No. 42)

DRAFT PRELIMINARY DETERMINATION

Subject to the terms and analysis in this DRAFT Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right No. 76LJ 30165123 should be GRANTED subject to the following.

The Department determines the Applicant may add an eighth point of diversion (well GWIC ID No. 76372) to Provisional Permit Nos. 76N 81519-00, 76N 85780-00, 76N 97278-00, and 76N 30016270 and may change their place of use to include the entire projected Salish Shores PWS system service area. The proposed POD will contribute up to 167.5 GPM of the total permitted 1,448.5 GPM of flow to the manifold Salish Shores PWS system. The tables below summarize the details of the granted change.

Table i: Summary of the Granted Change
(bold underlined text identifies the changed water right elements)

Water Right Number	Priority Date	Purpose	Flow Rate (GPM)	Volume (AF)	Period of Diversion & Use	Means of Diversion	Points of Diversion & Places of Use
76N 81519-00	May 14, 1992	Municipal	110.00	48.90	01/01 - 12/31	Eight Wells	**See Tables ii & iii**
76N 85780-00	June 1, 1993		210.00	104.32			
76N 97278-00	May 17, 1996		440.00	25.98			
76N 30016270	August 19, 2005		688.50	198.10			

Table ii: Points of Diversion for the Granted Change
(bold underlined text identifies the changed water right elements)

GWIC ID	1/4	1/4	1/4	Section	Township	Range	County
135335	SW	NE	SE	16	21 N	29 W	Sanders
131977	SW	NE	SE	16	21 N	29 W	Sanders
139319	SW	SW	SE	15	21 N	29 W	Sanders
139318	SW	SW	SE	15	21 N	29 W	Sanders
175584	NE	SW	NW	15	21 N	29 W	Sanders
175632	NE	SW	NW	15	21 N	29 W	Sanders
175585	NW	SE	NW	15	21 N	29 W	Sanders
76372	**NE**	**NW**	**NW**	**15**	**21 N**	**29 W**	**Sanders**

Table iii: Places of Use for the Granted Change (bold underlined text identifies the changed water right elements)						
1/4	**1/4**	**1/4**	**Section**	**Township**	**Range**	**County**
---	**E2**	**SW**	**9**	**21 N**	**29 W**	**Sanders**
---	**W2**	**SE**	**9**	**21 N**	**29 W**	**Sanders**
---	**SE**	**SE**	**9**	**21 N**	**29 W**	**Sanders**
---	**SW**	**SW**	**10**	**21 N**	**29 W**	**Sanders**
---	W2	SW	13	21 N	29 W	Sanders
---	---	---	**14**	**21 N**	**29 W**	**Sanders**
---	---	---	**15**	**21 N**	**29 W**	**Sanders**
---	---	E2	16	21 N	29 W	Sanders
---	N2	N2	22	21 N	29 W	Sanders
---	N2	N2	23	21 N	29 W	Sanders

To satisfy the adverse effect criterion, this change is subject to the following condition:

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

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 16th day of December, 2025.

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

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the DRAFT PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 16th day of December, 2025, by first class United States mail.

SALISH SHORES UTILITY CORP., INC.

PO BOX 1030

THOMPSON FALLS MT 59873-1030

****

Via email:

BRYAN GARTLAND

ASPECT CONSULTING

TRAVIS WILSON

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