

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

APPLICATION TO CHANGE WATER RIGHT)
NO. 41F 30163349 by JUMPING HORSE) PRELIMINARY DETERMINATION TO
STOCK RANCH LLC) GRANT CHANGE

On October 7, 2024, Jumping Horse Stock Ranch, LLC (Applicant) submitted Application to Change Water Right No. 41F 30163349 to change Statements of Claim 41F 8354-00 and 41F 8355-00 to the Bozeman Regional Office of the Department of Natural Resources and Conservation (Department or DNRC). The Department published receipt of the application on its website. A preapplication meeting was held between the Department and the Applicant on March 26, 2024, in which the Applicant designated that the technical analyses for this application would be completed by the Department. The Applicant returned the completed Preapplication Checklist on May 23, 2024. The Department delivered the completed Technical Analyses on July 5, 2024, and a revised version was sent August 8, 2024. The Draft Preliminary Determination to Grant was sent to the Applicant on December 20, 2024. The Department provided notice of opportunity to provide public comments to this application per §85-2-307(4), MCA on February 5, 2025. The Department received one public comment, and this updated Preliminary Determination considers the public comment. The Application was determined to be correct and complete as of October 28, 2024. An Environmental Assessment for this application was completed on December 18, 2024.

INFORMATION

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

Application as filed:

- Irrigation Application for Change of Appropriation Water Right, Form 606-IR
- Attachments:
 - Exhibit C: Proposed Pump and Infrastructure Specifications
- Maps:
 - Exhibit A: Historical Use, base map August 7, 1976, USDA aerial photo, produced by DMS Natural Resources, LLC, dated 3/25/2024
 - Exhibit A: Historical Use, base map August 7, 1976, USGS aerial photo, produced by DMS Natural Resources, LLC, dated 12/21/2023

REVISED 12-2023

- Exhibit A: Historical Use, base map September 1, 1979, USGS aerial photo, produced by DMS Natural Resources, LLC, dated 12/21/2023
- Exhibit A: Historical Use, base map September 7, 1981, USGS aerial photo, produced by DMS Natural Resources, LLC, dated 12/21/2023
- Exhibit B: Proposed Use, base map 2021 NAIP aerial photo, produced by DMS Natural Resources, LLC, dated 7/9/2024
- Exhibit C: Proposed Irrigation System, base map Google Earth Imagery, produced by Watson Irrigation Specialists
- Department-completed Technical Analyses based on information provided in the Preapplication Meeting Form, dated August 8, 2024.

Information Received after Application Filed

- Email chain between Consultant (DMS Natural Resources, LLC) and DNRC (Kendrew Ellis) dated October 28, 2024, RE: Correct and Complete Letter for Beneficial Water Use Change Preapplication No. 41F 30163349

Information within the Department's Possession/Knowledge

- DNRC Irrigation Change Application 41F 30163349 Technical Report dated July 5, 2024
- DNRC Irrigation Change Application 41F 30163349 Revised Technical Report dated August 8, 2024
- Water Resources Survey, Gallatin County, 1961
- Statement of Claim 41F 8354-00 file
- Statement of Claim 41F 8355-00 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 Bozeman Regional Office at 406-586-3136 to request copies of the following documents.
 - "Development of Standardized Methodologies to Determine Historic Diverted Volume" (Roberts and Heffner, 2012)
 - "Technical Memorandum - Assessment of new consumptive use and irrecoverable losses associated with change applications" (Heffner and Roberts, 2013)

Public Comments Received

- The Department received and considered the following comments for the Preliminary Determination. The Department has considered the public comments and has updated the typographical errors. The preliminary determination decision is to grant. The

comments are addressed in the respective criteria section. The public comments received can be found in the administrative file.

- One public comment was received regarding typographical errors in the Water Rights to be Changed section, Change Proposal section, and Adequacy of Diversion criteria. The Department has considered this public comment and has not modified the criterial analysis or preliminary determination decision.

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.

WATER RIGHTS TO BE CHANGED

FINDINGS OF FACT

1. The Applicant seeks to change the point of diversion (POD) of Statements of Claim 41F 8354-00 and 41F 8355-00 in this Application. Claim 41F 8354-00 is diverted and used from the Madison River at a flow rate of 5.30 CFS from April 15 to October 15. Claim 41F 8355-00 is diverted and used from the Madison River at a flow rate of 3.84 CFS from April 15 to October 15. The Claims are diverted from the Madison River at a total flow rate of 9.14 CFS via a pump site in the SENESW Section 20, T1N, R2E, Gallatin County for the claimed purpose of irrigation of 220 acres. The Claims are conveyed to the place of use (POU) in the W2NE, E2NW, NESW Section 20, T1N, R2E, Gallatin County via a pipeline. The historical elements for the claims included in this change application can be seen in Table 1 below.

Table 1. Water rights proposed for change

Water Right No	Purpose	Flow Rate (CFS)	Volume	Period of Use	Point of Diversion	Place of Use ¹	Priority Date	Acres
41F 8354-00	Irrigation	5.3	Historical Use Statement	4/15- 10/15	SENE SW Section 20, T1N, R2E, Gallatin County	W2NE, E2NW, NESW Section 20, T1N, R2E, Gallatin County	9/2/1970	220
41F 8355-00	Irrigation	3.84	Historical Use Statement	4/15- 10/15	SENE SW Section 20, T1N, R2E, Gallatin County	W2NE, E2NW, NESW Section 20, T1N, R2E, Gallatin County	2/7/1971	220

2. The Applicant filed a self-objection as part of the Preliminary Decree for Basin 41F to correct the POU legal land descriptions and the maximum irrigated acres for Claims 41F 8354-00 and 41F 8355-00. The Applicant provided information in the preapplication meeting supporting irrigation of 152.2 acres in the W2NE, NWNWSE, NESW, NWSESW, E2NW, and E2W2NW Section 20, T1N, R2E, Gallatin County. The Department will analyze Claims 41F 8354-00 and 41F 8355-00 using this information.

3. Claims 41F 8354-00 and 41F 8355-00 are fully supplemental on the entire historical POU. No other water rights irrigate the historical POU.

4. The water rights are owned solely by the Applicant and are not part of bigger water right. Ownership is clear, and these water rights are not part of an undivided interest.

5. No previous Change Authorizations are associated with the water rights to be changed.

ISSUES RAISED BY PUBLIC COMMENTS AND DEPARTMENT’S RESPONSES

6. The public submitted one comment on typographical errors.

7. Issue: The comment took issue with Table 1 in the “Acres” column, as the superscript text stated “*Error! Bookmark not defined*”.

8. Response: The Department corrected this typographical error in Table 1 above, as this superscript text was in error.

¹ The Applicant filed an objection to Claims 41F 8354-00 and 41F 8355-00 as part of the Preliminary Decree for Basin 41F to correct the POU legal land descriptions and maximum irrigated acres for both claims. The objection states 152.2 acres in the W2NE, NWNWSE, NESW, NWSESW, E2NW, and E2W2NW Section 20, T1N, R2E, Gallatin County were historically irrigated.

CHANGE PROPOSAL

FINDINGS OF FACT

9. The Applicant proposes to change the POD of Statements of Claim 41F 8354-00 and 41F 8355-00. The proposed POD is located downstream of the historical POD in the NESWNE Section 20, T1N, R2E, Gallatin County, on the Madison River, as seen in Figure 1. Water will be diverted via a pump site and conveyed into the irrigation system via a pipeline. The Applicant proposes to continue to divert water from the Madison River for irrigation of 152.2 acres in Section 20, T1N, R2E, Gallatin County from April 15 to October 15. The historical POD will no longer be used as a result of this change. The historical purpose, period of diversion, place of use, and period of use will remain unchanged.

10. The Applicant is also adding the proposed pump site as an additional POD to Claims 41F 132837-00, 41F 132838-00, 41F 136475-00, 41F 136476-00, 41F 136477-00, and 41F 136478-00 in Change Application No. 41F 30155891. All water rights that will be diverted from the proposed pump site in the future are owned by the Applicant. The Applicant provided information stating the irrigation systems can be operated together or individually depending on operational requirements, seasonal weather conditions, or water availability. Given information provided by the Applicant, the irrigation system for the water rights proposed for change in Change Application No. 41F 30155891 can be operated separately from the irrigation system for 41F 8354-00 and 41F 8355-00.

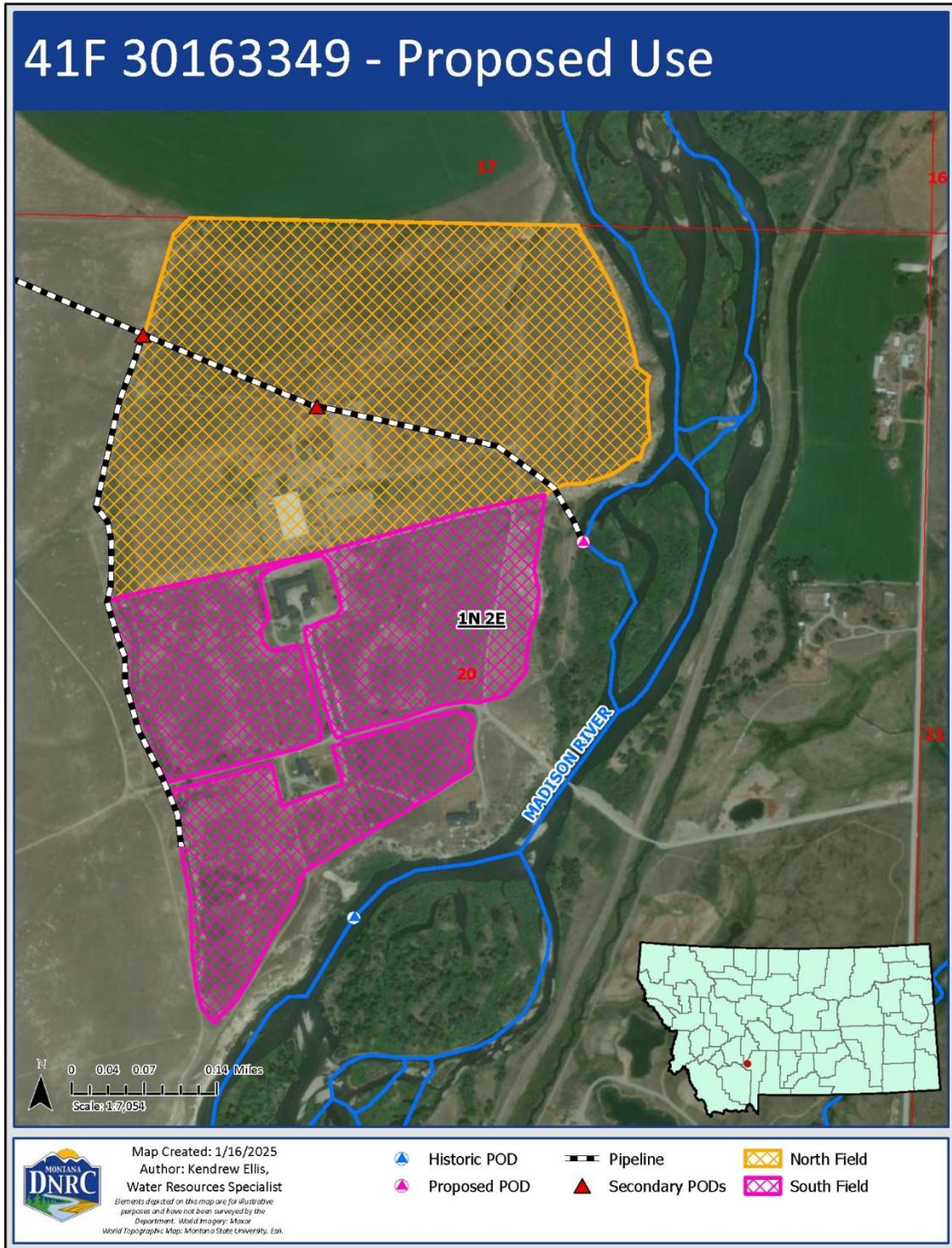


Figure 1. Proposed Use for Change Application 41F 30163349

ISSUES RAISED BY PUBLIC COMMENTS AND DEPARTMENT'S RESPONSES

11. The public submitted one comment on typographical errors.

12. Issue: The comment took issue with Figure 1. The figure included was taken from the Revised Technical Analysis dated August 8, 2024, which shows two secondary PODs along the spur pipeline running south along the west edge of the POU. However, the Applicant provided updated locations of the secondary PODs on the proposed use map provided as Exhibit B with the October 7, 2024, change application.

13. Response: The Department corrected this typographical error. The Department updated Figure 1 to the updated secondary PODs on the proposed use for Change Application 41F 30163349 map.

CHANGE CRITERIA

14. 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.

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 AND ADVERSE EFFECT

FINDINGS OF FACT - Historical Use

15. Statement of Claim 41F 8354-00 is a filed right with a priority date of September 2, 1970. Statement of Claim 41F 8355-00 is a filed right with a priority date of February 7, 1971. Claims 41F 8354-00 and 41F 8355-00 were included in the Temporary Preliminary Decree for Basin 41F and the Preliminary Decree for Basin 41F.

16. Claims 41F 8354-00 and 41F 8355-00 were originally claimed for irrigation of 236 acres in W2NE, E2NW, and NESW Section 20, T1N, R2E, Gallatin County. In the 1983 DNRC examination of the Claims 41F 8354-00 and 41F 8355-00, the DNRC modified the acres of irrigation to 165 acres based on the 1979 imagery. The maximum total acres were changed in the Temporary Preliminary Decree for Basin 41F to 220 acres through a self-objection by the water right owner (Quinta Land and Cattle Inc.) during the Temporary Preliminary Decree. However, the Applicant provided information in the Preapplication Meeting supporting irrigation of 152.2 acres in the W2NE, NWNWSE, NESW, NWSESW, E2NW, and E2W2NW Section 20, T1N, R2E, Gallatin County. The Applicant has filed a self-objection as part of the Preliminary Decree for Basin 41F to correct the POU legal land descriptions and the maximum irrigated acres for both Claims. The Water Resources Survey (WRS) for Gallatin County does not support irrigation of the historical POU because water rights have priority dates post-dating the WRS. Imagery taken between 1970 and 1973 is not available, so the historical POU was corroborated using imagery from 1976 and 1981. The historical irrigation of 152.2 acres is supported by USGS Photo AR1VEFX00010078, dated August 6, 1976, and Photo 179-49, dated September 1, 1979. The Department finds the maximum acres irrigated by Claims 41F 8354-00 and 41F 8355-00 is 152.2 acres.

17. The Applicant stated Statements of Claim 41F 8354-00 and 41F 8355-00 were historically diverted from a pump in the SENESW Section 20, T1N, R2E, Gallatin County for irrigation use. The original claim filings for both Claims 41F 8354-00 and 41F 8355-00 state the historical pump capacity was 4100 GPM, equal to a total capacity of 9.14 CFS. Claim 41F 8354-00 has a maximum claimed flow rate of 5.30 CFS. Claim 41F 8355-00 has a maximum claimed flow rate

of 3.84 CFS. No other water rights were historically diverted from the historical POD. The Department finds the maximum historic flow rate for the water rights proposed for change is 9.14 CFS.

18. The water rights being changed are Statements of Claim, and the historic use will be evaluated as the right existed prior to July 1, 1973. No prior Change Authorizations for the water rights have occurred, and no documented history of calls on Claims 41F 8354-00 and 41F 8355-00 exists. The Department calculated historical use using the Department's standard methodology, pursuant to ARM 36.12.1902.

19. The Applicant asserts that water was historically diverted from the Madison River by means of a pump site located in the SENESW of Section 20, T1N, R2E, Gallatin County to irrigate 152.2 acres. The Applicant states that the water was diverted from mid-April (4/15) to mid-October (10/15), for a total of 184 days. The POU was primarily used for horse and/or cattle grazing but has been cultivated for hay at times historically. When used for grazing, irrigation continued throughout the year without any shut off periods and water was rotated between fields if needed for operational considerations. Given the historical use description, the Department will calculate historical consumptive volume assuming full-service irrigation for the 184 days irrigated.

20. The Applicant states the northern portion of the historical POU was flood irrigated using contour ditches. The Applicant states that the irrigation method in the northern portion changed to a sprinkler system between 1976 and 1979 but this change occurred after July 1, 1973, and remained within the historical POU. The Applicant states that the southern portion of the historical POU was originally irrigated with big gun sprinklers. The Department categorized the historical irrigation method as sprinkler irrigation and contour ditch irrigation based on aerial photos and the Applicant's description of historical practices. The total historical consumptive volume (HCV) for the two water rights associated with this Change Application is 174.7 AF (41F 8354-00: 101.3 AF, 41F 8355-00: 73.4 AF). The Department calculated historical consumptive use according to the rules set forth in ARM.36.12.1902 using the following equations, summarized in Table 2:

$$\textit{Supplemental HCV} = \textit{HCV} * \textit{Supplemental Flow Proportion}$$

$$\begin{aligned} \textit{HCV} &= \textit{Crop Consumption} + \textit{Historic Irrecoverable Losses Crop Consumption} \\ &= \textit{Bozeman Exp Farm} * \frac{1\textit{ft}}{12\textit{inches}} * \textit{Gallatin County Management Factor} \\ &\quad * \textit{Historic Acres} \end{aligned}$$

$$\textit{Historic Irrecoverable Losses} = \textit{Field Applied} * \textit{IL}\%$$

$$Field\ Applied = \frac{Crop\ Consumption}{Field\ Efficiency}$$

Table 2. Historical consumptive use of historical place of use

Field ID	Irrigation Method	Acres	NIR (in)	Management Factor	Field Efficiency	Crop Consumption (AF)	Applied Volume (AF)	IL (AF)	Total Consumed Volume (AF)
South Field	Flood Irrigation, Wheeline & Handline	63	16.84	0.735	0.7	65	92.8	9.3	74.3
North Field	Flood Irrigation, Wheeline & Handline	89.2	16.84	0.735	0.55	92	167.3	8.4	100.4
Total		152.2				157	260.1	17.7	174.7

21. Statements of Claim 41F 8354-00 and 41F 8355-00 are fully supplemental. No other water rights irrigate the historical place of use. The historical consumptive volume for the historical POU was distributed to the water rights based on their proportion of the total flow rate; this is summarized in Tables 3 and 4.

Table 3. Historical consumptive use by water right per field

Water Right No	Field ID	Flow Rate (CFS)	Proportion	Crop Consumption - Supplemental (AF)	Applied Volume - Supplemental (AF)	Consumed Volume - Supplemental (AF)
41F 8355-00	South Field	3.84	0.42	27.3	39	31.2
41F 8354-00	South Field	5.3	0.58	37.7	53.8	43.1
41F 8355-00	North Field	3.84	0.42	38.6	70.3	42.2
41F 8354-00	North Field	5.3	0.58	53.4	97	58.2
Total			9.14	157.0	260.1	174.7

Table 4. Historical consumptive use by water right

Water Right No	Crop Consumption Supplemental (AF)	Applied Volume - Supplemental (AF)	Consumed Volume - Supplemental (AF)
41F 8354-00	91.1	150.8	101.3
41F 8355-00	65.9	109.3	73.4

22. No historical conveyance losses are associated with the historical use of Claims 41F 8354-00 and 41F 8355-00. Water was historically diverted from the Madison River by a pump and conveyed through a pipeline to a ditch that runs along the POU. The ditch is within the POU, so no conveyance losses were calculated.

23. Per ARM 36.12.1902(10), the historically diverted volume is equal to the sum of the historical field applied volume and historical conveyance loss volume. The Department calculated the historical diverted volume based on the information provided by the Applicant about the historical irrigation practices. No conveyance losses are associated with the system therefore the

historical diverted volume is equal to the historical field applied volume. Table 5 below summarizes the historical diverted volume for Claims 41F 8354-00 and 41F 8355-00.

Table 5. Historical diverted volume by water right

Water Right No	Historical Consumptive Volume (AF)	Historical Field Applied Volume (AF)	Historical Diverted Volume (AF)
41F 8354-00	101.3	150.8	150.8
41F 8355-00	73.4	109.3	109.3
Total	174.7	260.1	260.1

24. The Department finds the following historical use for Claims 41F 8354-00 and 41F 8355-00, as shown in Table 6.

Table 6. Summary of the historical use of Claims 41F 8354-00 and 41F 8355-00

Water Right No	Priority Date	Purpose (Total Acres)	Flow Rate (CFS)	Diverted Volume (AF)	Consumptive Volume (AF)	Period of Use	Point of Diversion	Place of Use ²
41F 8354-00	9/2/1970	Irrigation (152.2 acres)	5.3	150.8	101.3	4/15 - 10/15	SENE SW Section 20, T1N, R2E, Gallatin County	W2NE, NWNWSE, NESW, NWSESW, E2NW, and E2W2NW Section 20, T1N, R2E, Gallatin County
41F 8355-00	2/7/1971	Irrigation (152.2 acres)	3.84	109.3	73.4	4/15 - 10/15	SENE SW Section 20, T1N, R2E, Gallatin County	W2NE, NWNWSE, NESW, NWSESW, E2NW, and E2W2NW Section 20, T1N, R2E, Gallatin County

ADVERSE EFFECT

FINDINGS OF FACT

25. The Applicant proposes to change the POD for Claims 41F 8354-00 and 41F 8355-00. No changes in POU or purpose are proposed, and these water rights do not involve a place of storage. The historical POD will no longer be used by these water rights as a result of this change.

26. The proposed POD is a pump site in the Madison River in the NESWNE Section 20, T1N, R2E, Gallatin County. The proposed POD is located about 0.45 miles downstream of the historical POD on the Madison River and will convey water to the POU from the pump site by a means of a buried mainline pipeline. The Applicant proposes to divert water from the proposed pump site at a total flow rate of 2.07 CFS (1.20 CFS with 41F 8354-00 and 0.87 CFS with 41F 8355-00) for continued irrigation of the 152.2-acre POU. Diversions will continue to operate from the Madison River starting mid-April (4/15) to mid-October (10/15), as done historically.

² The historical place of use reflects the place of use legal land description stated on the self-objection filed by the Applicant in the Preliminary Decree for Basin 41F.

27. As no changes in POU are proposed, the consumptive use associated with the field will remain the same as the historical consumed volume. Return flows do not need to be modeled for changes in POD where no subsequent change in POU occurs, as no change in the location, timing, or amount of non-consumed water will occur.

28. Water will be conveyed from the pump site to the POU via pipelines. No conveyance losses are associated with the proposed conveyance system for Claims 41F 8354-00 and 41F 8355-00. As no changes in conveyance losses are proposed, the proposed diverted volume will be equal to the historical diverted volume. The Department finds the proposed consumed and diverted volumes for Claims 41F 8354-00 and 41F 8355-00 will be equal to the historical consumed and diverted volumes.

29. The proposed pump site will also be used as an additional POD for other water rights owned by the Applicant including Claims 41F 132837-00, 41F 132838-00, 41F 136475-00, 41F 136476-00, 41F 136477-00, and 41F 136478-00, which are proposed for change in Change Application No. 41F 30155891. The Applicant provided information stating the irrigation systems can be operated together or individually depending on operational requirements, seasonal weather conditions, or water availability. All water rights that will be diverted from the proposed pump site are owned by the Applicant. The proposed pump site has a capacity of 8.6 CFS. The Applicant proposes to divert 2.07 CFS through the pump site for irrigation of 152.2 acres under Claims 41F 8354-00 and 41F 8355-00. Following the proposed change, a remaining 6.53 CFS pump capacity will be available for use by water rights proposed for change in Change Application No. 41F 30155891. The Claims proposed for change in Change Application No. 41F 30155891 may also be diverted through three additional PODs to meet operational needs. After the proposed changes, the Applicant may divert water to all fields simultaneously, or rotate water between the fields depending on operation requirements and seasonal weather conditions. If call were placed, the Applicant would be able to operate the proposed diversion site to make sure all senior water rights are satisfied. The Department finds no adverse effect will occur to water rights sharing the proposed POD.

30. The Department identified an area of potential adverse effect beginning at the historical POD and ending at the proposed POD. Water rights with PODs within the area of potential adverse effect are State of Montana Dept. of Fish, Wildlife & Parks instream flow water rights (41F 30017505, 41F 138562-0, 41F 138560-00, 41F 138561-00, and 41F 13853-00). The proposed POD is 0.45 miles downstream of the historical POD, so water will remain in the source for a longer period of time. The Applicant proposes to divert water from the Madison River at a lower

flow rate than historically. No change in consumed volume or location of return flows will occur, as the proposed project does not change the POU. The Applicant will not increase the diverted or consumed volume nor change the timing of diversions for the water rights proposed for change.

31. The proposed pump site consists of two pumps in a series which will be operated by a variable frequency drive (VFD). The second pump will kick in as required to provide additional flow rate in the line when the first pump reaches its maximum capacity. If a call is placed in the future, the flow rate of the pumps can be reduced, or shut off completely to comply with the call.

32. The Department finds no adverse effect will occur as a result of the proposed change to Claims 41F 8354-00 and 41F 8355-00.

BENEFICIAL USE

FINDINGS OF FACT

33. The Applicant is not changing the purposes of the water rights proposed for change, which are remaining irrigation, a recognized beneficial use of water in the State of Montana. Through the proposed change, the method of irrigation will remain sprinkler irrigation. No change in place of use will occur, so no change in consumption will result from the proposed change.

34. The Applicant proposes to divert a total of 260.1 AF (150.8 AF with 41F 8354-00 and 109.3 AF with 41F 8355-00) and consume 174.7 AF (101.3 with 41F 8354-00 and 73.4 AF with 41F 8355-00), at a flow rate equal to 2.07 CFS (1.20 CFS with 41F 8354-00 and 0.87 CFS with 41F 8355-00). The Department finds the continued irrigation of the historical place of use with Claims 41F 8354-00 and 41F 8355-00 to be a beneficial use of water.

ADEQUATE DIVERSION

FINDINGS OF FACT

35. The proposed pump site will be operated with two identical 125 HP Cornell 6H pumps each equipped with 12" River screens. The two pumps will be in a series which will be operated by a VFD. The second pump will kick in as required to provide additional flow rate in the line when the first pump reaches its maximum capacity. The two pumps have a total capacity of 8.6 CFS, which is greater than the 2.07 CFS required by the proposed irrigation under Claims 41F 8354-00 and 41F 8355-00. The pump site is also proposed to divert water for irrigation under Claims 41F 132837-00, 41F 132838-00, 41F 136475-00, 41F 136476-00, 41F 136477-00, and 41F 136478-00 as part of Change Application No. 41F 30155891. After the proposed diversions for Claims 41F 8354-00 and 41F 8355-00, 6.53 CFS excess flow capacity will exist for use by water rights proposed for change in Change Application No. 41F 30155891. These water rights will also

be able to divert water through three additional PODs along with the proposed pump site. The Applicant proposes to divert water via the proposed POD to all fields simultaneously, or rotate water between the fields depending on operational requirements and seasonal weather requirements.

36. From the proposed POD, water will be conveyed from the pump site by means of a buried mainline to the irrigation systems. The irrigation systems will be composed of the existing half pivot and big gun sprinklers. The existing Valley 8000 pivot will be supplied by a 6” pipeline that tees from the 18” mainline. The pivot will operate off the pressure from the pumps at the primary POD. Water will be conveyed to the big gun sprinkler systems by means of a new booster pump and buried 8” PVC pipeline. The big gun sprinkler system will consist of existing and/or new Nelson SR150, F150, SR2000, and/or F200 model sprinklers.

37. The proposed diversion and conveyance structures have a capacity greater than the total flow rate conveyed through the pump site. The Department finds the proposed means of diversion and conveyance to be adequate.

ISSUES RAISED BY PUBLIC COMMENTS AND DEPARTMENT'S RESPONSES

38. The public submitted one comment on typographical errors.

39. Issue: The comment took issue with the last sentence of FOF 36 stating that the proposed sprinkler system will consist of “existing and/or new Nelson ST150, etc.” However, the sprinkler model is actually a Neslon SR150, as stated the response to question #35 of the change application.

40. Response: The Department corrected this typographical error in FOF 36.

POSSESSORY INTEREST

FINDINGS OF FACT

41. The Applicant signed the affidavit on the application form affirming the Applicant has 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. (Change Application 41F 30163349 file)

CONCLUSIONS OF LAW

HISTORICAL USE AND ADVERSE EFFECT

42. 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).³

43. 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*, ¶¶ 43-45.⁴

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

³ DNRC decisions are available at: <https://dnrc.mt.gov/Directors-Office/HearingOrders>

⁴ 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).

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.⁵ 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 juniors).⁶

⁵A 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

⁶ 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

45. 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).⁷

46. 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.

47. 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-

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.)

⁷ 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).

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).

48. The Department’s rules reflect the above fundamental principles of Montana water law and are designed to itemize the type 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.

49. Applicant seeks to change existing water rights represented by its Water Right Claims. The “existing water rights” in this case are those as they existed prior to July 1, 1973, because with limited exception, no changes could have been made to those rights after that date without the Department’s approval. Analysis of adverse effect in a change to an “existing water right”

requires evaluation of what the water right looked like and how it was exercised prior to July 1, 1973. In *McDonald v. State*, the Montana Supreme Court explained:

The foregoing cases and many others serve to illustrate that what is preserved to owners of appropriated or decreed water rights by the provision of the 1972 Constitution is what the law has always contemplated in this state as the extent of a water right: such amount of water as, by pattern of use and means of use, the owners or their predecessors put to beneficial use. . . . the Water Use Act contemplates that all water rights, regardless of prior statements or claims as to amount, must nevertheless, to be recognized, pass the test of historical, unabandoned beneficial use. . . . To that extent only the 1972 constitutional recognition of water rights is effective and will be sustained.

220 Mont. at 529, 722 P.2d at 604; see also *Matter of Clark Fork River Drainage Area*, 254 Mont. 11, 17, 833 P.2d 1120 (1992).

50. Water Resources Surveys were authorized by the 1939 legislature. 1939 Mont. Laws Ch. 185, § 5. Since their completion, Water Resources Surveys have been invaluable evidence in water right disputes and have long been relied on by Montana courts. *In re Adjudication of Existing Rights to Use of All Water in North End Subbasin of Bitterroot River Drainage Area in Ravalli and Missoula Counties*, 295 Mont. 447, 453, 984 P.2d 151, 155 (1999) (Water Resources Survey used as evidence in adjudicating of water rights); *Wareing v. Schreckendgust*, 280 Mont. 196, 213, 930 P.2d 37, 47 (1996) (Water Resources Survey used as evidence in a prescriptive ditch easement case); *Olsen v. McQueary*, 212 Mont. 173, 180, 687 P.2d 712, 716 (1984) (judicial notice taken of Water Resources Survey in water right dispute concerning branches of a creek).

51. While evidence may be provided that a particular parcel was irrigated, the actual amount of water historically diverted and consumed is critical. *E.g.*, *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, DNRC Proposal for Decision adopted by Final Order (2005). The Department cannot assume that a parcel received the full duty of water or that it received sufficient water to constitute full-service irrigation for optimum plant growth. Even when it seems clear that no other rights could be affected solely by a particular change in the location of diversion, it is essential that the change also not enlarge an existing right. See *MacDonald*, 220 Mont. at 529, 722 P.2d at 604; *Featherman*, 43 Mont. at 316-17, 115 P. at 986; *Trail's End Ranch, L.L.C. v. Colorado Div. of Water Resources*, 91 P.3d 1058, 1063 (Colo., 2004).

52. The Department has adopted a rule providing for the calculation of historic consumptive use where the Applicant proves by a preponderance of the evidence that the acreage was historically irrigated. ARM 36.12.1902(16). In the alternative an Applicant may present its own

evidence of historic beneficial use. In this case Applicant has elected to proceed under ARM 36.12.1902. (FOF No. 18).

53. If an Applicant seeks more than the historic consumptive use as calculated by ARM 36.12.1902(16), the Applicant bears the burden of proof to demonstrate the amount of historic consumptive use by a preponderance of the evidence. The actual historic use of water could be less than the optimum utilization represented by the calculated duty of water in any particular case. *E.g., Application for Water Rights in Rio Grande County*, 53 P.3d 1165 (Colo., 2002) (historical use must be quantified to ensure no enlargement); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*; *Orr v. Arapahoe Water and Sanitation Dist.*, 753 P.2d 1217, 1223-1224 (Colo., 1988) (historical use of a water right could very well be less than the duty of water); *Weibert v. Rothe Bros., Inc.*, 200 Colo. 310, 317, 618 P.2d 1367, 1371 - 1372 (Colo. 1980) (historical use could be less than the optimum utilization “duty of water”).

54. Based upon the Applicant’s evidence of historic use, the Applicant has proven by a preponderance of the evidence the historic use of Statement of Claim 41F 8354-00 to be a diverted volume of 150.8 AF, a historically consumed volume of 101.3 AF, and flow rate of 5.3 CFS. The Applicant has proven by a preponderance of the evidence the historic use of Statement of Claim 41F 8355-00 to be a diverted volume of 109.3 AF, a historically consumed volume of 73.4 AF, and flow rate of 3.84 CFS. (FOF Nos. 15-24)

55. 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. 25-34)

BENEFICIAL USE

56. 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).

57. Applicant proposes to use water for irrigation which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence irrigation is a beneficial use and that 260.1 AF (150.8 AF with 41F 8354-00 and 109.3 AF with 41F 8355-00) of diverted volume and 2.07 CFS (1.20 CFS with 41F 8354-00 and 0.87 CFS with 41F 8355-00) flow rate of water requested is the amount needed to sustain the beneficial use. Section 85-2-402(2)(c), MCA (FOF Nos. 33-34)

ADEQUATE MEANS OF DIVERSION

58. 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).

59. 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. 35-37)

POSSESSORY INTEREST

60. 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.

61. 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. 41)

PRELIMINARY DETERMINATION

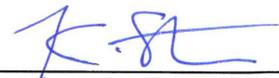
Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right No. 41F 30163349 should be GRANTED subject to the following.

The Applicant is authorized to divert Statements of Claim 41F 8354-00 and 41F 8355-00 from a point of diversion in the NESWNE Section 20, T1N, R2E, Gallatin County. Under Claim 41F 8354-00, the Applicant may divert a maximum volume of 150.8 AF and consume a volume of 101.3 AF at a flow rate of 1.20 CFS from 4/15 to 10/15 for irrigation of 152.2 acres in the W2NE, NWNWSE, NESW, NWSESW, E2NW, and E2W2NW Section 20, T1N, R2E, Gallatin County. Under Claim 41F 8355-00, the Applicant may divert a maximum volume of 109.3 AF and consumed a volume of 73.4 AF at a flow rate of 0.87 CFS from 4/15 to 10/15 for irrigation of 152.2 acres in the W2NE, NWNWSE, NESW, NWSESW, E2NW, and E2W2NW Section 20, T1N, R2E, Gallatin County. In aggregate, the maximum flow rate and volume that will be diverted from the Madison River by the water rights proposed for change cannot exceed 2.07 CFS and 260.1 AF.

NOTICE

The Department will provide public notice of this application and the Department's Preliminary Determination to Grant pursuant to § 85-2-307, MCA. The Department will set a deadline for objections to this application pursuant to §§ 85-2-307, and -308, MCA. If this application receives a valid objection, it will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If this application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this application as herein approved. If this application receives a valid objection(s) and the valid objection(s) are conditionally withdrawn, the Department will consider the proposed condition(s) and grant the application with such conditions as the Department decides necessary to satisfy the applicable criteria. Sections 85-2-310, -312, MCA.

Dated this 7 day of April, 2025.



Kerri Strasheim, Manager
Bozeman Regional Office
Montana Department of Natural Resources and Conservation

REVISED 12-2023

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 7 day of April, 2025, by first class United States mail.

JUMPING HORSE STOCK RANCH LLC
PO BOX 1377
ENNIS, MT 59729-1377

DEBORAH STEPHENSON (CONSULTANT)
DMS NATURAL RESOURCES
(VIA EMAIL: STEPHENSON@DMSNATURALRESOURCES.COM)

A handwritten signature in blue ink, appearing to read "Andrew R. Eui", is written over a horizontal line.

BOZEMAN Regional Office, (406) 586-3136