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

* * * * * * * * * * * * * * * * *

IN THE MATTER OF CHANGE	**)**	**PRELIMINARY DETERMINATION TO**
APPLICATION NO. 76E-30158160 BY	**)**	**GRANT CHANGE FOLLOWING**
ROCKING J RANCH	**)**	**SHOW CAUSE HEARING**

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Summary of Decision

Applicant Rocking J Ranch appeals from DNRC's Preliminary Determination which denied a portion of its proposed change of water right. DNRC found that Rocking J had not proved that the change would not cause adverse affect to Montana Fish, Wildlife, and Park's instream flow right in Rock Creek. I find that Rocking J has proven that while the change will impact a new section of Rock Creek this will not cause adverse affect to the instream flow right.

Appearances

Rocking J Ranch appeared at the hearing through counsel Nicholas J. Lofing. Witnesses included: Jim Nave, DNRC Missoula Regional Water Manager, Ben Thomas, DNRC Staff Expert and Water Resources Specialist at Missoula RO, and Julie Merritt, Consultant from WGM Group.

Exhibits

Applicant offered and I admitted the following exhibits into the administrative record:

1) **Exhibit A 1-32:** USGS Methods for Estimating Streamflow Characteristics at Ungaged Sites in Western Montana Based on Data through Water Year 2009, (16 pages).
2) **Exhibit B:** Map: Rock Creek Basin Exhibit, (1 page).
3) **Exhibit C 1-6:** Excerpts from Dept. Standard Practice Determining Area of Potential Impact, (3 pages).
4) **Exhibit D 1-35:** 1994 FWP Letter to Jack Galt, DNRC on Instream Flows; 1993 FWP Letter to Gary Fritz, DNRC, (18 pages).
5) **Exhibit E:** Map: Rocking J Ranch Old & New Wells Exhibit, (1 page).

6) **Exhibit F 1-5:** Email – Depo Ex 2 – In Re Rocking J Ranch 4.4.25 B. Thomas, (3 pages).

7) **Exhibit G 1-2:** General Abstract – Depo Ex 3 – In Re Rocking J Ranch 4.4.25 J. Nave, (1 page).

8) **Exhibit H 1-3:** General Abstract – Depo Ex 4 – In Re Rocking J Ranch 4.4.25 J. Nave, (2 pages).

9) **Exhibit I 1-13:** Instream Flow Method Attachment, (7 pages).

10) **Exhibit J 1-3:** DNRC Technical Report, (2 pages).

11) **Exhibit K 1-26:** Technical Memorandum – Additional Evidence for Inclusion 10.31.24, (13 pages).

12) **Exhibit L 1-4:** DNRC Expert Report Final, (2 pages).

The Department's *Preliminary Determination to Grant in Modified Form* is cited as the **PDGM**

This **Orde*r*** is cited as the **PDG**

The audio recording of the hearing is referred as "**HR**" to signify "hearing recording" and noting the track, minute and second of the track at which the relevant evidence is presented.

Statement of the Issues

A Montana water user attempting to change their water right must show that it will not adversely affect another user. When analyzing adverse affect does Montana adopt the de minimis doctrine of water rights, and may DNRC look beyond the numeric face value of affected water rights? I find that Montana does not accept the de minimis doctrine of water rights and that DNRC may look beyond the numeric face value of water rights. The subsequent analysis concludes that the proposed change will not cause adverse affect.

Statement of the Case

Rocking J Ranch is a guest ranch located on upper Rock Creek near Philipsburg. Rocking J drilled a new well to comply with DEQ drinking water regulations and applied to DNRC to change their water right from the old well to the new well.

Both wells impact Rock Creek because they pump groundwater which is hydraulically connected to the surface water. Montana Department of Fish, Wildlife, and Parks (FWP) and the Confederated Salish and Kootenai Tribes (CSKT) have instream flow rights in Rock Creek. The new well is located about one quarter mile upstream of the old well. (See Exhibit K, Figure 1). The new well will impact more of Rock Creek subject to the instream flow rights than the old well.

In the PDGM DNRC found that this impact constitutes adverse affect to the instream flow rights and denied Rocking J's change. DNRC also found that the new well would impact an irrigation water right owned by Rocking J itself. The only contested issue in this case is whether Rocking J has proven by a preponderance of evidence that it will not adversely affect these other water rights. In May 2025, I conducted a show cause hearing regarding the PDGM issued by DNRC. The show cause hearing provided the Applicant the opportunity to dispute the conclusions of the PDGM.

Findings of Fact

1. The Applicant proposes to change the point of diversion on verified Permit 76E 112878-00 from a well in Sec. 19, T6N, R15W to a well located in Sec. 30, T6N, R15W. The original well will be abandoned upon issuance of this change. (PDGM FOF #1).

2. Additionally, the Applicant seeks to change several other aspects of the water right including purposes and place of use. (PDGM FOF #1, #5, and #14).

3. DNRC approved all of the requested changes except for the change in point of diversion (i.e. the use of the new well). DNRC determined that withdrawing water from the new well would result in adverse effect to seven water rights: the ranch's own irrigation water right, and six instream flow rights in Rock Creek held jointly by FWP and the CSKT. FWP originally filed these water rights and developed the methodology quantifying them, so this PDG refers only to FWP. The instream flow rights are all for the same portion of Rock Creek but are separated into 6 calendar periods that correlate with different streamflow conditions. (PDGM FOF #22 and #23)

4. The new well is located approximately one quarter mile south (upstream) of the old well. The amount of water pumped from the new well will be exactly the same as the amount pumped from the old well. (PDGM FOF #19).

5. When water is pumped from the either well it depletes surface water in nearby Rock Creek. These depletions affect Rock Creek downstream from the highest point of impact, so a point is used to describe an effect that actually stretches downstream over a reach. In this Order this highest point of new impact is referred to as “at the new well”. (PDGM FOF #18 and #19).

6. The new well will affect approximately one quarter mile more of Rock Creek than the old well. (PDGM FOF #19, 21).

7. The instream flow rights each protect a separate period of the year and are collectively referred to as the “Instream Flow Rights”. The rights protect flow rates from the confluence of the Middle and West Forks of Rock Creek to the confluence of Ranch Creek and Rock Creek, a reach of approximately 40 miles. (PDGM FOF #23, Exhibit K Attachment “A”).

8. The following table from the PDGM displays the Instream Flow Rights:

Statement of Claim #	Start Date	End Date	Claimed Instream Flow (CFS)
76E 133216-00	April 30	May 15	454
76E 133217-00	May 15	June 1	975
76E 133215-00	May 31	June 15	926
76E 133208-00	June 15	July 1	766
76E 133218-00	June 30	July 15	382
76E 133219-00	July 15	April 30	150

(PDGM FOF #23)

9. In addition to the instream flow rights, the PDGM found that there is one water right that may be adversely affected by the new well, Statement of Claim 76E 102219-

00, an irrigation right owned by the Rocking J Ranch. This water right is referenced as the “Irrigation Right” in this order. (PDG) FOF #22).

10. Ben Thomas, Water Resource Specialist, testified credibly that the adverse affect conclusion about the Irrigation Right was a mistake. DNRC’s analysis now shows that the Irrigation Right is not in the area of potential impact of the new well and will not be adversely affected by the proposed change. (HR #02 at HR #03 at 6:20).

Adverse Affect Analysis of Water Rights in the PDGM

11. The instream flow rights are measured at the downstream end of each reach. Thus, the right is satisfied when the claimed flow rate passes the measurement point. The change will cause new impact to the portion of the reach between the old well and the new well. (PDGM FOF # 23, Exhibit K).

12. In the PDGM the Department estimated the water physically available in Rock Creek at the new well and compared that to the Instream Flow Rights in 15 periods. The Instream Flow Rights exceeded the estimated flow in all but 3 periods. The Department determined that the Instream Flow Rights exceeded the flow of Rock Creek at the new well most of the year and therefore the change would result in adverse affect. (PDGM FOF # 23-26).

13. Jim Nave, DNRC Missoula Regional Water Manager, testified that DNRC policy is to “take water rights at face value” when considering adverse affect, but there is no written policy or rule that he is aware of. Nave explained that “what their claimed flow rate or volume is the number that we use in our analysis.” (HR #02 at 35:30, HR #02 at 36:00).

14. Mr. Nave testified that Rocking J could get a waiver of adverse affect from the potentially affected water right - in this case the Instream Flow Rights, but Rocking J had not done so. (HR #01 at 38:50).

15. Mr. Nave testified that the owner of the potentially adversely affected water right could either agree that their actual water right was smaller than the face value of the water right or the owner of the potentially adversely affected water right could agree that they were willing to be adversely affected. (HR #01 at 48:23).

16. Ben Thomas was both the DNRC employee who worked on the Rocking J change application as well as the appointed Staff Expert. Mr. Thomas testified and wrote in the Staff Expert Report and to the Applicant that DNRC policy required that he consider the face value of a water right in determining legal availability, and that he equated legal availability analysis with adverse affect analysis. (Exhibit L, Staff Expert Letter of February 6, 2025, HR #04 at 20:21).

17. The use of the Rocking J wells causes a net depletion in Rock Creek ranging from a low of .73 gallons per minute (GPM) in December and January to a high of 14.6 GPM in July. The Instream Flow Rights and descriptions of Rock Creek flows are generally much larger and therefore expressed in cubic feet per second (CFS). One CFS is equal to 448.8 GPM. Expressed in CFS, the Rocking J wells will cause a depletion in Rock Creek ranging from .0016 CFS in December and January to a high of .0325 CFS in July. (PDGM FOF #20).

18. The Department estimated the amount of water available in Rock Creek using the USGS StreamStats estimation program combined with gage data as shown in PDGM FOF #24. The first column describes the time of year. The second column represents the flow rate of water rights in Rock Creek during each period. The third and fourth columns are estimates of flow that contribute to Rock Creek in each period bolstered by actual gage data. The fifth column is the sum of these two estimates and represents the estimated flow in Rock Creek near the new well. The last column is the legally available water in Rock Creek, the actual flow minus the flow claimed by water rights.

Period	Claimed Flow (CFS)	Median Mean Monthly Flow, East & Middle Fork Gages (CFS)	StreamStats Mean Monthly Flow Estimates (All Other Tributaries) (CFS)	Physically Available Flow (CFS)	Legally Available Flow (CFS)
January	150.0	35.7	34.7	70.4	-79.6
February	150.0	38.0	40.6	78.6	-71.4
March	150.0	40.5	64.3	104.8	-45.2
April 1 - April 29	162.5	77.6	136.2	213.8	51.3
April 30 - May 15	466.5	346.0	207.0	553.0	86.5
May 15 - June 1	987.5	346.0	207.0	553.0	-434.5
May 31 - June 15	938.5	497.6	122.0	619.6	-318.9
June 15 - July 1	778.5	497.6	122.0	619.6	-158.9
June 30 - July 15	394.5	175.5	31.9	207.4	-187.1
July 15 - July 31	162.5	175.5	31.9	207.4	44.9
August	162.5	72.9	20.8	93.7	-68.8
September	162.5	54.7	22.8	77.5	-85.0
October	162.5	51.2	24.4	75.6	-86.9
November	150.0	46.6	30.1	76.7	-73.3
December	150.0	40.0	29.4	69.4	-80.6

(PDGM FOF #25).

19. A comparison of the instream flow rights and the legal demands from the PDGM shows that most of the legal demands in the second column are the Instream flow rights. (PDGM FOF #25).

20. The Department found that the proposed change would result in adverse affect as "Department finds that streamflows are less than the existing legal demands in every month except from April 1 to May 15 and July 15 to July 31. Due to insufficient streamflows to satisfy existing water rights during that timeframe, an upstream change

in location of depletions will result in adverse effect to the seven water rights identified with diversions located in the NENE Sec. 30, T6N, RI5W." (PDGM FOF #26).

Establishing the Instream Flow Rights

21. FWP used two different methods to establish the flow rates for the Instream Flow Rights, one for the high flow period and one for the low flow period.

22. The high flow period is April 30th to July 15th and required instream flow rates were determined based on the discharge measured at the USGS gage located near the mouth of Rock Creek and referred to as the high flow measurement point. This gage is approximately 12 miles downstream from the lower end of the protected reach, or 40 miles from the new well. (Exhibit K, Exhibit I).

23. The low flow period is for the rest of the year. To determine instream flows needed during the low flow period FWP took specific channel and flow measurements and identified the flow rate that would maintain the desired characteristics. These measurements are approximately 20 miles downstream from the new well and this point is referred to as the low flow measurement point. (Exhibit K, p. 6, Attachment A; Exhibit L, p. 8; HR #05 at 44:12).

24. The low flow measurement point and the high flow measurement point are collectively called the "measurement points." Based on FOF #23 the Instream Flow Rights protect the flow rate required at the measurement points.

Pro Rata Approach to Adverse Affect Analysis

25. Rocking J's consultant, Julie Merritt, explained that the amount of water in a stream depends on the amount of land that it drains. At the lower end of a stream it drains more land resulting in more flow. Upstream a stream drains less land and has less flow. Accordingly, the flows in Rock Creek are lower at the new well than below at the measurement points. (H.R. 05 at 41:26)

26. Ms. Merritt used the USGS StreamStats program to estimate the amount of water in Rock Creek during periods that match the Instream Flow Rights. She calculated the estimated flow of Rock Creek at the measurement points and at the new well for each Instream Flow Right. Ms. Merritt then determined the correlation between the flow at the new well relative to the flow at the measurement points and expressed this as a percentage. Last, Ms. Merritt multiplied this percentage by the Instream Flow Right to estimate what instream flow would be required at the new well.

As an equation:

Estimated flow at new well/ estimated flow at measurement point = % of Rock Creek flows at new well.

% of Rock Creek flow at new well x Instream Flow Right at measurement point = amount of instream flow right required at new well.

The following demonstrates a sample calculation for Water Right No. 76E 133219-00, the Instream Flow Right for the month of January:

This calculation shows that the estimated flow in Rock Creek at the new well is 31.9% of the estimated flow in Rock Creek at the measurement point:

86.9 CFS / 272 CFS = 31.9%

Applying this percentage to the Instream Flow Right to provides an estimate of the proportional amount of the instream flow right required at the new well:

31.9% x 150 CFS = 47.9 CFS

According to Ms. Merritt, this calculation estimates the amount of water needed to fulfill the Instream Flow Right at the new well. Ms. Merritt referred to this methodology as the “pro rata approach”. (H.R. 05 @ 42:47 et seq., Exhibit K.)

27. Ms. Merritt calculated the flow required to satisfy the Instream Flow Rights for each of the Instream Flow Rights using the pro rata approach. (See Table 2, Exibit K-8) These calculations show that flow in Rock Creek exceeds the pro rata approach calculated Instream Flow Rights in every period. The predicted flows of Rock Creek at the new well minus the pro rata Instream Flow Rights exceed the predicted depletion from the new well in every instance. (H.R. 05 @ 42:47 et seq.)

30. In August 2025, the Bozeman Regional Water Resources Office of DNRC issued a Preliminary Determination to Change a Water Right. In that decision, the determination of ‘no adverse affect’ was based in part on a method which allowed a site-specific flow rate for an FWP instream flow rate to be estimated above or below the measurement point for that instream flow right. The applicant in that case faced a situation analogous to Rocking J, a proposed change was potentially blocked by predicted adverse affect to an FWP instream flow right. Similar to the instant case, that instream flow right protected a flow rate that had been established well downstream and was not reflective of the actual instream flow needs at points upstream.

28. The Bozeman case dealt with instream flow rights which were created with a statutory water reservation. This reservation included language instructing FWP to develop a method for pro rata measurement of this instream flow right. FWP and DNRC discussed but did not adopt any such method in the ensuing years. The applicant in the Bozeman case used information from those discussions to develop a pro rata value for the instream flow reservation. See *In the Matter of Application to Change Water Right No. 41H 30163442 By Great Northern Golf Co. of Montana*, Updated Draft Preliminary Determination to Grant Change (DNRC August 6, 2025). The Instream Flow Rights do not arise from such a reservation and Rocking J did not utilize the exact same methodology in this case, but the use of this method in the *Great Northern Golf Co.*

decision demonstrates that DNRC is not strictly beholden to the "face value" of water rights in analyzing adverse affect.

Principles of Law

29. The Department must consider whether the proposed change will result in adverse affect to another water right based on § 85-2-402(a), MCA, and Mont. Admin R. 36.12.1903.

30. The Applicant has the burden of proving that the proposed change will not adversely affect another water right by a preponderance of evidence. (§85-2-402(2), MCA).

31. Legal availability analysis relies on a determination of the flow rate and volume of existing water rights. (§ 85-2-311, MCA).

32. Section 85-2-402(b), MCA, specifically provides that "for purposes of this section, adverse effects analysis is specific to the proposed change in appropriation right and a determination that water is not legally available pursuant to 85-2-311 does not necessarily mean that an adverse effect will occur."

Analysis

Montana Does Not Accept the De Minimis Doctrine

33. Montana does not accept the *de minimis* doctrine of water rights adverse affect. The *de minimis* doctrine holds that a small or insignificant depletion does not need to be analyzed for adverse affect to other water rights. The depletions from the new well are small relative to the flow of Rock Creek but they must be analyzed for adverse affect. *Bostwick Properties, Inc. v. DNRC* 2013 MT 48 , ¶38, 369 Mont. 150, 296 P.3d 1154.

DNRC May Look Beyond the Face Value of Affected Water Rights

34. DNRC may look beyond the face value of potentially affected water rights. The Applicant in a change must provide information describing how the new use won't adversely affect other users. (ARM 36.12.1903).

35. A legal availability analysis is a comparison of the demands of other water rights to the amount of water actually present. The results of this analysis describe whether there is water legally available, or water that may be appropriated by a new user. DNRC must perform this analysis for a new permit. (§85-2-311(1)(b), MCA, Mont Admin R. 36.12.1704). This case is about a water rights change, and DNRC is not required to perform a legal availability analysis by statute or rule. However, DNRC does perform a legal availability analysis to inform an adverse affect analysis. The PDGM determined adverse affect based only on legal availability. (PDGM FOF #26.)

36. Legal availability analysis and adverse affect analysis are not the same. Montana law states that a determination that water is not legally available does not necessarily mean that an adverse effect will occur. (§ 85-2-402(2)(a), MCA)

37. Based on the specific language of each respective law, the Department must evaluate whether the change will cause adverse affect to the ***use*** of other water rights not just compare the ***amount*** of water available as in a legal availability analysis. (§85-2-402(2)(a), MCA, §85-2-311 (1)(a)(ii)).

38. DNRC does look past the numerical face value of a water right when determining legal availability if the Department has specific information that a water right may be "inflated" or the water right may not reflect the amount that is actually used. (DNRC Permit and Change Manual p. 76, 77 Exhibit C-4, C-5). DNRC investigated beyond the numerical face value of the water right in the Bozeman case, as the numerical face value of the water right does not show that the pro rata formula existed or was appropriate. (See. *Great Northern Golf Co.* FOF #37,38).

39. The Montana Supreme Court held that a DNRC Hearing Examiner did not err when they prevented the applicant in a change proceeding from presenting evidence on

an objector's water rights, but the Court did not prohibit them from doing so. *Matter of Royston*, 249 Mont. at 429, 816 P.2d at 1057 (1991). In *Royston* the Court noted the harm that might arise from such a critical analysis. The Court left the decision in the purview of the Hearing Examiner to regulate the hearing under Mont. Admin R. 36.12.203(3) and noted that DNRC had offered a logical explanation for not accepting the evidence of objector's water rights, that it might harm the Objector's water rights.

40. As outlined in the Water Permitting Manual in Exhibit C-4, and 5, DNRC may consider substantial credible information about the specific or actual use of a water right. In this case the Applicant provided evidence and argument that the Instream Flow Rights are uniquely measured and have a specifically quantified beneficial use at a specific location which justifies the Hearing Examiner evaluating such information. The Department did not offer any evidence of why it wouldn't accept evidence of the potentially adversely affected water rights except the testimony that it was against DNRC policy, though the witnesses did not point to any written policy or rule. DNRC offered no explanation of what harm might arise from such a consideration. Finally, any potential harm to an objector's water rights may be considered when an objection is lodged. (See Exhibit K, PDG FOF #13).

The Instream Flow Rights Will Not Be Adversely Affected

41. A change in stream conditions or reduction in streamflow does not automatically result in adverse affect to other water rights. Subsequent appropriators may insist that prior appropriators confine their use to what was actually appropriated or necessary for their originally intended purpose of use. Sp*okane Ranch & Water Co. v. Beatty*, 37 Mont. 342, 96 P. 727, 731 (1908) (PDGM COL #36).

42. Once DNRC looks beyond the numeric face value of a water right the extent of an existing water right is defined by its beneficial use. "[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 v. State* 220 Mont. 519 at 532, 722 P.2d 598 at 606 (1986).

43. Based on the FWP explanations and Ms. Merritt’s testimony, the high flow period Instream Flow Rights are based on a measurement nearly 40 miles downstream from the new well.

44. There is no basis in the record for equating the flow rate required for the Instream Flow Rights at the new well with the flow rate required for the Instream Flow Rights at the measurement point 40 miles downstream. (FOF# 21-27).

45. The low flow period of the Instream Flow Right is based on a site-specific measurement. FWP based the low flow period flow rates on surveys and measurements approximately 20 miles below the new well. (Exhibit K P. 6, Exhibit I, HR #05 at 40:00).

46. There is no basis in the record for equating the flow rate required for the Instream Flow Rights at the new well with the flow rate required for the Instream Flow Rights at the measurement point 20 miles downstream. (FOF# 21-27).

47. The low flow period Instream Flow Rights exceed the predicted flow of Rock Creek at the new well in all but one 15-day period during the low flow period. In six of these months the Instream Flow Right is about double the predicted flow of Rock Creek and in two months it is about one and a half times the predicted flow. (FOF #23).

48. The extent of the Instream Flow Right is defined by its beneficial use. The measurement points used to establish the flow required for the low flow and high flow periods are respectively 20 and 40 miles downstream of the new well and FWP established flow rates for the Instream Flow Rights using site-specific criteria. Therefore, Applicant argues the reduction in flow of Rock Creek at the new well location will not reduce flow sufficiently to adversely affect the Instream Flow Rights. This conclusion is reinforced by the evidence that existing flows in Rock Creek at the new well are less than the numeric value of the Instream Flow Rights in all but one 15-day period during the low-flow period, an overall period of 8 months each year.

49. Ms. Merrit's pro rata approach provides estimates of flow required at the new well in order to satisfy the purpose of the Instream Flow Rights and maintain adequate flow for the Instream Flow Rights at the measurement points. These estimates support a conclusion that the new well will not adversely impact the Instream Flow Rights.

50. Adjudication is the process of determining the relative priorities and rights of water users. (§ 85-2-234, MCA). The Montana Water Court has sole jurisdiction over the adjudication of water rights. (§ 3-7-501, MCA). This determination of potential adverse affect is distinct from adjudication. This determination does not determine the rights or extent of the Instream Flow Rights nor affect their priority, instead it predicts the likelihood that they will be adversely affected based on the information in the record. The holders of the Instream Flow Rights have two safeguards against impingement. First, if they determine that this Order is in error they may file an objection to the change application under § 85-2-308, MCA. Second, whether or not they object they may call Rocking J under § 85-2-401, MCA.

Conclusions of Law

51. I find it more probable than not that the Irrigation Right is outside the area of impact of the proposed change and will not be adversely impacted by the proposed change.

52. I find that the record contains substantial credible information that the Instream Flow Rights require less flow at the point of the new well than they do at the measurement points in analyzing an adverse affect analysis.

53. I find that the "pro rata" method introduced by the Applicant is a logical and reasonable method of determining how much water is required in Rock Creek at the new well in order to prevent adverse affect.

54. I find it more probable than not that the Instream Flow Rights will not be adversely affected by the proposed change.

55. I find that the Applicant has proven by a preponderance of the evidence that the proposed change will not adversely affect another water right user and thereby satisfied the requirements of § 85-2-402(2)(a), MCA.

Final Order

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change No. 76E-30158160 should be **GRANTED** subject to the condition outlined in the PDGM, to wit:

> WATER MEASUREMENT-INLINE FLOW METER REQUIRED: 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 NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR UNTIL THE CHANGE AUTHORIZATION IS PERFECTED AND THE DEPARTMENT RECEIVES A PROJECT COMPLETION NOTICE. IN THE EVENT THAT AUTHORIZED FLOW RATES AND/OR VOLUMES HAVE BEEN EXCEEDED DURING PERFECTION OF THE CHANGE AUTHORIZATION OR THE APPROPRIATOR FAILS TO SUBMIT ANNUAL REPORTS, THE DEPARTMENT MAY CONTINUE TO REQUIRE ANNUAL SUBMISSIONS OF MONTHLY FLOW RATE AND VOLUME RECORDS. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE MISSOULA 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 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. E.g., §§ 85-2-310, -312, MCA.

Dated this 25th day of March 2026.

/s/ Martin Balukas
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CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing was served upon all parties listed below on this 25th day of March 2026 by first-class United States mail and/or by electronic mail (e-mail).

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