

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

**APPLICATION TO CHANGE WATER RIGHT)
NO. 76G 30165115 BY THE CLARK FORK) [DRAFT] PRELIMINARY DETERMINATION
COALITION) TO GRANT TEMPORARY CHANGE**

On February 17, 2026, The Clark Fork Coalition (Applicant) submitted Application to Change Water Right No. 76G 30165115 to temporarily change water right Statement of Claim (Claim) Nos. 76G 5191-00, 76G 5192-00, 76G 5193-00, and 76G 215144-00 to the Helena 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 January 7, 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 July 9, 2025. The Department delivered the completed Technical Analysis on August 22, 2025. The Application was determined to be correct and complete as of March 9, 2026. An Environmental Assessment for this application was completed on May 5, 2026.

INFORMATION

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

Application as filed:

- Application for Change of Appropriation Water Right, Form 606
- Addenda:
 - Change to Instream Flow Addendum, Form 606-IFA
- Attachments:
 - Description of conveyance system and list of maps
- Maps:
 - Historical Use and Ditch Map
 - Proposed Use Map
 - 606-IFA Map
- Department- completed technical analyses based on information provided in the Preapplication Meeting Form, dated August 22, 2025

Information within the Department's Possession/Knowledge

- Water Resources Survey aerial photo dated August 17, 1947
- USDA aerial photo dated 1979
- 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 Helena Regional Office at 406-444-6999 to request copies of the following documents.
 - Department Memo dated April 1, 2016, regarding Return Flows
 - Department Memo dated September 13, 2012, regarding the development of standardized methodologies to determine Historic Diverted Volume

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; AC means acres; and AF/YR means acre-feet per year.

WATER RIGHTS TO BE CHANGED

FINDINGS OF FACT

1. Applicant seeks to change the purpose and place of use of the Statements of Claim listed in Table A below in this Application. These Claims are filed for the flow rates listed in the table for the purpose of irrigation from Cottonwood Creek and were diverted via a headgate into the Beaumont Ditch.

Table 1: Water Right(S) Proposed for Change

Water Right No.	Historical Purpose	Priority Date	Period of Diversion and Use	Historical Place of Use	Historical Point of Diversion	Maximum Historical Flow Rate (CFS)	Historically Diverted Volume (AF)
76G 5191-00	Irrigation	April 1, 1886	May 1 – October 1	NWSW, S2SWNW S34 T8N R9W Powell County	SWSWSE S34 T8N R9W Powell County	0.28	16.95
76G 5192-00	Irrigation	November 7, 1879	May 1 – October 1	NWSW, S2SWNW S34 T8N R9W Powell County	SWSWSE S34 T8N R9W Powell County	0.28	16.95
76G 5193-00	Irrigation	April 1, 1871	May 1 – October 1	NWSW, S2SWNW S34 T8N R9W Powell County	SWSWSE S34 T8N R9W Powell County	0.58	34.57
76G 215144-00	Irrigation	June 30, 1973	March 10 – July 10	NWSW, S2SWNW S34 T8N R9W Powell County	SWSWSE S34 T8N R9W Powell County	1.99	105.98

2. The Claims proposed for change in this Application are 100% supplemental with each other over the full place of use. No other rights overlap the historical place of use.

CHANGE PROPOSAL

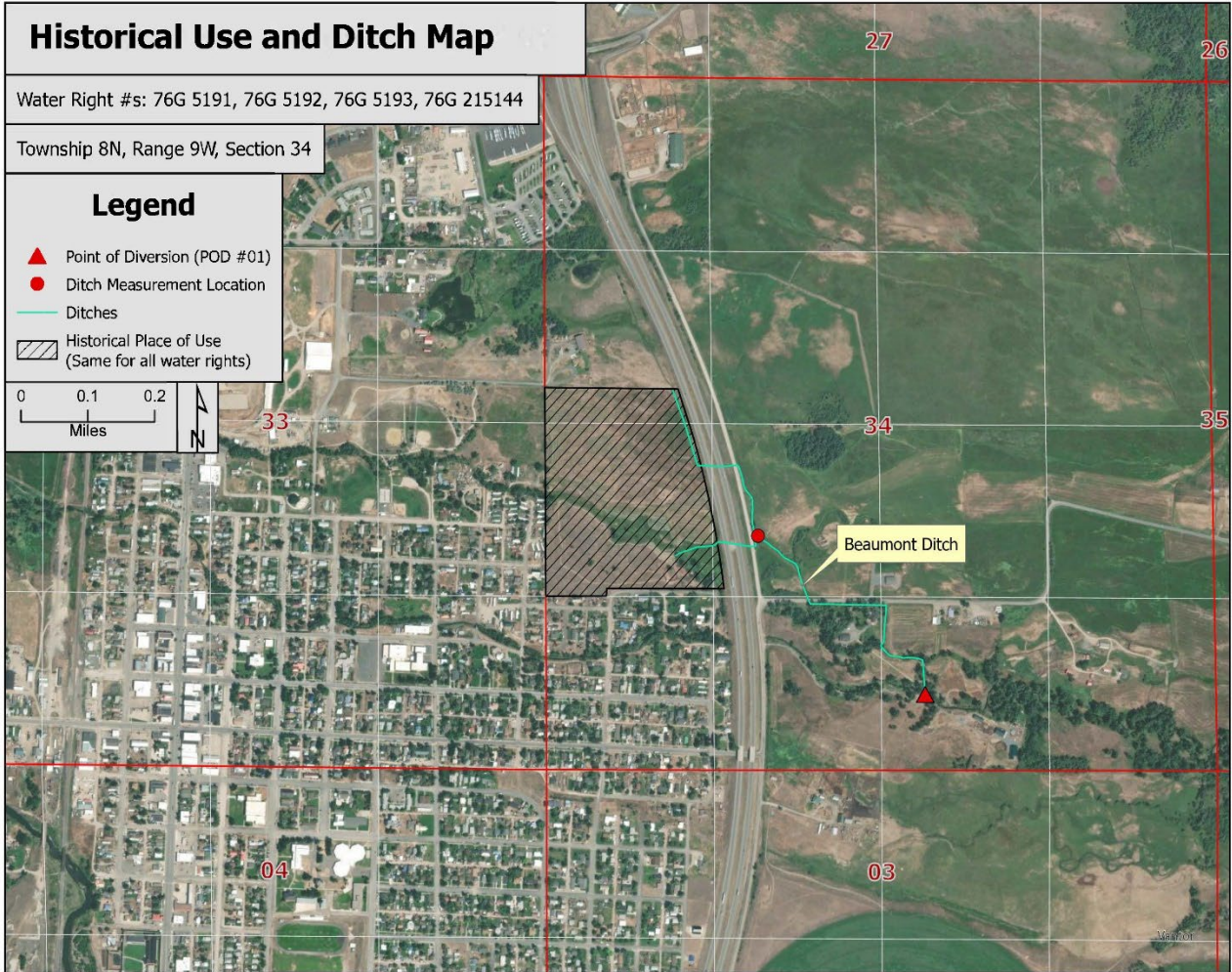
FINDINGS OF FACT

3. The Applicant proposes to temporarily change for a period of 10 years with the option to renew the place of use (POU) and purpose for Statements of Claim 76G 5191-00, 76G 5192-00, 76G 5193-00, and 76G 215144-00. The proposed place of use is the reach of Cottonwood Creek starting at the historical point of diversion (POD) for these Claims in the SWSWSE Section (S) 34 and ending at the confluence with the Clark Fork River in the NWNWSW S33, all Township (T) 8 North (N), Range (R) 9 West (W). The proposed purpose is instream flow for fisheries. The

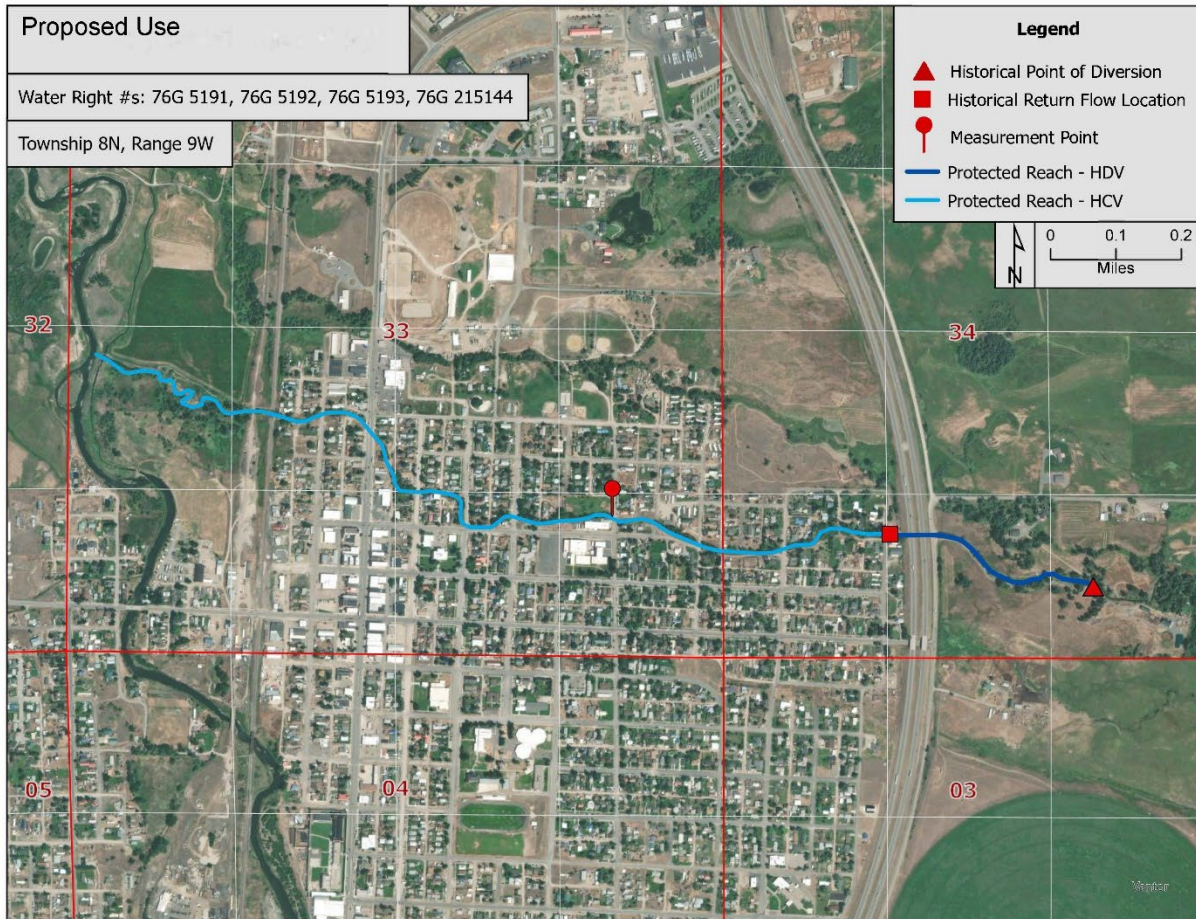
project is in Powell County and the source is Cottonwood Creek. After this change, the Applicant proposes to protect up to 174.45 AF volume at a flow rate of up to 1.99 CFS. The proposed period of diversion and period of use is June 13 to August 10. Maps 1 and 2 show the elements of the proposed change.

4. The Applicant proposes to protect the full historical diverted volume (HDV) of 174.45 AF from the historical POD to the point at which return flows from historical irrigation practices began to accrete to Cottonwood Creek in the NWSESW S34, T8N, R9W, Powell County. Below this point to the confluence with the Clark Fork River, the Applicant proposes to protect the historical consumed volume (HCV) of 31.67 AF.

5. The Applicant proposes to utilize the DNRC real-time stream gage on Cottonwood Creek in the NWSESE S33, T8N, R9W, Powell County to measure flows. If this gage becomes unavailable, the Applicant proposes to measure flows at the same location every two weeks during the period of use using Department approved methods.



Map 1: Historical Use



Map 2: Proposed Use

CHANGE CRITERIA

6. 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.

7. 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).

8. In addition to the § 85-2-402(2), MCA,¹ an Applicant for a temporary change authorization for instream flow must comply with the requirements and conditions set forth in §§ 85-2-407 and -408, MCA. Section 85-2-408, MCA provides in part:

(1) The department shall accept and process an application for a temporary change in appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the provisions of **85-2-402**, **85-2-407**, and this section. The application must:

(a) include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and

(b) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

¹ Pursuant to §§ 85-2-402 (2)(b) and -402(2)(d), MCA, the Applicant is not required to prove that the proposed means of diversion, construction, and operation of the appropriation works are adequate and is not required to prove possessory interest in the place of use because this application involves a temporary change in appropriation right for instream flow pursuant to § 85-2-408, MCA.

(2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:

(i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or

(ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.

(3) In addition to the requirements of **85-2-402** and **85-2-407**, an Applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

(5) The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.

....

(8) The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion.

9. Pursuant to §§ 85-2-407, and -408, MCA, a temporary change for authorization for instream flow is subject to special conditions which are identified above and addressed in the sections below. 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.*

HISTORICAL USE AND ADVERSE EFFECT

FINDINGS OF FACT - Historical Use

10. Table 2 below indicates the priority date and filing status for each of the rights proposed for change in this Application.

Table 2: Water Right Historical Basis

Water Right	Priority Date	Decree Status	Basis for Status
76G 5191-00	April 1, 1866	Decreed	Historical district court decree
76G 5192-00	November 7, 1879	Decreed	Historical district court decree
76G 5193-00	April 1, 1871	Decreed	Historical district court decree
76G 215144-00	June 30, 1973	Use	Filed based on use

11. The Claims proposed for change in this Application claim 56.62 acres of flood irrigation in the NW and SW of S34, T8N, R9W, Powell County. The Department identified 31.07 acres of historical irrigation within the historically claimed POU based on Water Resources Survey aerial photography dated August 17, 1947 and USDA aerial photography from 1979. The historical method of irrigation was wild flood with a field efficiency of 25%. All four claims proposed for change in this Application were 100% supplemental on the same 31.07-acre POU.

12. The Applicant elected to use the methodology set forth in ARM 36.12.1902 for the calculation of historic field application and consumed volumes. Per the IWR values listed under ARM 36.12.1902, the seasonal evapotranspiration (ET) for this area based on the Deer Lodge weather station is 13.14 inches for flood, wheel line, and hand line irrigation. The management factor for Powell County for pre-July 1, 1973, uses is 78%. The Applicant described wild flood

irrigation, and evidence of ditches in historical aerial photos supports this claim. The Department utilized the efficiency value of 25% corresponding to wild flood irrigation. The Department calculates an additional 5% irrecoverable losses from the field application volume for flood irrigation systems. Table 3 summarizes the calculated historical consumptive volume or the 31.07-acre historical place of use.

Table 3: Historic Applied and Consumed Volumes

Irrigation Method	Acres	IWR (in) ¹	Mgmt. Factor ²	Field Efficiency	Crop Consumption (AF)	Applied Volume (AF)	IL (AF)	Total Consumed Volume (AF)	Field Application Volume (AF)
Flood Irrigation, Wheeline & Handline	31.07	13.14	0.78	0.25	26.4	100.32	5.28	31.67	105.6

¹Deer Lodge IWR Weather Station

²Powell County Historical Use Management Factor 1964 - 1973

13. All four Claims proposed for change in this Application are 100% supplemental on the same 31.07-acre POU. The total historical consumptive volume for the POU was apportioned between each Claim based on the corresponding percentage of the total flow rate contributed by each right as shown in Table 4 below. In the absence of specific knowledge regarding the actual historical timing of diversions between the early priority date claims and the later claims, as well as the possibility of varying timing of diversions depending on the year and conditions, the Department utilized apportionment based on flow rate.

Table 4: Apportionment of Historical Use by Water Right

Water Right No.	Flow Rate (CFS)	Percentage of Flow	Apportioned HCV (Including IL) (AF)	Apportioned Field Application Volume (AF)
76G 5191-00	0.28	9	2.83	9.45
76G 5192-00	0.28	9	2.83	9.45
76G 5193-00	0.58	19	5.87	19.57
76G 215144-00	1.99	64	20.14	67.14
Total	3.13	100%	31.67	105.61

14. Water was diverted from Cottonwood Creek into the Beaumont Ditch via a headgate in the SWSWSE S34, T8N, R9W, Powell County and conveyed 2,112 ft to the place of use. The

Applicant provided a ditch bottom width of 3 ft and a top width of 5 ft, a depth of 2 ft, a length of 0.4 miles or 2,112 ft, a slope of 0.2%, and a Manning's n value of 0.03. The ditch dimensions result in a Mannings capacity estimate of 18.6 CFS.

15. The historical period of diversion and period of use for Claims 76G 5191-00, 76G 5192-00, and 76G 5193-00 is May 1 through October 1, and March 10 through July 10 for Claim 76G 215144-00. The Applicant states that water was historically diverted for the entire period of diversion for each of the Claims proposed for change.

16. Conveyance losses were calculated based on ARM 36.12.1902(10) and are the sum of seepage loss, vegetative loss, and ditch evaporation. The components are determined by the following variables:

- a. Seepage Loss: wetted perimeter, ditch length, ditch loss rate, days of diversion
- b. Vegetation Loss: % loss per mile, flow rate, days of diversion, evaporation rate
- c. Ditch Evaporation: ditch surface area, evaporation rate

The following equations are used per Department standard practice:

d.
$$\text{Seepage Loss}^A = \frac{\text{wetted perimeter} \times \text{ditch length} \times \text{ditch loss rate} \times \text{days}}{43,560 \text{ ft}^2/\text{acre}},$$

e.
$$\text{Vegetation Loss}^B = \left(\% \frac{\text{loss}}{\text{mile}} \right) \times \text{flow rate} \times \text{days} \times \text{ditch length} \times 2 \text{ (unit conversion constant)},$$

f.
$$\text{Ditch Evaporation}^C = \frac{\text{ditch surface area} \times \text{evaporation rate}}{43,560 \text{ ft}^2/\text{acre}}.$$

17. The Applicant provided a ditch bottom width of 3 ft and a top width of 5 ft, a depth of 2 ft, a length of 0.4 miles or 2112 ft, and a slope of 0.2%. The ditch dimensions result in a wetted perimeter value of 7.08 ft. The soil material was identified by the Applicant as loam, which the Department determined has a loss rate of 1.4 ft³/ft²/day. The total number of days irrigated was split into three periods: Beaumont A from March 10 to April 30 when only Claim 76G 215144-00 is being used, Beaumont B from May 1 to July 10 when all four Claims are being used, and Beaumont C from July 11 to October 1 when only Claims 76G 5191-00, 76G 5192-00, and 76G 5193-00 are being used. Adjusted net evaporation rates of 2.06 in, 4.97 in, and 11.16 in were applied to each of these periods respectively. The conveyance losses were calculated for each of these time periods, then apportioned as shown in Table 6 to each Claim within these periods based on relative proportion of flow rate for each Claim as shown in Table 4. The Department utilized the procedures outlined in the Department Memo dated September 13, 2012, regarding

the development of standardized methodologies to determine historic diverted volume to calculate the values found in Table 5 below.

Table 5: Conveyance loss apportionment by period of diversion

Ditch Leg	Length (ft)	Flow Rate (CFS)	Width (ft)	Wetted Perimeter (ft)	Ditch Loss Rate (ft ³ /ft/day)	Number of Days Irrigated	Adj. Net Evap (in)	Seepage Loss (AF)	Vegetation Loss (AF)	Evaporative Loss (AF)	Total Conveyance Loss (AF)
Beaumont A	2112	1.99	3	4.24	1.4	76	2.06	21.87	0.91	0.03	22.81
Beaumont B	2112	3.13	3	4.63	1.4	75	4.97	23.57	1.41	0.08	25.06
Beaumont C	2112	1.14	3	3.88	1.4	77	11.16	20.28	0.53	0.16	20.97
Total								65.72	2.84	0.27	68.84

Table 6: Conveyance loss apportionment by water right

Ditch Leg	Water Right Number	Flow Rate (CFS)	Conveyance Loss Volume (by Leg) (AF)	% of Flow	CL Volume (by WR) (AF)
Beaumont A	76G 215144-00	1.99	22.81	100	22.81
Beaumont B	76G 5191-00	3.13	25.06	9	2.26
	76G 5192-00			9	2.26
	76G 5193-00			18	4.51
	76G 215144-00			64	16.03
Beaumont C	76G 5191-00	1.14	20.97	25	5.24
	76G 5192-00			25	5.24
	76G 5193-00			50	10.49
Total			68.84		68.84

18. Per ARM 36.12.1902(10), the historically diverted volume is equal to the sum of the historical field application volume and historical conveyance loss volume. Table 7 below summarizes the historical field applied and conveyance loss volumes as apportioned between each Claim.

Table 7: Historic Diverted Volume for each right

Water Right No.	Field Application Apportionment (%)	Apportioned Field Application Volume (AF)	Apportioned Conveyance Loss Volume (AF)	Apportioned HDV (AF)
76G 5191-00	9	9.45	7.50	16.95
76G 5192-00	9	9.45	7.50	16.95
76G 5193-00	19	19.57	15.00	34.57
76G 215144-00	64	67.14	38.84	105.98
Total	100%	105.6	68.84	174.45

19. The Department finds the following historical use, as shown in Table 8.

Table 8: Summary of historical use findings for each right

WR #	Priority Date	Diverted Volume (AF)	Flow Rate (CFS)	Purpose (Total Acres)	Consumptive Use (AF)	Place of Use	Point of Diversion
76G 5191-00	April 1, 1866	16.95	0.28	31.07	2.83	NWSW, S2SWNW S34 T8N R9W Powell County	SWSWSE S34 T8N R9W Powell County
76G 5192-00	November 7, 1879	16.95	0.28	31.07	2.83	NWSW, S2SWNW S34 T8N R9W Powell County	SWSWSE S34 T8N R9W Powell County
76G 5193-00	April 1, 1871	34.57	0.58	31.07	5.87	NWSW, S2SWNW S34 T8N R9W Powell County	SWSWSE S34 T8N R9W Powell County
76G 215144-00	June 30, 1973	105.98	1.99	31.07	20.14	NWSW, S2SWNW S34 T8N R9W Powell County	SWSWSE S34 T8N R9W Powell County
Total		174.45			31.67		

ADVERSE EFFECT

FINDINGS OF FACT

20. The Applicant proposes to protect the historical diverted volume of 174.45 AF instream from the historical point of diversion in the SWSWSE S34, T8N, R9W, Powell County to the point at which return flows from historical irrigation practices began to accrete to Cottonwood Creek in the NWSESW S34, T8N, R9W, Powell County. Below this point to the confluence with the Clark Fork River, the Applicant proposes to protect the historical consumed volume of 31.67 AF.

21. The historical consumptive use for the water rights proposed for change in this Application is 31.67 AF, and the proposed use is instream fisheries and does not result in any consumptive use, therefore the proposed change results in a decrease in consumed volume from Cottonwood Creek of 31.67 AF.

22. The Applicant states that by leaving historically diverted and consumed water instream below the historical diversion, other users will not experience a decrease in historically available water in Cottonwood Creek. The Department finds that by leaving historically diverted water instream, the ability of other users to exercise their rights will not be adversely affected.

23. Department Groundwater Hydrologist Evan Norman completed the Surface Water Change Technical Analysis Report Part B. The historical applied but non-consumed volume is 73.93 AF (105.6 AF applied volume – 31.67 AF consumed volume; due to rounding differences the consumed volume listed in the return flow analysis was 31.68 AF, however calculations in this document are based on a consumed volume of 31.67 AF), and the location of historical return flows is Cottonwood Creek downstream of the NWSESW S34, T8N, R9W, Powell County. Historically diverted flows will be left instream in Cottonwood Creek during the historical period of diversion below the point of diversion and where return flows historically returned to the source. Per Department policy as referenced in the April 1, 2016 memo regarding return flows the return flow analysis does not include a monthly breakdown of the rate and time of return flows.

24. The Applicant proposes to protect the historically diverted volume in the reach between the historical POD and the point downstream where return flows from historical practices began to accrete to Cottonwood Creek. Other users within this reach would not historically have had access to the diverted volume proposed for change in this Application, therefore these users will not experience a decrease in availability as a result of the proposed change. The Applicant proposes to protect the historically consumed volume below the point where historical return flows began to accrete, and any users in this reach would not historically have had access to the consumed volume, therefore these users will not experience any decrease in availability as a result of the proposed change. The Department finds that no other water rights will be adversely impacted by the proposed change.

BENEFICIAL USE

FINDINGS OF FACT

25. The Applicant proposes to protect up to 1.99 CFS flow rate and up to 174.45 AF volume for the purpose of instream flow for fisheries in Cottonwood Creek. Cottonwood Creek is listed as a dewatered source by MT Fish, Wildlife, and Parks and the proposed increase in instream flow

is beneficial to fish and other aquatic organisms. The Department finds that protecting the proposed flow rate and volume for instream flow is a beneficial use.

ADEQUATE DIVERSION

FINDINGS OF FACT

26. The proposed change of Water Right Nos. 76G 5191-00, 76G 5192-00, 76G 5193-00, and 76G 215144-00 does not require a means of diversion or conveyance. Per § 85-2-402(2)(b), MCA, a change in appropriation right for instream flow pursuant to § 85-2-408, MCA, is exempt from the adequacy of diversion criterion.

POSSESSORY INTEREST

FINDINGS OF FACT

27. Pursuant to § 85-2-402(2)(d), MCA, the Applicant is not required to prove that they have 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 because this application involves a change in appropriation right for instream flow per § 85-2-408, MCA.

TEMPORARY PROTECTED REACH/ MEASUREMENT PLAN

FINDINGS OF FACT

28. The Applicant is proposing to temporarily change the purpose and place of use of Claim Nos. 76G 5191-00, 76G 5192-00, 76G 5193-00, and 76G 215144-00 to instream flow for the benefit of the fishery resource in Cottonwood Creek for a period of 10 years with the option to renew. During the term of this temporary change, 31.07 acres will no longer be irrigated. After this change, the Applicant will appropriate 1.99 CFS between June 13 and July 10 in a 0.35-mile reach from the historical POD in the SWSWSE S34, T8N, R9W, Powell County to the point at which return flows from historical irrigation practices began to accrete to Cottonwood Creek in the NWSESW S34, T8N, R9W, Powell County. The total protected volume during this period will be 105.98 AF. From July 11 to August 10 the Applicant will appropriate 1.14 CFS in this same reach, with a protected volume of 68.47 AF. The total combined protected volume for both periods will be 174.45 AF. In the 1.4-mile reach below the point where historical return flows began to accrete to Cottonwood Creek to the confluence with the Clark Fork River in the NWNWSW S33, T8N, R9W, Powell County the Applicant may protect the historical consumed volume of 31.67 AF. The total proposed protected reach length is 1.75 miles.

29. The Applicant will monitor flow rates and volumes appropriated for the instream flow purpose by utilizing the DNRC real-time stream gage on Cottonwood Creek in the NWSESE S33, T8N, R9W, Powell County approximately 0.4 miles below the point where return flows begin to accrete to Cottonwood Creek. If this gage becomes unavailable, the Applicant proposes to measure flows at the same location every two weeks during the period of use using Department approved methods. The change authorization will be subject to the following condition:

FLOW WILL BE PROTECTED INSTREAM UP TO 1.99 CFS BETWEEN JUNE 13 AND JULY 10, AND UP TO 1.14 CFS BETWEEN JULY 11 AND AUGUST 10, UP TO A TOTAL PROTECTED VOLUME OF 174.45 AF. THE APPLICANT OR DESIGNEE SHALL MEASURE THE FLOWS AT THE DNRC GAGE BELOW THE HISTORICAL POD. MEASUREMENTS WILL BE TAKEN MONTHLY DURING THE PERIOD OF USE FOR INSTREAM FLOW USING DEPARTMENT APPROVED MEASURING DEVICES. ALL MEASUREMENTS WILL BE REPORTED TO THE DNRC HELENA REGIONAL OFFICE BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR DURING THE TEMPORARY CHANGE AUTHORIZATION. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A CHANGE.

30. The Department finds the Applicant has met the additional criteria for a temporary change in appropriation right to maintain or enhance instream flow to benefit a fishery resource under the provisions of § 85-2-408, MCA.

CONCLUSIONS OF LAW

HISTORICAL USE AND ADVERSE EFFECT

31. 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).²

32. 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*, ¶¶ 43-45.³

33. 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 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.⁴ 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

² DNRC decisions are available at: <https://dnrc.mt.gov/Directors-Office/HearingOrders>

³ 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).

⁴A 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

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).⁵

34. 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

⁵ Other western states likewise rely upon the doctrine of historic use as a critical component in evaluating changes in appropriation rights for expansion and adverse effect: Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy District, 717 P.2d 955, 959 (Colo. 1986)("[O]nce an appropriator exercises his or her privilege to change a water right ... the appropriator runs a real risk of requantification of the water right based on actual historical consumptive use. In such a change proceeding a junior water right ... which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historic use of the right."); Santa Fe Trail Ranches Property Owners Ass'n v. Simpson, 990 P.2d 46, 55 -57 (Colo., 1999); Farmers Reservoir and Irr. Co. v. City of Golden, 44 P.3d 241, 245 (Colo. 2002)("We [Colorado Supreme Court] have stated time and again that the need for security and predictability in the prior appropriation system dictates that holders of vested water rights are entitled to the continuation of stream conditions as they existed at the time they first made their appropriation); Application for Water Rights in Rio Grande County, 53 P.3d 1165, 1170 (Colo. 2002); Wyo. Stat. § 41-3-104 (When an owner of a water right wishes to change a water right ... he shall file a petition requesting permission to make such a change The change ... may be allowed provided that the quantity of water transferred ... shall not exceed the amount of water historically diverted under the existing use, nor increase the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators.); Basin Elec. Power Co-op. v. State Bd. of Control, 578 P.2d 557, 564 -566 (Wyo, 1978) (a water right holder may not effect a change of use transferring more water than he had historically consumptively used; regardless of the lack of injury to other appropriators, the amount of water historically diverted under the existing use, the historic rate of diversion under the existing use, the historic amount consumptively used under the existing use, and the historic amount of return flow must be considered.)

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).⁶

35. 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.

36. 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

⁶ 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).

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).

37. 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.

38. 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).

39. 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).

40. 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).

41. 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.12)

42. 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").

43. 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 76G 5191-00 to be a

diverted volume of 16.95 AF, a historically consumed volume of 2.83 AF, and flow rate of 0.28 CFS. The historic use of Statement of Claim 76G 5192-00 is a diverted volume of 16.95 AF, a historically consumed volume of 2.83 AF, and flow rate of 0.28 CFS. The historic use of Statement of Claim 76G 5193-00 is a diverted volume of 34.57 AF, a historically consumed volume of 5.87 AF, and flow rate of 0.58 CFS. The historic use of Statement of Claim 76G 215144-00 is a diverted volume of 105.98 AF, a historically consumed volume of 20.14 AF, and flow rate of 1.99 CFS. (FOF Nos. 10-19)

44. 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. 20-24)

BENEFICIAL USE

45. A change Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. Sections 85-2-102(5) 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).

46. Applicant proposes to use water for instream flow which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence instream flow is a beneficial use and that 174.45 acre-feet of diverted volume and 3.13 CFS flow rate of water requested is the amount needed to sustain the beneficial use. Section 85-2-402(2)(c), MCA (FOF No. 25).

ADEQUATE MEANS OF DIVERSION

47. Pursuant to § 85-2-402 (2)(b), MCA, the Applicant is not required to prove that the proposed means of diversion, construction, and operation of the appropriation works are adequate because this application involves a change in appropriation right for instream flow pursuant to §§ 85-2-408, MCA.

48. 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 No. 26)

POSSESSORY INTEREST

49. Pursuant to § 85-2-402(2)(d), MCA, the Applicant is not required to prove 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 because this application involves a change in appropriation right for instream flow pursuant to §§ 85-2-408, MCA.

50. 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. 27).

PRELIMINARY DETERMINATION

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to temporarily Change Water Right No. 76G 30165115 should be GRANTED subject to the following.

The Applicant is authorized to temporarily change the purpose and place of use of Claim nos. 76G 5191-00, 76G 5192-00, 76G 5193-00, and 76G 215144-00 to instream flow for the benefit of the fishery resource in Cottonwood Creek for a period of 10 years with the option to renew. During the term of this temporary change, 31.07 acres will no longer be irrigated. After this change, the

Applicant will appropriate up to 1.99 CFS flow rate in the proposed 1.75 -mile instream place of use in Cottonwood Creek, which will extend from SWSWSE S34, T8N, R9W, Powell County to the NWNWSW S33, T8N, R9W, Powell County. The proposed period of use is June 13 to August 10. The total volume available to be appropriated instream is 174.45 AF.

Conditions

FLOW WILL BE PROTECTED INSTREAM UP TO 1.99 CFS BETWEEN JUNE 13 AND JULY 10, AND UP TO 1.14 CFS BETWEEN JULY 11 AND AUGUST 10, UP TO A TOTAL PROTECTED VOLUME OF 174.45 AF. THE APPLICANT OR DESIGNEE SHALL MEASURE THE FLOWS AT THE DNRC GAGE BELOW THE HISTORICAL POD. MEASUREMENTS WILL BE TAKEN MONTHLY DURING THE PERIOD OF USE FOR INSTREAM FLOW USING DEPARTMENT APPROVED MEASURING DEVICES. ALL MEASUREMENTS WILL BE REPORTED TO THE DNRC HELENA REGIONAL OFFICE BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR DURING THE TEMPORARY CHANGE AUTHORIZATION. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A CHANGE.

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 8th day of May, 2026.

/Original signed by Jennifer Daly/

Jennifer Daly, Manager
Helena Regional Office
Montana Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the [DRAFT] PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 8th day of May, 2026, by first class United States mail.

CLARK FORK COALITION
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MISSOULA, MT 59801

Helena Regional Office, (406) 444-6999