

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

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APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 76LJ 30172339 BY KELLY M WILLS AND SHELLEY WILLS	))	DRAFT PRELIMINARY DETERMINATION TO GRANT PERMIT
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On May 8, 2026, Kelly M Wills and Shelly Wills (Applicants) submitted Application for Beneficial Water Use Permit No. 76LJ 30172339 to the Kalispell Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) for 25.0 gallons per minute up to 3.73 acre-feet to irrigate 1.5 acres of lawn and garden from April 15th to October 15th annually. The Department published receipt of the application on its website on May 11, 2026. A preapplication meeting was held between the Department and the Applicants on November 17, 2025, in which the Applicants designated that the technical analyses for this application would be completed by the Department. The Applicants returned the completed Preapplication Meeting Form on December 15, 2025. The Department delivered the Department-Completed Technical Analyses on January 29, 2026. The Department sent the Applicants a letter identifying an error in the Department-completed Technical Analyses on May 26, 2026. The application was determined to be correct and complete as of June 1, 2026. An Environmental Assessment for this application was completed on July 27, 2026.

INFORMATION

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

Application as filed:

- Application for Beneficial Water Use Permit, Form 600
- Attachments:
 - Exhibit A & B: Vicinity Map and Parcel View

- Exhibit C: Total Dynamic Head Calculation
- Exhibit D: Water Use/Needs Calculation
- Exhibit E: Pump Curve and Specifications
- Exhibit F: Irrigation and K-Rain Sprinkler Information
- Department Completed Technical Analyses Report based on information provided in the Preapplication Meeting Form, dated January 29, 2026
- Department Completed Errata for Technical Analyses, dated May 26, 2026

Information within the Department's Possession/Knowledge

- Lake Mary Ronan's volume quantified using publicly available bathymetric data (dated July 18, 2011) from the Montana Department of Fish, Wildlife, and Parks' (MTFWP) FishMT website
- List of existing surface water rights on Lake Mary Ronan
- Photographs and Notes from Site Visit to Lake Mary Ronan by DNRC Hydrologist Melissa Brickl, dated July 17, 2019
- 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 Kalispell Regional Office at 406-752-2288 to request copies of the following documents.
 - DNRC Technical Memorandum: Physical Availability of Surface Water With Gage Data, Dated November 1, 2019
 - DNRC Technical Memorandum: Physical Availability of Ponds, Dated April 22, 2019
 - DNRC Technical Memorandum: Physical Availability of Surface Water Without Gage Data, Dated April 18, 2019

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, MCA).

For the purposes of this document:

Department or DNRC means the Department of Natural Resources and Conservation	
NRCS means the Natural Resource Conservation Service	
DEQ means the Montana Department of Environmental Quality	
GWIC ID means Groundwater Information Center Identification	
AF means acre-feet	AOPI means Area of Potential Impact
ARM means Administrative Rules of Montana	BGS means below ground surface
AU means Animal Units	CFS means cubic feet per second
BTC means below top of casing	GPD means gallons per day
FOF means finding(s) of fact	POD means point of diversion
GPM means gallons per minute	SWL means static water level
IWR means Irrigation Water Requirements	VFD means variable frequency drive
MCA means Montana Code Annotated	ZOI means zone of influence
TDH means total dynamic head	WSB means the Water Sciences Bureau
USDA means United States Department of Agriculture	
CSKT means Confederated Salish and Kootenai Tribes	

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicants propose to divert water from Ronan Creek (Lake Mary Ronan) – hereafter referred to as Lake Mary Ronan, by means of a pump, from April 15th to October 15th at a flow rate of 25.0 GPM. The Applicants propose to divert up to 3.73 AF/year, from a point in the S2SESE Section 11, Township 25N, Range 22W, Lake County, to irrigate 1.5 acres of lawn and garden from April 15th to October 15th. The place of use is Government Lot 7, S2SESE, Section 11, Township 25N, Range 22W, Lake County, Montana (**Figure 1**). **Table 1** below provides a summary of the proposed use.

Table 1: Summary of Proposed Use					
Flow Rate	Volume	Purpose	Period Of Use	Place Of Use	Point(s) Of Diversion
25 GPM	3.73 AF	Lawn and Garden	4/15 to 10/15	Government Lot 7, S2SESE, Section 11, Township 25N, Range 22W, Lake County	S2SESE Section 11, Township 25N, Range 22W, Lake County

2. Groundwater Certificate 76LJ 30050229 is currently being used for domestic use for one household and to irrigate 1.8 acres of lawn and garden. Upon issuance of the permit the well will cease to provide irrigation to the property and the well will be utilized for domestic use only while the provisional permit covers the lawn and garden irrigation.

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Wills, Shelly & Kelly



Figure 1: Map of Applicants' Proposed Point of Diversion and Place of Use

BENEFICIAL WATER USE PERMIT CRITERIA (§ 85-2-311, MCA)

GENERAL CONCLUSIONS OF LAW

3. The Montana Constitution expressly recognizes in relevant part that:

- (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
- (2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use . . . shall be held to be a public use.
- (3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

Mont. Const. Art. IX, § 3. While the Montana Constitution recognizes the need to protect senior appropriators, it also recognizes a policy to promote the development and use of the waters of the state by the public. This policy is further expressly recognized in the water policy adopted by the Legislature codified at § 85-2-102, MCA, which states in relevant part:

- (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter. . . .
- (3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana . . .

4. Pursuant to § 85-2-302(1), MCA, except as provided in §§ 85-2-306 and 85-2-369, MCA, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the Department. *See* § 85-2-102(1), MCA. An Applicant in a beneficial water use permit proceeding must affirmatively prove all of the applicable criteria in § 85-2-311, MCA. Section § 85-2-311(1) states in relevant part:

- ... the department shall issue a permit if the Applicant proves by a preponderance of evidence that the following criteria are met:
- (a) (i) there is water physically available at the proposed point of diversion in the amount that the Applicant seeks to appropriate; and
 - (ii) water can reasonably be considered legally available during the period in which the

Applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

- (A) identification of physical water availability;
 - (B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and
 - (C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.
- (b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an Applicant's plan for the exercise of the permit that demonstrates that the Applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;
- (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
- (d) the proposed use of water is a beneficial use;
- (e) 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 use has 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 under the permit;
- (f) the water quality of a prior appropriator will not be adversely affected;
- (g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and
- (h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.
- (2) The Applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

To meet the preponderance of evidence standard, “the Applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the Applicant, the department, the U.S. geological survey, or

the U.S. natural resources conservation service and other specific field studies.” Section 85-2-311(5), MCA (emphasis added). The determination of whether an application has satisfied the § 85-2-311, MCA criteria is committed to the discretion of the Department. *Bostwick Properties, Inc. v. Montana Dept. of Natural Resources and Conservation*, 2009 MT 181, ¶ 21. The Department is required grant a permit only if the § 85-2-311, MCA, criteria are proven by the Applicant by a preponderance of the evidence. *Id.* A preponderance of evidence is “more probably than not.” *Hohenlohe v. DNRC*, 2010 MT 203, ¶¶ 33, 35, 357 Mont. 438, 240 P.3d 628.

5. Pursuant to § 85-2-312, MCA, the Department may condition permits as it deems necessary to meet the statutory criteria:

(1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

E.g., Montana Power Co. v. Carey (1984), 211 Mont. 91, 96, 685 P.2d 336, 339 (requirement to grant applications as applied for, would result in, “uncontrolled development of a valuable natural resource” which “contradicts the spirit and purpose underlying the Water Use Act.”); *see also, In the Matter of Application for Beneficial Water Use Permit No. 65779-76M by Barbara L. Sowers* (DNRC Final Order 1988)(conditions in stipulations may be included if it further compliance with statutory criteria); *In the Matter of Application for Beneficial Water Use Permit No. 42M-80600 and Application for Change of Appropriation Water Right No. 42M-036242 by Donald H. Wyrick* (DNRC Final Order 1994); Admin. R. Mont. (ARM) 36.12.207.

6. The Montana Supreme Court further recognized in *Matter of Beneficial Water Use Permit Numbers 66459-76L, Ciotti: 64988-G76L, Starnier*, 278 Mont. 50, 60-61, 923 P.2d 1073, 1079, 1080 (1996), *superseded by legislation on another issue*:

Nothing in that section [85-2-313], however, relieves an Applicant of his burden to meet the statutory requirements of § 85-2-311, MCA, before DNRC may issue that provisional permit. Instead of resolving doubts in favor of appropriation, the Montana Water Use Act requires an Applicant to make explicit statutory showings that there are unappropriated waters in the source of supply, that the water rights of a prior appropriator will not be adversely affected, and that the proposed use will not unreasonably interfere with a planned use for which water has been reserved.

See also, Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court,

Memorandum and Order (2011). The Supreme Court likewise explained that:

.... unambiguous language of the legislature promotes the understanding that the Water Use Act was designed to protect senior water rights holders from encroachment by junior appropriators adversely affecting those senior rights.

Montana Power Co., 211 Mont. at 97-98, 685 P.2d at 340; *see also* Mont. Const. art. IX § 3(1).

7. An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of § 85-2-311, MCA is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this § 85-2-311, MCA. Section 85-2-311(6), MCA.

8. The Department may take notice of judicially cognizable facts and generally recognized technical or scientific facts within the Department's specialized knowledge, as specifically identified in this document. ARM 36.12.221(4).

PHYSICAL AVAILABILITY

FINDINGS OF FACT

9. The Applicants propose to divert water from Lake Mary Ronan at a rate of 25.0 GPM up to 3.73 AF to irrigate 1.5 acres of lawn and garden from May 15th to October 15th annually.

10. There are three major streams supplying water to Lake Mary Ronan: Donaldson, Freeland, and Hilburn Creeks. A single stream, Ronan Creek, serves as the outlet of the lake. Ronan Creek flows southeast, discharging to Dayton Creek, a tributary to Flathead Lake.

11. A dam structure on private land at the head of Ronan Creek impounds water approximately 4 feet above the natural level of Lake Mary Ronan. A site visit was conducted by Mark Paulson of Aquatek Consulting for water right application 76LJ 30063101 on October 13, 2012. This site visit confirmed a dike with concrete weir structure approximately 25 ft long, 12 to 14 feet wide, and approximately four feet tall holding back lake waters. The weir structure acts as an overflow structure (**Figure 2**). DNRC's Melissa Brickl visited the site of the dam on July 17, 2019, and photographed the system. The bottom of the corrugated metal pipe (CMP) lies at the top of the natural lake storage and at the bottom of the volume impounded by the dam, which allows the owner to divert the water impounded by the dam for their water rights.



Figure 2: The weir structure that acts as an overflow structure for high lake levels.

12. Approximately 30 feet west of the overflow structure was an elliptical CMP buried in the dike that extends from its upstream (lake) side to its downstream (creek) side. The CMP pipe measured 36 inches in diameter and was 56 inches long. The upstream end of the pipe was

fitted with an adjustable steel slide gate embedded in a concrete headwall and secured with a padlock (**Figure 3**). The CMP is the primary means of releasing water for irrigation Claims 76LJ 45094, 76LJ 39786, 76LJ 45090, and 76LJ 45093 downstream on Ronan Creek.



Figure 3: Headgate holding water in Lake Mary Ronan that allows the dam and headgate owner to release water into the CMP and into Ronan Creek on an unknown schedule.

13. The maximum water surface elevation of Lake Mary Ronan, including the dam storage, is 3,701 feet according to the US Geological Survey (USGS) Topographic map (**Figure 4**).

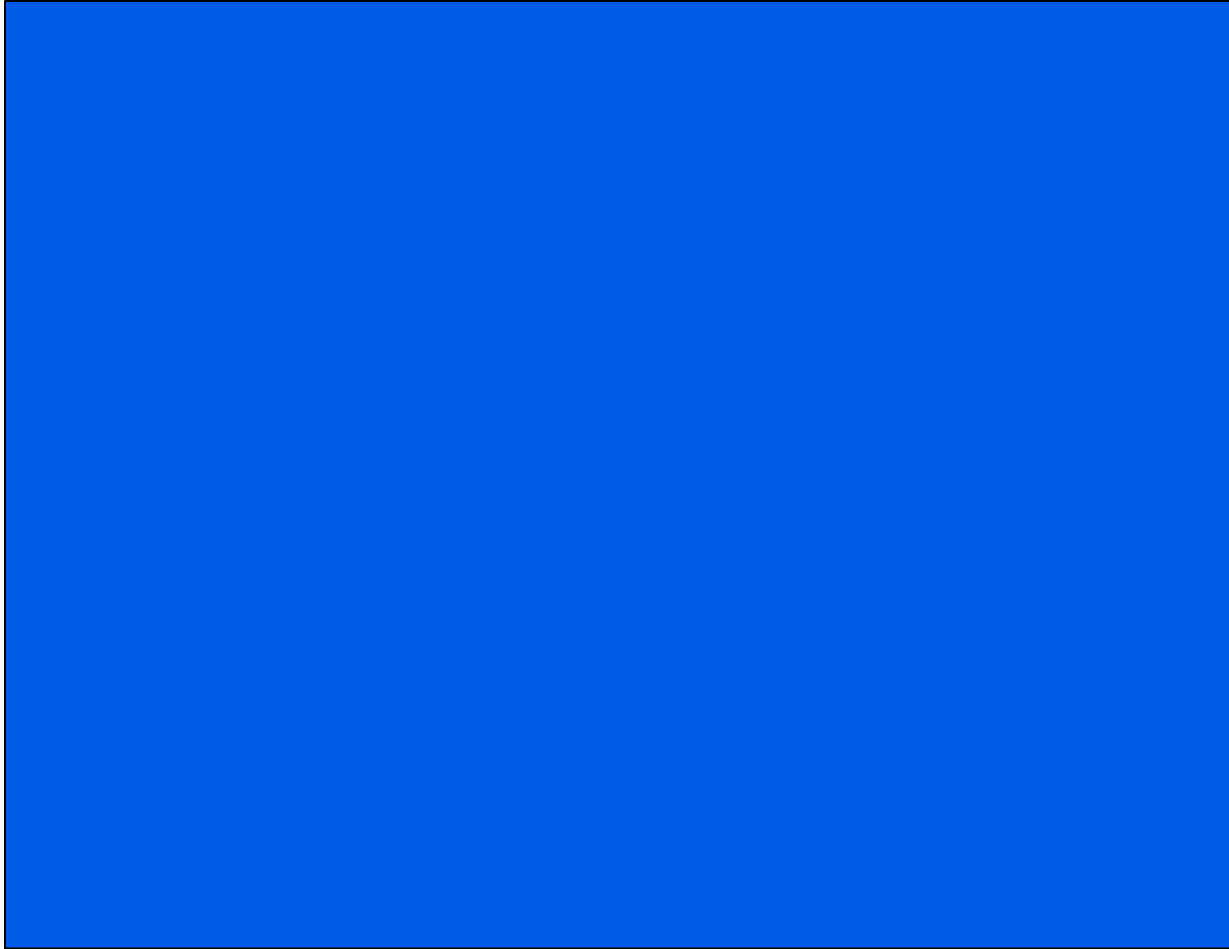


Figure 4: Bathymetric Map of Lake Mary Ronan showing the strata of the lake.

14. The Department quantified Lake Mary Ronan's volume using publicly available bathymetric data from the MT Department of Fish, Wildlife, and Parks (MTFWP) and adjusted using the following methodology. Lake Mary Ronan was surveyed on July 18, 2011, by MTFWP. The Department used ArcGIS to generate polygons of depth strata from this data, **Figure 4**, allowing the Department to quantify the total area of each depth stratum. The National Hydrography Dataset (NHD) Waterbody ArcGIS Polygon area was used for the zero-foot contour extent. This data was used in place of the MTFWP zero-foot contour because it appears to provide a more accurate representation of the lake boundary when compared to the USGS topographic map and aerial imagery. Lake Mary Ronan's area was calculated as 1,515.7 acres based on the sum of all depth strata areas. The end-area formula used for finding the volume of prismatic forms was used to quantify the total volume of water within

each depth stratum, **Table 2**. The process for applying the end area formula to compute lake volume is found in the DNRC Technical Memorandum: Physical Availability of Ponds, dated April 22, 2019. The Department calculated 41,564.5 AF as Lake Mary Ronan’s total volume. The Department used the following equation to calculate the volume of Lake Mary Ronan:

End Area Formula

$$V = \frac{1}{2} H(A_1 + A_2)$$

H= The difference in depth between two successive depth contours;

A₁ = area of the lake within the outer depth contour being considered;

A₂ = area of the lake within the inner contour line under consideration

15. Due to the construction of the dam on private land affecting the capacity of the lake, storage from the dam structure needed to be quantified. Per a US Army Corps of Engineers (ACOE) Report entitled “Flood Plain Determination Lake Mary Ronan, Lake County Montana” dated September 1996, the minimum elevation of the CMP is 3,696.74 feet. The ACOE report calculated that 4.26 feet (3,701.0 feet – 3,696.74 feet = 4.26 feet) or approximately **6,456.9 AF** (4.26 feet x 1,515.7 acres = 6,456.9) of water could be stored and released by the CMP.

16. To be conservative, the Department estimated the physical availability of Lake Mary Ronan by subtracting the volume stored by the dam/dike structure from the maximum lake volume. As the Department has no way to quantify the annual volume and/or the timing of water released from Lake Mary Ronan, physical availability is limited to pre-dam/dike construction volume of Lake Mary Ronan. The volume of water physically available in Lake Mary Ronan below the bottom of the dam is **35,107.6 AF (Table 2)**.

Table 2: Physical Availability Bathymetric Analysis of Lake Mary Ronan Using the End-Area Formula					
Contour Interval (ft)	H (ft)	Area (ac)	Total Area (ac)	Depth Strata (ft)	Volume (AF)
0	10	274.6	1,515.7	0-10	13,784.0
10	10	187.8	1,241.1	10-20	11,472.0
20	10	173.7	1,053.3	20-30	9,664.5
30	10	430.4	879.6	30-40	6,644.0
40	10	449.2	449.2		
TOTAL VOLUME (AF)					41,564.5
VOLUME STORED BY DAM (AF)					6,456.9
PHYSICALLY AVAILABLE VOLUME (AF)					35,107.6

17. Based on the physical availability analysis of Lake Mary Ronan at the Applicants' POD, the Department finds that the requested flow rate of 25.0 GPM (0.056 CFS) up to 3.73 AF of volume is physically available in Lake Mary Ronan during the proposed period of diversion spanning from April 15th to October 15th.

LEGAL AVAILABILITY

FINDINGS OF FACT

18. The Applicants propose to divert water from Lake Mary Ronan at a rate of 25.0 GPM up to 3.73 AF to irrigate 1.5 acres of lawn and garden from April 15th to October 15th annually.

19. The Department determined the AOPI for this application to be Lake Mary Ronan, from the inlet to the privately controlled dam above Ronan Creek. Lake Mary Ronan has a private dam that allows the dam owner to store and release up to 6,456.9 AF of water as needed for his Statements of Claims 76LJ 45094 00, 76LJ 45093 00, 76LJ 45090 00 and 76LJ 39786 00 (see FOF 15). The owner of the private dam releases water via the headgate and CMP system as needed for these four appropriations. These releases provide a direct flow of water into Ronan Creek immediately downstream of the dam.

20. The area around the private dam is marshy allowing seepage into Ronan Creek. The owner of the dam told DNRC during a site visit on July 19, 2016, that the dam "leaks just right". This description of leakage through/around the dam is supported by previous

discussions between department staff and various landowners in the area where landowners stated that there is a known baseflow in Ronan Creek that is the result of seepage through or around the dam into Ronan Creek. This baseflow has not been quantified and may fluctuate seasonally. Any additional flows, beyond what seeps through the marshy area or overflows the spillway, out of Lake Mary Ronan into Ronan Creek are dependent upon the management of the private dam structure.

21. The flow of Ronan Creek below the dam is unknown. There are no measurement records on Ronan Creek, and the department is unaware of any measurement records associated with the private dam operations. Additionally, the property surrounding Ronan Creek is almost all privately owned, mostly by the owner of the dam, which limits access to the creek for the purpose of taking measurements. The closest location measurements could theoretically be taken is on CSKT land approximately 3 miles downstream of the dam outlet. However, at this location it is unknown if the area would be suitable for representative measurements to be taken because between the outlet of the lake and the theoretical measurement location, additional inflows enter the creek, allowing for a possibility of inaccurate flows being measured.

22. The Department did not reach out to the private dam owner to gather information on the dam operations as there is no requirement for the dam owner to have a plan of operation. Nor is it possible for the Department to hold the private dam owner to release water on a fixed schedule. If the Applicants went to take measurements based on the schedule (if one were to exist) and the owner deviated from his proposed schedule, the Department would be unable to ensure the measurements taken were valid and representative of the baseflow.

23. The Department has the ability to validate measurements taken by Applicants on ungaged streams by utilizing one or more of the three approved methods; Stream stats, USGS Reports, and Drainage Area Ratio Method. Under most conditions, these methods are used to validate the measurements taken by Applicants due to regression modeling using basin characteristics. However, these methods require certain parameters to be met for them to work as designed. For accurate stream modeling using regression equations the stream must

be free flowing with unmodified (natural) streams whose flow is driven by overland flow in the basin. Ronan Creek does not fit the modeling criteria needed due to the management of the dam on Lake Mary Ronan adding flow on top of the baseflows caused by seepage and overland flows from precipitation. As such, Ronan Creek is not suitable for regression modeling to verify measurements. If an Applicant sought to take measurements on Ronan Creek, the Department would have no valid way to verify them. As a result, the Department finds that Ronan Creek would not be suitable for regression modeling to verify measurements taken on the creek and therefore did not require the applicants to take measurements.

24. The dam owner has no requirement to release water for water rights holders downstream of the dam. Nor is the release of water on a schedule that the Department is aware of, but rather on the whim of the owner. Lake Mary Ronan has a large volume of water physically available, 35,107.6 AF, that is stored below the volume impounded by the private dam and is unable to be diverted by the CMP and headgate system. Due to private management of the dam on Lake Mary Ronan causing inconsistent and unnatural flows into Ronan Creek, lack of measurement information for the creek, lack of a viable method to verify measurements, had they been available, the Department did not consider the existing water rights on Ronan Creek as part of this Application's AOPI. The Department finds Lake Mary Ronan to be a reasonable AOPI.

25. The DNRC used the following method below to quantify legally available monthly volumes in Lake Mary Ronan at the proposed POD during the proposed period of diversion:

- a. The Department generated a list of existing water rights on Lake Mary Ronan to quantify the legal demand on the source shown in **Table 3**.
- b. Four of the water rights found are associated (76LJ 45094 00, 76LJ 45093 00, 76LJ 45090 00 and 76LJ 39786 00) due to them sharing the same method of conveyance, headgate, and storage. The legal demand for the four associated water rights is broken out in **Table 4**.
 - The Department found the associated water rights legal demand on Lake Mary Ronan and the stored water by the dam summed to a volume of 14,000 AF (**Table 4**).

- The four water rights that use the approximate top 4 feet of the lake as storage via the dam structure. The Department found the private dam structure on Lake Mary Ronan can hold 6,456.9 AF (**Table 2**). As such the Department subtracted the stored dam volume from the legal demand on the associated water rights. This was done because the 6,456.9 AF stored by the dam is legally reserved for the four water rights. The remaining legal demand of 7,543.1 AF ($14,000 \text{ AF} - 6,456.9 \text{ AF} = 7,543.1 \text{ AF}$) is considered the legal demand on the lake storage for the four associated water rights (**Table 5**).
- c. The legal demand for Lake Mary Ronan sums to **7,595.1 AF** ($7,543.1 + 52.0 = 7,595.1 \text{ AF}$).
- d. The Department subtracted the legal demand from physically available water as quantified in the Physical Availability section above. The total volume of water physically available in Lake Mary Ronan is **35,107.6 AF**. The Department found the legal demand on Lake Mary Ronan summed to **7,595.1 AF** annually, leaving a total of 27,512.5 AF legally available annually for appropriations from Lake Mary Ronan (**Table 6**).

Table 3: Existing Water Rights on Lake Mary Ronan			
Water Right Number	Purposes	Volume (AF)	Period of Diversion
76LJ 143853 00	COMMERCIAL	14	01/01 to 12/31
76LJ 99075 00	DOMESTIC	1.5	01/01 to 12/31
76LJ 110786 00	DOMESTIC	0.8	01/01 to 12/31
76LJ 110789 00	DOMESTIC	0.3	01/01 to 12/31
76LJ 32526 00	DOMESTIC	1	06/01 to 09/30
76LJ 110785 00	DOMESTIC	0.3	01/01 to 12/31
76LJ 99148 00	DOMESTIC	1.5	01/01 to 12/31
76LJ 110790 00	DOMESTIC	0.3	01/01 to 12/31
76LJ 110787 00	DOMESTIC	1	01/01 to 12/31
76LJ 664 00	DOMESTIC	1.5	01/01 to 12/31
76LJ 26581 00	IRRIGATION	10.6	05/15 to 09/15
76LJ 30006219	IRRIGATION; LAWN AND GARDEN	7.6	01/01 to 12/31
76LJ 30063101	LAWN AND GARDEN	2.6	04/15 to 10/15
76LJ 30005417	LAWN AND GARDEN	2.5	04/15 to 10/15
76LJ 30113323	LAWN AND GARDEN	0.2	04/15 to 10/15
76LJ 30110395	LAWN AND GARDEN	2.7	04/15 to 10/15
76LJ 30008226	LAWN AND GARDEN	0.6	04/01 to 10/01
76LJ 41392 00	LAWN AND GARDEN; STOCK	1.4	01/01 to 12/31
76LJ 39634 00	MULTIPLE DOMESTIC	1.8	01/01 to 12/31
Total	-	52	-

Table 4: Associated Water Rights Legal Demand on Lake Mary Ronan			
Water Right Number	Purposes	Volume (AF)	Period of Diversion
76LJ 45093 00*	IRRIGATION	2,000.0	05/10 to 09/10
76LJ 39786 00*	IRRIGATION	2,000.0	01/01 to 12/31
76LJ 45094 00*	IRRIGATION	1,400.0	01/01 to 12/31
76LJ 45090 00*	IRRIGATION	8,600.0	01/01 to 12/31
Total	-	14,000.0	-
*Claims 76LJ 45093 00, 76LJ 39786 00, 76LJ 45094 00, and 76LJ 45090 00 are associated. They share the same place of storage, head gate, and means of conveyance.			

Table 5: Associated Water Rights Legal Demand on Lake Mary Ronan		
Volume Impounded by Private Dam for Associated Water Rights*	Legal Demand of Associated Rights	Remaining Legal Demand on Lake Mary Ronan
6,456.9 AF	14,000 AF	7,543.1 AF
*The private dam on Lake Mary Ronan accounts for approximately the top 4.26 feet of storage on the lake.		

Table 6: Legal Demand on Lake Mary Ronan		
Physically Available Volume of Lake Mary Ronan	Existing Legal Demand Volume (AF)	Legally Available Volume (AF)
35,107.6	7,595.1	27,512.5

26. The Department finds that the proposed annual diverted volume of 3.73 AF diverted at a flow rate of 25.0 GPM (0.056 CFS) is legally available for appropriation in Lake Mary Ronan.

ADVERSE EFFECT

FINDINGS OF FACT

27. The Applicants propose to divert water from Lake Mary Ronan at a rate of 25.0 GPM up to 3.73 AF to irrigate 1.5 acres of lawn and garden from April 15th to October 15th annually.

28. The Applicants provided a plan showing they can regulate their water uses during water shortages. To satisfy the water rights of senior appropriators the Applicants will;

- a. Regulate volume of water at start of water shortage;
- b. Suspend or reduce irrigation if the water shortage continues; and,
- c. In cases of a valid call being made on the source, the pump will be turned off, and irrigation will cease at that time.

29. The Applicants have shown that they can regulate their water use and they have a plan of implementation to protect senior water users. The Department finds the proposed diversion of 3.73 AF annually at a rate of 25.0 GPM will not have an adverse effect to existing surface water users.

ADEQUATE MEANS OF DIVERSION

FINDINGS OF FACT

30. The Applicants propose to divert water from Lake Mary Ronan at a rate of 25.0 GPM up to 3.73 AF to irrigate 1.5 acres of lawn and garden from April 15th to October 15th annually.

31. The Applicants propose to divert water from Lake Mary Ronan at a rate of 25.0 GPM up to 3.73 AF to irrigate 1.5 acres of lawn and garden by either a Munro MXS 204 or Munro MXS 205 (or equivalent) submersible pump located 60 feet from the high-water mark. The pump is equipped with a screen to prevent debris from entering the system and a backflow preventor to prevent backflow into the lake. The pump outlet is connected to a 2-inch high density polyethylene (HDPE) mainline that extends 595-feet northeast to the top edge of the property. There are 9 irrigation zones controlled by a control box allowing each zone to operate individually. Each zone is served by 1-inch HDPE lines that connect to K-Rain rotors with an operation pressure of 30 PSI to ensure head-to-head coverage. Applicants have approximately 78 feet of lateral 1-inch HDPE line for all 9 zones to connect sprinklers to the main line.

32. The Applicant's calculated a TDH of 133 feet for the system with an expected output of 30 PSI at a flow rate of 25.0 GPM. The Applicants are considering two pumps for this project, the Munro MXS 204 and the Munro MSX 205, depending on the availability. The Applicants provided pump curves for both the Munro MXS 204 and Munro MXS 205 demonstrating that each pump is capable of producing the proposed flow rate of 25.0 GPM at the operating TDH of 133 feet.

33. Applicant may substitute another pump in lieu of the Munro MXS 204 and Munro MXS 205 so long as it provides a flow rate of 25.0 GPM at a TDH of 133 feet.

34. Based on the system design and specifications, the Department finds that the diversion and conveyance system is adequate to supply the requested flow rate of 25.0 GPM (0.056 CFS) up to the annual volume 3.73 AF.

BENEFICIAL USE

FINDINGS OF FACT

35. The Applicants propose to divert water from Lake Mary Ronan at a rate of 25.0 GPM up to 3.73 AF to irrigate 1.5 acres of lawn and garden from May 15th to October 15th annually.

36. The Applicants calculated their water usage based on the DNRC/MSU Extension service recommendation for proper lawn and garden care that calls for 1 to 1.5 inches of water per week in the spring and fall, and 2.5 inches per week in the mid-summer. By alternating days for the watering schedule, the Applicants can apply 1.5 inches per week in the Spring and Fall and 2.5 inches per week in the Mid-Summer for each sprinkler zone. The Applicant created the following water schedule to calculate their water usage:

- Alternate water with zones 1-4 watering on Day 1 and zones 5-9 on Day 2
- Spring water period: April 15 to June 30 (77 days)
- Mid-Summer watering period: July 1 to August 31 (62 days)
- Fall watering period: September 1 to October 15 (45 days)

The Applicants plan to alternate watering days for the zones results in all zones having 7 watering days each 2-week period. The Applicants will water 61 days in the spring/fall period and 31 days in the mid-summer period. Watering days were calculated by summing the days for each period and dividing by 2 since Applicant plans to alternate watering days (62 days in summer / 2 = 31 watering days; 122 days in spring/fall / 2 = 61 watering days).

37. To calculate the requested volume of 3.73 AF/year for lawn and garden, the Applicants used the extension service standards and the precipitation rate for each zone to calculate each zones run time for the spring/fall periods and for the mid-summer period. The Applicants used the flow rate calculated for each zone along with the runtime and number of watering days to calculate the total gallons per day needed. Applicant submitted the “WATER NEEDS CALCULATION” (**Figure 5**) showing how the Applicants quantified the total volume requested for their planned lawn and garden.

WATER NEEDS CALCULATION											
Zone	GPM	SPRING AND FALL				SUMMER					
		Run Time Minutes	Gal/Day	# of Days	Total Each Zone	Run Time Minutes	Gal/Day	# of Days	Total Each Zone		
1	25	53	1,325	61	80,825	87	2,175	31	67,425		
2	21	54	1,134	61	69,174	89	1,869	31	57,939		
3	22	55	1,210	61	73,810	91	2,002	31	62,062		
4	24	56	1,344	61	81,984	93	2,232	31	69,192		
5	24	56	1,344	61	81,984	93	2,232	31	69,192		
6	21	56	1,176	61	71,736	93	1,953	31	60,543		
7	21	56	1,176	61	71,736	93	1,953	31	60,543		
8	21	56	1,176	61	71,736	93	1,953	31	60,543		
9	18	53	954	61	58,194	87	1,566	31	48,546		
				Total	661,179					Total	555,985
Total Usage							1,217,164				
Acre Feet							3.73				

Figure 5: Applicant submitted water need calculation

38. The Applicants calculated the total gallons needed to irrigate their lawn and garden to be 1,217,164 gallons (3.73 AF) annually.

39. Applicants property is in USDA Natural Resources Conservation Service climatic area III. The watering schedule created by the Applicant follows the requested period of diversion from April 15 to October 15 , which follows the standards in per ARM 36.12.112(1)(c)(ii).

40. The Department finds that the proposed water use is beneficial and that the requested flow rate of 25.0 GPM up to an annual volume of 3.73 AF are reasonably justified for the purpose of lawn and garden.

POSSESSORY INTEREST

FINDINGS OF FACT

41. The Applicants own the property where water is to be put to beneficial use, which demonstrates possessory interest. The Department finds the possessory interest criterion to be met.

CONCLUSIONS OF LAW

PHYSICAL AVAILABILITY

42. Pursuant to § 85-2-311(1)(a)(i), MCA, an Applicant must prove by a preponderance of the evidence that “there is water physically available at the proposed point of diversion in the amount that the Applicant seeks to appropriate.”

43. It is the Applicant’s burden to produce the required evidence. *In the Matter of Application for Beneficial Water Use Permit No. 27665-41I by Anson* (DNRC Final Order 1987) (Applicant produced no flow measurements or any other information to show the availability of water; permit denied); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005).

44. An Applicant must prove that at least in some years there is water physically available at the point of diversion in the amount the Applicant seeks to appropriate. *In the Matter of Application for Beneficial Water Use Permit No. 72662s76G by John Fee and Don Carlson* (DNRC Final Order 1990); *In the Matter of Application for Beneficial Water Use Permit No. 85184s76F by Wills Cattle Co. and Ed McLean* (DNRC Final Order 1994).

45. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. Section 85-2-311(1)(a)(i), MCA. (FOF 9-17)

LEGAL AVAILABILITY

46. Pursuant to § 85-2-311(1)(a), MCA, an Applicant must prove by a preponderance of the evidence that:

- (ii) water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:
 - (A) identification of physical water availability;
 - (B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and
 - (C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

E.g., ARM 36.12.101 and 36.12.120; *Montana Power Co.*, 211 Mont. 91, 685 P.2d 336 (Permit granted to include only early irrigation season because no water legally available in late irrigation season); *In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson* (DNRC Final Order 1992).

47. It is the Applicant's burden to present evidence to prove water can be reasonably considered legally available. *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (the legislature set out the criteria (§ 85-2-311, MCA) and placed the burden of proof squarely on the Applicant. The Supreme Court has instructed that those burdens are exacting.); *see also Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston* (1991), 249 Mont. 425, 816 P.2d 1054 (burden of proof on Applicant in a change proceeding to prove required criteria); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005) (it is the Applicant's burden to produce the required evidence.); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions, LLC* (DNRC Final Order 2007) (permit denied for failure to prove legal availability); *see also* ARM 36.12.1705.

48. Applicant has proven by a preponderance of the evidence that water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the Department and other evidence provided to the Department. Section 85-2-311(1)(a)(ii), MCA. (FOF 18-26)

ADVERSE EFFECT

49. Pursuant to § 85-2-311(1)(b), MCA, the Applicant bears the affirmative burden of proving by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Analysis of adverse effect must be determined based on a consideration of an Applicant's plan for the exercise of the permit that demonstrates that the Applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. *See Montana Power Co.*, 211 Mont. 91, 685 P.2d 336 (1984) (purpose of the Water Use Act is

to protect senior appropriators from encroachment by junior users); *Bostwick Properties, Inc.*, ¶ 21.

50. An Applicant must analyze the full area of potential impact under the § 85-2-311, MCA criteria. *In the Matter of Beneficial Water Use Permit No. 76N-30010429 by Thompson River Lumber Company* (DNRC Final Order 2006). While § 85-2-361, MCA, limits the boundaries expressly required for compliance with the hydrogeologic assessment requirement, an Applicant is required to analyze the full area of potential impact for adverse effect in addition to the requirement of a hydrogeologic assessment. *Id.* ARM 36.12.120(5).

51. Applicant must prove that no prior appropriator will be adversely affected, not just the objectors. *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, 4 (2011).

52. In analyzing adverse effect to other appropriators, an Applicant may use the water rights claims of potentially affected appropriators as evidence of their “historic beneficial use.” *See Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston*, 249 Mont. 425, 816 P.2d 1054 (1991).

53. It is the Applicant’s burden to produce the required evidence. *E.g., Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, 7 (2011) (legislature has placed the burden of proof squarely on the Applicant); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005). The Department is required to grant a permit only if the § 85-2-311, MCA, criteria are proven by the Applicant by a preponderance of the evidence. *Bostwick Properties, Inc.*, ¶ 21.

54. Section 85-2-311 (1)(b) of the Water Use Act does not contemplate a de minimis level of adverse effect on prior appropriators. *Wesmont Developers v. DNRC*, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, 8 (2011).

55. The Applicant has proven by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Section 85-2-311(1)(b), MCA. (FOF 27-29)

ADEQUATE DIVERSION

56. Pursuant to § 85-2-311(1)(c), MCA, an Applicant must demonstrate that the proposed means of diversion, construction, and operation of the appropriation works are adequate.

57. The adequate means of diversion statutory test merely codifies and encapsulates the case law notion of appropriation to the effect that the means of diversion must be reasonably effective, i.e., must not result in a waste of the resource. *In the Matter of Application for Beneficial Water Use Permit No. 33983s41Q by Hoyt* (DNRC Final Order 1981); § 85-2-312(1)(a), MCA.

58. Applicants have 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. Section 85-2-311(1)(c), MCA (FOF 30-34).

BENEFICIAL USE

59. Under § 85-2-311(1)(d), MCA, an Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use.

60. An appropriator may appropriate water only for a beneficial use. See also, § 85-2-301 MCA. It is a fundamental premise of Montana water law that beneficial use is the basis, measure, and limit of the use. *E.g., McDonald; Toohey v. Campbell* (1900), 24 Mont. 13, 60 P. 396. The amount of water under a water right 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, Montana First Judicial District Court, Lewis and Clark County (2003), *affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518; *In The Matter Of Application For Beneficial Water Use Permit No. 43C 30007297 by Dee Deaterly* (DNRC Final Order), *affirmed other grounds, Dee Deaterly v. DNRC*, Cause No. 2007-186, Montana First Judicial District, *Order Nunc Pro Tunc on Petition for Judicial Review* (2009); *Worden v. Alexander* (1939), 108 Mont. 208, 90 P.2d 160; *Allen v. Petrick* (1924), 69 Mont. 373, 222 P. 451; *In the Matter of Application for Beneficial Water Use Permit No. 41S-105823 by French* (DNRC Final Order 2000).

61. Amount of water to be diverted must be shown precisely. *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, 3 (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).

62. It is the Applicant's burden to produce the required evidence. *Bostwick Properties, Inc. v. DNRC*, 2013 MT 48, ¶ 22, 369 Mont. 150, 296 P.3d 1154 ("issuance of the water permit itself does not become a clear, legal duty until [the Applicant] proves, by a preponderance of the evidence, that the required criteria have been satisfied"); *Sitz Ranch v. DNRC*, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7; *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005); *see also Royston; Ciotti*.

63. Applicants propose to use water to irrigate 1.5 acres of lawn and garden which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicants have proven by a preponderance of the evidence lawn and garden is a beneficial use and that 3.73 AF of diverted volume and 25.0 GPM is the amount needed to sustain the beneficial use. Section 85-2-311(1)(d), MCA. (FOF 35-40)

POSSESSORY INTEREST

64. Pursuant to § 85-2-311(1)(e), MCA, an 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, or if the proposed use has 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 under the permit.

65. Pursuant to ARM 36.12.1802:

- (1) An Applicant or a representative shall sign the application affidavit to affirm the following:
 - (a) the statements on the application and all information submitted with the application are true and correct and
 - (b) except in cases of an instream flow application, or where the application is for sale, rental, distribution, or is a municipal use, or in any other context in which water is being supplied to another and it is clear that the ultimate user will not accept the supply without consenting to the use of water on the user's place

of use, the Applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

(2) If a representative of the Applicant signs the application form affidavit, the representative shall state the relationship of the representative to the Applicant on the form, such as president of the corporation, and provide documentation that establishes the authority of the representative to sign the application, such as a copy of a power of attorney.

(3) The department may require a copy of the written consent of the person having the possessory interest.

66. The Applicants have proven by a preponderance of the evidence 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. Section 85-2-311(1)(e), MCA. (FOF 41)

PRELIMINARY DETERMINATION

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Application for Beneficial Water Use Permit No. 76LJ 30172339 should be GRANTED.

The Department determines the Applicant may divert water from Lake Mary Ronan, by means of a pump, from April 15th to October 15th at 25.0 GPM up to 3.73 AF, from a point in the S2SESE Section 11, Township 25N, Range 22W, Lake County, for lawn and garden use from April 15th to October 15th. The place of use is located in Government Lot 7, S2SESE Section 11, Township 25N, Range 22W, Lake County. The Applicant may irrigate lawn and garden on 1.5 acres.

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 pursuant to § 85-2-307(4), 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 30th day of July, 2026.



James Ferch, Manager
Kalispell 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 30th day of July, 2026, by first class United States mail.

KELLY AND SHELLY WILLS
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MISSOULA MT 59801-8651



Abigail Williams
Kalispell Regional Office, (406)-752-2288