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

\*\*\*\*\*

**IN THE MATTER OF APPLICATION FOR )  
BENEFICIAL WATER USE PERMIT NO. )  
76N 30010429 BY THOMPSON RIVER )  
LUMBER COMPANY )** **PROPOSAL FOR DECISION**

\*\*\*\*\*

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, and after notice required by Mont. Code Ann. § 85-2-307, a hearing was held on October 13, 2005, in Missoula, Montana, to determine whether a beneficial water use permit should be issued to Thompson River Lumber Company of Montana, Inc., hereinafter referred to as "Applicant" for the above application under the criteria set forth in Mont. Code Ann. § 85-2-311.

**APPEARANCES**

Applicant appeared at the hearing by and through counsel, John E. Bloomquist. Roger Claridge, President of Thompson River Lumber Company (TRLIC) and Applicant; Fred Busch, Senior Management Officer with Savage Services; and Karl Uhlig, Water Rights Specialist, Land and Water Consulting, a division of PBS&J, testified for the Applicant.

Objector Avista Corporation (Avista) appeared at the hearing by and through counsel, R. Blair Strong. Steven Silkworth, P.E. and Manager of Wholesale Power, Avista Corp. testified for this Objector.

No other Objectors appeared.

Kurt Hafferman, Manager, Kalispell Water Resources Regional Office of the Department of Natural Resources and Conservation (Department) was called to testify by the Applicant.

**EXHIBITS**

Both Applicant and Objectors offered exhibits for the record. The exhibits are admitted into the record to the extent noted below.

Applicant offered nine exhibits for the record. The Hearing Examiner accepted and admitted into evidence Applicant's Exhibit 1, 2, 4-9. Applicant's Exhibit A3 was withdrawn.

1           **Applicant's Exhibit A1** is a one-page copy of Centrifugal Pump Characteristics, Goulds  
2 Pumps, Inc.

3           **Applicant's Exhibit A2** consists of three pages of Clark Fork River gauging data from  
4 the USGS Gauge 12391400 below Noxon Rapids Dam. One page is a tabulation, and two  
5 pages are charts prepared by Applicant's consultant.

6           **Applicant's Exhibit A4** consists of a large map showing project features prepared by  
7 Land and Water Consulting, a Division of PBS&J and dated June 2005.

8           **Applicant's Exhibit A5** consists of three sets of TRLC drawings: (1) Thompson River  
9 Go-Gen Facility Site Plan drawing prepared by Land & Water Consulting, revised June 7, 2005,  
10 (2) Thompson River Go-Gen Facility Site Plan drawing prepared by Land & Water Consulting,  
11 revised July 7, 2005, and an eight-page set of construction drawings for a temporary storage  
12 pond dated July 2004, prepared by Morrison Maierle, Inc.

13           **Applicant's Exhibit A6** consists of one 11" by 17" chart entitled *Estimated Thompson*  
14 *River Co – Gen Well Water Balance*.

15           **Applicant's Exhibit A7** is a facsimile of Applicant's Permit To Appropriate Water Right  
16 No. 76N 30011235.

17           **Applicant's Exhibit A8** consists of a one-page copy of a 2005 tax assessment notice  
18 from Sanders County.

19           **Applicant's Exhibit A9** is a five-page copy of relevant portions of a lease agreement  
20 between Thompson River Lumber Company, Inc. and Thompson River Co-Gen LLC.

21           **Applicant's Exhibit A10** consists of eleven pages of Karl Uhlig's pre-filed testimony.  
22           Objector offered eleven exhibits for the record. The Hearing Examiner accepted and  
23 admitted into evidence Objector's Exhibit Nos. O Silkworth 1-11.

24           **Objector's Exhibit O Silkworth 1** is a three-page copy of Steven Silkworth's  
25 Qualifications and Professional Experience.

26           **Objector's Exhibit O Silkworth 2** is a 30 x 60 minute series Geological Survey  
27 topographic map entitled: Thompson Falls, Montana – Idaho.

28           **Objector's Exhibit O Silkworth 3** is a ten-page copy of Findings of Fact, Conclusions of  
29 Law, and Order, Case 76N-46, Montana Water Court, Clark Fork Division.

30           **Objector's Exhibit O Silkworth 4** consists of a certification page and a copy of Permit  
31 to Appropriate Water, and Notice of Completion of Water Development for Water Right Number  
32 P004189-76N.



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**FINDINGS OF FACT**

3 **General**

4 1. Application for Beneficial Water Use Permit 76N 30010429 in the name of Thompson  
5 River Lumber Company of Montana, Inc. and signed by Barbara Wolstein, Secretary, was filed  
6 with the Department on April 29, 2004. (Department file)

7 2. Notice of the Application was properly made in the *Sanders County Ledger* on  
8 September 9, 2004. (Department file)

9 3. The Environmental Assessment (EA) dated June 8, 2004, prepared by the Department  
10 for these applications was reviewed and is included in the record of this proceeding.

11 4. Applicant seeks to appropriate 250 gallons per minute (gpm) up to 400 acre-feet of water  
12 per year from the Clark Fork River. The water is to be diverted at a point in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$   
13 of Section 13, Township 21 North, Range 29 West, Sanders County, Montana. The proposed  
14 means of diversion is a pump. The proposed use is power generation. The proposed place of  
15 use is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  and in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , all in Section 13, Township 21 North,  
16 Range 29 West, Sanders County, Montana. The proposed period of diversion and period of use  
17 is January 1 through December 31, inclusive. The proposed 3.5-acre evaporation pond place of  
18 storage for water treated after use in the generation of power, with a volume of 34.00 acre-feet  
19 is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, Township 21 North, Range 29 West, Sanders  
20 County, Montana. (Department file)

21 5. Objector Avista Corporation is the owner of downstream Clark Fork River Water Right  
22 Nos. 76N P004189-00 for 15,000 cubic feet per second (cfs) and 76N W-125799-00 for 40,400  
23 cfs. (Department file)

24 **Physical Availability**

25 6. Applicant reviewed U.S. Geological Survey Streamflow Statistics for the gauging sites  
26 located on the Clark Fork River upstream of the project site near Plains, Montana (period of  
27 record: 1910 to present), and downstream of the project site about 5 miles (period of record: 8  
28 years in the 1950's). The Hearing Examiner did not find the distance between Plains, Montana,  
29 and the project site in the record; however, the Hearing Examiner takes judicial notice that  
30 Plains is upstream of the City of Thompson Falls approximately 25-30 miles. The average  
31 monthly Clark Fork River flows at the Thompson Falls gauge varied from a low of 9,680 cubic

1 feet per second (cfs) (typically occurring in September) to a June high of 57,600 cfs. The data  
2 from the gauge near Plains, Montana, shows the September low is approximately 9,800 cfs and  
3 the June average is 45,600 cfs. Applicant is requesting 0.56 cfs which is less than the gauged  
4 low flows both upstream and downstream of the proposed point of diversion. Water is physically  
5 available. (Department file, testimony of Karl Uhlig)

### 6 **Legal Availability**

7 7. Applicant reviewed existing gauging data described in Finding of Fact No.6 above, and  
8 compared that data to the DNRC water right records for the Clark Fork River for a distance of  
9 five miles downstream of the proposed point of diversion. The largest water right in this river  
10 reach is Pacific Power & Light's (hereafter PPL) for 23,420 cfs for power generation at its  
11 Thompson Falls facility. Applicant's project site is approximately five miles upstream of  
12 Thompson Falls and PPL's facility. Applicant's consultant testified that the requested 0.56 cfs is  
13 so small (0.0062% of physical flow in the river) that PPL would not be able to accurately  
14 measure the difference through its turbines if Applicant was pumping or not. In addition,  
15 Applicant reviewed DNRC water right records for rights that are junior to the PPL water right.  
16 Applicant found that 891 new water rights were issued by DNRC in river drainages above the  
17 PPL generation facility since May 1992 (the date of PPL's 23,420 cfs water right) for a combined  
18 total of 1,467.7 cfs up to 72,771 acre-feet. Applicant then reviewed gauging data and DNRC  
19 water right records for the source down to Objector Avista's water right (50,000 cfs) at Noxon  
20 Rapids Dam. Applicant found there are periods of time between April and July in most years,  
21 and other periods in some years, when flows exceed 50,000 cfs. Applicant points out that  
22 Objector Avista's water right was perfected before recent late season releases from up-gradient  
23 Hungry Horse Dam. Applicant argues that these late season releases were not available to PPL  
24 and Objector Avista when they completed their projects, and the water released from the up-  
25 gradient dams is available for appropriation by Applicant. Applicant presented no other  
26 supporting evidence regarding these late season flows, and Applicant presented no data  
27 regarding the amount or timing of these "late season flows." Applicant argues that water is  
28 available for appropriation at any time the flow in the Clark Fork River is more than 50,000 cfs or  
29 at any time Objector Avista's needs are less than 50,000 cfs. (Department file, testimony of Karl  
30 Uhlig)

31 8. Objector Avista has existing Montana water rights totaling 50,000 cfs, which are located  
32 approximately 40 miles downstream from Applicant's project on the Clark Fork River. The Clark

1 Fork River water flows past the Applicant’s proposed point of diversion, downstream through  
2 PPL’s power generating facility at Thompson Falls and then re-enters the Clark Fork River and  
3 flows in the river channel until it enters the reservoir of Avista’s Noxon Rapids Dam. Objector  
4 Avista uses the flows of the Clark Fork River up to 50,000 cfs at the Noxon Rapids Dam to  
5 generate electricity and/or refill the reservoir behind the Noxon Rapids Dam to maintain  
6 elevation head. Objector Avista maintains records of flow through its turbine generators on a  
7 daily basis. There is no month during which flows, on average, exceed 50,000 cfs (Exhibit O  
8 Silkworth 5). From the same daily flow records Objector Avista compiled the number of days, on  
9 average a year, when flows of the Clark Fork River at the Noxon Rapids Dam exceed 50,000  
10 cfs. The daily flow information between 1985 and 2004, shows that the average number of days  
11 per month exceeding 50,000 cfs equaled 0.8 days in April, 5.4 days in May, 9.1 days in June,  
12 and 0.7 days in July for a total of 16.1 days per year when flows exceed 50,000 cfs at Noxon  
13 Rapids Dam. Applicant determined the average number of days in a year when flow at Noxon  
14 Rapids Dam exceeds 50,000 cfs is 23.7 days. The difference between 16.1 and 23.7 days is the  
15 result of the different periods of record used by the Parties; Applicant used 1960 to 2004, and  
16 Objector used 1985 to 2004. (Department file, testimony of Kurt Hafferman, Steve Silkworth,  
17 Karl Uhlig)

18 **Adverse Effect**

19 9. Adverse affect must be determined based on a consideration of an applicant's plan for  
20 the exercise of the permit that demonstrates that the applicant’s use of water will be controlled  
21 so the water rights of a prior appropriator will be satisfied. Applicant plans to use Water Use  
22 Permit No. 76N 30011235, issued for a ground water source, to provide water when Clark Fork  
23 River water use would adversely affect a downstream senior appropriator. However, Applicant  
24 states that if it knows Objector Avista’s “ramping” flows, it could go to a website to check river  
25 flows to know when water flows exceed the flows needed for Avista’s power generation.  
26 (Department file, testimony of Karl Uhlig)

27 10. Applicant and others testified that 250 gpm is not measurable at downstream diversions  
28 when compared to the total flow in the Clark Fork River. Applicant claims it is futile to measure  
29 250 gpm (.56 cfs) flowing in the River. Applicant is willing to decrease diversions if a call on the  
30 source is made by a downstream senior appropriator. Applicant states they will be responsive to  
31 a daily call by Objector Avista if Avista can put 250 gpm to use and can see results of the call.  
32 The evidence presented by Applicant regarding whether 250 gpm will show up at Objector

1 Avista's point of diversion came from Karl Uhlig who agreed that if one assumes all else is  
2 equal, then an additional 250 gpm put in the River at the Thompson Falls dam would increase  
3 flows by 250 gpm in the reservoir above the Noxon Rapids Dam. However, the 250 gpm  
4 increase may not be detectable. Water in the reservoir is used for power generation.  
5 (Department file, testimony of Karl Uhlig, Kurt Hafferman, Steve Silkworth)

6 11. Objector Avista uses all river flows up to 50,000 cfs for power generation, refilling  
7 storage behind Noxon Rapids Dam, and for evaporation from the stored water surface. The only  
8 water not used for power generation is evaporation from the reservoir surface, or that is spilled  
9 when flows exceed 50,000 cfs. Objector Avista has water rights for power generation, for  
10 reservoir storage and release for power generation and reregulation of the flows in the Clark  
11 Fork River, and to provide hydraulic head for power generation at its facility at Noxon Rapids  
12 Dam in the amount of 50,000 cfs. The impact of 250 gpm of flow on Objector Avista is small,  
13 and Objector Avista can still exercise its water right even if this permit is issued - they can't  
14 exercise their full right. However, Objector Avista will generate less power when river flows are  
15 reduced by the requested 250 gpm – they are either using the water to generate power or to  
16 refill their storage. Objector Avista's power generation facility operation varies throughout each  
17 day depending on the power load and prices. Water is spilled without use by Objector Avista at  
18 its Noxon Rapids generating facility only 16 to 24 days on average each year. Objector Avista  
19 will be not be able to fully exercise its water rights when Clark Fork River flows are less than  
20 50,000 cfs. (Department file, testimony of Steve Silkworth, Objector Silkworth Exhibit Nos. 3, 4)

### 21 **Adequacy of Appropriation Works**

22 12. Applicant's means of diversion is two twenty-five (25) horsepower pumps, delivery  
23 pipeline, and appropriate valving that was designed by a professional engineering firm to  
24 provide the necessary water for this purpose. The appropriation works are adequate to divert  
25 the requested flow and operate to provide water to the proposed use. (Department file,  
26 testimony of Karl Uhlig)

### 27 **Beneficial Use**

28 13. The proposed power generation in a steam generating plant and ancillary systems is a  
29 beneficial use of water. Applicant determined flow rate and volume based upon system design  
30 and anticipated electrical demands. Applicant has provided evidence of a direct correlation  
31 between the amount of water applied for and the need for that amount of water to generate  
32 power. The power generation purpose is beneficial and the amounts are the minimum

1 necessary amounts to sustain the purpose. (Department file, testimony of Fred Busch, Karl  
2 Uhlig)

3 **Possessory Interest**

4 14. Applicant is the owner of the property which has been designated in the Application as  
5 the place of use. (Department file, testimony of Roger Claridge)

6 **Water Quality Issues**

7 15. Seven objections relative to water quality were filed against this application. Five of  
8 these Objectors withdrew their objections prior to the hearing. The remaining two valid water  
9 quality objections were dismissed at hearing after being found in default and dismissed with  
10 prejudice. Therefore, there are no valid water quality objections to this application. There were  
11 no objections relative to water classification or to the ability of a discharge permit holder to  
12 satisfy effluent limitations of his permit. (Department file)

13 Based on the foregoing Findings of Fact and the record in this matter, the Hearing  
14 Examiner makes the following:

15  
16 **CONCLUSIONS OF LAW**

17 1. The Department has jurisdiction to issue a provisional permit for the beneficial use of  
18 water if the applicant proves the criteria in Mont. Code Ann. § 85-2-311 by a preponderance of  
19 the evidence. Mont. Code Ann. § 85-2-311(1).

20 2. A permit shall be issued if there is water physically available at the proposed point of  
21 diversion in the amount that the applicant seeks to appropriate; water can reasonably be  
22 considered legally available during the period in which the applicant seeks to appropriate, and in  
23 the amount requested, based on an **analysis** of the evidence on physical water availability and  
24 the existing legal demands, including but not limited to a comparison of the physical water  
25 supply at the proposed point of diversion with the existing legal demands on the supply of water;  
26 the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a  
27 state reservation will not be adversely affected based on a consideration of an applicant's **plan**  
28 for the exercise of the permit that demonstrates that the applicant's use of the water will be  
29 controlled so the water right of a prior appropriator will be satisfied; the proposed means of  
30 diversion, construction, and operation of the appropriation works are adequate; the proposed  
31 use of water is a beneficial use; the applicant has a possessory interest, or the written consent



1 of the person with the possessory interest, in the property where the water is to be put to  
2 beneficial use; and, if raised in a valid objection, the water quality of a prior appropriator will not  
3 be adversely affected, the proposed use will be substantially in accordance with the  
4 classification of water, and the ability of a discharge permit holder to satisfy effluent limitations of  
5 a permit will not be adversely affected. Mont. Code Ann. § 85-2-311 (1) (a) through (h).

6 3. The Hearing Examiner may take notice of judicially cognizable or generally recognized  
7 technical or scientific facts within the Department's specialized knowledge. Parties shall be  
8 notified either before or during the hearing or by reference in the proposal for decision of the  
9 material noticed. Parties may contest the materials first noticed in this proposal for decision by  
10 filing exceptions to the proposal for decision. Mont. Admin. R. 36.12.221(4); Mont. Admin. R.  
11 36.12.229. See Finding of Fact No. 6.

12 4. The Applicant has proven that water is physically available at the proposed point of  
13 diversion in the amount Applicant seeks to appropriate, and in the amount requested. Mont.  
14 Code Ann. § 85-2-311(1)(a)(i). See Finding of Fact No. 6.

15 5. The Applicant has not proven that water can reasonably be considered legally available.  
16 Applicant has proven that water is only available at times the flows at Noxon Rapids Dam  
17 exceed 50,000 cfs. Legal availability is determined by analysis of non-drought periods. See In  
18 The Matter of Application 41B-074154 by Johnson, Proposal for Decision, (1990). Applicant has  
19 shown in non-drought years sufficient unappropriated water will be physically available at the  
20 point of diversion to supply the amount requested only for 16 to 24 days throughout the period  
21 of appropriation (January 1 through December 31). An applicant must prove that, at least in  
22 some years, sufficient unappropriated water will be physically available at the point of diversion  
23 to supply the amount requested throughout the period of appropriation, and that at least in  
24 some years, no legitimate calls for water will be made on him by a senior appropriator. In the  
25 Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson (1992).  
26 However, Applicant has not shown that legitimate calls for water will not be made on him by a  
27 senior appropriator in at least some years. Here, Applicant could expect calls for water for all but  
28 16 to 24 days of each year. Mont. Code Ann. § 85-2-311(1)(a)(ii). See Finding of Fact Nos. 7, 8.

29 6. The Applicant has not proven that the water rights of prior appropriators under existing  
30 water rights, certificates, permits, or state reservations will not be adversely affected when  
31 conditioned according to the plan to have downstream senior appropriators call the source when  
32 their rights are not being met. In the situation at hand, the evidence is that Objector Avista will

1 not likely be able to look at their measuring gauge and know that river flows have been reduced  
2 by 250 gpm (i.e. that Applicant's pump is running). That does not mean Objector Avista is not  
3 adversely affected. At flows less than 50,000 cfs, Objector Avista would be short 250 gpm at  
4 times Applicant's pump is running. Objector Avista would have to call the Applicant to find out if  
5 Applicant's pumps are running. Applicant's plan would have Avista call Applicant to see if they  
6 are pumping, then decide if they must call the source rather than have the Applicant call to  
7 make sure water is available for use prior to turning on the pump. The burden in Applicant's plan  
8 is on the wrong appropriator. Avista would be short 250 gpm in all but 16-24 days per year when  
9 their reservoir is full and the project is spilling water.

10 A discussion of the use of the word "futile" as used in hearing testimony is needed here.  
11 Testimony in this case concerned the phrase "futile to measure" which is different from the  
12 phrase "futile call" when used in water right context. A call is not futile because the water not  
13 reaching Objector Avista is too small to measure at Objector's point of diversion. Case law in  
14 this context does not discuss the measurability of water reaching the downstream senior.  
15 Instead, case law discusses whether the water will reach the downstream senior.

16 In order to justify their diversion, defendants must be in a position to show affirmatively  
17 that **under all the conditions such diversion does not reduce or limit the plaintiffs'**  
18 **receipt of water to which the latter are entitled.** Possibly defendants can prove that  
19 plaintiffs have received their full appropriation in spite of defendants' taking of water. Or it  
20 may be that in a particular instance defendants can show that the rainfall was sufficiently  
21 slight and the stream bed sufficiently dry that no water would reach plaintiffs whether or  
22 not the defendants impounded or diverted water at their dam; and in that event  
23 defendants' acts would not be detrimental to plaintiffs. That is the limit of the meaning  
24 attributable to the court's statement on this question in *Raymond v. Wimsette*, 12 Mont.  
25 551, 31 P. 537, 33 Am.St.Rep. 604.

26  
27 *Irion v. Hyde*, 105 P.2d 666, \*674, (Mont. 1940) (emphasis added). There was no evidence in  
28 this case that the 250 gpm that the Applicant seeks to appropriate would not reach the Noxon  
29 Rapids Dam.

30 The Objector here will not receive all water to which they are entitled at times the flows  
31 in the Clark Fork River do not exceed 50,000 cfs. Mont. Code Ann. § 85-2-311(1)(b). Flows  
32 exceed 50,000 cfs only 16-24 days per year. The record here shows that Objector Avista will be  
33 adversely affected by diminished flows in the amount of the Applicant's proposed diversion on  
34 the days where flows do not exceed 50,000 cfs. The Applicant failed to prove by a

1 preponderance of the evidence that prior appropriators will not be adversely affected by the  
2 proposed appropriation. See Finding of Fact Nos. 9, 10, 11.

3 7. The Applicant has proven that the proposed means of diversion, construction, and  
4 operation of the appropriation works are adequate. Mont. Code Ann. § 85-2-311(1)(c). See  
5 Finding of Fact No. 12.

6 8. The Applicant has proven the proposed use of water is a beneficial use of water for  
7 which Applicant can establish a water right under a permit. Mont. Code Ann. § 85-2-311(1)(d).  
8 See Finding of Fact No. 13.

9 9. The Applicant has proven a possessory interest in the property where water is to be put  
10 to beneficial use. Mont. Code Ann. § 85-2-311(1)(e). See Finding of Fact No. 14.

11 10. Valid water quality objections were raised as to the issue of water quality of a prior  
12 appropriator being adversely affected. However, these Objections were withdrawn or dismissed  
13 at hearing. No valid water quality objections were filed alleging that the proposed use is not in  
14 accordance with a classification of water, nor as to the ability of a discharge permit holder to  
15 satisfy effluent limitation of a permit. This Hearing Examiner interprets a “dismissed” objection  
16 the same as a “withdrawn” objection. See Mont. Admin. R. 36.12.208. That is, it is as if it were  
17 never filed. Here, all valid objections were withdrawn or dismissed, so Applicant need only prove  
18 the criteria in Mont. Code Ann. §§ 85-2-311(1)(a-e). Mont. Code Ann. § 85-2-311(1)(f), (g), (h).  
19 See Preliminary Matters on page 3, and Finding of Fact No. 15.

20 11. The Department may issue a permit subject to terms, conditions, restrictions, and  
21 limitations it considers necessary to satisfy the criteria for issuance of a beneficial water use  
22 permit. Applicant has not met the criteria for issuance of a permit. Mont. Code Ann. § 85-2-312.  
23 See Conclusions of Law Nos. 5, 6.

24 **WHEREFORE**, based upon the foregoing Findings of Fact and Conclusions of Law, the  
25 Hearing Examiner makes the following:

26  
27 **PROPOSED ORDER**

28 Application for Beneficial Water Use Permit No. 76N 30010429 by Thompson River  
29 Lumber Company is **DENIED**.

1 **NOTICE**

2 This Proposal for Decision may be adopted as the Department's final decision unless  
3 timely exceptions are filed as described below. Any party adversely affected by this Proposal for  
4 Decision may file exceptions and a supporting brief with the Hearing Examiner and request oral  
5 argument. Exceptions and briefs, and requests for oral argument must be filed with the  
6 Department by April 19, 2006, or postmarked by the same date, and copies mailed by that same  
7 date to all parties.

8 Parties may file responses and response briefs to any exception filed by another party.  
9 The responses and response briefs must be filed with the Department by May 1, 2006, or  
10 postmarked by the same date, and copies must be mailed by that same date to all parties. No  
11 new evidence will be considered.

12 No final decision shall be made until after the expiration of the above time periods, and  
13 due consideration of *timely* oral argument requests, exceptions, responses, and briefs.

14 Dated this 30<sup>th</sup> day of March 2006.

15  
16 / Original Signed By Charles F Brasen /

17 Charles F Brasen  
18 Hearing Examiner  
19 Water Resources Division  
20 Department of Natural Resources  
21 and Conservation  
22 PO Box 201601  
23 Helena, Montana 59620-1601

## CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PROPOSAL FOR DECISION was served upon all parties listed below on this 30<sup>th</sup> day of March 2006 by first class United States mail.

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/ Original Signed By Jamie Scow /

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