

Montana Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau

ENVIRONMENTAL ASSESSMENT
For Routine Actions with Limited Environmental Impact

Part I. Proposed Action Description

1. Applicant/Contact name and address: John Jr., Edward & Lorrie Balock
PO Box 98
Melstone, MT 59054
2. Type of action: Application to Change a Water Right # 40C 30063066
3. Water source name: Musselshell River
4. Location affected by project: The point of diversion (POD) is an infiltration gallery located in the NW SW NW Section 32 T10N R31E and the place of use (POU) is in the SE SW SE Section 30 T10N R31E, all in Musselshell County.
5. Narrative summary of the proposed project, purpose, action to be taken, and benefits:

The applicant proposes to change Statement of Claim 40C 204989-00, an industrial water right out of the Musselshell River historically used by the Milwaukee Railroad near Melstone, MT. The Applicant is proposing to change the POD, POU and purpose of the claim. The applicant has installed an infiltration gallery next to the river that facilitates pumping water to a truck fill site near HWY 12 in Melstone. The Applicant is also changing the purpose from industrial use to water marketing to allow the Applicant to sell water. The pump will supply a maximum flow rate of 300 gallons per minute (GPM) up to 403.0 acre-feet (AF) per year.
6. Agencies consulted during preparation of the Environmental Assessment:
(include agencies with overlapping jurisdiction)

Dept. of Environmental Quality Website - TMDL 303d listing
MT. National Heritage Program Website - Species of Concern
USDI Fish & Wildlife Service Website - Endangered and Threatened Species
MT State Historic Preservation Office - Archeological/Historical Sites
USDA Natural Resources Conservation Service – Web Soil Survey
USDI Fish & Wildlife Service – Wetlands Online Mapper

Part II. Environmental Review

1. **Environmental Impact Checklist:**

PHYSICAL ENVIRONMENT

WATER QUANTITY, QUALITY AND DISTRIBUTION

Water quantity - *Assess whether the source of supply is identified as a chronically or periodically dewatered stream by DFWP. Assess whether the proposed use will worsen the already dewatered condition.*

Determination: Significant impact.

The Musselshell River has been identified as chronically dewatered and has been closed to most new appropriations from July 1 through September 30 by administrative rule. This change proposes to divert a maximum volume of 403.0 AF from the Musselshell River, much of which does not appear to have been diverted from the river since the 1950's, when the railroad was still operating steam powered trains in the Melstone area. This project will have a significant impact on surface water quantity, because this large volume of water has not been diverted from the Musselshell for approximately 60 years and will contribute to the chronic dewatering problems listed by DFWP.

Water quality - *Assess whether the stream is listed as water quality impaired or threatened by DEQ, and whether the proposed project will affect water quality.*

Determination: No significant impact.

The reach of the Musselshell River from Roundup to the confluence with Flatwillow Creek has been designated as needing a TMDL plan. The 2000 303d listing identifies impairments to aquatic life support & warm water fishery probably caused by flow alteration, riparian degradation and other habitat alterations.

Groundwater - *Assess if the proposed project impacts ground water quality or supply. If this is a groundwater appropriation, assess if it could impact adjacent surface water flows.*

Determination: No significant impact.

The proposed project will consist of an infiltration gallery located adjacent to the Musselshell River in the NW SW NW Section 32 T10N R31E, Musselshell County. There could be a small amount of pre-stream tributary groundwater captured by the system; however the infiltration gallery is designed to be hydraulically connected to the river and will pull water from that source. No significant impacts to ground water quality or supply are expected as a result of this project.

DIVERSION WORKS - *Assess whether the means of diversion, construction and operation of the appropriation works of the proposed project will impact any of the following: channel impacts, flow modifications, barriers, riparian areas, dams, well construction.*

Determination: No significant impact.

There could be some flow modification associated with the water being pumped from the infiltration gallery instead of the river; however, diversion works impacts are expected to be insignificant.

UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES

Endangered and threatened species - Assess whether the proposed project will impact any threatened or endangered fish, wildlife, plants or aquatic species or any “species of special concern,” or create a barrier to the migration or movement of fish or wildlife. For groundwater, assess whether the proposed project, including impacts on adjacent surface flows, would impact any threatened or endangered species or “species of special concern.”

Determination: No significant impact.

The Montana National Heritage Program Website lists eight animal species as a Species of Concern and three animal species as Potential Species of Concern within Township 10 North Range 31 East. There are no plant Species of Concern. The USDI Fish & Wildlife Service webpage for Musselshell County has two bird species shown as candidates for listing, the Greater Sage-Grouse and the Sprague’s Pipit. They list one species as endangered, the Black-footed Ferret. No impacts to any of these species are expected as both the point of diversion and place of use have been previously disturbed by multiple land uses.

Wetlands - Consult and assess whether the apparent wetland is a functional wetland (according to COE definitions), and whether the wetland resource would be impacted.

Determination: No significant impact.

There are no known wetlands associated with this project. The USDI Fish & Wildlife Service – Wetlands Online Mapper has no data available for the area of interest.

Ponds - For ponds, consult and assess whether existing wildlife, waterfowl, or fisheries resources would be impacted.

Determination: No significant impact.

This project does not involve a pond. No impact to wildlife, waterfowl, or fisheries is anticipated.

GEOLOGY/SOIL QUALITY, STABILITY AND MOISTURE - Assess whether there will be degradation of soil quality, alteration of soil stability, or moisture content. Assess whether the soils are heavy in salts that could cause saline seep.

Determination: No significant impact.

This project is simply for the addition of an infiltration gallery, a conveyance pipeline and a water depot site. The land has been previously disturbed and there is a low likelihood of adverse impact to soil quality, stability, or moisture content.

VEGETATION COVER, QUANTITY AND QUALITY/NOXIOUS WEEDS - *Assess impacts to existing vegetative cover. Assess whether the proposed project would result in the establishment or spread of noxious weeds.*

Determination: No significant impact.

Normal weed management can be used to control noxious weeds potentially invading re-disturbed areas due to construction activities; therefore, no spread of noxious weeds should be associated with this application. It is the responsibility of the property owner to control noxious weeds on their property.

AIR QUALITY - *Assess whether there will be a deterioration of air quality or adverse effects on vegetation due to increased air pollutants.*

Determination: No significant impact.

It is unlikely air quality would be impacted; as this project will utilize a small 10 HP pump.

HISTORICAL AND ARCHEOLOGICAL SITES - *Assess whether there will be degradation of unique archeological or historical sites in the vicinity of the proposed project if it is on State or Federal Lands.*

Determination: N/A

None of the project area is located on state or federal land.

DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AND ENERGY - *Assess any other impacts on environmental resources of land, water and energy not already addressed.*

Determination: Significant impact.

Water is currently unavailable in the Musselshell River from July through September. As stated above under the Water Quantity section, depletions of 403 AF will have a significant impact on other water users during periods of low flow. The instream flow reservation of 70 CFS held by the Montana Fish, Wildlife & Parks for a fishery purpose on the Musselshell River has numerous instances of not being satisfied (see USGS Stream Gage information for the Mosby Gage).

HUMAN ENVIRONMENT

LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS - *Assess whether the proposed project is inconsistent with any locally adopted environmental plans and goals.*

Determination: No significant impact.

No locally adopted environmental plans and goals have been identified.

ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES - Assess whether the proposed project will impact access to or the quality of recreational and wilderness activities.

Determination: No significant impact.

The proposed action should not impact recreational activities in the area.

HUMAN HEALTH - Assess whether the proposed project impacts on human health.

Determination: No significant impact.

No impacts to human health have been identified.

PRIVATE PROPERTY - Assess whether there are any government regulatory impacts on private property rights.

Yes___ No X___ If yes, analyze any alternatives considered that could reduce, minimize, or eliminate the regulation of private property rights.

Determination: No known impacts.

OTHER HUMAN ENVIRONMENTAL ISSUES - For routine actions of limited environmental impact, the following may be addressed in a checklist fashion.

Impacts on:

- (a) Cultural uniqueness and diversity? **None anticipated.**
- (b) Local and state tax base and tax revenues? **Project will provide income tax revenue through bulk water sales.**
- (c) Existing land uses? **Water Depot site and truck staging area will modify land use.**
- (d) Quantity and distribution of employment? **None anticipated.**
- (e) Distribution and density of population and housing? **None anticipated.**
- (f) Demands for government services? **None anticipated.**
- (g) Industrial and commercial activity? **Purpose of change is to provide water for oilfield development and servicing. Increased commercial truck traffic, if approved.**
- (h) Utilities? **None**
- (i) Transportation? **Increased commercial truck traffic on local roads, if approved.**
- (j) Safety? **None anticipated, although increased truck traffic has the potential to detrimentally affect safety on public roads.**
- (k) Other appropriate social and economic circumstances? **None anticipated.**

2. Secondary and cumulative impacts on the physical environment and human population:

Secondary Impacts – No secondary impacts are anticipated.

Cumulative Impacts – This amount of water diverted from the already chronically dewatered Musselshell River would make less water available to downstream water users.

3. Describe any mitigation/stipulation measures:

The Applicant's deficiency response (received September 28, 2012) offers a condition of water use if necessary to prevent adverse effects to existing water users who divert water from the Musselshell River. Applicant offers to appropriate water only during the non-peak irrigation period if necessary to meet the statutory criteria, a period identified as January through May, and September through December.

4. Description and analysis of reasonable alternatives to the proposed action, including the no action alternative, if an alternative is reasonably available and prudent to consider:

No action alternative: Deny the application. This alternative would result in none of the related benefits being realized by the applicant.

PART III. Conclusion

1. Preferred Alternative

The preferred alternative is the no action alternative.

2. Comments and Responses

None Received.

3. Finding:

Yes ___ No X Based on the significance criteria evaluated in this EA, is an EIS required?

If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action:

The only significant impact is to water quantity in the Musselshell River. An expanded analysis, including an EIS will likely conclude the same findings as this EA.

Name of person(s) responsible for preparation of EA:

Name: Douglas Mann

Title: Water Resources Specialist - LRO

Date: 11/16/2012