

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

IN THE MATTER OF COMBINED APPLICATION) FOR BENEFICIAL WATER USE PERMIT NO.) 76H- 30043133 AND APPLICATION NO. 76H-) 30043132 TO CHANGE WATER RIGHT NOS.) 76H-121640-00, 76H-131641-00 AND 76H-) 131642-00 BY THE TOWN OF STEVENSVILLE)	FINAL ORDER
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Pursuant to its authority under 2-4-601 et. seq., 85-2-310, 85-2-344, 85-2-360 to -363, 85-2-402, MCA and Mont. Admin. R. 36.12.201 et. seq., and upon the request of Applicant Town of Stevensville (Applicant), the Department of Natural Resources and Conservation (Department) conducted a show cause hearing in this matter on November 29, 2010, to allow the Applicant to show cause why the Combined Application (85-2-363, MCA) of Application for Beneficial Water Use Permit No. 76H-30043133 and Application No. 76H-30043132 to Change Water Right Nos. 76H-121640-00, 76H-131641-00 and 76H-131642-00 should not be denied pursuant to the Department's Statements of Opinion issued January 15, 2010 (Permit) and January 15, 2010 (Change). The purpose of the show cause hearing was to allow the Applicant the opportunity to present evidence and argument as to why the Department's Statements of Opinion denying the Permit and Change were in error. This Final Order must be read in conjunction with the Statements of Opinion.

APPEARANCES

Applicant appeared at the hearing by and through counsel Ross D. Miller. Adam Perine testified as the Applicant's expert witness. Russ Levens, Department Hydrogeologist, was examined by the Applicant regarding the adequacy of the mitigation plan.

EXHIBITS

Applicant offered one exhibit at the hearing which was accepted.
Show Cause Exhibit 1 consists of a Notice of Completion of Groundwater Development consisting of three pages.

Applicant also provided pre-filed expert testimony from Adam Perine in this matter.

PRELIMINARY MATTERS

Application No. 76H-30043133 (Permit), submitted on September 3, 2008, is a request for use of groundwater from a well to serve year-round use for the Twin Creeks residential subdivision in the Bitterroot River Basin near Stevensville, Montana. The proposed well and subdivision are located within the Bitterroot River Sub-Basin Temporary Closure. 85-2-344, MCA. Groundwater appropriations are an exception allowed within the closure area subject to the requirements of 85-2-360 to -363, MCA and ARM 36.12.120, Basin Closure Area Exceptions and Compliance. The requirements of 85-2-360 to -363, MCA have been met because the Applicant has submitted a combined application consisting of an application for beneficial water use permit (76H-30043133), a hydrogeologic assessment with an analysis of net depletion to surface water, an aquifer recharge plan, and Application to Change a Water Right No. 76H-30043132 (Change) to mitigate adverse effect to surface water resulting from consumptive use of the new proposed groundwater appropriation. (Statement of Opinion, Permit)

During review of the Applications, it was discovered that the Town of Stevensville is not yet the owner of the water rights to be changed under Application to Change a Water Right No. 76H-30043132. As a result the actual owner of the water rights, John L. and Kristie A. Anderson dba Twin Creeks Properties LLC, were added as an Applicant under Change No. 76H-30043132. (Department File) In order to complete the Change, if granted, a condition must be added that requires Applicant to file a legally binding document evidencing the change in ownership of the water right and an ownership update form with the Department.

All of the testimony and exhibits offered by the Applicant were accepted into the record. This Final Order must be read in conjunction with the January 15, 2010 Statements of Opinion (SOP's) by William J. Schultz, which are hereby incorporated by reference, as the show cause hearing was held to address the denial of the Combined Application for the reasons set forth in the SOPs. This decision considers the new evidence and arguments presented by the Applicant at the hearing and constitutes the Final Order on this Combined Application. Application No. 76H-30043133 was denied in the SOP based on failure to prove the criteria of Legal Availability (specifically the timing of accretions from a proposed mitigation plan) and Adverse Effect during the non irrigation season (again timing of accretions resulting from a

proposed mitigation plan during the non-irrigation season). 85-2-311(a)(ii), (b), MCA. The criteria related to Physical Availability, Adequacy of Diversion, Beneficial Use, Possessory Interest and Water Quality were addressed and determined to have been proven in the SOP and were not part of this hearing. 85-2-311(a)(i), (c), (d), (e) and (f), MCA. (Statement of Opinion, Permit)

Concomitantly, Application No. 76H-30043132 (Change) was denied based solely on the criteria of Beneficial Use due to the denial of the Permit (i.e. if there is no Permit requiring mitigation or aquifer recharge water then mitigation or aquifer recharge water in and of itself is not a beneficial use). 85-2-402(2)(c), MCA. The Statement of Opinion (Change) specifically found that the Change would not exceed or increase the flow rate and volume historically diverted and would not exceed or increase the historic volume consumptively used under the existing use. In addition the SOP (Change) found that the Applicant had proven that the proposed change would not adversely affect the use of existing water rights, that the diversion works are adequate, and that the Applicant had a sufficient possessory interest in the property where water is to be put to beneficial use. 85-2-402(2)(a), (2)(b), (2)(d), MCA.

GENERAL APPLICATION DETAILS

Application 76H-30043133 is an Application for Beneficial Water Use Permit for use of groundwater from a new well for municipal purposes. The proposed use will serve a 117 lot subdivision known as the Twin Creeks Subdivision. The Applicant proposes to divert a maximum of 300 gallons per minute (gpm), up to 96.3 acre-feet per year (AF/year) from one groundwater well. 33.6 AF will be for in home domestic uses and 62.7 AF will be for lawn and garden uses. The Applicant estimates a total consumptive use of 50.17 AF. The place of use is approximately 40 acres located in the NWNE of Section 35, T9N, R20W, Ravalli County, approximately 1 mile southeast of the city center of the Town of Stevensville. The proposed point of diversion is a well located in the NENE of Section 35, T9N, R20W, Ravalli County. The Applicant's stream depletion analysis and modeling indicates that the maximum annual depletion to the Bitterroot River would be 49.83 AF of the total 50.17 AF expected consumptive use. Assuming an annual depletion equal to the 50.17 AF consumptive volume and a generally constant year round depletion rate calculated from modeling, the year round depletion rate would be 0.069 CFS or 31.1 gpm. (Department File, SOP (Permit))

Originally, the proposed mitigation strategy was through Application 76H-30043132 to change water rights 76H-131640-00, 76H-131641-00, and 76H-131642-00 from South Swamp

Creek and Robertson Creek (both tributary to the Bitterroot River) by permanently retiring 33.23 acres of a 40 acre historically irrigated parcel and reallocating the consumptive use from the retired acres to mitigation. Surface water no longer diverted for irrigation under the three permits would provide offset of stream depletion in two ways: (1) a majority of the water would flow directly to the Bitterroot River within the depleted reach as surface flow, and (2) the remainder of the water would recharge groundwater through streambed seepage from South Swamp Creek and Robertson Creek. (Department File, SOP (Change))

The Applicant's revised aquifer recharge plan is to direct the entire historically diverted volume of water from the 33.23 historically irrigated acres to be retired into a gravel pit immediately adjacent to the historic place of use to infiltrate into the aquifer. (Department File, Testimony of Perine)

STATEMENT(S) OF OPINION

The Department found *surface water historically diverted from South Swamp Creek and Robertson Creek under the three water rights . . . are hydraulically connected to the Bitterroot River and provide an amount of water for mitigation that offsets the total amount of net depletion to the river.* However, the Applicant's "Spreadsheet Calculations of Consumptive Use, Stream Depletion and Mitigation" indicates zero mitigation volume for the period of October through April due to the fact that the three water rights being use for mitigation have a period of use between May1 and September 30 of each year. The Montana Department of Fish Wildlife and Parks has two instream flow claims that include the potentially affected reach of the Bitterroot River during the non-irrigation season (October 1 to April 30). The Department thus found that *the Applicant has not demonstrated a plan to mitigate the depletion to surface water during the non-irrigation season and the lack of a plan to mitigate surface water depletions during the non-irrigation season fails to prove lack of adverse effect to senior appropriators who hold surface water rights for that period of time. The Department further found that the Applicant's failure to analyze surface water rights, such as DFWP's instream flow recreation rights, does not preclude a finding that senior appropriators will not be adversely affected, so long as the Applicant offsets or mitigates in amount, duration, and location all surface water depletions caused by its proposed use that would adversely affect senior water rights.* Applicant's failure to offset its depletions of surface water in amount, duration, and location in the closed Bitterroot River necessarily translates to a finding of no Legal Availability.

Thus, the Department denied Application 76H-30043133 based solely on the failure to

provide mitigation water during the non-irrigation season under the Legal Availability criteria and the No Adverse Effect criteria. As a result of the denial of Application 76H-30043133 there is no need for mitigation water, thus Application 76H-30043132 (Change) was denied based on the Beneficial Use criterion. (Department Files; SOP's)

APPLICANT ARGUMENT

On February 16, 2010, the Department received a request for a hearing on the denial of the Combined Application. A hearing was subsequently held on November 29, 2010.

Findings of Fact (Permit)

1. Under Applicant's original Mitigation Plan previously diverted surface water would no longer be diverted at the historic Place of Use and would be allowed to flow directly into the Bitterroot River from South Swamp Creek and Robertson Creek only during the irrigation season (May 1 through September 30). (Department File; Perine Letter April 30, 2010)
2. In order to more accurately address the timing of predicted depletion to the Bitterroot River, the Applicant now proposes to divert the full volume of the retired irrigation water (444.7 gpm up to 300.7 acre-feet per year) into an existing gravel pit which currently has three open pools. The gravel pit is owned by the developer of the subdivision, is located immediately east of the proposed subdivision, and will be serviced through the existing irrigation ditch that was utilized to irrigate the historic place of use. The gravel pit is directly connected to shallow groundwater and has no surface water outlet. The surface water diverted into the gravel pit will rapidly infiltrate the shallow aquifer, which will provide a delayed discharge to the Bitterroot River (i.e. an aquifer recharge plan). The full diverted volume of the retired historically irrigated acres (as opposed to just the consumptive use) was used to account for the historic consumptive use and to mimic historic return flows. (Perine Letter April 30, 2010; Perine November 12, 2010 prefiled testimony)
3. The gravel pit is located in the SWNE Sec. 35, T9N, R20W and has an estimated surface area of 1.1 acres and an average depth of 5 feet. Using the Department's formula for estimating pond capacities results in a capacity of 2.75 AF. Applicant estimates 2.75 AF of annual evaporation from the gravel pit pond. (Perine November 12, 2010 prefiled testimony; Exhibit SC-1; Department calculation)
4. The effects of the aquifer recharge plan on flow in the Bitterroot River was modeled using the same analytic model used to model stream depletion as a result of the new well and by using the same aquifer characteristics. (Perine Letter April 30, 2010)

5. The results of the aquifer recharge plan modeling show monthly volumes of accretions to streamflow exceed the expected depletion. (Perine letter April 30, 2010)
6. The Department hydrogeologist was concerned that placing the full diverted volume of the historic use into the pond could result in mounding of the water table allowing the aquifer recharge water to enter South Swamp Creek or Robertson Creek which would affect the aquifer recharge plans' effectiveness. Applicant's analysis shows that mounding of the water table will raise the water table approximately 1.49 feet, resulting in the water table rising to 2 feet below Robertson Creek and 1 foot below South Swamp Creek. Under the Applicant's analysis, the water table will not intersect the beds of either creek. The Department hydrogeologist finds the results reasonable. (Testimony of Perine, Levens memo November 19, 2010)
7. Concern was raised that pond evaporation has not been taken into consideration. The developer of the subdivision has filed a Form 602 to account for the pond evaporation as suggested by the Department hydrogeologist. Pond evaporation was calculated to be 2.75 acre-feet per year. (Perine prefiled testimony, Exhibit SC-1)
8. The Department hydrogeologist testified that his concerns had been addressed and that the aquifer recharge plan should mimic the historic irrigation practices. By retiring 33.23 historically irrigated acres and directing the entire diverted volume into the gravel pit, 50.17 AF/Y of historically consumed water will be available to offset depletions caused by the new groundwater well. (Department File; Testimony of Levens)
9. I find that the Applicant has proven by a preponderance of the evidence, through an aquifer recharge plan to offset all depletions in amount, timing and location, 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. (85-2-311(1)(a)(ii), SOP 76H-30043133)
10. I find that 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. (85-2-311(b), SOP 76H-30043133)

Conclusions of Law (Permit)

1. Pursuant to 85-2-311(1)(b), MCA, 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. Applicant has modeled the depletion of the proposed appropriation to surface water and assumes a potential depletion of 49.83 AF/YR. See Montana Trout Unlimited (TU), et al. v.

DNRC, et al. 2006 MT 72, 331 Mont. 483, 133 P.3d 224 (recognizing effect of prestream capture on surface water). It is the applicant's burden to produce the required evidence, and not doing so constitutes a failure of proof. *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, Proposal for Decision, adopted by DNRC Final Order (2005); *East Bench, supra*. The proposed appropriation is within the Bitterroot River basin closure, 85-2-344, MCA. The Department cannot assume an impact to a source is so inconsequential and negligible that it can be disregarded in a closed basin. Any depletion of water in a 'closed' basin or any other basin from a new appropriation must be addressed so as to not cause adverse affect to a senior water right holder. E.g., In the Matter of Application for Beneficial Water Use Permit No. 41H-30021840 by the Town of Manhattan, Proposal for Decision (December 2008); *Application for Beneficial Water Use Permit No. 41H 30025398 by Bostwick Properties Inc.*, DNRC Statement of Opinion (2008), *appeal pending Bostwick Properties Inc. v. DNRC*, Case No. DA-08-0248, Supreme Court of Montana.(citing, Alley (2007, Ground Water)); see also *In The Matter Of Application For Beneficial Water Use Permit No. 41H 30023457 By Utility Solutions, LLC.*, DNRC Final Order (December 2007)(permit denied); Proposal for Decision, Final Order (2006), *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 And 41H 30013629 By Utility Solutions LLC* (permits granted requiring mitigation of depletion), *affirmed, Faust v. DNRC et al.*, Cause No. CDV-2006-886, Montana First Judicial District (2008); Final Order (2007), *In the Matter of Application for Beneficial Water Use Permit 41H 30019215 by Utility Solutions LLC* (permit granted requiring mitigation of depletion), *affirmed, Montana River Action Network et al. v. DNRC et al.*, Cause No. CDV-2007-602, Montana First Judicial District (2008); Statement of Opinion with Conditions accepted by Applicant (2008)(required mitigation for depletion), *Application No.41F-30013630 by Treeline Springs, LLC* ;Final Order (2008), *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 By Utility Solutions LLC* (permit granted with mitigation for depletion), *pending judicial review, Shennum et al. v. DNRC et al.*, Cause No. CDV-2008-740, Montana First Judicial District.

2. Where a proposed groundwater appropriation depletes surface water, applicant must prove legal availability of amount of depletion of surface water throughout the period of diversion either through a mitigation /aquifer recharge plan to offset depletions or by analysis of the legal demands on and availability of water in the surface water source. 85-2-311(a)(ii) MCA; *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 And 41H 30013629 By Utility Solutions LLC* (DNRC Final Order 2006) (permits granted where projected depletion of 167.91

acre-feet per year mitigated in upper Missouri River closed basin), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit 41H 30019215 by Utility Solutions LLC* (DNRC Final Order 2007)(permit granted where projected depletion of 6 gpm and 9.73 acre-feet per year mitigated in upper Missouri River closed basin), *affirmed*, Montana River Action Network et al. v. DNRC et al., Cause No. CDV-2007-602, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 By Utility Solutions LLC* (DNRC Final Order 2007) (permit denied); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 By Utility Solutions LLC* (DNRC Final Order 2008) (permit granted where projected depletion of 5.18 acre-feet per year mitigated in upper Missouri River closed basin); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009).

3. Applicant has proven by a preponderance of the evidence that surface water can reasonably be considered legally available during the non-irrigation season (dates) due to the aquifer recharge plan.
4. 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. (85-2-311(1)(a)(ii), SOP 76H-30043133, Findings of Fact 1 - 10)
5. Applicant has proven by a preponderance of the evidence that the surface water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation during the non-irrigation season will not be adversely affected due to the aquifer recharge plan.
6. 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. (85-2-311(b), SOP 76H-30043133)

Findings of Fact (Change)

1. The infiltration from the gravel pit, which is located immediately adjacent to the historic place of use will mimic historic irrigation practices and result in stream recharge that mimics the historic irrigation return flows. The flow rate (444.7 gpm), diverted volume (300.7 AF/Y) and consumptive use volume (50.17 AF/Y) of water being changed is necessary to mimic historic return flows and to offset the depletions causing adverse effects of the predicted net depletion to

the Bitterroot River, that would result from use of groundwater proposed by Application for Beneficial Use Permit 76H-30043133. (Department File)

2. Water will be diverted into the gravel pit using the same ditch system that previously was used to irrigate the historic place of use. (Testimony of Perine; Department File)

3. Approval of Application for Beneficial Water Use Permit 76H-30043133 would require aquifer recharge water that could be obtained through Change Application 76H-30043132. (Department File)

4. I find that the means of diversion for Change Application 76H-30043132 are adequate.

5. I find that the use of water under Change Application 76H-30043132 is a beneficial use.

Conclusions of Law (Change)

1. Using water rights for mitigation purposes to offset adverse effect is a use of water that is a recognized beneficial use. (85-2-102(4)(e), MCA)

2. Applicant has proven by a preponderance of the evidence that the proposed use of water is a beneficial use. (85-2-311(1)(d), MCA; Findings of Fact 1, 3, 5)

3. Applicant has proven by a preponderance of the evidence that the proposed means of diversion are adequate. (Finding of Fact 2)

CONCLUSION

Permit

1. Applicant has proven 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. (85-2-311(1)(a)(i), MCA; SOP 76H-30043133)

2. 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. (85-2-311(1)(a)(ii), MCA; SOP 76H-30043133; COL(Permit) 2 *supra*)

3. 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. (85-2-311(1)(b), MCA; SOP 76H-30043133; COL(Permit) 3 *supra*)

4. Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. (85-2-311(1)(c), MCA; SOP 76H-30043133)

5. Applicant has proven by a preponderance of the evidence that the proposed use of water is a beneficial use. (85-2-311(1)(d), MCA; SOP 76H-30043133)
6. Applicant has proven by a preponderance of the evidence that 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. (85-2-311(1)(e), MCA; SOP 76H-30043133)
7. The criteria of 85-2-311(1)(f), -(g), and -(h), MCA, are not applicable to this application as no objections relative to water quality were filed.

Change

8. Applicant has proven by a preponderance of the evidence that the proposed change will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued. (85-2-402(2)(a), MCA; SOP 76H-30043132)
9. Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. (85-2-402(2)(b), MCA; SOP 76H-30043132)
10. Applicant has proven by a preponderance of the evidence that the proposed use of water is a beneficial use. (85-2-401(2)(c), MCA; COL(Change) 2 *supra*)
11. Applicant has proven by a preponderance of the evidence that 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. (85-2-402(2)(d), MCA)

ORDER

The Combined Application for Beneficial Water Use Permit No. 76H-30043133 and Application to Change a Water Right No. 76H-30043132 by the Town of Stevensville is **GRANTED**, as described below.

Application for Beneficial Water Use Permit No. 76H-30043133 by the Town of Stevensville, to appropriate a maximum of 300 gallons per minute, up to 96.3 acre-feet per year from a well located in the NENE Sec. 35, T9N, R20W, Ravalli County is **GRANTED**. The place of use is a 40 acre parcel described as the Twin Creeks Subdivision in the NWNW Sec. 35, T9N, R20W, Ravalli County. The appropriation is for municipal use with 33.6 acre-feet per year

to be for in-home domestic uses and 62.7 acre-feet per year for lawn and garden uses. The total consumptive use is 50.17 acre-feet per year.

This Permit is subject to the following conditions, limitations or restrictions:

1. Diversion under this permit may not commence until the aquifer recharge plan is legally implemented. Diversion under this Permit must stop if the aquifer recharge plan in amount, location and duration ceases in whole or in part. The aquifer recharge water shall be diverted at a rate of 444.7 gpm up to 300.7 AF from Robertson Creek and South Swamp Creek at their historic claimed points of diversion and conveyed through the existing ditch to the pond in the gravel pit located in the SWNE Sec. 35, T5N, R20W.
2. On a form provided by the Department, the appropriator shall keep a monthly written record of the flow rate and volume of all water diverted. Records shall be submitted to the Missoula Regional Office by November 30 of each year and upon request at other times during the year. Failure to submit reports may be cause for revocation of the Permit. The appropriator shall maintain the measuring device so it always operates properly and measures flow rate and volume accurately.

Application to Change a Water Right No. 76H-30043132 by the Town of Stevensville, to change the purpose and place of use of 444.7 gpm up to 300.7 AF/Y diverted flow (50.17 AF/Y consumptive) and to retire 33.23 acres of historically irrigated land under water right nos. 76H-131640-00, 76H-300131641, and 76H-131642 from South Swamp Creek and Robertson Creek and convey the historically diverted volume from the retired irrigation to a pond in a gravel pit located in the SWNE Sec. 35, T5N, R20W, Ravalli County to be used for aquifer recharge water is **GRANTED**. The three water rights being changed are supplemental to each other and were historically used to irrigate a 40 acre parcel located in the NWNE Sec. 35, T9N, R20W, Ravalli County. The flow rate and diverted volume from each right that is used for aquifer recharge is detailed below.

<i>WR#</i>	<i>Priority Date</i>	<i>Flow Rate - Cfs/Gpm</i>	<i>Period of Diversion</i>	<i>Historic Diverted Volume</i>	<i>Historic Consumptive Volume</i>
76H-131640-00 South Swamp Cr	MAY 15, 1881	326.2 GPM	05/01-09/30	220.7 AF	36.87AF
76H-131641-00 South Swamp Cr	JULY 1, 1875	77.6 GPM	05/01-09/30	52.3 AF	8.73 AF
76H-131642-00 Robertson Cr	JUNE 1, 1858	40.8 GPM	05/01-09/30	27.7 AF	4.62 AF
TOTALS		444.7 GPM		300.7 AF	50.22 AF

This Change Authorization is subject to the following conditions, limitations or

restrictions:

1. Prior to diverting under this Change Authorization the Applicant(s) must file with the Department a legally binding document (deed, warranty deed, etc.) evidencing a change in the ownership (divided interest) in Water Right Nos. 76H-131640-00, 76H-131641 and 76H-131642 along with the proper fees and Department Form(s).
2. On a form provided by the Department, the appropriator shall keep a monthly written record of the flow rate and volume of all water diverted into the recharge pond. Records shall be submitted to the Missoula Regional Office by November 30 of each year and upon request at other times during the year. Failure to submit reports may be cause for revocation of this change. The appropriator shall maintain the measuring device so it always operates properly and measures flow and volume accurately.
3. The appropriator shall install piezometers to monitor groundwater levels adjacent to South Swamp Creek and Robertson Creek for five years. The Department must be notified by letter if groundwater levels rise to streambed elevations of either stream resulting in groundwater discharge. The appropriator shall describe modifications they propose to ensure that aquifer recharge water does not continue to discharge to either stream.

NOTICE

A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision is entitled to judicial review under the Montana Administrative Procedure Act (Title 2, Chapter 4, Mont. Code Ann.). A petition for judicial review under this chapter must be filed in the appropriate district court within 30 days after service of the final order. (Mont. Code Ann. § 2-4-702)

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcript prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements for preparation of the written transcript. If no request for a written transcript is made, the Department will transmit only a copy of the audio recording of the oral proceedings to the district court.

DATED this 22nd day of April, 2011.

/Original signed by David A Vogler/
David A. Vogler, Hearing Examiner
Department of Natural Resources
and Conservation
Water Resources Division
P.O. Box 201601
Helena, Montana 59620-1601

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the FINAL ORDER was served upon all parties listed below on this 22nd day of April 2011, by first class United States mail.

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