

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
MISSOULA WATER RESOURCES REGIONAL OFFICE



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January 31, 2008

Stephen R. Brown
Garlington, Lohn & Robinson, PLLP
PO Box 7909
Missoula, MT 5980-7909

**Re: Response to December 26, 2007 letter on Growing Communities Doctrine.
Mountain Water Company Permit Application 76M 30024604**

Dear Mr. Brown:

This letter is in response to your December 26, 2007 correspondence regarding the Mountain Water Company's request to allow additional wellheads as new points of diversion for existing rights. In your letter you make an argument for using the Change Authorization process rather than submitting new Beneficial Water Use Permit applications.

Your arguments for utilizing the Change Authorization process rather than new permit applications rely on "the growing communities doctrine" and "the special status of municipal water rights" in Montana Code Annotated §85-2-227.

The Department disagrees that the Montana Water Use Act provides for the special considerations for municipal use based on the "growing communities doctrine" as you described in your letter. The Department also is not persuaded that the doctrine is supported by case law in Montana. Implementation of such a doctrine will require legislation modifying the Water Use Act, and could have significant implications for other water right holders. Montana Code Annotated §85-2-227 MCA deals with the criteria for presumption of municipal non-abandonment. A presumption against abandonment is not a determination that a water right has been perfected.

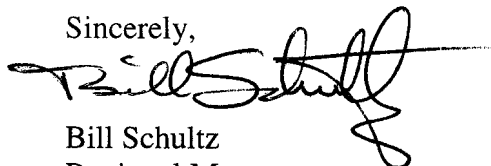
Change Authorization applications submitted by Mountain Water Company for adding a new point of diversion will be processed under the New Appropriation Rules adopted January 1, 2005 and MCA §85-2-402. The elements of the change will be limited by the historic beneficial use of each water right claim and permit being changed.

Application For Beneficial Water Use Permit 76M 30024604 was submitted by Mountain Water Company on October 3, 2006. The application requests adding 300 gpm up to 484 acre feet per year from a new well in the Bandman Flats area of East Missoula. The place of use is within the designated Mountain Water Company service area (place of use) as designated in Change Authorization 76M 26358-99 granted December 1, 2003. The deadline for Mountain Water Company to provide additional information to meet the

statutory criteria for permit issuance ended on January 10, 2008. This includes the additional 60 days requested by the applicant. If requested within ten days, DNRC will grant an additional 60 days, until March 10, 2008, for response from Mountain Water Company to issues raised in the Application Review Form dated May 16, 2007. If no request is received, I will proceed with my review of the criteria based on the information currently in the application file.

If you have any questions, please contact me or Jim Nave, the Water Resource Specialist processing the application.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Schultz", with a long horizontal line extending to the right from the end of the signature.

Bill Schultz
Regional Manager

Cc: Karl Uhlig, PBS&J
Anne Yates
Terri McLaughlin