

Application of City of Shelby
Water Reservation No. 71891-41P

II. FINDINGS OF FACT

A. FINDINGS ON THE QUALIFICATION OF THE CITY OF SHELBY TO RESERVE WATER (Mont. Code Ann. § 85-2-316(1)(1991); ARM 36.16.107B(1)(a).)

1. The City of Shelby is an incorporated municipality and a subdivision of the State of Montana. (Bd. Exh. 9-A, p. 1; § 85-2-316(1), ARM 36.16.107B(1)(a).)

2. The City of Shelby has applied for a water reservation of 302 acre-feet/year (af/yr) of water with a maximum diversion rate of 1.83 cubic feet/second (cfs) to be diverted from alluvial gravel infiltration wells adjacent to the Marias River to be located upstream of the present city infiltration field for year round use. (Bd. Exh. 9-A, pp. 4 and 6.)

3. The City of Shelby requested a water reservation to meet future demands by municipal and industrial users. (Bd. Exh. 9-A, p. 4.)

B. FINDINGS ON THE PURPOSE OF THE WATER RESERVATION APPLIED FOR BY THE CITY OF SHELBY (Mont. Code Ann. § 85-2-316(4)(a)(1991); ARM 36.16.107B(1)(b).)

4. The City of Shelby seeks to provide municipal water for future growth in a cost-effective manner. Sound planning requires providing users with an adequate water supply. The term of the water reservation is to year 2025. (Bd. Exh. 9-A, p.6.)

5. The purpose of the reservation is to provide the water for municipal and industrial uses. (Bd. Exh. 9-A, p. 4.) Municipal and industrial uses are beneficial uses of water in Montana. (§ 85-2-102(2)(a), ARM 36.16.102(3); ARM 36.16.107B(1)(b).)

C. FINDINGS ON THE NEED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF SHELBY (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

6. An existing infiltration field of ten wells presently provides an average of .84 cfs of water to the City of Shelby. (Bd. Exh. 9-C, pp. 1, 3.) The reservation water requested would be delivered from up to 8 new infiltration wells which would pump into the existing municipal water system. (Bd. Exh. 9-C, p. 3.)

7. A reservation is the only means to obtain an early priority date for water that will be needed to meet projected municipal and industrial growth. In the future, water may be appropriated by competing agricultural, industrial, and instream users. (Bd. Exh. 40, p. 249; Bd. Exh. 9-A, p. 28.)

8. It is important that the City of Shelby have a water reservation to meet future municipal and industrial water demands in order for the community to prosper and develop. (Bd. Exh. 9-A, p. 27.)

9. Competing water uses may prevent the City of Shelby from obtaining or perfecting a water use permit in the future. Without a reservation, the City of Shelby may have to go through a costly process of buying or condemning existing water rights to meet increasing demands. (Bd. Exh. 40, p. 249.)

D. FINDINGS ON THE AMOUNT OF WATER NEEDED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF SHELBY (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

10. The method of determining the amount of water requested for a water reservation by the City of Shelby was based on a forecast of its future population to the year 2025 along with the estimated amount of water used per person. (Bd. Exh. 40, p. 35.) The methodology used by the City of Shelby projected an average annualized (compounded population growth rate) of approximately .74 percent. (Bd. Exh. 40, p. 236.) The 1990 population of Shelby was 2,763. (Bd. Exh. 40, p. 236.) The City of Shelby's population forecast for the year 2025 was 4,387 people. (Bd. Exh. 40, p. 236.)

11. The populations recorded in the 1990 census indicate that over the past 30 years Shelby's population declined from 4,017 people in 1960 to 2,763 people at present (an annualized population decrease of -1.24 percent). (Bd. Exh. 9-C, p. 7.)

12. The City of Shelby has lower than average leakage levels which are estimated at .14 cfs per day (16 percent of daily use). (Bd. Exh. 9-A, p. 25.) Shelby's average per person usage of 170 gallons per person daily is significantly lower than the typical basin municipal use rate of 250 gallons per person per day. (Bd. Exh. 9-A, pp. 24-25; Bd. Exh. 9-C, p. 3.)

13. One hundred percent of the City water services are metered at present. (Bd. Exh. 9-A, p. 24.) The City of Shelby has one of the lowest rates of per person water use, primarily because of the city's high cost of water. (Bd. Exh. 9-A, p. 25.)

14. The water use efficiencies associated with the municipal and industrial uses by the City of Shelby are reasonable. (ARM 36.16.107B(3)(b).)

15. No other cost-effective measure could be taken within the reservation term to increase the use efficiency by the City of Shelby and lessen the amount of water required for the purpose of the reservation. (ARM 36.16.107B(3)(b).)

E. FINDINGS THAT THE WATER RESERVATION APPLIED FOR BY THE CITY OF SHELBY IS IN THE PUBLIC INTEREST (Mont. Code Ann. § 85-2-316(4)(a)(iv)(1991); ARM 36.16.107B(4).)

16. Benefits of the City of Shelby's water reservation were calculated on a willingness-to-pay basis. Shelby used a \$1.50 to \$3.00/1,000 gallons value. (Bd. Exh. 9-A, p. 46.) Helena municipal users are currently paying \$2.47/1,000 gallons. (Bd. Exh. 40, p. 253.)

17. The additional water provided by the water reservation will cost approximately \$2.32/1,000 gallons. (Bd. Exh. 9-C, p. 5.) This cost is high when compared to other municipal reservation requests (Bd. Exh. 9-C, p. 5.)

18. The direct benefits of the City of Shelby's water reservation exceed the direct costs. (ARM 36.16.107B(4)(a).)

19. Indirect benefits of the City of Shelby's reservation may include secondary economic benefits to the community and to the state, and expanding both the property and income tax base from increased population. (Bd. Exh. 9-A, p. 48.)

20. Indirect costs of the reservation may include loss of opportunity for other development and increased administrative costs. While not quantified these costs are minor. (Bd. Exh. 9-A, p. 48.)

21. There is no significant adverse environmental impact associated with the use of the City of Shelby's water reservation. (Bd. Exh. 9-C, p. 6.) The effects of individual municipal water reservation depletions on water quality have not been quantified (Bd. Exh. 40, pp. 253 - 254), but should be very small. Resulting health risks have not been quantified. No other non-quantifiable benefits or costs were identified. (Bd. Exh. 9 - A.)

22. Net benefits of granting the City of Shelby's water reservation exceed the net benefits of not granting the water reservation and the project is economically feasible. (ARM 36.16.107B(4)(b); ARM 36.16.102(9).)

23. The City of Shelby identified eight alternative sources of water for future development. These alternatives would not provide greater net benefits than the water reservation, (Bd. Exh. 9-A, p. 44) and are not reasonable. (ARM 36.16.107B(4)(c).)

24. Failure to reserve water for future municipal and industrial use by the City of Shelby is likely to result in an irretrievable loss of a resource development opportunity. (Bd. Exh. 9-A, pp. 49 and 50; ARM 36.16.107B(4)(d).)

25. As conditioned, the City of Shelby's water reservation will have no significant adverse impact to public health, welfare, or safety. (ARM 36.16.107B(4)(e).)

F. OTHER FINDINGS RELATING TO BOARD DECISION (Mont. Code Ann. § 85-2-316(3)(B), (4)(a)(iv)(b), (5), (6), and (9)(e)(1991); ARM 36.16.107B(5) through (8).)

26. The water reservation by the City of Shelby will be used wholly within the state and within the Missouri River basin. (Bd. Exh. 9-A; ARM 36.16.107B(5) and (6).)

27. The City of Shelby has identified a management plan for the design, development, and administration of its water reservation. (Bd. Exh. 9-A, p. 51.)

28. The City of Shelby is capable of exercising reasonable diligence towards feasibly financing the project and applying reservation water to beneficial use in accordance with the management plan. (ARM 36.16.107B(7).)

29. The priority date of the City of Shelby's water reservation is July 1, 1985. (Mont. Code Ann. § 85-2-331(4).)

30. As conditioned, the City of Shelby's water reservation will not adversely affect any senior water rights. (ARM 36.16.107B(8).)

31. The public interest in protecting domestic and stockwater rights with a priority date on or after July 1, 1985 and perfected prior to the final date of this Order outweighs the values protected by the municipal reservations.

III. CONCLUSIONS OF LAW

1. City of Shelby is a qualified applicant for a water reservation. (Mont. Code Ann. § 85-2-316(1)(1991).)

2. The purpose of the City of Shelby's application is a beneficial use. (Mont. Code Ann. § 85-2-316(4)(a)(i)(1991); ARM 36.16.107B(1)(b).)

3. The need for the City of Shelby has been established. Specifically, the City has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose of its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

4. The methodologies and assumptions used by the City of Shelby are suitable but not accurate under present conditions. (ARM 36.16.107B(3)(a).) An accurate population projection for the City of Shelby is 3,140 based on a .36 percent annualized growth rate. As modified, the City of Shelby has established the amount of water needed to fulfill its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

5. Based on a weighing and balancing of the evidence, the reservation by the City of Shelby as modified herein is in the public interest. (Mont. Code Ann. § 85-2-316(4)(a)(iv); ARM 36.16.107B(4).)

6. Upper Missouri River water reservations approved by the Board shall have a priority date of July 1, 1985. (Mont. Code Ann. § 85-2-331(4).) The Board may determine the relative priorities of all reservations. (Mont. Code Ann. § 85-2-316(a)(e).)

7. The Board may grant, deny, modify, or condition any reservation applied for. In no case may the Board make a reservation for more than the amount applied for. (Mont. Code Ann. § 85-2-316.)

8. The Board has no authority under the reservation statutes or any other statutes to determine, or alter, any water right that is not a reservation. (Mont. Code Ann. § 85-2-316(14).)

IV. ORDER

1. Subject to all applicable modifications, conditions, and limitations (including but not limited to the conditions applied to consumptive use reservations in Exhibits A and B attached to this Order) the application of the City of Shelby is granted for the following amount and flow of water: .23 cfs and (100 gallons per minute) and 161 af/year.

2. The point of diversion and place of use are from the well set forth in the reservation application City of Shelby and by reference are made a part of this Order.

3. The reservation is adopted subject to being perfected by December 31, 2025.

4. Relative to other reservations the priority date of the reservation shall be ahead of any other non-municipal reservation granted with a priority date of July 1, 1985. The reservation shall have equal priority with all other reservations granted to all municipalities.

5. Any and all liability arising from the reservation or the use of the reservation is the sole responsibility of the applicant. By granting such reservations, the Board on behalf of itself and the Department of Natural Resources and Conservation assumes no liability.