

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
RESERVATION OF WATER NO. 9646-r43Q)
BY THE CITY OF BILLINGS)

) FINDINGS OF FACT AND CON-
) CLUSIONS OF LAW OF APPLI-
) CATION NO. 9646-r43Q

The above-entitled matter came on regularly for hearing starting on or about August 8, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared by and through its counsel of record, Calvin Calton. The Montana Department of Natural Resources and Conservation appeared by and through its counsel of record, Richard Gordon. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. The Montana Department of Fish and Game appeared by and through its counsel of record, Clayton Herron. The fourteen applicant conservation districts appeared by and through their counsel of record, Gary Spaeth. The U.S. Department of the Interior appeared by and through its counsel of record, Robert Woodahl. The Montana Wildlife Federation appeared by and through its counsel of record, William Madden. The Environmental Information Center appeared by and through its counsel of record, William Leaphart, Jr. Witnesses were duly sworn, and oral and documentary evidence was introduced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the City of Billings, Application No. 9646-r43Q:

FINDINGS OF FACT

1. The City of Billings applied for a reservation of 317,456 acre-feet of water per year (af/y) with a maximum diversionary flow rate of 1,190 cubic feet per second (cfs) from the Yellowstone River to be used for municipal water supply purposes for the year 2070 (Application No. 9646-r43Q), and beneficial uses listed in R.C.M. 89-867(2).

Findings Related to the Purpose of the Reservation (89-890(3)(a)).

2. The purpose of the reservation is to ensure water availability and an adequate streamflow for future needs of the City of Billings (City of Billings, Application No. 9646-r43Q).

3. It is established to the satisfaction of the Board that a purpose of the reservation has been shown (Finding 2).

Findings Related to the Need for the Reservation (89-890(3)(b)).

4. A reservation of water is needed because it will secure a priority date for future developments that is earlier than the priority dates such developments would have if permits were obtained immediately before construction or use began (Draft EIS, Vol. 1. p. 1).

5. A reservation of water is needed. The competition for Yellowstone River water exists between municipalities and the other potential users (Tr. Vol. 1, following p. 134, Testimony of Gerald D. Underwood, p. 6).

6. A reservation of water is needed. The validity of the City of Billings' filed appropriations for its municipal water supply has not been proven (Tr. 2 Underwood, p. 8).

7. A reservation of water is needed. The Yellowstone River water is the only practical, economic source of municipal water available to the City of Billings (City of Billings, Application No. 9646-r43Q; narrative attachment submitted with Application No. 9646-r43Q; Tr. 2 Underwood, pp. 18-21).

8. A reservation of water is needed. It would be an assurance that the City of Billings would have an adequate quantity of water available for its municipal water supply (City of Billings, Application 9646-r43Q; narrative attachment submitted with Application No. 9646-r43Q; Tr. 2, Underwood, pp. 18-21).

9. Increased industrial development with associated increased water needs can be expected, based on inquiries from potential industries (Tr. 2 Underwood, pp. 64 and 65).

10. The City of Billings can expect an increased population with associated increased water needs (Tr. 2 Underwood, p. 29).

11. The City of Billings will need an increased water supply in the future (Tr. 2 Underwood, p. 19).

12. It is established to the satisfaction of the Board that the need for a reservation of water has been shown (Findings 4 through 8).

Findings Related to the Amount of Water Necessary for the Purpose of the Reservation (89-890(3)(c)).

13. The 1970 population of the City of Billings was 61,581 (City of Billings, data submitted with Exhibit 4 of Application No. 9646-r43Q, p. 1).

14. The 1970 population of the Billings water service area was 72,000 (City of Billings, data submitted with Exhibit 4 of Application No. 9646-r43Q, p. 1).

15. The 1975 population of the City of Billings was approximately 70,000 (City of Billings, Exhibit 5 of Application No. 9646-r43Q).

16. The 1975 population of the Billings water service area was approximately 81,000 (City of Billings, Exhibit 5 of Application No. 9646-r43Q).

17. The projected population of the City of Billings in the year 2000 is 131,000 (City of Billings, data submitted with Exhibit 4 of Application No. 9646-r43Q, p. 1).

18. The projected population of the Billings water service area for the year 2000 is 164,700 (City of Billings, data submitted with Exhibit 4 of Application No. 9646-r43Q, p. 1; Tr. 2 Underwood, p. 28).

19. A reasonable population figure for the Billings water service area is 164,700 in the year 2000 (Findings 9-11 and 13-18).

20. The amount of the City of Billings reservation request is based on a design population projection for the year 2070 (City of Billings, Exhibit 4 of Application No. 9646-r43Q, pp. 1 through 3).

21. The projected population of the City of Billings in the year 2070 is 600,000 (city of Billings, data submitted with Exhibit 4 of Application No. 9646-r43Q, p. 1).

22. The projected population of the Billings water service area for the year 2070 is 600,000 (City of Billings, data submitted with Exhibit 4 of Application No. 9646-r43Q, p. 1; Tr. 2 Underwood, pp. 25-48, 58-59, 62-64, 71-75).

23. The City of Billings based its application partially on a thirty percent (30%) contingency reservation for industrial development potential (Tr. Vol. 2, p. 48; Cross of Underwood).

24. The thirty percent (30%) contingency for industrial development potential is speculative and is supported by insufficient evidence (Tr. Vol. 2; Cross of Underwood).

25. A reasonable population figure for the Billings water service area for the year 2000 is 164,700 (Department of Natural Resources Finding 19; City of Billings Finding 18).

26. The population projection of the City of Billings is speculative and is not supported by sufficient evidence (Tr. Vol. 2, pp. 36-37; Cross of Underwood).

27. Using the population data for the year 2000, it is able to be projected for the year 2010 for Billings water service area. (Application No. 9646-r43Q).

28. Any projection beyond 2010 is speculative and not supported by sufficient evidence (Exhibit 2 of Application No. 9646-r43Q, p. 3).

29. The population for the year 2010 is projected to be 206,000 people for water service area.

30. The average daily per capita water consumption rate for the City of Billings in 1975 was 210 gallons per capita per day (gpcd) (Tr. Vol. 2, Cross of Underwood, p. 57).

31. The average municipal per capita water consumption rate in Yellowstone County in 1970 was 198 gpcd (Draft EIS, Vol. II, p. 405).

32. The average municipal per capita water use rate in the Yellowstone Basin in 1970 was 212 gpcd (Draft EIS, Vol. II, p. 405).

33. The City of Billings has calculated a water use rate of 250 gpcd for the year 2000 (City of Billings, Exhibit 6 of Application No. 9646-r43Q).

34. Based on the average use rates listed in Findings 30 through 33, 250 gpcd is a reasonable average use rate for the City of Billings for the year 2010 (Findings 30 through 33).

35. With a population of 72,000 and an average use rate of 204 gpcd, the City of Billings' estimated water use in the year 1970 was 16,450 acre-feet.

36. With a water service population of 206,000 in 2010 and an average use rate of 250 gallons per capita per day, the City of Billings will need 57,679 acre-feet per year of water.

37. A reservation that would provide sufficient water to meet the city's projected increased requirements to the year 2010 is the difference between the projected requirement (57,679 af/y) and the existing water usage (16,450 af/y).

38. It is established to the satisfaction of the Board that 41,229 af/y is the amount of water necessary for the purpose of the reservation to the year 2010.

Findings Related to the Public Interest (89-890(3)(d)).

39. Municipal water use is a recognized beneficial use of water under Montana law (City of Billings, narrative attachment submitted with Application No. 9646-r43Q, p. 2).

40. Adoption of the reservation would not significantly reduce the flow of the Yellowstone River

41. Adoption of the reservation would contribute to community planning and provide economic benefits to the community (City of Billings, narrative attachment submitted with Application No. 9646-r43Q, p. 2).

42. Adoption of a reservation for the City of Billings would contribute to the public health (City of Billings, narrative attachment submitted with Application No. 9646-r43Q, p. 2).

43. It is established to the satisfaction of the Board that the reservation of 41,229 af/y from the Yellowstone River for the City of Billings for municipal water supply use is in the public interest, and that there will be accomplishment of the purpose with reasonable diligence in accordance with an established plan (Findings

CONCLUSIONS OF LAW

1. Chapter 8, Title 89, R.C.M. 1947, and in particular, Section 89-890, R.C.M. 1947, authorize the adoption by the Montana Board of Natural Resources and Conservation of orders reserving water to qualified applicants for reservation of water.

2. If ordered adopted, a reservation must be ordered adopted in accordance with Chapter 8, Title 89, R.C.M. 1947, and any rules adopted thereunder.

3. The Applicant, City of Billings, is a political subdivision of the State of Montana and as such is entitled to apply to reserve waters within the State of Montana in accordance with 89-390, R.C.M. 1947, and any rules adopted thereunder.

4. All pertinent statutes and rules of the State of Montana have been adhered to in review of this reservation application, both by the Montana Department of

Natural Resources and Conservation and by the Montana Board of Natural Resources and Conservation.

5. Based upon the above Findings of Fact, and specifically based upon any condition, limitation, or modification of the full application appearing in said Findings, all pertinent criteria delineated in Section 89-890, R.C.M. 1947, and any rules adopted thereunder providing for the adoption of an order reserving water have been met.

6. Nothing found herein has bearing upon the status of water rights claimed by the Applicant other than those herein newly applied for, nor does anything found herein have bearing on the status of claimed water rights of any other party except in relation to those rights herein newly applied for, to the extent necessary to reach a conclusion herein.