

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

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IN THE MATTER OF APPLICATION FOR )  
RESERVATION OF WATER NO. 9953-r42J ) FINDINGS OF FACT AND CON-  
BY THE TOWN OF BROADUS ) CLUSIONS OF LAW OF APPLI-  
 ) CATION NO. 9953-r42J  
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The above-entitled matter came on regularly for hearing starting on or about August 10, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll; the Applicant did not appear at the hearing nor was any direct testimony offered.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the Town of Broadus, Application No. 9953-r42J:

FINDINGS OF FACT

Background Finding

1. The Town of Broadus has applied for a reservation of 605 acre-feet of water per year (af/y) with a maximum diversionary rate of 0.84 cubic feet per second (cfs) from ground water to be used for municipal water supply purposes for the year 1995. (Narrative attachment submitted with Application No. 9953-r42J).

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

2. The purpose of the reservation is to ensure for the Town of Broadus a municipal water supply for domestic, fire protection, commercial, industrial, lawn watering, city park and related uses (Town

of Broadus, Application No. 9953-r42J; Town of Broadus, narrative attachment submitted with Application No. 9953-r42J).

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 ground 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 (Drafts EIS, Vol. 1, p. 1).

5. A reservation of ground water is needed because coal development in the vicinity of the Town of Broadus may increase the town's growth and thus increase the town's need for water (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J).

6. A reservation of ground water is needed because total dissolved solid (TDS) concentrations in surface water in the Tongue and Powder subbasins frequently exceed the upper limit (500 milligrams per liter) for drinking water and would therefore require expensive treatment (Draft EIS, Vol. 11, p. 259).

7. A reservation of ground water is needed because municipal and domestic water users may be forced to find water sources other than surface water (Draft EIS, Vol. 11, p. 259).

8. A reservation of ground water is needed because no municipalities in the Tongue and Powder subbasins use surface water (Draft EIS, Vol. 11, p. 259).

9. A reservation of ground water is needed because the town of Broadus currently uses ground water and anticipates that its future water supply will be obtained from ground water (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J).

10. It is established to the satisfaction of the Board that the need for a reservation of ground water has been shown.

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

11. The 1977 population of the Town of Broadus is estimated at 800 (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J; Draft EIS, Vol. 1, p. 174).

12. Coal development in the vicinity of the Town of Broadus would include growth of the town and a concurrent growth in the town's water needs (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J).

13. The Town of Broadus projects its population to be 4,000 persons in the year 1995 (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J).

14. A Yellowstone Basin population simulation for the year 2000 prepared by the Montana Department of Community Affairs for the Yellowstone Impact Study projects a population of 4,138 persons for Broadus under a low level of development, 6,096 under an intermediate level of development, and 10,692 under a high level of development (Draft EIS, Vol. II, p. 406).

15. An estimate of 4,000 persons for the Town of Broadus for the year 1995 is reasonable and possibly low (Findings 11 through 14).

16. The Town of Broadus has a per capita water use rate of 122 gallons per capita per day (gpcd) (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J).

17. Several years ago, 148 gpcd was estimated to be the average residential commercial, and industrial water use rate in small towns (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J, citing Volume I of Design by E. E. Seelye).

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

19. A water use rate of 135 gpcd,  
was used by the Town of Broadus in calculating its water reservation request (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J).

20. A reasonable average water use rate for the Town of Broadus for the year 1995 assuming some industrial development will occur in the future and use water from the municipal water supply system, is 250 gpcd (Findings 12 and 16 through 19).

21. With a population of 800 and an average use rate of 250 gpcd, the Town of Broadus' estimated water use in the year 1977 was 224 af/y (Findings 11 and 20).

22. With a population of 4,000 and an average use rate of 250 gpcd, the Town of Broadus would need 1,122 af/y in the year 1995 (Findings 15 and 20).

23. A reservation that would provide sufficient water to meet the Town of Broadus' projected increased requirements to the year 1995 is the difference between the projected requirements in the year 1995 (1,122 af/y) and the existing water usage (224 af/y) (Findings 21 and 22).

24. It is established to the satisfaction of the Board that 898 af/y is the amount of water necessary for the purpose of the reservation

to the year 1995 (Findings 11 through 23).

25. The Town of Broadus has applied for the reservation of only 605 af/y (Town of Broadus, Application No. 9953-r42J).

26. It is established to the satisfaction of the Board that 605 af/y is a conservative amount of water necessary for the purpose of the reservation to the year 1995 (Findings 11 through 25).

27. Adoption of a reservation of ground water for the Town of Broadus would have a negligible environmental impact (Draft EIS, Vol. I, pp. 173 and 174).

28. Adoption of a reservation of ground water for the Town of Broadus would not affect the flow of the Yellowstone River (Draft EIS, Vol. 1, p. 174).

29. Adoption of a reservation of ground water for the Town of Broadus would help provide for anticipated domestic, fire protection, commercial, industrial, lawn watering, city parks, and related uses (Town of Broadus, narrative attachment submitted with Application No. 9953-r42J).

30. Adoption of a reservation for the Town of Broadus would provide a future supply of ground water in an area where the development of surface water for municipal purposes is not practical (Findings 6 through 9).

31. Adoption of a reservation of 605 af/y ground water for the Town of Broadus does not reserve an excessive amount of water (Findings 24 through 26).

32. It is established to the satisfaction of the Board that the reservation 605 af/y of ground water for the Town of Broadus for municipal water supply use is in the public interest and that there will be progress toward accomplishment of the purpose of the reservation with reasonable diligence in accordance with an established plan

(Findings 28 through 31; Town of Broadus, Application No. 9953-r42J).

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, Town of Broadus, 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 89-890, 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.