

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

IN THE MATTER OF APPLICATION FOR)
RESERVATION OF WATER NO. 9937-r43Q)
BY THE CITY OF COLUMBUS)
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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, Dick Heard. 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 City of Billings appeared by and through its counsel of record, Calvin Calton. The Montana Power Company appeared by and through its counsel of record, Robert Woodahl. 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 Columbus, Application No. 9937-r43Q:

FINDINGS OF FACT

Background Finding

1. The City of Columbus has applied for a reservation of 2606 acre-feet of water per year (af/y) with a maximum diversionary flow rate of 3.6 cubic feet per second (cfs) from the Yellowstone River to be used for municipal water supply purposes for the year 2007.

(Application No. 9937-r430).

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 the future needs of the City of Columbus (City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 3).

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. I, p. 1).

5. A reservation for water is needed. Competition for Yellowstone River water, especially from irrigated agriculture and industry, exists and is increasing (City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 3; Tr. Vol 1, Cross of A. T. Kersich, p. 116).

6. A reservation of water is needed. The validity of the City of Columbus's existing filed appropriations for its municipal water supply has not been proven (Tr. Vol 1, following p. 38, Testimony of Kersich, 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 Columbus (City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 3).

8. A reservation of water is needed. It would be an assurance that the City of Columbus would have an adequate quantity of water available from the Yellowstone River for its municipal water supply (City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 3).

9. The City of Columbus is becoming a "bedroom community" to the City of Billings. A number of people are living in Columbus and working in Billings. The newly completed interstate highway makes it only a 35 to 40 minute drive from Columbus to Billings (Tr. Vol. 1, Cross of Kersich, p. 116).

10. The City of Columbus can expect an increased population with associated increased water needs (City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 2; Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 9; Tr. Vol. 1, Cross of Kersich, p. 115).

11. Currently, industry is a user of the City of Columbus' municipal water supply. Expansion of such industry is proposed. Expansion would increase such industrial water use. An example of such proposed industrial expansion is the Timberweld Plant (Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 9; City of Columbus narrative attachment submitted with Application No. 9937-r430, p. 3).

12. New industrial development which would use the municipal water supply is possible (Tr. Vol. 1, Cross of Kersich, pp. 114 and 115).

13. The City of Columbus will need an increased water supply in the future (City of Columbus, narrative attachment submitted with

Application No. 9937-r430, p. 3).

14. It is established to the satisfaction of the Board that the need for reservation of water has been shown (Findings 4 through 13).

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

15. The 1975 population of the City of Columbus is estimated at 1350 (City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 2).

16. The amount of the City of Columbus' reservation request is based on a design population projection of 4,500 in approximately the year 2007 (Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 9; City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 2).

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

18. The Environmental Protection Agency's figure for the City of Columbus' water use rate is approximately 200 gpcd (Tr. Vol 1, Cross of Kersich, pp. 113-114).

19. The City of Columbus has utilized a per capita water use rate of 500 gpcd in calculating its request. (Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 8; City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 1).

20. The 500 gpcd figure is questionable (Tr. Vol. 1, Cross of Kersich, p. 110).

21. Based on the current average use rate listed in Findings 17 and 18, 250 gpcd is a reasonable average use rate for the City of Columbus for the year 2007 (Findings 17 through 20).

22. With a population of 1,350 and an average use rate of 250 gpcd, the City of Columbus' estimated water use in the year 1975 was 379 af/y (Findings 15 through 21).

23. With a population of 4,500 and an average use rate of 250 gpcd, the City of Columbus would need 1,262 af/y in the year 2007 (Findings 16 and 21).

24. A reservation that would provide sufficient water to meet the city's projected increased requirements to the year 2007 is the difference between the projected requirements in 2007 (1,262 af/y) and the existing water usage (379 af/y) (Findings 22 and 23).

25. It is established to the satisfaction of the Board that 883 af/y is the amount of water necessary for the purpose of the reservation to the year 2007 (Findings 15 through 24).

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

26. Municipal water use is a recognized beneficial use of water under Montana law (City of Columbus, narrative attachment submitted with Application No. 9937-r43Q, pp. 3 and 4).

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

28. Adoption of a reservation for the City of Columbus would not reduce the flow of the Yellowstone River significantly (Tr. Vol. I, following p. 38, Testimony of Kersich, p. 10).

29. Adoption of a reservation for the City of Columbus is necessary for the public health of present and future residents (Tr. Vol. I, following p. 38, Testimony of Kersich, p. 10; City of Columbus, narrative attachment submitted with Application No. 9937-r43Q, p. 4).

30. Adoption of a reservation for the City of Columbus would provide economic benefits and contribute to community planning and orderly growth and development (City of Columbus, narrative attachment submitted with Application No. 9937-r430, p. 3; Tr. Vol. 1, Cross of Kersich, p. 116).

31. It is established to the satisfaction of the Board that the reservation of 883 af/y from the Yellowstone River for the City of Columbus 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 the established plan (Findings 1 and 26 through 30; City of Columbus, Application No. 9937-r430).

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 Columbus, 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.