

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

IN THE MATTER OF APPLICATION FOR
RESERVATION OF WATER NO. 9942-r43Q
BY THE HUNTLEY PROJECT

)
) FINDINGS OF FACT AND CON-
) CLUSIONS OF LAW OF APPLI-
) CATION NO. 9942-r43Q

The above-entitled matter came on regularly for hearing starting on or about September 9, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared without benefit of counsel. 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, F. Woodside Wright and Clayton Herron. 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 Huntley Project, Application No. 9442-r43Q:

FINDINGS OF FACT

1. The Huntley Project has applied for a reservation of 27,372.3 acre-feet of water per year (af/y) with a maximum diversionary flow rate of 92 cubic feet per second (cfs) from the Yellowstone River to be used to irrigate 4,000 acres.

On the average, this request is for a diversion of 6.82 acre-feet per acre.
(Huntley Project, Application No. 9442-r430).

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

2. The purpose of this reservation is to ensure that water will be available for the expected expansion of irrigation on the Huntley Project (Huntley Project, letter from Paul Sian, President, accompanying Application No. 9942-r430).

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. Funds are not available and it is not known when, or even if funds will be available for the projects.

5. Water will be available for some of the projects proposed with water from the Yellowstone Conservation District.

6. It has not been established to the satisfaction of the Board that the Applicant has shown a need for this reservation (Findings 4 and 5).

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

7. It has not been established to the satisfaction of the Board that any amount of water is necessary for the purpose of the reservation for which there is no need.

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

8. It has not been established to the satisfaction of the Board that it is in the public interest to grant a reservation for which there is no need.

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 reservations 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, the Huntley Project, 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.

CONCLUSIONS OF LAW

1. Chapter 8, Title 89, R.C.M. 1947, and in particular Section 89-890, R.C.M. 1947, authorizes 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 in accordance with Chapter 8, Title 89, R.C.M. 1947, and any rules adopted thereunder.

3. The Applicant, Huntley Irrigation District, 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 Section 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 the 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, a pertinent criterion for the adoption of an order reserving water as delineated in Section 89-890(3)(b), R.C.M. 1947, has not been met, to wit: it has not been established to the satisfaction of the Board that need has been shown for the reservation.

6. Based upon the above Findings of Fact, a pertinent criterion for the adoption of an order reserving water as delineated in Section 89-890(3)(c), R.C.M. 1947, has not been met, to wit: it has not been established to the satisfaction of the Board that any water should be reserved for the

7. Based upon the above Findings of Fact, a pertinent criterion for the adoption of an order reserving water as delineated in Section 89-890(3)(d), R.C.M.

1947, has not been met, to wit: it has not been established to the satisfaction of the Board that the reservation is in the public interest.

8. 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.