

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. 11349-r42L&M )  
BY THE LITTLE BEAVER CONSERVATION )  
DISTRICT FOR IRRIGATION AND STOCK )  
WATERING )

) FINDINGS OF FACT AND CON-  
) CLUSIONS OF LAW OF APPLI-  
) CATION NO. 11349-r42L&M  
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The above-entitled matter came on regularly for hearing 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 by and through its counsel of record, Gary Spaeth, and its legal intern of record, Bob Phillips. 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. Intake Water Company appeared by and through its counsel of record, Henry Loble. Witnesses were duly sworn, and oral and documentary evidence was introudced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to that part of Little Beaver Conservation District Application No. 11349-r42L&M dealing with irrigation and stock watering.

### FINDINGS OF FACT

1. The Little Beaver Conservation District has applied for a reservation of 8,566 acre-feet of water per year (af/y) to be used to irrigate 5,300 acres of alfalfa, 12,000 acre-feet to be used for 8,000 acres of waterspreading, and 3,600 acre-feet to be used for 900 stock ponds. No maximum flow rates were requested. Water is requested from O'Fallon, Pennel, and Cabin creeks. The Little Beaver Conservation District has also applied for a reservation of 1,400 acre-feet of water per year (af/y) from O'Fallon Creek and Cabin Creek (tributaries of the Yellowstone River) and Panel Creek (a tributary of O'Fallon Creek) for recreation and wildlife ponds in Fallon County. The Applicant has not identified the locations or sizes of the stockwater ponds, or recreation ponds, nor has it specified the amounts of water requested from each of the three sources named for the year 2027.

(Application No. 11349-

r42L&M).

#### 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 and stockwater ponds in Fallon County by the Little Beaver Conservation District and to secure a water supply for future recreation and wildlife ponds in Fallon County (Little Beaver Conservation District, Application No. 11349-r42L&M, pp. 2 through 6).

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 (Little Beaver Conservation District, Application No. 11349-r42L&M, p. 3).

5. A reservation of water is needed because there is competition for water in the Yellowstone Basin which may affect the ability of the Applicant to obtain a water right by permit in the future (Little Beaver Conservation District, Application No. 11349-r42L&M, p. 3).

6. A reservation of water is needed because, at this time, only one body of water is sufficiently large to provide flatwater recreation in a multicounty area which includes Fallon County (Tr. Vol. 24, p. 65(3)).

7. It is established to the satisfaction of the Board that the need for a reservation of water in some amount has been shown (Findings 4,5, and 8).  
Findings Related to the Amount of Water Necessary for the Purpose of the Reservation (§9-890(3)(c)).

8. Because the Draft EIS projected levels of irrigation development only through the year 2000 and because no systematic basin-wide projections have been made beyond the year 2000, any projections beyond the year 2000 are speculative (Draft EIS, Vol. II, p. 241).

9. The amount of water necessary for this reservation is the amount that can reasonably be expected to be developed and put to use by the Little Beaver Conservation District by the year 2000 (Finding 8).

10. The Little Beaver Conservation District does not plan to put all of the water applied for to use before 2027 (Little Beaver Conservation District, Application No. 11349-r42L&M).

11. It is established to the satisfaction of the Board that the amount of water necessary for the purpose of insuring that water will be available for the expected expansion of irrigation and stockwater ponds in Fallon County by the Little Beaver Conservation District is 12,073 acre-feet per year. Of this 12,073 acre-feet per year, 4,273 acre-feet per year is for full-service irrigation, 6,000 acre-feet per year is for waterspreading and 1,800 acre-feet per year is for stockwater ponds.

12. Seven recreation ponds are planned to be constructed in Fallon County within the next 30 years (Little Beaver Conservation District, Application No. 11349-r42L&M, p. 6).

13. The average storage capacity of planned flatwater recreation facilities in Fallon County is 100 acre-feet (Little Beaver Conservation District, Application No. 11349-r42L&M).

14. It is established to the satisfaction of the Board that the amount of water necessary for the purpose of securing a water supply for future recreation and wildlife ponds in Fallon County is 700 acre-feet per year.

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

15. New irrigation would increase income in Fallon County, both for the farmers who would install the systems and for the local businesses that would enjoy increased sales resulting from the increase in agricultural income. New irrigation would increase the number of both on-farm jobs and off-farm jobs (Draft EIS, Vol. I, P. 156; Draft Addendum EIS, pp. 45 and 46).

16. Urban populations and nonagricultural water users such as municipal water use have been increasing in the Yellowstone Basin and are projected to continue increasing. Some growing towns such as Sidney have not applied for a water reservation and may have to depend upon water availability through permits for the future expansion of water use (Draft EIS, Vol. I, pp. 101 and 174).

17. The Little Beaver Conservation District has an established plan for completion of the proposed facilities which will put reserved water to use by the year 2000 (Little Beaver Conservation District, Application No. 11349-r42L&M).

18. A reservation of 12,073 af/y for irrigation and stockwater purposes is in the public interest because it is reasonable to expect that the Little Beaver Conservation District will put this amount to a beneficial use by the year 2000 (Findings 11 and 17).

19. It is established to the satisfaction of the Board that the reservation of 12,073 af/y for irrigation and stockwater purposes is in the public interest and that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan Findings 15 through 18).

20. The existing flatwater pond provides such public benefits as picnicking, swimming, boating, and fishing opportunities (Tr. Vol. 24, following p. 65, Testimony of Thielen, p. 3).

21. The existing flatwater pond provides such public benefits as cover for wildlife and habitat for fish (Tr. Vol. 24, following p. 65, Testimony of Thielen, p. 3).

22. The adoption of an order reserving water will make possible the construction of additional ponds to provide increased opportunity for such public benefits (Little Beaver Conservstion District, Application No. 11349-r42L&M, p. 6; Findings 20 and 21).

23. Recreation ponds provide significant public benefits and will continue to be demanded and used (Tr. Vol. 24, following p. 32, Testimony of Irvine, p. 4).

24. It is established to the satisfaction of the Board that the reservation of 700 af/y of water for recreation and wildlife ponds in Fallon County is in the public interest (Findings 20 through 23).

25. The public interest requires that specific locations, sources, amounts, and plans for the proposed recreation ponds be supplied so that other water users in the basin may know the status of the reservation and the amount of water available for appropriation (Findings 20 through 24; Little Beaver Conservation District, Application No. 11349-r42L&M).

### 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 Little Beaver Conservation 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 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.