

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

IN THE MATTER OF APPLICATION FOR)
RESERVATION OF WATER NO. 9954-r42K)
BY THE CITY OF MILES CITY)

) FINDINGS OF FACT AND CON-
) CLUSIONS OF LAW OF APPLI-
) CATION NO. 9954-r42K

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 appeared without aid 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, Clayton Herron and F. Woodside Wright. 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. The Intake Water Company appeared by and through its counsel of record, Henry Loble. 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 Miles City, Application 9954-r42K:

FINDINGS OF FACT

1. The City of Miles City has applied for a reservation of 21,720 acre-feet of water per year (af/y) with a maximum diversionary flow rate of 30 cubic feet per second (cfs) from the Yellowstone River, to be used for municipal water supply purposes for the year 2000. (Application No. 9954-r42K).

2. The annual amount of the City of Miles City's water reservation request is based on a projected maximum daily water diversion rather than an average daily water diversion (Tr. Vol. 3, Direct of Bill Enright, p. 9).

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

3. The purpose of the reservation is to ensure water availability for domestic use, lawn watering, and fire protection needs of the City of Miles City (City of Miles City, letter submitted with Application No. 9954-r42K, p. 1).

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

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

5. 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).

6. A reservation of water is needed. 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 (Draft EIS, Vol. I, p. 1).

7. A reservation of water is needed. The Yellowstone River water is the only source of municipal water available to the City of Miles City (Tr. Vol. 3, Cross of Enright, pp. 13 and 14).

8. A reservation of water is needed. The City of Miles City has long-range plans for construction of additional storage reservoirs and expansion of the

water plan as the need for such construction and expansion arises (Tr. Vol. 3, Cross of Enright, p. 18).

9. The City of Miles City is experiencing growth as evidenced by construction of two major subdivisions and coal and energy developments (Tr. Vol. 3, Cross of Enright, p. 10).

10. The City of Miles City can expect an increased population with associated increased water needs (City of Miles City, letter submitted with Application No. 9954-r42K, p. 1; Tr. Vol. 3, Direct of Enright, pp. 8 & 9).

11. The City of Miles City provides water to residents outside the city limits including the recently formed Custer County Water and Sewer District which will offer Miles City water service to 2,000 persons presently residing within one mile of the city limits of Miles City.

12. The City of Miles City needs an increased water supply for the future (City of Miles City, letter submitted with Application No. 9954-r42K, p. 2).

13. A reservation of water is needed because it would provide water to satisfy demands of present and future residents and development (City of Miles City, letter submitted with Application No. 9954-r42K, p. 1; Tr. Vol. 3, Direct of Enright, p. 9).

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

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

15. The 1976 population of the City of Miles City was 9,700 (Tr. Vol. 3, Direct of Enright, p. 8).

16. The City of Miles City's reservation request, to approximately the year 2000, is based on the maximum daily use of a population of 31,000 (Tr. Vol. 3, Direct of Enright, pp. 9, 12, and 13; City of Miles City, letter submitted with Application No. 9954-r42K, p. 1).

17. Both urban and rural populations in Custer County decreased in the decade from 1960 to 1970. The countywide population also decreased between 1970 and 1974 (Draft EIS, Vol. I, p. 101).

18. A population projection of 31,000 for the City of Miles City to the year 2000 is excessive.

19. The Department of Natural Resources has estimated a design population for the City of Miles City for the year 2000 to be 20,000 people (Tr. Vol. 3, p. 8).

20. The Department of Natural Resources' population projection for the City of Miles City for the year 2000 is based on a study by an engineering firm which was planning a sewage treatment plant.

21. In planning the sewage treatment plant, the engineering firm consulted with the City-County Planning Organization, the City Council and the Yellowstone-Tongue Areawide Planning Organization (Department of Natural Resources Finding of Fact 23).

22. A reasonable population estimate for the City of Miles City in the year 2000 is 20,000 people.

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

24. The average municipal per capita water use rate in Custer County in 1970 was 215 gpcd (Draft EIS, Vol. II, p. 405).

25. The average per capita water use rate for the City of Miles City is 230 gpcd (Tr. Vol. 3, Cross of Enright, p. 14).

26. For the year 2000, an average per capita water use rate of approximately 250 gpcd is projected for the City of Miles City (Tr. Vol. 3, Cross of Enright, p. 15).

27. The 630 gallons per capita per day utilized by the City of Miles City in

computing its reservation is excessive and not supported by evidence.

28. Based on the current average and projected water use rates listed in Findings 23 through 26, 250 gpcd is a reasonable average use rate for the City of Miles City for the year 2000.

29. With a population of 9,700 and an average use rate of 250 gpcd, the City of Miles City's estimated water use in the year 1976 was 2,721 af/y.

30. With a population of about 20,000 and an average use rate of 250 gpcd, the City of Miles City would need 5,610 af/y in the year 2000.

31. A reservation that would provide sufficient water to meet the city's projected increased requirements to the year 2000 is the difference between the projected requirements in 2000 (5,610 af/y) and the existing water usage (2,721 af/y).

32. It is established to the satisfaction of the Board that 2,889 af/y is the amount of water necessary for the purpose of the reservation to the year 2000.

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

33. Adoption of a reservation for the City of Miles City would have a negligible environmental impact (Draft EIS, Vol. I, p. 174).

34. At this time, about 87 percent of the flow diverted for the City of Miles City is returned to the Yellowstone River (Tr. Vol. 3, Cross of Enright, p. 14).

35. Adoption of a reservation for the City of Miles City would not reduce the flow of the Yellowstone River significantly (Draft EIS, Vol. I, pp. 173 and 174; Finding 34).

36. Adoption of a reservation for the City of Miles City would contribute to the City's facility planning (City of Miles City, letter submitted with Application No. 9954-r42K, p. 1).

37. It is established to the satisfaction of the Board that the reservation of 2,889 af/y from Yellowstone River for the City of Miles City 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 (Finding 1, 8, and 33 through 36; City of Miles City, Application No. 9954-r42K).

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 Miles City, 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.