

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT FILED)
BY V.M. FOUST AND C.O. HOLTER,) FINDINGS OF FACT,
APPLICATION NO. 56-s40-0) CONCLUSIONS OF LAW AND
ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter entered May 16, 1974, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

1. The applicants' permit is granted allowing the appropriation of 50 acre-feet per annum of water from Cherry Creek to be diverted at a point in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 11, Township 29 North, Range 39 East, of Valley County, Montana, by means of an earth ditch having a capacity of 16 cubic feet per second with a 24-inch pipe turnout.
2. The project is to be completed within one year from the date of issuance of this order.
3. The permit is granted subject to existing rights.

Done this _____ day of _____, 1974.

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

8/23/74 - as per Judy's book (log)

sm **CASE # 56**

FILMED

APR 5 1974

BEFORE THE MONTANA DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE
APPLICATION OF V.M. FOUST
AND C.O. HOLTER
56-S40 0

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pursuant to the provisions of the Montana Water Use Act, section 89-865 et seq., R.C.M. 1947, after due notice, a public hearing was held May 6, 1974, at the Valley County Courthouse, Glasgow, Montana. The objectors did not appear and the applicants offered brief testimony.

PROPOSED FINDINGS OF FACT

1. On August 3, 1973, V.M. Foust and C.O. Holter duly filed with the Department of Natural Resources and Conservation, Water Resources Division, an application for beneficial water use permit to appropriate water from March 1 to September 30, 50 acre feet of water per annum (16 cubic feet per second for twelve (12) hours three (3) times per season) for irrigation purposes from Cherry Creek in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 11, T29N, R39E, Valley County Montana.
2. Objections to the application were filed by Kenneth Thompson and Fredrick S. Stratton, both of Glasgow, Montana.
3. The applicants' diverting works consist of an earthditch, sixteen (16) cubic feet per second capacity, with a twenty four (24) inch pipe turnout. The water is to be used for a waterspreading project intended for hay production.
4. The applicants were issued an interim permit to appropriate water on December 12, 1973.
5. The intended diversion of water from Cherry Creek will not unreasonably deplete existing ground water levels in areas adjacent to the Creek.
6. The total drainage of Cherry Creek above the project is approximately 31,570 acres.

From the foregoing proposed findings of fact the following proposed conclusions of law are hereby made:

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PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water from Cherry Creek for a beneficial use is required.
2. The applicants' intended use as described in the application is a beneficial use for which water may be appropriated.
3. The application for beneficial water use permit may be granted in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana.

Based on the above proposed findings of fact and conclusions of law, the following order is proposed:

PROPOSED ORDER

1. The applicants' permit is granted allowing the appropriation of 50 A.F. per annum of water from Cherry Creek to be diverted at a point in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 11, T29N, R39E, of Valley County, Montana, by means of an earthditch having a capacity of 16 c.f.s. with a 24 inch pipe turnout.
2. The project is to be completed within one year from the date of issuance of this order.
3. The permit is granted subject to existing rights.

NOTICE: This is a proposed order and will become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the proposed order shall be filed with the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

May 16, 1974
Date

Donald D. McIntyre
Donald D. McIntyre
Hearing Examiner

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