

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

FILMED

APR 5 1980

IN THE MATTER OF APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT )  
FILED BY CITY OF RONAN, )  
APPLICATION NO. 73-g76L )

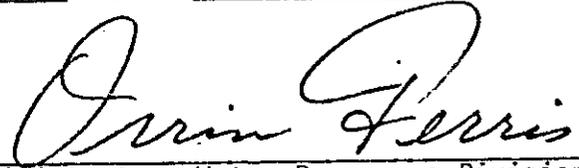
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter entered June 5, 1974, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby Ordered.

ORDER

The beneficial water use permit applied for will be granted, subject to the prior paramount reserved rights of the Confederated Salish and Kootenai Tribes in the source of water from which the appropriation is made.

Done this 3<sup>rd</sup> day of October, 1974



Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

73-g 76L

BEFORE THE MONTANA DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT NO. )  
73-g76L, CITY OF RONAN )

PROPOSED FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

Pursuant to the requirements of the Montana Water Use Act, Section 89-865 et seq., R.C.M. 1947, a hearing was held on April 30, 1974, in Ronan, Montana, for the purpose of hearing objections to the above-entitled application. A timely objection to the application had been filed by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, through their counsel Wilkinson, Cragun and Barker of Washington, D. C. Neither the objectors nor their counsel appeared at the hearing. The applicant appeared and was represented by Lloyd Ingraham, Esq., the Ronan City Attorney. The applicant presented testimony and oral argument in support of the application.

PROPOSED FINDINGS OF FACT

1. On August 8, 1973, the City of Ronan filed an application for beneficial water use permit with the Department seeking to appropriate 2.23 cubic feet of water per second from a 400-foot well to be located within the City.
2. On September 5, 1973, the Department issued the applicant an interim permit to commence the well and appropriate water. The interim permit was issued "subject to all reserved Indian water rights."
3. The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, Montana, object to the granting of a permit for the subject well because the "Department of Natural Resources and Conservation, State of Montana, does not have the jurisdiction or authority to permit the use or diversion of any waters from within the Flathead Indian Reservation."
4. The City of Ronan, and the subject well, are located within the exterior boundaries of the Flathead Indian Reservation, Montana. The land now occupied by the City of Ronan was originally held by the tribes as reservation land, but

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was subsequently opened to non-Indian settlement by the United States pursuant to Federal homestead and townsite laws.

5. No timely objections were raised that there were no unappropriated waters in the source of supply; that the means of diversion or construction are inadequate; that the proposed use is not a beneficial use; or that the proposed use will unreasonably interfere with other planned uses for which a permit has been issued or for which water has been reserved.

#### PROPOSED CONCLUSIONS OF LAW

1. The waters sought to be appropriated by the applicant are waters in which the objector has a reserved water right. Winters v. United States, 207 U.S. 564 (1908); United States v. McIntire, 101 F. 2d 650 (9Cir. 1939).

2. The objectors have paramount rights in the waters on the Flathead Indian Reservation to the extent of their reserved water right, and the State of Montana has no jurisdiction to regulate, apportion or otherwise affect or diminish those rights.

3. The State of Montana does have jurisdiction to regulate those waters, if any, on the Flathead Indian Reservation which are surplus to the objectors' reserved rights. The State of Montana may therefore issue beneficial water use permits to appropriate such surplus waters pursuant to the Montana Water Use Act.

#### PROPOSED ORDER

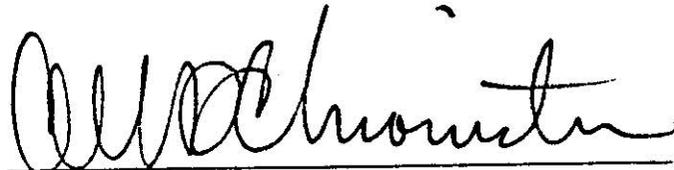
The beneficial water use permit applied for should be granted, subject to the prior paramount reserved rights of the Confederated Salish and Kootenai Tribes in the source of water from which the appropriation is made.

NOTICE: This is a proposed order. It will become final when accepted by the Administrator, Water Resources Division, Montana Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, 59601. Written exceptions to the proposed order must be filed with the Administrator within 10 (ten) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity

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will be provided to file briefs and to make oral argument before the Administrator.

DATED: June 5, 1974.



Allen B. Chronister  
Hearing Officer

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