

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

FILMED

APR 5 1988

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IN THE MATTER OF THE APPLICATION)
FOR CHANGE OF APPROPRIATION WATER) NOTICE OF TERMINATION
WATER RIGHT NO. G95-s40E BY)
ERVIN J. CROWDER)

* * * * *

The contested case hearing in the above-entitled matter was duly convened on December 8, 1988 in Malta, Montana. Subsequent to a discussion with the other parties of record, the Applicant, in person and by and through counsel, expressed his intent to withdraw the change application in this matter.

THEREFORE, Application for Change of Appropriation Water Right No. G95-s40E by Ervin J. Crowder hereby is terminated.

Dated this 9th day of December, 1988.

Peggy A. Elting
Peggy A. Elting, Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6612

CASE # 95

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing NOTICE OF TERMINATION was duly served upon all parties of record at their address or addresses this 9th day of December 1988, as follows:

Ervin J. Crowder
HC 84 Box 8110
Malta, MT 59538

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Sally Martinez
Secretary

CASE # 95

BEFORE THE MONTANA DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE
APPLICATION OF ERVIN
J. CROWDER 95-s40E

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 7, 1974, at the Great Northern Motor Motel, Malta, Montana. The objector William E. Spencer and Sherman R. Grimsley presented testimony. Ervin Crowder presented testimony.

PROPOSED FINDINGS OF FACT

1. On August 13, 1973, Ervin J. Crowder duly filed with the Department of Natural Resources and Conservation, Water Resources Division, an application for beneficial water use permit to appropriate 150 acre feet per annum of water in Phillips County, Montana. The water is to be diverted from an existing earth diversion on Dog Creek, at a point in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 22, Township 24 North, Range 31 East, M.P.M., and used for water-spreading purposes on 70 acres NW $\frac{1}{4}$ of Section 22, Township 24 North, in the Range 31 E., M.P.M., from February 1 to November 30, inclusive, of each year.
2. Objections to the application were filed by Sherman R. Grimsley and William Spencer, all of Malta, Montana.
3. The applicants' diverting works to consist of an existing earth diversion and a new dyke system at a point in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 22, Township 24 North, Range 31 East, M.P.M. The water is to be used for spreader type irrigation.
4. An interim permit was issued to the applicant on September 14, 1973.
5. Objector William Spencer is the owner of an 80 miners inch water right on Dog Creek prior to the water right of the applicant.
6. It appears that there are waters available in the source of supply; that the rights of prior appropriators will not be adversely affected; that the proposed means of diversion is adequate; that the proposed use of water is a beneficial use; and, that the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

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

CASE # 95

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water from Timber Creek for a beneficial use is required.
2. The criteria for issuance of a permit set forth at Section 89-885, R.C.M. 1947, have been met.
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 150 acre feet per annum of water from Dog Creek to be diverted at a point in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 22, T24N, R31E, of Phillips County, Montana, and used for irrigation purposes.
2. The permit is granted subject to the applicants construction of a by-pass to insure that 80 miners inches of the water of Dog Creek are delivered to the objector, William E. Spencer, for irrigation of land described as W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 15, Township 24 North, Range 31 East, M.P.M., prior to applicants appropriation.
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.

Date June 12, 1974

Donald D. MacIntyre
Donald D. MacIntyre
Hearing Examiner

CASE # 95