

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
FILED BY ALFONS DEBUF,)
APPLICATION NO. 159-s40A)

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

1. The applicant's permit is granted allowing the appropriation of 5 cubic feet per second of water from Timber Creek to be diverted at a point in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 10, Township 9 North, Range 17 East, of Wheatland County, Montana, and used for irrigation purposes.

2. The applicant shall construct adequate diversion facilities that will allow water to flow freely downstream to prior water-right holders, and that will prohibit more water than necessary to satisfy applicant's entitlement under this permit from entering the applicant's irrigation system.

3. The permit is granted subject to existing rights.

Done this 19th day of August, 1974.

Arvin Ferris
Administracor, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

CASE # 159

BEFORE THE MONTANA DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE)
APPLICATION OF ALFONS)
DEBUF 159-s40A)

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 28, 1974, at the Wheatland County Courthouse, Harlowton, Montana. The objectors appeared and offered brief testimony. The applicant did not appear to offer rebuttal testimony.

PROPOSED FINDINGS OF FACT

1. On August 23, 1973, Alfons DeBuf duly filed with the Department of Natural Resources and Conservation, Water Resources Division, an application for beneficial water use permit to appropriate 5 cubic feet per second and not to exceed 708 acre-feet per annum of water in Wheatland County, Montana. The water is to be diverted from Timber Creek, a tributary of the Musselshell River, at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, Township 9 North, Range 17 East, M.P.M., and used for irrigation purposes on 10 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, 10 acres in the S $\frac{1}{2}$ NW $\frac{1}{4}$, 87 acres in the SW $\frac{1}{4}$, and 117 acres in the SE $\frac{1}{4}$ of Section 9; and 12 acres in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 10; all in Township 9 North, Range 17 East, M.P.M., and containing a total of 236 acres, more or less, from April 15 to September 15, inclusive, of each year.
2. Objections to the application were filed by John M. Ginther, Bertha C. Muller, and Michael R. and Bettie J. Teig, all of Harlowton, Montana.
3. The applicants' diverting works consist of ditch running west-south-west through section 10 and into section 9, with an earthen dike for diversion in section 10. The water is to be used for spreader type irrigation.
4. 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:

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PROPOSED CONCLUSIONS OF LAW

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1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water from Timber Creek for a beneficial use if 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 5 cubic feet per second of water from Timber Creek to be diverted at a point in the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 10, T9N, R17E, of Wheatland County, Montana, and used for irrigation purposes.
2. 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 5, 1974

Donald D. MacIntyre
Donald D. MacIntyre
Hearing Examiner

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