

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT FILED)
BY W. H. NUSSBAUM AND L. P. JOHNSON)
APPLICATION NO. 201-g76LJ)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter entered May 10, 1974, and the Addition to Proposed Findings of Fact entered May 11, 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 to appropriate water from their open pit will be granted for a withdrawal of not more than 1,000 gallons per minute or 2.23 cubic feet per second from April 1 to November 1, to be used on the NW $\frac{1}{4}$ of Section 16, Township 29 North, Range 22 West.

2. This amount will be granted contingently based upon the effects, if any, that the applicants' pumping may have upon existing open pits in the area for at least two irrigation seasons. If, upon examination, it appears that the applicants' pumping is having an adverse effect upon the water levels in existing pits, the amount of water the applicants are permitted to appropriate will be reduced.

3. The applicants will be required to install a suitable device for measuring the amount of water withdrawn.

Done this 8th day of July, 1974.

Corrin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

CASE # 201

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BEFORE THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.)
201-g76LJ, NUSSBAUM AND JOHNSON)

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, and after due notice, a hearing was held on April 29, 1974, in Kalispell, Montana, for the purpose of hearing objections to the above-named application. The objectors J.W. and Rose Clark, Dennis Rasmussen and Veronica Hanson appeared, and presented statements and testimony to support their objections. The applicant L. P. Johnson appeared and was represented by counsel, Stewart E. Stadler, of Kalispell, Montana.

PROPOSED FINDINGS OF FACT

1. The application indicates an intent to appropriate 4.25 cubic feet of water per second from April 1 to November 1 for sprinkler irrigation from an open pit or ditch 200 feet in length, 30 feet in width and 15 feet in depth. The proposed point of diversion is in the SE $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 16, T29N, R22W, Flathead County, Montana. The proposed place of use was indicated as the NE $\frac{1}{2}$ of the same Section 16.
2. The applicants were issued a temporary permit on October 1, 1973, and an interim permit to appropriate water on December 18, 1973, and pursuant thereto completed the open pit and pumped some water late in the summer of 1973.
3. The applicants have negotiated and intend to sell 160 of the 320 acres on which they propose to use the water applied for. The applicants do not intend to irrigate that 160 acres themselves, and neither the sale nor the

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sale price is contingent upon the permit being granted as to that 160 acres. The applicants stated that they did not in fact need the full amount of water applied for to irrigate their remaining 160 acres, and that approximately 1000 gallons per minute would be sufficient.

4. The objector Hanson has an existing pit directly "across the fence line" from the applicants' pit. Approximately 1200 gallons per minute have been pumped from this pit during past irrigation seasons to sprinkle about 200 acres of pasture and hay. The Hanson pit was lowered in 1973 to increase the availability of water in it.
5. The objectors Clark also have an existing pit from which they have pumped approximately 500 gallons per minute during past irrigation seasons. The Clark pit was lowered in 1973 to increase the availability of water in it.
6. The objector Rasmussen has an existing pit south-east of the applicants' pit, from which approximately 1000 gallons per minute have been pumped in past irrigation seasons.
7. The existing pits in the area of applicants' point of diversion are at a "full" level when the irrigation season begins, and experience a steady draw-down during the summer. Except for adjustments of about 18 inches, the pits do not fill back up if pumping is stopped during the irrigation season. Water in the relatively shallow aquifer tapped by these pits moves roughly in a north-to-south direction throughout the area, although water may seep into a given pit from almost any direction.
8. The existing pits in the area of applicants' point of diversion are interconnected in that they all collect water from the same aquifer. That water comes primarily from mountain snowpack, and the water levels in the pits tend to rise and fall together. Increased logging operations in the adjacent mountains could adversely affect the amount of water available in future years.

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9. While the applicants did a limited amount of pumping from their pit in the late summer of 1973, the objectors had ceased pumping from their pits by that time. Therefore the effect of the applicants' pumping on the objectors' water levels was not noted.

PROPOSED CONCLUSIONS OF LAW

1. There appears to be sufficient water in the aquifer involved to support applicants' pumping at their reduced rate of approximately 1000 gallons per minute.
2. The objectors all have existing water rights which could be adversely affected in low water years by applicants' pumping of 1000 gallons per minute from their pit.

PROPOSED ORDER

The applicants' permit to appropriate water from their open pit should be granted for a withdrawal of not more than 1000 gallons per minute from April 1 to November 1. This amount should be granted contingently based upon the effects, if any, that the applicants' pumping may have upon existing open pits in the area for at least two irrigation seasons. If, upon examination, it appears that the applicants' pumping is having an adverse effect upon the water levels in existing pits, the amount of water the applicants are permitted to appropriate should be reduced. The applicants should be required to install a suitable device for measuring the amount of water withdrawn.

NOTICE: As provided by the Montana Administrative Procedure Act, this is a proposed order. It will become final when accepted by the Administrator of the Water Resources Division, Montana Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59601.

Written exceptions to this proposed order shall be filed with the Administrator within ten (10) days of service upon the parties herein. Upon receipt of

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any written exceptions, opportunity will be provided, if requested, to file
briefs and make oral argument before the Administrator.

May 10, 1974
Date

Allen B. Chronister
Allen B. Chronister
Hearing Examiner

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