

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

FILMED

APR 5 1990

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE)
PERMIT NO. 1523-s76D,)
ALLEN H. AND LOUISE GARRISON)

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on February 10, 1975, by the Hearing Examiner, are hereby modified and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

1. A Temporary Permit is granted subject to all prior existing water rights in the source of supply.
2. The Temporary Permit is issued for a period of three years, until water-level fluctuations can be documented, after which time the data will be evaluated by the Department of Fish and Game and the Department of Natural Resources and Conservation and a Provisional Permit issued if no serious problems arise.
3. The Temporary Permit is conditioned so that the project will not lower the lake level more than two vertical feet below the average water elevation for the specific month of the year.
4. The permittee is required to keep accurate records of the pumping time by days and the amount of water pumped per month for a period of at least three years.

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5. A suitable check valve will be installed in the pipeline to prevent water surging back into the lake and causing excessive turbidity in the lake waters.

Done this sixth day of June, 1975

Arvin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

NOTICE: Section 89-8-100, R.C.M. 1947, provides that a person who is aggrieved by a final decision of the Department is entitled to a hearing before the Board of Natural Resources and Conservation. A person desiring a hearing before the Board pursuant to this section must notify the Department in writing within ten (10) days of the final decision.

Address: Department of Natural Resources and Conservation
Natural Resources Building
32 South Ewing
Helena, MT 59601 -

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BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 1523-s76D, ALLEN H. AND)
LOUISE GARRISON)

PROPOSAL FOR DECISION

Pursuant to the provisions of the Montana Water Use Act, Section 89-865 et seq., R.C.M. 1947, a hearing was held on December 16, 1974 at Eureka, Montana, for the purpose of hearing objections to the granting of the application captioned above. The applicants appeared and offered testimony in support of their application. Objections were filed by the following: The Montana Fish and Game Department by Wes Woodgerd, Director; Dale L. McGarvey, David A. and NYLa Ann Leonard, Frank H. and Mable M. Leonard, Jimmy D. and Carolyn M. Leonard, Donald R. and Ethel Lundeen, and H.D. and Evelyn Smiley. Hugh Brown was counsel for Fish and Game and Liter Spence testified on behalf of their objection. Others present and offering testimony on behalf of their objections were Frank H. and Mable M. Leonard, H.D. and Evelyn Smiley, and Donald R. and Ethel Lundeen. Others testifying on behalf of the Applicant were: Burgess Drake, Howard Helms, and Bert C. Roe. As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact, Conclusions of Law and Order to the Administrator, Water Resources Division, Department of Natural Resources and Conservation.

PROPOSED FINDINGS OF FACT

1. On February 8, 1974 at 9:03 a.m., Allen H. Garrison and Louise Garrison (hereinafter called Applicants) made application with the Department of Natural Resources and Conservation (hereinafter called the Department) for Beneficial

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Water Use Permit, Application No. 1523-s76D. The Application is for 1,000 gpm of water and 300 acre feet per annum to be used for irrigation purposes from May 1 to October 15, inclusive. The water is to be withdrawn by means of a pump with a capacity of approximately 1,000 gpm from Carpenter Lake (also known as Tetrault Lake) in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, Township 37 N., Range 27 W., Lincoln County, Montana. The water will be used to irrigate 150 acres located in the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 27, Township 37 N., Range 27 W., Lincoln County. The pump will be located near the lakeshore, and a pipeline will be installed from the pump to the irrigated land. The type of inlet structure in the lake has not been definitely determined.

2. Carpenter Lake is a "pothole" lake fed mainly by underground sources of water, and it has no surface inlet or outlet. Over the years, the average yearly level of the lake has fluctuated greatly; in the last few years the level has been higher than average. It rises to its maximum elevation in July or August, and falls to its minimum level in mid-June. A groundwater study in the Tobacco and upper Stillwater Valleys by the U.S. Geological Survey and the Montana Bureau of Mines and Geology (Coffin, et al. 1971) showed a maximum fluctuation of 6.32 feet between October 1966 and April 1969.

3. Carpenter Lake is and for many years has been used extensively by local residents and the general public for recreational purposes, including boating, swimming, fishing, and water skiing. There are numerous cabins around the lake and several more planned. The Objector, Dale McGarvey, has purchased acreage around the lake and is in the process of selling cabin sites. The Objectors essentially contend that the Applicant's withdrawal of water from Carpenter Lake may seriously lower the lake level, thereby adversely affecting their recreational uses of the lake. They further contend that such withdrawal will lower

the value of their land located around the lake and that approval of the Application will establish a precedent for approving future withdrawals of a similar nature.

4. The Montana Fish and Game Department through Counsel, Hugh Brown, and Liter Spence, introduced into evidence the results of their research of Carpenter Lake. Liter Spence read the conclusions and recommendations of the Fish and Game Department into the record and left a copy of such with the Hearing Examiner. The Montana Fish and Game Department recommended that if a permit is granted that: 1) a temporary permit be issued for a period of three years until water level fluctuations can be documented; 2) the permit be conditioned so that the project will not lower the lake level more than two (2) vertical feet below the average water elevation for the specific month of the year; 3) any other project or combination of projects on this lake not be allowed to lower the lake below the levels stated in recommendation number 2; 4) the temporary permit require accurate records be kept of the pumping time by days and the amount of water pumped per month for a period of at least three (3) years. The Department of Fish and Game will record lake levels during the same period. By doing this the Fish and Game would be able to determine the effects of pumped water withdrawal on the lake level; and 5) a suitable check valve to prevent water surging back into the lake and causing excessive turbidity in the lake waters.

5. Carpenter Lake has a surface area of 94 acres and a maximum depth of 58 feet. A withdrawal of 300 acre-feet of water without recharge would produce a potential drawdown of about 3.3 feet.

6. Carpenter Lake was rehabilitated in 1964 and the Fish and Game annually restock the lake. The shallow water, or littoral areas, of the lake are the zones of primary food production for the aquatic insects upon which fish feed. If the lake level is lowered appreciably by pumping and fails to refill to its

normal highs, changes will take place in the lake's aquatic vegetation, in the fish food organisms which are grazers on the aquatic vegetation, and ultimately this would have an adverse effect on the fish population of the lake.

7. The Fish and Game have cataloged over 9,000 different bodies of water in Montana and from a fishing pressure survey completed in 1969, Carpenter Lake ranked 276 in estimated numbers of fishermen using the water.

8. The Objector, Dale McGarvey, through a telephonic request at the time of the hearing from his counsel, Frank B. Morrison, Jr., was given an additional ten (10) days in which to file further information and memorandum with the Hearing Examiner. To date, such information has not been received.

9. The Objector, H.D. Smiley, introduced three exhibits at the hearing which were accepted and labeled "A" through "C". Exhibit "A" is a picture of Carpenter Lake taken from the air. Exhibit "B" is a picture of Carpenter Lake taken from the shore. Exhibit "C" is a collection of six (6) photographs of Carpenter Lake taken from various locations around the lake.

10. The Objectors, Frank H. and Mable M. Leonard introduced two photographs taken of Carpenter Lake in early March and late March, 1974. They were accepted into evidence.

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

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water from Carpenter Lake for a beneficial use is required.
2. There are, at times, unappropriated waters in the source of supply (Carpenter Lake).
3. The proposed use of water is a beneficial use.

4. The criteria for issuance of a permit set forth at Section 89-885, R.C.M. 1947, have been met.

5. Testimony and evidence relating to recreational and wildlife uses of Carpenter Lake was not considered. Such nondiversiory recreational and wildlife uses are not recognized under Montana Water Law before July 1, 1973 and testimony as to their existence is not relevant.

6. 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, since no prior permits or reservations of water have been approved on this source pursuant to the Montana Water Use Act.

7. 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 300 acre feet per annum to be used for irrigation purposes from May 1 to October 15, inclusive. The water is to be diverted from Carpenter Lake at a point in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, Township 37 N., Range 27 W., Lincoln County and will be used to irrigate 150 acres in the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 27, Township 37 N., Range 27 W., Lincoln County.

2. The permit is granted subject to the installation of a check valve in the pipeline to prevent water surging back into the lake and causing excessive turbidity.

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.

10 Feb 75
Date

Gary L. Spaeth
Gary L. Spaeth
Hearing Examiner

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