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STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF THE APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 1655-s43D, BY
W. K. AND ALZO HOWELL

} FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER
}

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on March 7, 1975, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

The Applicant's permit is granted subject to:

1. Prior existing water rights,
2. The condition that the Applicant cannot divert any water from the source of supply except from April 15 to June 15 of each year, and
3. The permit is limited to a beneficial irrigation use of 12 acre-feet of water per year.

Done this fourteenth day of April 1975.

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 1655

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 1655-s43D, W.K. AND ALZO)
HOWELL)

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice a hearing was held on January 15, 1975 at Red Lodge, Montana for the purpose of hearing objections to the above-named Application. The Applicant, W.K. Howell, appeared at the hearing and presented testimony. He was not represented by counsel. A Rock Creek Water User, the Finn Ditch Company; Emil Kober, Merle Million, the Clear Creek Ditch Company; Roy Million and Walter Million, a partnership; John and Grace Ruitter, Charles Descheemaeker, Harry J. Matthews and Thomas K. Garry all filed timely objections to the above-named application. None of the Objectors were represented by counsel. A Mr. Leonard Bell presented testimony as a Rock Creek Water User. The Finn Ditch Company was represented by Merle Million. Emil Kober was present and presented testimony. Merle Million was present and presented testimony as an individual objector as well as representing the Finn Ditch Company. Walter Million represented the Clear Creek Ditch Company, Walter Million represented Roy and Walter Million, a partnership. John Ruitter was present and presented testimony. A Mr. Joe Matthews presented testimony for the objector, Charles Descheemaeker. Mr. Matthews said that Mr. Descheemaeker requested him to present testimony. Mr. Harry J. Matthews was present and presented testimony.

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Mr. Thomas J. Garry was present and presented testimony. Several people came late and requested permission to present testimony. Mr. Walter Schwind, Mr. Curtis Schwind, Mr. Robert Carol, and Mr. Arthur Defries were late-comers who presented testimony as commentators.

PROPOSED FINDINGS OF FACT

1. On March 4, 1974, the Applicant submitted an Application for Beneficial Water Use Permit No. 1655-s43D to the Department seeking to appropriate 200 gpm and not to exceed 22 acre feet for irrigation purposes on 11 acres from April 15th to October 15th, inclusive of each year. The water is to be appropriated by means of a 16 horse power gas motor driven pump and sprinkler out of 4 inch aluminum pipe. The source of supply as stated in the application is to be springs, seepage, drainage and overflow from dams, all tributary of Rock Creek. The point of diversion is to be in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 6 S., Range 20 E., Carbon County, Montana, MPM. The water is to be used for irrigation of 11 acres, more or less, on Tract 1A of Certificate of Survey 645 located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 6S., R. 20E.

2. Mr. Howell testified at the hearing that he actually intended to irrigate only 5 or 6 acres and that his actual annual beneficial use would be only 10 to 12 acre feet.

3. All of the above-named objections are on the grounds of adverse affect to prior existing water rights, and no unappropriated waters/available in the source of supply.

4. Testimony at the hearing indicated that in the peak irrigation season

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in the months of June, July and August, there are no unappropriated waters in the source of supply. Other testimony did indicate that for a short period of time during the high spring runoff, there are unappropriated waters in the source of supply.

5. Mr. Walter Million testified that even the springs which flow in the area are actually from the source of the Price ditch. He testified that if the ditches are dry, then the springs are dry. The springs will flow only when there is water in the ditch.

PROPOSED CONCLUSIONS OF LAW

1. There are unappropriated waters in the source of supply in the high spring runoff prior to June 15th of each irrigation season.

2. Diversions at any other time of the year will adversely affect prior appropriations.

PROPOSED ORDER

That the Application 1655-s43D be granted subject to: 1) prior existing water rights, and 2) the condition that the applicant not divert any water from the source of supply except from April 15 to June 15 of each year.

3. The permit be limited to the quantity actually put to beneficial use, 12 acre feet.

NOTICE: This is a proposed Order and will become final when accepted by the Administrator, Division of Water Resources, Department of Natural Resources and Conservation. Pursuant to Section 82-4212, R.C.M. 1947 and Rule MAC 1-1.6(2)-P6190, written exceptions to this Proposed Order may be filed with the Administrator within ten (10) days of service of this Proposed Order upon the parties herein. Upon receipt of any written exceptions, opportunity will be afforded to file briefs and make oral arguments before the Administrator.

Mar 7, 1975
DATE

James A. Lewis
JAMES LEWIS
HEARING EXAMINER

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