

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 1905-g76LJ BY THE MONTANA
AGRICULTURAL EXPERIMENT STATION
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER
APR 0 1980

Pursuant to the Montana Water Use Act and the Administrative Procedure Act, after due notice a hearing was held in Kalispell, Montana, on February 24, 1975, for the purpose of hearing objections to the above-named application.

Mr. Vern Stewart, Mr. Charles C. Bowman, and Mr. Joe Asleson appeared at the hearing and presented testimony on behalf of the Applicant. Mr. Arnold Boettcher, Mr. Don Walker, and Mr. Bill Osborne were asked to present testimony by the Applicant.

Mr. Lester Mahugh and Mr. Jay T. Smith submitted timely objections to the application. They appeared at the hearing and presented testimony. Mr. Mahugh was represented by counsel, James C. Bartlett, Esq., of Kalispell. Mrs. Myrtle Smith presented testimony for Mr. Smith. Mr. Dale Mahugh presented testimony on behalf of Mr. Lester Mahugh.

The Applicant offered into evidence a copy of a well log report compiled by Liberty Drilling Company. This copy was marked "Applicant's Exhibit No. 1," and was received into evidence without objection.

Objector Mahugh offered into evidence a photocopy of a Declaration of Vested Groundwater Rights, a photocopy of a Well Driller's Report, and a photocopy of a diary kept by Mr. Mahugh. These photocopies were marked as "Objector's Exhibit No. 1, 2, and 3," and received into evidence without objection.

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Mr. Peter Norbeck, hydrogeologist for the Department, appeared at the hearing and presented testimony for the Department.

A Proposed Order (Proposal for Decision) on the above hearing was issued by the Hearing Examiner, Mr. James A. Lewis, on July 14, 1975. The Proposed Order specified that the Proposed Order would become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation, that written exceptions to the Proposed Order must be filed with the Department within ten (10) days of receipt of same, and that upon receipt of any written exceptions by the Department, opportunity would be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

On July 24, 1975, the Department received a letter dated July 21, 1975, from Mr. J. A. Asleson, director of the Agricultural Experiment Station, Montana State University, Bozeman, Montana. The letter requested an extension of time until October 15, 1975, in which to complete repairs on the well, concerning the condition stated in the Proposed Order on page 6, Item 2. By the Department's letter of July 31, 1975, Mr. Asleson was advised in reply to his July 21, 1975, letter that "In view of the exception filed, we must decline to act on that condition of the Proposed Order and your request until briefs have been filed and possibly a second hearing held and a final order issued. However, you are still operating under an Interim Permit and should take the necessary steps to eliminate the seepage problem as soon as practicable."

A written Exception dated July 25, 1975, to the Proposed Order as issued in the matter of Application No. 1905-g76LJ was filed by Mr. James C. Bartlett, attorney at law, on behalf of Objector Lester G. Mahugh.

By the Department's letter of July 31, 1975, Mr. Bartlett was informed that he had an opportunity to file a brief supporting the exception

within fifteen (15) days after receipt of the notice. The Applicant (Mr. J. A. Asleson) by the Department's letter of July 31, 1975, was informed and sent a copy of the exception and the objector's right to file a written brief.

Mr. Bartlett, on behalf of his client, Mr. Mahugh, filed a brief dated August 18, 1975, in support of the exception to the Proposed Findings of Fact, Conclusions of Law, and Order.

Mr. Asleson on behalf of the Applicant was afforded the opportunity by the Department's letter of August 20, 1975, to file a Reply Brief within fifteen (15) days after receipt of said letter. Mr. Barry L. Hjort, Assistant Commissioner for Labor Relations and Legal Affairs, the Montana University System, on behalf of the Applicant requested by letter dated September 4, 1975, an extension of ten days to and including September 16, 1975, for the purpose of filing a reply brief. By letter dated September 9, 1975, the Department informed Mr. Hjort that the request for an extension was granted to and including September 16, 1975. Mr. Hjort by letter dated September 15, 1975, requested a second extension to and including September 26, 1975, for the purpose of filing a reply brief. The Department in its letter of September 16, 1975, granted Mr. Hjort the requested extension to and including September 26, 1975.

Mr. Hjort, on behalf of the Applicant, filed his reply brief (Brief in Opposition to Exceptions to the Proposed Findings of Fact, Conclusions of Law, and Order) dated September 25, 1975, and received by the Department on September 26, 1975, in opposition to the exceptions filed by Mr. Bartlett on behalf of his client, Mr. Mahugh.

On October 6, 1975, the Department received a reply brief in support of exceptions to the Proposed Findings of Fact, Conclusions of Law, and Order dated October 3, 1975, prepared by Mr. Bartlett on behalf of his client, Mr. Mahugh.

The Department by its letter of October 7, 1975, sent a copy of Mr. Hjort's brief dated September 25, 1975, to Mr. Bartlett and requested that he review his client's position in this matter and notify the Department in writing within five (5) days after receipt, indicating if he wished to make oral argument before the Administrator of the Water Resources Division. By letter dated October 10, 1975, Mr. Bartlett replied to the Department's letter of October 7, 1975, and stated, "Please be advised that the objector, Lester Mahugh, submits the matter on the briefs that have been previously filed and deems that oral argument is not necessary." Mr. Hjort informed the Department by telephone that the Applicant did not wish to make oral argument before the Administrator of the Water Resources Division.

Neither party in this matter requested an oral argument hearing on their objections, exceptions, and briefs before the Administrator; therefore, the Administrator of the Water Resources Division hereby makes the following Final Order, based on the Proposed Order of July 14, 1975, and the objections, exceptions, briefs, and all pertinent information filed by parties to this matter, and made a permanent record of the application.

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on July 14, 1975, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and Order, except that the Proposed Order is hereby modified as follows:

FINAL ORDER

1. The Applicant's Provisional Permit is hereby conditionally granted for Application No. 1905-g76LJ to appropriate 2 cubic feet per second or 900 gallons per minute of water and not to exceed 546 acre-feet per annum in Flathead County, Montana, to be diverted by means of a well 358 feet deep

at a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, Township 28 North, Range 20 West, M.P.M., and used for supplemental irrigation on 70 acres in the SW $\frac{1}{4}$ of Section 15 and 112 acres in the SE $\frac{1}{4}$ of Section 16, all in Township 28 North, Range 20 West, and containing a total of 182 acres, more or less, from April 1 to October 15, inclusive, of each year.

2. The Provisional Permit is subject to any final determination of prior existing water rights as provided by Montana law.

3. The Provisional Permit is subject to all prior existing water rights in the source of supply. In the event that any of the objectors or other existing water-right users have factual proof within a three-year period after the effective date of this Order showing that they are being adversely affected to the point that they cannot reasonably exercise their prior water rights under any changed conditions, they must inform the Department and the Permittee in writing by certified mail immediately of such alleged factual adverse effect, and upon receipt of said notice the Department will conduct a full field investigation of the alleged factual adverse effect, prepare a written report of the findings, and the Administrator of the Water Resources Division, after consideration of all facts presented, will issue an appropriate order to all concerned parties, including any modification of the permit and this Order, if necessary. The Order, as issued, shall be final in answering the alleged adverse effect and may further condition, modify, or in extreme case, revoke Provisional Permit No. 1905-g76LJ.

4. The Provisional Permit is issued subject to Sections 89-897 and 89-2926, R.C.M. 1947, which specifically deal with the wasting of water without a beneficial use. The Permittee must proceed with due diligence in eliminating the seepage from around the well casing by using the best technological knowledge available within reason to the Permittee. Once the seepage and waste problem has been eliminated, it must be maintained,

and a control valve must be installed to properly regulate and control any natural flow of water from the well casing to prevent unnecessary ground-water waste. Further, the control valve may not be opened, except for the use of water for said granted beneficial use and amount, for periodic necessary repairs and maintenance, and as deemed necessary by professional advice in order to aid in properly sealing the ground-water seepage around the well. In the latter instance, the Department and objector must be notified in writing in advance, and the control valve shall not remain open for a greater length of time than totally deemed necessary by said professional advice available to the Permittee.

In any case, the Permittee must proceed with due diligence to completion of reasonably eliminating said seepage within six (6) months after the date of this Final Order.

5. The Provisional Permit is granted subject to all prior existing water rights in the source of supply, and to protect these rights, the Permittee shall, insofar as reasonably possible in view of the proposed beneficial use, operate his system in a manner which will maintain the maximum practical artesian pressure within the ground-water aquifer.

6. The Provisional Permit is granted subject to the permanent installation and maintenance of an adequate measuring device capable of accurately measuring all ground-water diverted or pumped from said well, and the keeping of an accurate log of records of all periods and quantities of water diverted or pumped. In addition, a pressure gage capable of measuring the static waterhead in pounds per square inch should be installed. The Permittee shall supply said records to the Department upon request.

Recommendation

The Department recommends that all parties in this matter properly install and maintain adequate measuring devices, or at regular periodic

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intervals measure their static water levels or water pressure to fit their particular situation, and keep and maintain records of water levels, pressure, and water used for their own proof, protection of their water rights, and assistance in gathering data to provide a better understanding of the ground-water aquifer.

Done this 22nd day of April, 1976.



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

CASE # 1905

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION }
FOR BENEFICIAL WATER USE PERMIT }
NO. 1905-g76LJ BY MONTANA }
AGRICULTURAL EXPERIMENT STATION }

ORDER

Pursuant to the Montana Water Use Act and the Administrative Procedures Act, after due notice a hearing was held in Kalispell, Montana, on February 24, 1975, for the purpose of hearing objections to the above-named application.

A Proposed Order (Proposal for Decision) on the above hearing was issued by the hearing examiner, James A. Lewis, on July 14, 1975.

On April 22, 1976, the administrator of the Water Resources Division issued a Final Order in this matter, granting a Provisional Permit to the Applicant, with specific conditions.

As provided in paragraph 3 of the Final Order of April 22, 1976, the Administrator hereby makes the following Findings of Fact, Conclusions of Law, and Order.

INTRODUCTORY FACTS

1. By letter of July 23, 1976, James Bartlett, counsel for Objector MaHugh, requested pursuant to paragraph 3 of the Final Order dated April 22, 1976, that a full field investigation of alleged adverse effects to the Objector's well be made.

2. Paragraph 3 of the Final Order of April 22, 1976, provides as follows:

"3. The Provisional Permit is subject to all prior existing water rights in the source of supply. In the event that any of the objectors or other existing water-right users have factual proof within a three-year period after the effective date of this order showing that they are being adversely affected to the point that they cannot reasonably exercise their prior water rights under any changed conditions, they must inform the Department and the Permittee in writing by certified mail, immediately of such alleged factual adverse effect, and upon receipt of said notice the Department will conduct a full field investigation of the alleged factual adverse effect, prepare a written report of the findings, and the Administrator of the Water Resources Division, after consideration of all facts presented, will issue an appropriate order to all concerned parties,

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including any modification of the permit and this Order, if necessary. This Order, as issued, shall be final in answering the alleged adverse effect and may further condition, modify, or in extreme case, revoke Provisional Permit No. 1905-g76LJ."

3. On August 5 and 24, 1976, Steve White, geologist for the Department, conducted a field investigation as requested by counsel for the Objector. A copy of Mr. White's field investigation report dated November 16, 1976, is attached to this Order.

4. Counsel for the Objector stated in part in a letter of December 1, 1976, "The Agricultural Experiment Station has not complied with paragraph four (4) of your order dated April 22, 1976, in that the Agricultural Experiment Station has failed to reasonably eliminate the seepage around the well within the six-month time period, as is provided by said order."

5. On September 16 and 17, 1976, Steve White, geologist for the Department, made an inspection of the leakage around the Applicant's well. A copy of Mr. White's report dated October 1, 1976, is attached to this order.

6. On January 14, 1977, a Notice of Completion of Ground-Water Development was filed by Betty A. Sibley, appropriating seepage from around the Creston Agricultural Experiment Station well, at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 28 North, Range 20 West, M.P.M., Flathead County, Montana. This water flows into Blaine Creek at said point of diversion and is diverted from Blaine Creek at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, Township 28 North, Range 20 West, M.P.M., Flathead County, Montana. This water is used for stock-watering purposes at points in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, Township 28 North, Range 20 West, M.P.M., Flathead County, Montana, from January 1 to December 31, inclusive, of each year. The appropriation shall not exceed that amount of water which is supplied to Blaine Creek by said seepage and shall at no time exceed a maximum of 10 gallons per minute.

7. A Certificate of Water Right No. 10,982-g76LJ has been granted to the Applicant, Betty A. Sibley, for the above said seepage waters pursuant to Section 89-880(5), R.C.M. 1947.

8. The summary of the field investigation report of November 16, 1976, states:

"The geology of the area is complex and difficult to interpret, due to the glacial deposits. According to the well logs of the immediate area, the sand and gravel lenses become thicker and more numerous the deeper the strata, making the tops of the various aquifers uneven and hard to predict.

"There are two major factors which support the hypothesis that the leakage does not originate in the lower aquifer. The first concerns the effect of the pumpage on the rate of leakage. The rate of leakage was constant, regardless of whether the production well was being pumped. If there were a direct connection, it would be expected that, because of a decrease in pressure, the leakage should lessen as the water was withdrawn from the well.

"The second concerns the temperature of the various water samples. The water that was undoubtedly originating from the deeper aquifer was 50 degrees F. The temperature of the leakage was 54 degrees F. This 4-degree-temperature spread is significant, and indicates a distinction between the leakage source and the source that supplies water to the Experiment Station's irrigation system.

"Mr. Mahugh's static-water-level fluctuations correlate closely to the pumping of the production well. As the pressure of the artesian system is reduced by the withdrawal of the water by the Experiment Station, his well reacts accordingly (static water level drops).

"If the 19-foot drawdown in Mr. Mahugh's well was a result of the Experiment Station's pumping, it is very likely that the production well's performance would have been drastically reduced.

"Mr. Mahugh has been able to withdraw his water by means of a pump, and the flow of his well (used to water his garden) is terminated during the pumping of the production well."

Based on the above Findings of Fact, the following Conclusions of Law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Under the provisions of paragraph 3 of the Final Order of April 22, 1976, the Department must cause to be made a field investigation of any alleged factual adverse effect of the Applicant's well upon any objector or other prior water-right users, a written report of the field investigation must be provided to the Administrator, and the Administrator must prepare and issue an Order answering the alleged adverse effect.

2. The seepage around the Applicant's well has been fairly constant at a flow rate of 10 gallons per minute from the upper aquifer, which is a different aquifer from that which the Applicant's production well and the Objector obtain their ground-water supply.

3. Objector's static-water-level fluctuations correlate closely to the pumping of the Applicant's production well, and not to the upper aquifer seepage.

4. Consequently, the Objector is in no way adversely affected by the seepage in question.

5. Although the flow of water from the Objector's well has on occasion ceased during periods of pumping from the Applicant's production well, the Objector's well is equipped with a pump by means of which the Objector has been able to reasonably satisfy his existing water right.

6. Therefore the Objector can continue to reasonably exercise his prior water rights under present conditions even though at times the static water level may fluctuate.

7. The Applicant's Provisional Permit is subject to all prior existing water rights in the source of supply, and any final determination of prior existing water rights as provided by Montana law.

8. Pursuant to the Final Order of April 22, 1976, the Administrator of the Water Resources Division, after consideration of all facts presented, will issue an appropriate order to all concerned parties, including any modification of the permit and Final Order, if necessary.

9. Pursuant to the Final Order of April 22, 1976, this Order as issued shall be final in answering the alleged adverse affect and may further condition, modify, or in an extreme case, revoke Provisional Permit No. 1905-g76LJ.

ORDER

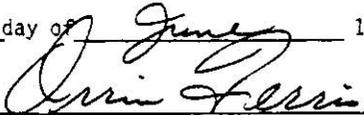
1. The Final Order of April 22, 1976, with the conditions contained therein to the granting of the Provisional Permit to the Applicant, stands as issued, except said permit is further conditioned as follows:

A. The issuing of a Provisional Permit by the Department in no way reduces the Applicant's liability for damage caused by the Applicant's exercise of his Provisional Permit, nor does the Department in issuing a Provisional Permit in any way acknowledge liability for damage caused by the Applicant's exercise of his Provisional Permit.

B. A copy of each of the Department's field investigation reports, dated October 1, 1976, and November 16, 1976, are hereby attached to this Order and made a part hereof.

C. This Order shall be final in answering the alleged adverse effect.

Done this 27th day of June 1977.



Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 1905

BEFORE THE MONTANA DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 1905-g76LJ, MONTANA AGRICULTURAL) PROPOSAL FOR DECISION
EXPERIMENT STATION.)

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice, a hearing was held in Kalispell, Montana on February 24, 1975 for the purpose of hearing objections to the above-named application.

Mr. Vern Stewart, Mr. Charles C. Bowman and Mr. Joe Asleson appeared at the hearing and presented testimony on behalf of the Applicant. Mr. Arnold Boettcher, Mr. Don Walker and Mr. Bill Osborne were asked to present testimony by the Applicant.

Mr. Lester Mahugh, and Mr. Jay T. Smith submitted timely objections to the application. They appeared at the hearing and presented testimony. Mr. Mahugh was represented by counsel, Mr. James C. Bartlett, Esq., of Kalispell. Mrs. Myrtle Smith presented testimony for Mr. Jay T. Smith. Mr. Dale Mahugh presented testimony on behalf of Mr. Lester Mahugh.

The Applicant offered into evidence a copy of a Well Log compiled by Liberty Drilling Company. This copy was marked Applicant's Exhibit No. 1, and was received into evidence without objection.

The Objector, Mahugh, offered into evidence a photocopy of a Declaration of Vested Groundwater Rights; a photocopy of a Well Driller's Report, and a photocopy of a diary kept by Mr. Mahugh. These photocopies were marked as Objector's Exhibit No. 1, 2, and 3 and received into evidence without objection.

Mr. Peter Norbeck, Hydrogeologist for the Department, appeared at the hearing and presented testimony for the Department.

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 March 29, 1974, the Applicant submitted Application for Beneficial Water Use Permit No. 1905-g76LJ, seeking to appropriate 2 cubic feet per second or 900 gpm and not to exceed 546 acre feet per annum in Flathead County, Montana. The water is to be diverted by means of a well 358 feet deep at a point in the NE 1/4 SW 1/4 SW 1/4 of Section 15, T. 28 N., R. 20 W., M.P.M., and used for supplemental irrigation on 70 acres in Section 15, and 112 acres in Section 16 in said T. 28 N., R. 20 W., M.P.M., from April 1 to October 15, inclusive, of each year.

2. On June 20, 1974 Mr. Jay T. Smith submitted a timely objection to the application on the grounds that the proposed diversion might adversely affect his prior water rights to his existing well.

On July 1, 1974, Mr. Lester Mahugh submitted a timely objection to the application on the grounds that the proposed diversion might adversely affect his prior water rights to his existing well.

3. Testimony at the hearing concerned the appropriation of water from an aquifer described by Mr. Pete Norbeck, Hydrogeologist for the Department, as a series of beds of unconsolidated sand and gravel separated by discontinuous beds of fine grain material. Because the beds of fine grain material are discontinuous, the sand and gravel beds are hydraulically connected. The thickness of the deep artesian aquifer is generally unknown because the top has been penetrated only a few feet except in well No. B29-20-27 CB where the aquifer is at least 364 feet thick. This well is about five miles north of the Creston Experiment Station. A few wells to the west of the Creston experiment station have been drilled to as much as 600 feet. The subject well was completed tapping into the aquifer sometime in November of 1974. The Objector, Mr. Lester Mahugh, has a small artesian well which taps the same aquifer as the subject well. The Peisometric level of Mr. Mahugh's well is the same as the subject well, 2956 feet, M.S.L. The Objector, Mr. J.T. Smith, also has a small artesian well which taps the same aquifer.

4. Mr. Mahugh's well stopped flowing toward the end of November 1974. On December 6, 1974, the subject well was capped and within 8 hours after the subject well was capped, the domestic well at the experiment station resumed flowing. While the subject well was capped, Mr. Stuart, Manager of the Creston Agricultural Experiment Station, observed the water seeping up through the ground around the well casing and after consulting with the driller, asked that the well be uncapped to reduce the risk of water seepage and floating the casing out of the well. Mahugh's well is located in Section 15, T. 28 N., R. 20 W., and is due north just across the road from the Creston Agricultural Experiment Station. The Mahugh well was constructed in

in 1960 and has been used continuously since then for garden, domestic and livestock watering uses. His garden is approximately 264 feet long and 99 feet wide. His house has often been occupied by up to four persons. His stock is numbered up to 24 head of cattle. The Mahugh well did stop flowing once for two months in the summer of 1967, but resumed flowing again in the fall of 1967. Mr. Mahugh uses a natural artesian flow from the well to irrigate his garden, and he has always been able to pump from the well even when it was not flowing. Mr. Mahugh testified that he will suffer serious financial harm if his well ceases flowing.

5. Mr. J.T. Smith has a flowing artesian well which they use to irrigate a garden 125 feet long and 60 feet wide and for domestic use in the house, ordinarily occupied by two persons. Because of the snow cover on the ground surrounding the well, they did not know if the well had as yet stopped flowing.

6. Mr. William Osborne, driller of the well, testified that the seepage around the casing is coming from the shallow strata above the 100 feet depth level rather than from the strata below the 246 foot level where the casing perforations begins. Mr. Osborne, in his professional opinion, thinks the well will seal itself.

7. Mr. Don Walker, a well sealing specialist for Halliburton Oil Well Sealing Company, testified that he has looked at the well and thinks that the problem is not serious. Mr. Walker recommended that a bridge plug be set above the existing perforations; new perforations be placed at about 100 feet; approximately 100 sacks of cement containing 2% calcium chloride be injected into the new perforations; a top plug be set in the casing about 10 feet above the new perforations; and the well be shut in for about 24 hours. The top plug would be removed and the cement be drilled out of the well. The seepage problem would be corrected.

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 is required to appropriate water by means of the subject well.
2. There are unappropriated waters in the source of supply.
3. The proposed use of water is a beneficial use.
4. 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.
5. The proposed means of diversion is not adequate in its present form because it is wasting water. This wasting of water falls within Subsection (2) of 89-2926, R.C.M. 1947 and is an allowable waste if reasonable diligence is followed in effecting the necessary repair.
6. The proposed diversion might possibly adversely affect prior water rights if the permit is granted without modification.
7. The criteria for issuance of a permit as set forth in Section 89-885, R.C.M. 1947 will be met if the applicant complies with the conditions imposed on the permit.
8. The Application for Beneficial Water Use Permit may be granted as modified 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 Applicant's permit is granted allowing the appropriation of 900 gpm and not to exceed 546 acre-feet per annum for irrigation purposes from April 1 to October 15, inclusive, of each year. The water is to be diverted by means of well 356 feet deep located at a point in the NE 1/4 SW 1/4 SW 1/4 of Section 15, T. 28 N., R. 20 W., Flathead County, Montana. If the Applicant's actual beneficial use is less than the amount requested the permit shall be accordingly reduced.

2. The permit is granted subject to eliminating all seepage from around the well casing and capping the well so that no water is allowed to flow freely from the well, without being put to beneficial use. Such repairs are to be completed by August 15, 1975.

3. The permit is granted subject to all prior water rights, and to protect these prior rights, the applicant shall, insofar as reasonably possible, in view of the proposed beneficial use, operate his system in a manner which will maintain the maximum practical artesian pressure within the aquifer.

4. The permit is granted subject to installation of a measuring device capable of accurately measuring all water diverted from the well, and the keeping of an accurate record of all periods of diversion and quantities of water diverted.

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 this Proposed Order shall be filed with the Department within ten (10) days

of receipt of same. Upon receipt of any written exceptions by the Department, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 10th day of July, 1975.

James A. Brown
HEARING EXAMINER