

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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MONT. DEPT. of NATURAL
RESOURCES & CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 2272-g41-0, BY
RAYMOND ANDERSON

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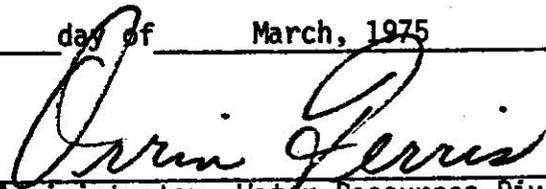
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter entered on February 28, 1975, by the Hearing Examiner are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

It is hereby ordered that the Application for Beneficial Water Use Permit No. 2272-g41-0 is granted, subject to prior existing water rights, and if it be determined that the well does interfere with those prior existing water rights, this permit shall be modified so as not to interfere with those rights.

Done this twenty-fourth day of March, 1975.


Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 2272

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 2272-g410, RAYMOND ANDERSON

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PROPOSAL FOR DECISION
}

Pursuant to the Montana Water Use Act and Administrative Procedures Act, a hearing was held January 6, 1975 in Choteau, Montana for the purpose of hearing objections to the above-entitled Application. The City of Choteau, Fred G. Miller, Robert Knott and Claude F. Smith all filed timely objections to the application. Mr. Merrill E. Hirsch sent a letter objecting to the application which was received as a timely objection. Mr. Robert Knott and Mr. Claude F. Smith were not present. Mr. Hirsch, the City of Choteau, represented by counsel, Mr. Leo H. Murphy, Esq., of Choteau and Fred G. Miller all appeared and presented testimony. Mr. Allen Schallenberger presented testimony in favor of the objectors at his own request.

PROPOSED FINDINGS OF FACT

1. On May 13, 1974 Raymond L. Anderson of Choteau, Montana filed with the Department of Natural Resources and Conservation an Application for Beneficial Water Use Permit for a well to be drilled in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 24 N., Range 5 W., Teton County, Montana. The well will be drilled to a depth of 30-40 feet and the water is to be used for irrigation purposes on 40 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, and 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, for a total of 80 acres,

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more or less. On September 23, 1974 the City of Choteau filed a timely objection to the application. On October 3, 1974 Fred G. Miller filed a timely objection to the Application No. 288-g41-0, which by letter of November 12, 1974 Mr. Miller requested that his objection be amended to be in objection to Application No. 2272-g41-0 and not No. 288-g41-0 as he had mistaken the numbers on Mr. Anderson's applications.

2. On October 7, 1974 the Department of Natural Resources and Conservation received a letter from Merril E. Hirsch objecting to the application. This letter was received as a formal objection. On November 1, 1974, Mr. Robert Knott filed a timely objection with the Department. On October 4, 1974 Mr. Claude F. Smith filed timely objection with the Department. Neither Mr. Smith nor Mr. Knott appeared at the hearing to present testimony in opposition to the application. Both Mr. Smith and Mr. Knott originally objected to Application No. 288-g41-0 by mistake.

3. Mr. Allen Schallenberger of Choteau, Montana appeared at the hearing and requested permission to present testimony in support of the objectors. Permission was granted; Mr. Schallenberger presented testimony.

4. At the hearing Mr. Anderson gave testimony that he would respect all prior appropriations and that this land was a light sandy soil and had been irrigated in the past but was not suitable for flood irrigation. Mr. Anderson hoped that sprinkler irrigation would be more suitable for this land and would increase the crop production from the 80 acres.

5. Mr. Leo H. Murphy, counsel for the City of Choteau, requested that the City of Choteau's objection stand on the grounds stated in the Objection. This objection was on the grounds that lowering the water table would interfere with and adversely affect the City of Choteau's water wells used for city purposes. The city's biggest need for water is in the summer from May 1 to September 1.

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6. Mr. Merrill Hirsch testified that he has a stockwater pit, which he used to dig out just below the surface of the ground, but now to acquire the water from this pit, he must dig down about 5-6 feet and he believes that there is a general lowering of the water table in the area. Some testimony indicated that this lowering of the water table could be because of the extreme dry years in the last 3 or 4 years. The above mentioned pond is for "outside watering and stock." Mr. Hirsch also testified that he has a house well approximately 20 feet deep and in the spring there was 6 to 8 feet of water in his house well, but by August 1 this house well was nearly dry.

7. Mr. Fred G. Miller testified that he has two wells approximately one mile southeast of the proposed well and that he wished to have his water rights for these wells protected. Mr. Anderson testified that if he interfered with Mr. Miller's wells, he would stop pumping.

8. Mr. Schallenberger testified that he has two domestic wells approximately 3/4 of a mile to the southeast of the point of diversion, and that he would be interested in having the right to these wells protected.

PROPOSED CONCLUSIONS OF LAW

1. The objectors all have apparent prior existing water right which could be adversely affected and must be protected by virtue of first in time, first in right mandate of Montana Water Law.

2. The evidence was insufficient to support a conclusion that other prior existing water rights would be adversely affected.

PROPOSED ORDER

It is hereby ordered that the Application for Beneficial Water Use Permit No. 2272-g41-0 be granted subject to prior existing water rights, and if it be determined

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that the well does interfere with those prior existing water rights, this permit be modified so as to not interfere with those rights.

NOTICE: This is a proposed Order and will become final when accepted by the Administrator, Water Resources Division, 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 the proposed order may be filed with the Administrator within ten (10) days of service of the 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.

Feb 28, 1975
Date

James A. Lewis
James Lewis
Hearing Examiner

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