

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 2567-g40J, BY WALTER J. HINEBAUCH
FIRMED
APR 6 1990
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, entered on March 19, 1975, by the Hearing Examiner, are hereby modified and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

The Applicant's Provisional Permit is granted, subject to:

1. All prior existing water rights in the source of supply.
2. Installation of a flowmeter which will accurately measure the actual quantity of water pumped from the well.
3. All monitoring and measuring of the well in question will be coordinated with and a part of the study of the Big Flat area, which is being undertaken by the Department.
4. Both the Applicant and the Objectors will observe the water levels in their wells and keep an accurate record of the water levels during the peak irrigation season. Each record shall include water level, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, lengths of periods of pumping, and year, month, and day measured. The Applicant and Objectors shall submit copies of the above records to the Department at the end of each irrigation season or upon

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request of the Department, with adequate notice given. The records will be used to evaluate possible adverse effects to prior water rights and as data to be utilized in the Big Flat groundwater study.

The Department recommends that the water levels in the wells be measured by the method of chalking a steel measuring tape, and that measurements be made at a time when the well has not been pumped for at least one hour prior to the measurement.

5. If it be determined that the Applicant's well does interfere with those prior existing water rights, this permit will be modified so as not to interfere with those rights.

Done this _____ day of _____, 1975.

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.)
2567-g40J, WALTER J. HINEBAUCH)

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice and by stipulation of both the Applicants and the Objectors, a hearing was held on November 14, 1974, at Chinook, Montana for the purpose of hearing objections to the above-named application and Application No. 2302-g40J, Dean R. VanVoast. The Applicant, Walter J. Hinebauch, appeared at the hearing and presented testimony. He was represented by Counsel, Mr. John Warner, Esq., of Havre, Montana. Mr. Ralph Nace, Mr. Clarence Harmon, and Mr. Don E. Harmon filed timely objections to Application No. 2567-g40J. All were represented by Counsel, Mr. Stuart MacKenzie, Esq., of Chinook, Montana. Mr. Ralph Nace and Mr. Don Harmon were present at the hearing and presented testimony. Mr. James Reid, Mr. Patrick Kimmel, Mr. Ryle Simons, Mr. Carl Humphreys, Mr. Leonard Zellmer, Mr. William McGilvrey, Mr. John Holfert, Mr. Art Killam, and Mr. Bill Ammens appeared as witnesses and presented testimony in support of the Objectors.

Mr. MacKenzie offered into evidence a Montana Bureau of Mines and Geology Report on the Geology and Groundwater Resources of Northern Blaine County (E.A. Zimmerman, 1960, Preliminary Report on the Geology and Groundwater Resources of Northern Blaine County, Montana; Montana Bureau of Mines and Geology Bulletin No. 19) (hereinafter called Zimmerman Report). This report was received into evidence without objection. Mr. MacKenzie was asked to file a brief summarizing his arguments in support of the Objectors. This brief was received December 30, 1974,

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and is now a part of the file.

Mr. John Warner, Esq., offered into evidence four maps indicating the well sites in the vicinity of the proposed wells. These maps were received into evidence without objection. Mr. Warner was asked to file a brief summarizing his arguments in support of the Applicants. This brief was received December 16, 1974, and is now part of the file.

PROPOSED FINDINGS OF FACT

1. On June 11, 1974, Walter J. Hinebauch submitted an Application for Beneficial Water Use Permit to the Department seeking to appropriate 750 gallons per minute and not to exceed 143.5 acre-feet per year. The water is to be appropriated by means of a well, pump, and sprinkler. The well is to be located at a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, T. 36 N., R. 24 E., Blaine County, Montana, and is to be used on 140 acres in the SE $\frac{1}{4}$ of Section 26, T. 36 N., R. 24 E., from May 1 to October 1, inclusive, of each year.

2. On October 7, 1974, Mr. MacKenzie filed timely objections to Application No. 2567-g40J on behalf of his clients, Mr. Ralph Nace, Mr. Clarence Harmon, and Mr. Don E. Harmon. These objections are filed on the grounds that the Applicant's proposed wells will have an adverse effect on the prior existing water rights of the Objectors. The objections request consideration of feasibility of creating a controlled groundwater area which, however, can only be established by complying with Sections 89-2911, et seq.

3. The Applicant, Mr. Walter Hinebauch, testified that he owns a drill rig, and he has drilled some wells. He drilled Harlan Crass' wells; he drilled his own well and he drilled Mr. VanVoast's well. He doesn't know of any other wells in the area, except those shown on Applicant's Exhibit No. 1. He has looked for irrigation

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in the vicinity and has not seen any. He further testified that last month he drilled the well applied for by this application, 2567-g40J. He said this well is 53 feet deep and he has 24 feet of water-bearing gravel at 26 feet. He stated that the well is not yet fully developed, but when he develops it he believes there is enough gravel to produce about 500 to 600 gallons per minute. He testified that he has invested \$3,000 in the well, another \$37,000 for the T & L Pivot System, another \$7,000 for the pump and another \$2,500 for the pipe. He testified that he has other wells. He has a 46-foot well which produces 450 gallons per minute, from which he has irrigated for two years. He has a house well $\frac{1}{4}$ mile from the 46-foot irrigation well, and the water level in the 26-foot house well has never varied more than an inch. The house well was monitored by the County Agent in the summer of 1974. He has another well (# 25 on Applicant's Exhibit No. 1) of 750-gallon-per-minute capacity, which he pumped for a total of 15 days, four or five days at a time. This well is $\frac{3}{4}$ of a mile from his house well, and it has not varied the water level in his 26-foot house well. He said his neighbors never complained of losing water. He has another well (#24 on Applicant's Exhibit No. 1) which he monitored and has never fluctuated. He further testified that Aaron Laco is not irrigating any more because he gets sand in his pump at 700 gallons per minute. He does not get sand at 500 gallons per minute, but 500 gallons per minute is not sufficient to support irrigation. He further testified that he thinks there is enough water in the aquifer beneath the Big Flat for more irrigation wells without affecting the other wells. He said he agrees to quit pumping if he dries up prior appropriators.

4. Mr. MacKenzie quoted from the Zimmerman Report, page 1, "The only source of recharge of the aquifer is the precipitation falling in the plateau which it under-

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lies. It is estimated that 5,000 acre-feet of recharge is available for use from the Flaxville formation. Approximately 300,000 acre-feet of groundwater is in storage and depletion of the aquifer is not imminent under the present patterns of water use." Mr. MacKenzie said that the objectors, all ranchers and farmers in the area, have pits, domestic wells, stockwater wells and springs which they fear could be adversely affected by the applicant's proposed wells. The total amount requested by the applications heard in the two-day series of hearings (November 13 and November 14, 1974) in Chinook, Montana, totaled 2,190 acre-feet per year. Mr. MacKenzie said that he had made a research of filings made from December of 1970 to July of 1973. Filings were made on thirteen irrigation wells, for a total of 3,320 acre-feet per year. He understands that all of these wells are now being used for irrigation. Mr. MacKenzie continued that also there are six wells that were filed on from 1957 to 1959. Only two of these are now in use. If all of these wells were pumped to capacity, the quantity of appropriations would exceed the 5,000 acre-feet of estimated annual recharge, and at some point shortly, the aquifer is going to be lowered. There are many wells on the Big Flat area used for stock-water and domestic purposes which have never been filed upon. Mr. MacKenzie stated that unless it can be shown that the prior appropriators abandon these wells, they still have a right to pump these wells, and that they still have a priority over the applicant to pump these wells. Mr. MacKenzie continued that with a filing made on public record there is a presumption that the wells are in use. He further argued that to show abandonment one must show intent and that it is very difficult to show intent. No evidence was presented as to the quantity actually put to beneficial use by any of these wells filed upon.

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5. Mr. Peter Norbeck, hydrogeologist for the Department, testified that the Big Flat is an isolated aquifer and is not fed by underground flows from Canada. The only recharge is from precipitation falling on the plateau. The Zimmerman Report estimate of 5,000 acre-feet annual recharge is the best estimate available. If the annual rate of withdrawal exceeds the annual rate of recharge, the level of water in the aquifer will be lowered. This will first affect the wells closest to the Applicant's irrigation wells. Further study would be desirable to determine the hydrologic situation and the quantity of recharge available.

6. Mr. Pat Kimmel testified that he wants to protect the water table. Mr. Kimmel continued that he wants to get a control on the water table. He said that if there is sufficient water in the Big Flat aquifer, he has no objection to these wells as long as devices to tell what the quantity of water that the wells use are installed on the wells.

7. Mr. James Reed testified that he is concerned about the water table. He said that he desires a study to be performed to see if there is enough water.

8. Mr. Ryle Simons testified that he wants to have the annual withdrawals controlled before the water table drops.

9. Mr. Carl Humphreys testified that Mr. Egbert's house well went down when the irrigation well was pumped. He said that the well had been pumped at 1,000 gallons per minute in July of 1957 for one month, and the house well went dry.

10. Mr. Leonard Zellmer testified that in the 1930's springs and wells went dry and it took three or four years for them to come back. He wants a thorough study of the aquifer before the permit is issued.

11. Mr. McGilvery has a 150-foot well which went dry last irrigation season. Mr. Norbeck testified that it is highly unlikely that the shallow irrigation wells

would affect a 150-foot well.

12. Mr. John Holfert testified that he wants a study of the aquifer first. He testified that his dugouts went dry last season when the irrigation wells were pumping.

13. Mr. Art Killam testified that the wells and springs went dry in the 1930's. He testified that he has stockwater pits, and if the water table doesn't drop, he has no objection to issuing these permits.

14. Mr. Bill Ammens testified that he wants a thorough study of the aquifer before any more permits to drill wells are issued.

15. Page 14 of the Zimmerman Report states:

"With the 5,000 acre-feet of recharge each year it should be possible to apply light irrigation for at least 7,000 acres of land. Part of the water pumped from the irrigation wells may be expected to percolate back into the groundwater reservoir. With the 300,000 acre-feet of water storage in the gravel aquifer it would be possible to pump somewhat more water than the average annual recharge for a long period before serious depletion of the aquifer would take place."

PROPOSED CONCLUSIONS OF LAW

1. The evidence presented did not conclusively establish that granting the Applications would adversely affect prior existing water rights.
2. A filed appropriation is a valid water right only to the extent and limit of the quantity of water actually put to beneficial use and not for the entire quantity filed upon.

PROPOSED ORDER

The Applicant's Provisional Permit be granted subject to:

1. All prior existing water rights.
2. Installation of a flow meter which will accurately measure the actual quantity of water pumped from the well.

Both the Applicant and the Objectors will observe the water level in their

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wells and will keep an accurate record of the water levels during the peak irrigation season. Each record should include water level, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, lengths of periods of pumping, and year, month and day measured.

The Department recommends that the water level in the wells be measured by the method of chalking a steel measuring tape, and that measurements be made at a time when the well has not been pumped for at least one hour prior to the measurement. If it be determined that the Applicant's well does interfere with those prior existing water rights, that 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)-P5190, 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.

DATED this 17th day of March, 1975.



JAMES LEWIS
Hearing Examiner

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