

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 2815-e406
BY ROBERT BOND

F I L M E D FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER
APR 6 1976

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on November 14, 1975, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

1. The Applicant's permit is granted allowing the appropriation of 2 acre-feet of water per annum from a closed basin from the period of May 1 to October 1, inclusive, of each year, for stock-watering purposes, to be impounded in a reservoir located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, Township 36 North, Range 6 East, in Liberty County, Montana.
2. The permit is subject to all prior existing water rights in the source of supply.

Done this _____ day of _____ January, 1976.

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 2815

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE) PROPOSAL FOR DECISION
PERMIT NO. 2815-s40G,)
ROBERT BOND)

ISSUE

When the field investigation by Department personnel indicates that the reservoir proposed in the Application for Beneficial Water Use Permit draws water from a closed basin, which is not tributary to the water source of the objectors' water, can the Hearing Examiner grant the permit for the reason that it will not have an adverse affect on the apparent prior existing water rights of the objectors?

MEMORANDUM

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice, a hearing on objections to the above-named application was held on April 15, 1975, in Chester, Montana. The Applicant, Mr. Robert Bond, appeared at the hearing and presented testimony. The Applicant's lessee, Mr. Jim Grammar, appeared at the hearing and presented testimony. They were represented by counsel, Mr. Paul Bunn, Esq., of Chester, Montana. The hearing was a combined hearing on several applications, all seeking to appropriate water from the same source, Sage Creek in Liberty County, Montana. Mr. Arthur Rambo, Mr. Mike Burkhartsmeier, Mr. Virgil Jurenka and Mr. Terry Stevenson all filed timely objections to the application.

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Mr. Rambo, Mr. Burkhartsmeier, and Mr. Jurenka appeared at the hearing and presented testimony. Mr. Terry Stevenson did not appear at the hearing and present testimony. However, all of the objectors were represented by counsel, Mr. John Warner, Esq., of Havre, Montana. Mr. Warner presented testimony on behalf of Mr. Stevenson. On behalf of the Objectors, Mr. Warner offered into evidence a map showing the Sage Creek vicinity indicating the property of the Objectors' in colored pencil. This was marked as Objectors' Exhibit No. 1 and was received into evidence without objection. As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact, Conclusions of Law and Order to the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation, of the State of Montana.

PROPOSED FINDINGS OF FACT

1. On July 5, 1974 the Applicant submitted an Application for Beneficial Water Use Permit to the Department seeking to appropriate 2 acre-feet per annum of water from an unnamed tributary of Big Sage Creek in Liberty Co., Montana. The water is to be impounded in a dam and reservoir on said unnamed tributary at a point in the NW 1/4 of the NW 1/4 of the NW 1/4 of Sec. 7, T. 36N., R. 6E., and used for stock-watering purposes from May 1 to October 1, inclusive, of each year.

2. On January 21, 1975 Mr. Virgil Jurenka submitted a timely objection to the application. On December 31, 1974 Mr. Mike Burkhartsmeier submitted a timely objection to the Application. On January 7, 1975, Mr. Terry Stevenson submitted

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a timely objection to the Application. On December 1974, Mr. Arthur Rambo submitted a timely objection to the application. All of the Objectors object to the Application on the grounds that there are no unappropriated waters in the source of supply and the rights of the prior appropriator will be adversely affected.

3. A field investigation conducted by the Department personnel, Mr. Ken Clark and Mr. Kent Gerdes, determined that the water impounded by the proposed reservoir would not be tributary to Sage Creek, the source of the Objectors' prior existing water right.

From the foregoing Proposed Findings of Fact, the Hearing Examiner hereby makes the following Proposed Conclusions of Law.

PROPOSED CONCLUSIONS OF LAW

1. Because the water impounded by the proposed reservoir is not tributary to Sage Creek, the source of water for the Objectors' prior existing water rights, granting of this application could not adversely affect any prior existing water rights.

From the foregoing Proposed Findings of Fact and Conclusions of Law, the Hearing Examiner hereby makes the following Proposed Order:

PROPOSED ORDER

1. The applicant's permit be granted allowing the appropriation of 2 acre-feet per annum of water from a closed basin from the period of May 1 to October 1, inclusive, of each year for stockwater purposes, to be impounded in a reservoir

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located in the NW 1/4 NW 1/4 NW 1/4 of Sec. 7, T. 36N., R. 6E.,
in Liberty County, Montana.

2. That the permit be subject to all prior existing water
rights in the source of supply.

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 and with opposing parties 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 14th day of November, 1975.

James A. Lewis
HEARING EXAMINER *By: ABC*

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NOTICE:

Section 89-8-100, R.C.M. 1947, provides that a person 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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