

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

* * * * *

IN THE MATTER OF THE)
APPLICATION FOR CHANGE OF) FINAL
APPROPRIATION WATER RIGHT) ORDER
41S-G(P)002909 BY RANDAL G.)
RIDGEWAY)

* * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation accepts and adopts the Findings of Fact and Conclusions of Law as contained the January 8, 1998, Proposal for Decision, and incorporates them by reference.

WHEREFORE, based upon the record, the Department makes the following:

ORDER

Subject to the terms, conditions, restrictions, and limitations listed below Application for Change of Appropriation Water Right 41S-G(P)002909 is granted to Randal G. Ridgeway to add a place of storage to the following water rights: 41S-P002909; 41S-P002920; 41S-P007360; 41S-P014256; 41S-P053496; 41S-P053497; and 41S-P053498. Applicant is authorized to divert water from Sage Creek and three wells into the storage pond. The wells are: the well permitted by 41S-P002909 and 41S-P053496, located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13; the well permitted by 41S-P002920 and 41S-P053497, located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13; the well permitted by 41S-P014256, located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15. Water is to be pumped from the pond for irrigation. The period of appropriation is the maximum combined period allowed by all rights being changed, from March 1 through December 31, inclusive of each year. However, each right is bound by the permitted period of appropriation. The authorized location of the storage pond is the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, Township 15 North, Range 12 East, Judith Basin County, Montana. The authorized capacity of the pond is 65 acre-feet.

A. The appropriator shall install a Department approved in-line flow meter at a point in the delivery line from the well located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, Township 15 North, Range 12 East, to record the flow rate and volume of water diverted. Water must not be diverted until the required measuring device is

in place and operating. On a form provided by the Department, the appropriator shall keep weekly written records of the flow rate and volume measurements and shall submit the records by November 30 of each year and upon request at other times of the year. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be submitted to the water resources regional office. Contact the regional office listed below to obtain the current address.
Lewistown PH: 406-538-7459 FAX: 406-538-7089.

B. The appropriator shall install a pressure monitoring device on the well in Section 15, to measure hydrostatic pressure of the aquifer(s). On a form provided by the Department, the appropriator shall keep weekly written records of the flow rate, volume, and pressure measurements, and shall submit the records by November 30 of each year and upon request at other times of the year. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be submitted to the water resources regional office. Contact the regional office listed below to obtain the current address.
Lewistown - PH: 406-538-7459 FAX: 406-538-7089.

The appropriator shall maintain the pressure monitoring device so it always operates properly and measures hydrostatic pressure accurately.

C. The appropriator shall install a flow measuring device at a point in the delivery ditch from Sage Creek, between the headgate/control structure and the storage facility, to allow the flow rate of water diverted to be recorded. The design of the measuring device must be approved by the Department prior to installation, and water must not be diverted until the required device is in place and operable. On a form provided by the Department, the appropriator shall keep a written weekly record of the flow rate and volume of all water diverted, including the period of time, and shall submit the records by November 30, each year and upon request by the Department. The records must distinguish the flow rate and volume of surface water from groundwater diverted from the well located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, Township 15 North, Range 12 East. The records shall be submitted on November 30 of each year and upon request at other times of the year. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be submitted to the water resources regional office. Contact the regional office listed below to obtain the current address.

Lewistown PH: 406-538-7459 FAX: 406-538-7089.

The appropriator shall maintain the measuring device so it always operates properly and measures flow rate and volume accurately.

D. The appropriator shall install a diversion control structure that allows a minimum of 2.0 cubic feet per second of surface water flow to remain in Sage Creek at all times. Any

natural surface water flow of 2.0 cubic feet per second or below shall be bypassed in order to protect existing downstream water rights. The design of the diversion structure must be approved by the Department prior to installation.

E. The appropriator shall keep written records of the flow rate and volume of water diverted from the two wells located in the W $\frac{1}{2}$ Section 13, Township 15 North, Range 12 East. The method of measurement for the wells in Section 13 shall be to measure the discharge rate at the beginning of each irrigation season, April 1 or later, and on the first of every month following until October 15 of each year, then calculate the volume by using the recorded flow rate and the period of time water was diverted. The records shall be submitted on November 30 of each year and upon request at other times of the year. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be submitted to the water resources regional office. Contact the regional office listed below to obtain the current address.

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F. If the storage pond does not seal within two years after issuance of this permit, appropriator shall line the pond with bentonite.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this _____ day of February, 1998.

Jack Stults, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6605

CERTIFICATE OF SERVICE

Final Order
App. 41S-G(P) by Randal Ridgeway

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CASE # 2909

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record, first class mail, at their address or addresses this _____ day of February, 1998, as follows:

Randal G. Ridgeway
HC 62 Box 3014
Stanford, MT 59479

Stanford, MT 59479

Richard A. Hitchcock
HC 76 Box 37
Denton, MT 59430

Allen W. Zimmer
HC 62 box 3110
Stanford, MT 59479

Robert Reilly
HC 53 Box 18
Stanford, MT 59479

Gerald W. & Joyce M. Clark
RT 3 Box 3070
Stanford, MT 59479

Lois Hajenga
HC 90 Box 38
Moccasin, MT 59462

Lyle R. Deegan
HC 90 Box 72
Moccasin, MT 59462

John & Janice Deegan
HC 62 Box 3085
Stanford, MT 59479

James C. & Virginia K. Dye
P.O. Box 3049
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Bill Walker
P.O. Box 255
Hobson, MT 59452

Mark Holzer
P.O. Box 523
Stanford, MT 59479

Beulah & Francis Biegelke
RR 3
Stanford, MT 59479

John D. Neill
HC 62 Box 3075
Stanford, MT 59479-9503

Ronald F. Sherer
HC 62 Box 3101

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CASE # 2909

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Don & Joy Carver
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Scott M. Seilstad
HC 76 Box 38
Denton, MT 59430

Nancy Andersen, Chief
Water Rights Bureau
Department of Natural
Resources & Conservation
P.O. Box 201601
Helena, MT 59620-1601

Scott Irvin, Manager
Lewistown Water Resources
Regional Office
613 NE Main, Suite E
Lewistown, MT 59457-2020
(via electronic mail)

Mandi Shulund
Hearings Assistant

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

* * * * *

IN THE MATTER OF THE)	
APPLICATION FOR CHANGE OF)	PROPOSAL
APPROPRIATION WATER RIGHT)	FOR
41S-G(P)002909 BY RANDAL G.)	DECISION
RIDGEWAY)	

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on October 14, 1997, in Stanford, Montana, to determine whether an authorization to change appropriation water right should be granted to Randal Ridgeway for the above-entitled application under the criteria set forth in Mont. Code Ann. § 85-2-402(2) (1995).

APPEARANCES

Randal Ridgeway (Applicant) appeared at the hearing in person.

Objectors Ronald Sherer; Richard A. Hitchcock; Scott M. Seilstad; Janice and John Deegan; Joy Carver; Lois Hajanga; Mark Holzer; Mike Metcalfe; Lyle Deegan; Robert Reilly; Bill Walker; and Joyce Clark appeared at the hearing in person and had chosen Ronald Sherer as their spokesman.

Objectors Beulah and Francis Biegalke; John Neill; and Allen W. Zimmer appeared at the hearing in person.

Kirk Waren, Hydrogeologist with the Department of Natural Resources and Conservation (Department); Sterling Sundheim, Civil Engineering Specialist with the Department's Lewistown Water Resources Regional Office; and Scott Irvin, Manager of the Department's Lewistown Water Resources Regional Office, appeared at the hearing.

EXHIBITS

Neither Applicant nor Objectors offered exhibits for the record.

PRELIMINARY MATTERS

Prior to the hearing, Objectors Richard Hitchcock; Robert Reilly; Lois and Jeff Hajenga; Lyle Deegan; John and Janice Deegan; James and Virginia Dye; Bill Walker; Mark Hozer; Ron Sherer; Gerald and Joyce Clark; Michael Metcalfe; Don and Joy Carver; and Scott Seilstad reached an agreement with Applicant and formally withdrew their objections. The agreement was based on the installation of a passive diversion structure that would allow a minimum of 2.0 cubic feet per second to remain in Sage Creek at all times and the understanding that the well water would be tested to determine if the quality of the well water would degrade the quality of Sage Creek water.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. Application for Change of Appropriation Water Right 41S-G(P)002909 in the name of and signed by Randal G. Ridgeway was received by the Department on November 19, 1996, at 10:42 a.m. (Department file.)

2. Pertinent portions of the application were published in the *Judith Basin Press*, a newspaper of general circulation in the area of the source, on March 6, 1997. Additionally, the Department served notice by first-class mail on individuals and public agencies which the Department determined might be interested in or affected by the application. Sixteen objections to the proposed change were received by the Department. Applicant was notified of the objections by a letter from the Department dated April 14, 1997. (Department file.)

3. Applicant proposes to add a place of storage to the following water rights: 41S-P002909; 41S-P002920; 41S-P007360; 41S-P014256; 41S-P053496; 41S-P053497; and 41S-P053498. Applicant proposes to divert water from Sage Creek and three wells into the storage pond. Water would be pumped from the pond for irrigation. The proposed period of appropriation includes the maximum combined period allowed by all rights being changed, from March 1 through December 30, inclusive of each year. The location of the storage pond is the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, Township 15 North, Range 12 East, Judith Basin County, Montana.¹ The

¹ Unless otherwise stated all land descriptions in this Proposal are located in Township 15 North, Range 12 East, Judith Basin County, Montana.

capacity of the pond is 65 acre-feet. (Department file and testimony of Applicant.)

4. Applicant has proven by a preponderance of evidence the proposed means of diversion, construction, and operation of the appropriation works are adequate. The pond was constructed by Empire Sand and Gravel Co. Inc. (Empire). Gravel was excavated from the site when the highway was under construction through Stanford and Windham in 1993. Samples of the soil separated from the gravel were sent to Northern Testing Lab which deemed the soil adequate for pond lining. A dam was constructed across the east end and part of the northeast side of the pond. In 1994, Empire completed lining the pond, strengthened the face of the dam and laid drainage tiles on much of the east side of the dam to route any seepage back to Sage Creek. The pond still seeps a little, but not enough to cause any problems. Each year, more silt will settle and the pond will seal preventing excess seepage.

All of Applicant's wells are flowing and all are equipped so the flow of water may be stopped when not being put to beneficial use. Water from the well permitted by 41S-P002909 and 41S-P053496,² located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, would be allowed to flow through an existing six-inch pipeline into the pond. Water from the well permitted by 41S-P002920 and 41S-P053497, located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, flows into a

² 41S-P53496, 41S-P53497, and 41S-53498 were filed to extend the period of appropriation of 41S-P002909, 41S-P002920, and 41S-P007360.

stock tank then the overflow goes into the pond. Water from the well permitted by 41S-P014256, located in the SW¼SE¼SE¼ of Section 15, would be piped through an above-ground mainline to Flat Creek which flows into Sage Creek which would then become a natural carrier of that water to the pond where it would be diverted at a point in the NW¼SW¼NW¼ of Section 13. The water from Sage Creek permitted by 41S-P007360 and 41S-P053498 would be diverted into the pond using the same diversion ditch in the NW¼SW¼NW¼ of Section 13. (Department file and testimony of Applicant and Kirk Waren.)

5. Applicant has proven by a preponderance of evidence there would be no adverse effect to the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved. The proposed change is to add a place of storage. There would be no change in points of diversion of the wells. There would be no change in the place of use or period of use of the underlying water rights. Applicant would not be diverting more water than he has in the past. (Department file and testimony of Applicant.)

There were concerns that Applicant would let his artesian wells flow continuously from April to December which would affect the flow of other artesian wells in the area. While the period of use of the proposed change does encompass the period from March 1 through December 30, each well is bound by the permitted period of appropriation of each permit. The well in the

SW¼SE¼SE¼ of Section 15 has a period of use from March 1 through December 30, inclusive of each year. The two wells in the W¼ of Section 12 have a period of use from April 1 through October 15, inclusive of each year. Moreover, the appropriations from the wells under the proposed change cannot exceed the permitted flow rates and volumes. Applicant would be required to install measuring devices and keep written records to show the flow rate and volume of water appropriated from the wells do not exceed the permitted amount. (Department file and testimony of Beulah Biegelke.)

There was also a concern about the quality of water from the well located in SW¼SE¼SE¼ of Section 15 because that well is located approximately two miles from the proposed storage and the means of conveyance is an above-ground mainline into Flat Creek which flows into Sage Creek until it is diverted into the pond. Using Flat Creek and Sage Creek as carriers has been the practice since 1984. The water has been tested and the quality of the well water is better than Sage Creek water. (Department file and testimony of Applicant, John Neill, Ronald Sherer, and Kirk Waren.)

6. Applicant has proven by a preponderance of evidence the water use, irrigation, is a beneficial use. The proposed storage would most likely be beneficial, not only to the Applicant, but to other Sage Creek water users. By filling the pond when there is excess water, the natural flow would be left in the creek

later in the season when flow begins to diminish. (Testimony of Applicant.)

7. Applicant has proven by a preponderance of evidence that he has possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. Applicant owns the place of use. (Department file.)

8. No objections relative to water quality were filed against this application nor were there any objections relative to the ability of a discharge permit holder to satisfy effluent limitations of his permit. (Department file.)

Based upon the foregoing Findings of Fact and the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all substantive procedural requirements of law or rule have been fulfilled; therefore, the matter was properly before the Hearing Examiner. See Findings of Fact 1 and 2. Mont. Code Ann. § 85-2-402 (1995).

2. Applicant has met all the criteria for issuance of an Authorization to Change. See Findings of Fact 3 through 8. Mont. Code Ann. § 85-2-402 (1995).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations listed below, Authorization to Change 41S-G(P)002909 is granted to Randal G. Ridgeway to add a place of storage to the following water rights: 41S-P002909; 41S-P002920; 41S-P007360; 41S-P014256; 41S-P053496; 41S-P053497; and 41S-P053498.

Applicant is authorized to divert water from Sage Creek and three wells into the storage pond. The wells are: the well permitted by 41S-P002909 and 41S-P053496, located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13; the well permitted by 41S-P002920 and 41S-P053497, located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13; the well permitted by 41S-P014256, located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15. Water is to be pumped from the pond for irrigation. The period of appropriation is the maximum combined period allowed by all rights being changed, from March 1 through December 30, inclusive of each year. However, each right is bound by the permitted period of appropriation. The authorized location of the storage pond is the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, Township 15 North, Range 12 East, Judith Basin County, Montana. The authorized capacity of the pond is 65 acre-feet.

A. The appropriator shall install a Department approved in-line flow meter at a point in the delivery line from the well located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, Township 15 North, Range 12 East, to record the flow rate and volume of water diverted. Water must not be diverted until the required measuring device is in place and operating. On a form provided by the Department,

the appropriator shall keep weekly written records of the flow rate and volume measurements and shall submit the records by November 30 of each year and upon request at other times of the year. Failure to submit reports may be cause for revocation or modification of a permit or change. Contact the regional office listed below to obtain the current address.

Lewistown PH: 406-538-7459 FAX: 406-538-7089.

B. The appropriator shall install a pressure monitoring device on the well in Section 15, to measure hydrostatic pressure of the aquifer(s). On a form provided by the Department, the appropriator shall keep weekly written records of the flow rate, volume, and pressure measurements, and shall submit the records by November 30 of each year and upon request by the Department. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be submitted to the water resources regional office. Contact the regional office listed below to obtain the current address.

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The appropriator shall maintain the measuring device so it always operates properly and measures flow rate accurately.

C. The appropriator shall install a flow measuring device at a point in the delivery ditch from Sage Creek, between the headgate/control structure and the storage facility, to allow the flow rate and volume of water diverted to be recorded. The design of the measuring device must be approved by the Department prior to installation, and water must not be diverted until the

required device is in place and operable. On a form provided by the Department, the appropriator shall keep a written weekly record of the flow rate and volume of all water diverted, including the period of time, and shall submit the records by November 30, each year and upon request by the Department. The records must distinguish the flow rate and volume of surface water from groundwater diverted from the well located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, Township 15 North, Range 12 East. The records shall be submitted on November 30 of each year and upon request at other times of the year. Failure to submit reports may be cause for revocation or modification of a permit or change. Contact the regional office listed below to obtain the current address.

Lewistown PH: 406-538-7459 FAX: 406-538-7089.

The appropriator shall maintain the measuring device so it always operates properly and measures flow rate accurately.

D. The appropriator shall install a diversion control structure that allows a minimum of 2.0 cubic feet per second of surface water flow to remain in Sage Creek at all times. Any natural surface water flow of 2.0 cubic feet per second or below shall be bypassed in order to protect existing downstream water rights. The design of the diversion structure must be approved by the Department prior to installation.

E. The appropriator shall keep written records of the flow rate and volume of water diverted from the two wells located in the W $\frac{1}{2}$ Section 13, Township 15 North, Range 12 East. The method

of measurement for the wells in Section 13 shall be to measure the discharge rate at the beginning of each irrigation season, April 1 or later, and on the first of every month following until October 15 of each year, then calculate the volume by using the recorded flow rate and the period of time water was diverted. The records shall be submitted on November 30 of each year and upon request at other times of the year. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be submitted to the water resources regional office. Contact the regional office listed below to obtain the current address.

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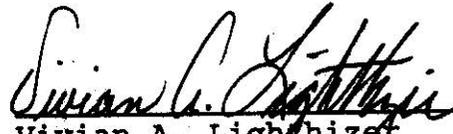
F. If the storage pond does not seal within two years after issuance of this permit, Permittee shall line the pond with bentonite.

NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Exceptions must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities upon which the party relies, and specific citations to the record. Vague assertions as to what the record shows or does not show without

citation to the precise portion of the record will be accorded little attention. Any exception containing obscene, lewd, profane, or abusive language shall be returned to the sender. Parties may file responses to any exception filed by another party. The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. No new evidence will be considered.

Dated this 8th day of ~~December~~ ^{January}, 1997.


Vivian A. Lighthizer
Hearing Examiner
Water Resources Division
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, MT 59620-1601

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record, first class mail, at their address or addresses this 8th day of ~~December~~ ^{January}, 1997, as follows:

Randal G. Ridgeway
HC 62 Box 3014
Stanford, MT 59479

Richard A. Hitchcock
HC 76 Box 37
Denton, MT 59430

Robert Reilly
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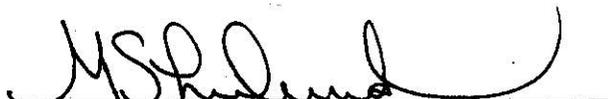
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