

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 3094-g76L
BY PAUL HOWSER

FILMED
APR } 1990

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on October 7, 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 application is approved allowing the appropriation of 350 gallons per minute and not to exceed 90 acre-feet of water per annum to be used for new irrigation on 40 acres and supplemental irrigation on 20 acres. The water is to be appropriated by means of a pump and sprinkler from developed springs (McClary Springs) at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, Township 23 North, Range-24 West, and used on a total of 60 acres, more or less, in said Section 2, from April 15 to September 15, inclusive, of each year. The portion of this water appropriated prior to July 1, 1973, will have the priority date of that first appropriation.
2. The Provisional Permit shall be issued subject to all prior existing water rights.

Done this 3rd day of November, 1975.

Orin Ferris
Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 3094

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 3094-g76L, PAUL HOWSER)

PROPOSAL FOR DECISION

ISSUES

On an application for water for both new and supplemental irrigation does the water used on the supplemental acreage retain its original priority date?

MEMORANDUM

Pursuant to the Montana Water Use and Administrative Procedure Acts a hearing on objections to the above-named application was held June 16, 1975 at Lonepine, Montana.

The Applicant, Mr. Paul Howser, appeared at the hearing and presented testimony. He was represented by counsel, Mr. Keith W. McCurdy, Esq., of Polson, Montana. In compliance with subpoenas issued by the Hearing Examiner, Mr. Eugene Lynch and Mr. Howard Orr appeared at the hearing and presented testimony on behalf of the Applicant. Mr. Louis Mountjoy and Mr. Mike Mattovich appeared at the hearing and presented testimony on behalf of the Applicant.

Mr. George W. Tripp, Mr. Robert Potter, Mr. Walter Jackson, Mr. Donald V. Frolin, Mr. Kenneth G. McClary, Ms. Roberta Jackson, Mr. John Swope, and the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and the U.S.D.I. Solicitor's Office all submitted timely objections to the Application.

Mr. George W. Tripp, Mr. Robert Potter, Mr. Walter Jackson, Mr. Kenneth G. McClary, Mr. John Swope, and Ms. Roberta Jackson appeared at the hearing. All

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were represented by Mr. Leonard Kaufman Esq., of Kalispell, Montana. Ms. Roberta Jackson presented testimony.

The Applicant, through Counsel Mr. McCurdy, offered into evidence a copy of a Notice of Appropriation, a photo map, and a copy of an S.C.S. engineering plan. These were marked as Applicant's Exhibit No. 1, 2 and 3 and were received into evidence without objection.

The Applicant testified that by this application he is trying to establish a legal right to use the irrigation facilities which he installed in 1974, and that this application does not represent plans to increase his present diversion of water. Mr. Howser intends to appropriate 112 gpm and not to exceed 90 acre-feet of water per annum from developed springs (hereinafter called McClary Springs) at a point in the SE 1/4 SW 1/4 SW 1/4 of Section 2, T. 23N., R. 24W. and used for new irrigation on 40 acres and supplemental irrigation on 20 acres and containing a total of 60 acres more or less in said Section 2 and used from April 15 to September 15 inclusive of each year.

Objector, Ms. Roberta Jackson testified that since 1939 she has customarily watered her 10 to 15 head of cattle pastured on her property in Section 3 from the drainage ditch fed by the McClary Springs that Mr. Howser intends to use as the source of his irrigation water.

Mr. Leonard Kaufman, withdrew his client's objection to the application for reason that these objectors had misunderstood the public notice and had thought that Mr. Howser intended to further expand his diversions. None of the other objectors appeared at the hearing.

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.

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PROPOSED FINDINGS OF FACT

1. All Objectors appearing at the hearing withdrew their objections to the application.
2. Ms. Roberta Jackson has an apparent prior existing water right to stockwater for the 10 to 15 cattle customarily watered from the ditch fed by the McClary Springs.

From the foregoing Proposed Findings of Fact, the Hearing Examiner hereby makes the following:

PROPOSED CONCLUSIONS OF LAW

1. The criteria for issuance of a Water Use Permit set out in Section 89-885 R.C.M. 1947 have been met.
2. Ms. Roberta Jackson has an apparent prior existing right to take stockwater for 10 to 15 cattle from the ditch to which the McClary Springs are tributary.

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

PROPOSED ORDER

1. That the Applicant's application be approved allowing the appropriation of 350 gpm and not to exceed 90 acre-feet of water per annum to be used for new irrigation on 40 acres and supplemental irrigation on 20 acres. The water is to be appropriated by means of a pump and sprinkler from developed springs (McClary Springs) at a point in the SE 1/4 SW 1/4 SW 1/4 of Section 2, T. 23N., R. 24W. and used on a total of 60 acres more or less in said Section 2, from April 15 to September 15, inclusive of each year.

The portion of this water appropriated prior to July 1, 1973 will have the priority date of that first appropriation.

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2. The Provisional permit shall be issued subject to all prior existing water rights.

NOTICE

This is a Proposed Order and will become final when accepted by the Administrator, Division of Water Resources, 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 this Proposed Order may be filed with the Administrator within ten (10) days of the 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 7th day of October, 1975.

James A. Lewis
HEARING EXAMINER
By ABC

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