

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE)
PERMIT NO. 3997-g41-0)
BY LYDIA E. HAMMOND)

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on March 18, 1976, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

FINAL ORDER

1. Subject to the conditions cited below, the Applicant's Permit is granted in modified form only, allowing the appropriation of no more than 1.24 cubic feet per second or 560 gallons per minute of water and not to exceed 163 acre-feet per annum, in Teton County, to be diverted by means of a ground-water well approximately 26 feet deep, at a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, Township 24 North, Range 4 West, M.P.M., and to be used for irrigation on a total of 112 acres, more or less, in said Section 31 from May 15 to May 31, inclusive, of each year, and from July 15 to September 1, inclusive, of each year.

2. The Applicant may not withdraw water from the Teton River ground-water system pursuant to said permit during periods other than those specifically enumerated above, nor at such enumerated times when there is insufficient water to satisfy prior rights along the Teton River system, nor when it appears to the Department that within ten days there will be insufficient water in the Teton River system to satisfy prior rights at a point or points along the Teton River system below the Dutton gaging system.

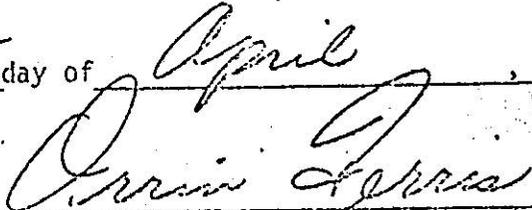
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3. The Permit is granted subject to all prior existing water rights in the source of supply.

4. At the discretion of the Department of Natural Resources and Conservation, the Applicant shall install and maintain adequate measuring devices so that a record is kept of all quantities of water pumped, as well as the periods of pumping. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

5. This Permit, granted in modified form only, is subject to any final determination of prior existing water rights in the source of supply as provided by Montana law.

Done this 28th day of April, 1976.


Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

NOTICE: Section 89-8-100, R.C.M. 1947, provides that a person who is 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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BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION OF
THE STATE OF MONTANA

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 3997-g⁴¹-0 BY LYDIA E.)
HAMMOND)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedure Act, after due notice, a hearing on objections to the above-entitled application was held in the courtroom of the Teton County Courthouse, Choteau, Montana at 1:30 p.m. on Monday, December 15, 1975, Richard Gordon, Hearing Examiner, presiding.

Ms. Lydia E. Hammond, the Applicant, appeared personally and presented testimony in support of her application.

Mr. Thomas Patton appeared personally and presented testimony on behalf of the Department of Natural Resources and Conservation. Mr. Patton offered into evidence one exhibit: a graph showing Teton River streamflow depletion versus time as computed by the Department with regard to the proposed appropriation. Said exhibit was entered and numbered accordingly.

Mr. Morris A. Larson and Ms. Clara E. Larson, Objectors, appeared personally and presented testimony in support of their objection.

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Mr. S. A. Pithoud and Ms. Joan Pithoud, Objectors, appeared personally and presented testimony in support of their objection.

Mr. Bill Reichelt, Mr. Charles Danreuther, and Ms. Janet Danreuther, representatives of the Teton Water Association, appeared personally and presented testimony in support of the Teton Water Association's objection.

As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact, Conclusions of Law, and Order to the Administrator, Water Resources Division, Department of Natural Resources and Conservation:

PROPOSED FINDINGS OF FACT

1. On October 24, 1974, the Applicant, Ms. Lydia E. Hammond, submitted Application No. 3997-g41-0 to the Department seeking to appropriate 1.24 cubic feet per second or 560 gallons per minute of water and not to exceed 270 acre-feet per annum in Teton County, Montana, to be diverted by means of a groundwater well approximately 26 feet deep, at a point in the SE1/4NW1/4NW1/4 of Section 31, Township 24 North, Range 4 West, M.P.M., and to be used for irrigation on a total of 112 acres, more or less, in said Section 31 from May 10 to October 15, inclusive, of each year.

2. On May 16, 1975 Mr. Morris A. Larson and Ms. Clara E. Larson filed a timely objection to the above-described application alleging a prior groundwater well use, and expressing fear that the water table might be adversely affected

should the permit be granted. Objectors requested a modification of the application to protect their alleged prior right.

3. On May 21, 1975, the City of Choteau, Montana, through its City Clerk, Mr. James Dellwo, filed a timely objection to the above-described application alleging a prior groundwater use for the city drinking water supply. The Objector requested a denial of the application so as to protect its alleged prior right. Neither the Objector, nor a designated representative of the Objector appeared or presented testimony at the hearing.

4. On May 23, 1975, Mr. Edward T. Nordahl filed a timely objection to the above-described application alleging fear that the permit, if granted, will lower the water table. Objector did not allege a prior use, or request specific relief. Neither the Objector nor a designated representative of the Objector appeared or presented testimony at the hearing.

5. On May 27, 1975, Mr. S. A. Pithoud and Ms. Joan Pithoud filed a timely objection to the above-described application alleging a prior groundwater use right. The Objectors requested that the application be modified so as to protect said alleged right.

6. On June 18, 1975, Mr. Thomas Snyder filed a timely objection to the above-described application alleging fear that the permit, if granted, might lower the water table. The Objector did not allege a prior use or request specific relief. Neither the Objector or a designated representative of the Objector appeared or presented testimony at the hearing.

Teton River system and the withdrawal of such water would ultimately effect streamflow in the Teton River. Mr. Patton introduced into evidence a graph showing the estimated cumulative streamflow depletion rate from the Teton River due to the Applicant's proposed appropriation at various times following the commencement of withdrawal. The graph shows a maximum streamflow depletion of approximately 200 gallons per minute occurring 120 days after the start of pumping, and 10 days after the cessation of pumping. Mr. Patton defined streamflow depletion as either direct depletion of the stream or the reduction of groundwater flow to the stream. Mr. Patton testified that there could be as much as a 50 gallon per minute margin of error in the 200 gallon per minute maximum estimate depletion rate. Mr. Patton thus testified that a maximum 150 gallon depletion rate could be estimated. Mr. Patton testified that by proper scheduling of withdrawal, the point in time at which specified streamflow depletion is reached, could be delayed until after the finish of the irrigation season.

10. Mr. Reichelt, Mr. Danreuther, and Ms. Danreuther testified that together they irrigate a total of 370 acres of hay and together water several hundred head of stock from the Teton River near Carter, Montana substantially downstream below the Dutton gauging station. They testified that together they need 55 cubic feet per second for their combined flood and sprinkler systems. They testified that their rights at least partially extend back in time to a 1904 adjudication of the Teton River. They testified that in the past there generally has been

sufficient water to satisfy downstream rights. However, they testified that in recent years the Teton River has regularly gone dry during the irrigation season and that there has been insufficient water for irrigation at their point of diversion and at most other points of diversion below the Dutton gauging station for the past several years. They testified that in 1973 they were unable to irrigate after July 13, 1973, and that the Teton River was completely dry at their point of diversion on August 1, 1973. They testified that in 1974 they were unable to irrigate after July 24, 1974, and that the river went dry shortly thereafter. Finally, they testified that although they did not have exact acreage, use, or claimed water right information for the other members of the Teton Water Association, they testified that they were authorized to represent the other members at this hearing, all of whom have had similar difficulty obtaining sufficient irrigation water claimed pursuant to use, filed, and decreed water rights. Thus, the association members present testified that the situation with respect to the other members of the Teton Water Association was basically the same as their own, principally that there is insufficient water in the Teton River to satisfy prior water rights during the latter part of the irrigation season. Finally, they testified that the fact that the river actually runs dry during the latter part of the irrigation season, evidences the nonavailability of unappropriated water.

11. Mr. Morris A. Larson and Ms. Clara E. Larson testified that they live approximately 1/2 mile downstream from the

applicant, and that they have two wells, one 21 feet deep, the other 28 feet deep. Mr. Larson did not know the flow figures for these two wells. He stated, however, that they were only used for occasional domestic and garden purposes. No evidence was presented as to the date of first use. Mr. Larson testified to have never had trouble obtaining sufficient amounts of water from these two wells in the past. Nevertheless, Mr. Larson alleged that the above-described application might lower the water table in the vicinity of his two wells. No evidence was presented to support the allegation.

12. Mr. S. A. Pithoud, and Ms. Joan Pithoud testified that they live approximately half way between the Applicant and the Larsons. Mr. Pithoud testified that he has three driven wells. He did not know the flow figures for these wells. He testified that they were used only for domestic and garden purposes. No evidence was presented as to the date of first use. Mr. Pithoud testified that he never has had difficulty in obtaining sufficient amounts of water from these wells in the past. Nevertheless, he alleged that the above-described application might lower the water table in the vicinity of his wells. No evidence was presented to support the allegation. Mr. Pithoud additionally testified that an underground stream surfaces near the edge of one of the Applicant's lower fields and runs off the Applicant's field onto his own property. Mr. Larson suggested that the Applicant use this runoff instead of applying for a new well. The Applicant denied the existence of such subsurface percolation and subsequent surface runoff

from her property.

13. Analysis of the information depicted in the streamflow depletion chart introduced at the hearing reveals that if the Applicant's permit is granted, but only in modified form so that the Applicant may not pump at those times when the Objectors have insufficient water, principally from mid-July until the end of the irrigation season, then an estimated total streamflow depletion of 31 acre-feet of water may be expected to result annually. Utilizing similar information, a two period pumping scheme may be derived which is both more beneficial to the Applicant, and as well, should result in substantially lower streamflow depletion during the irrigation season. By allowing pumping only from May 15 to May 31, inclusive, (during the peak spring runoff) of each year, and from July 15 to September 1, inclusive of each year, maximum streamflow depletion should not be reached until substantially after the end of the irrigation season. The first pumping period should not result in any measurable streamflow depletion. The second pumping period should not result in more than approximately 18 acre-feet of streamflow depletion during the irrigation season. Such depletion figures are substantially lower than those that would result if the Applicant is merely forbidden to pump when the Objectors have insufficient water at their respective points of diversion.

From the foregoing Proposed Findings of Fact, the following Proposed Conclusions of Law are hereby made:

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PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-830 of the Revised Codes of Montana, 1947, a permit is required to appropriate 100 gallons per minute or more from the groundwater supply from which the Applicant proposes to appropriate.

2. There are at times, primarily during the nonirrigating and spring runoff seasons, unappropriated waters in the source of supply.

3. There are at times, primarily during the irrigating season, no unappropriated waters in the source of supply.

4. Objectors and others downstream along the Teton River appear to have valid use rights which cumulatively effectively appropriate all available water in the Teton River system at various times during the irrigation season.

5. The rights of prior appropriators will be protected if the permit is conditioned to protect those rights.

6. Proper scheduling of appropriation of water from the Teton system by the Applicant, specifically by allowing the Applicant only to pump during two pumping periods, the first from May 15 to May 31, inclusive of each year, and the second from July 15 to September 1, inclusive of each year, will ensure that prior existing water rights will be protected.

7. The proposed means of diversion is adequate.

8. The proposed use of the water constitutes a beneficial use.

9. The proposed use of water will not interfere unreasonably

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with other planned uses or developments for which a permit has been issued or for which water has been reserved.

10. The Application for Beneficial Water Use Permit should be granted in accordance with the provisions of Chapter 8 of Title 89 of the Revised Codes of Montana.

11. Nothing decided herein has bearing upon the status of water rights claimed by the Applicant other than those herein applied for, nor does anything decided herein have bearing upon the status of claimed rights of any other party except in relation to those rights applied for, to the extent necessary to reach a conclusion herein.

Based upon the above Proposed Findings of Fact and Conclusions of Law, the following Proposed Order is hereby made:

PROPOSED ORDER

1. Subject to the conditions cited below, the Applicant's permit is granted in modified form only, allowing the appropriation of no more than 1.24 cubic feet per second or 560 gallons per minute of water not to exceed 163 acre-feet per annum in Teton County, to be diverted by means of a groundwater well approximately 26 feet deep in a point in the SE1/4NW1/4NW1/4 of Section 31, Township 24 North, Range 4 West, and to be used for irrigation on a total of 112 acres, more or less, in said Section 31 from May 15 to May 31, inclusive of each year, and from July 15 to September 1, inclusive of each year.

2. The Applicant may not withdraw water from the Teton River groundwater system pursuant to said permit during periods other than those specifically enumerated above, nor at such enumerated times when there is insufficient water to satisfy prior rights

along the Teton River system, nor when it appears to the Department that within 10 days there will be insufficient water in the Teton River system to satisfy prior rights at a point or points along the Teton River system below the Dutton gauging station.

3. The permit is granted subject to all prior existing water rights in the source of supply.

4. At the discretion of the Department of Natural Resources and Conservation the Applicant shall install and maintain adequate measuring devices so that a record is kept of all quantities of water pumped as well as the periods of pumping. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

5. This permit, granted in modified form only, is subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

NOTICE

This is a Proposed Order and will not become final until accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the Proposed Order, if any, shall be filed with the Department within ten (10) days of service of the parties herein. Upon receipt of any written exceptions opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 18th day of March, 1976.

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Richard Gordon
RICHARD GORDON
HEARING EXAMINER