

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION)
FOR CHANGE OF APPROPRIATION WATER) FINDINGS OF FACT, CONCLUSIONS OF
RIGHT NO. 5063-c43D BY VERN KARR) LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on January 12, 1977, by the Hearings Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order, except that Item 2 of the Final Order is slightly modified in wording.

FINAL ORDER

1. The Applicant's Application for Change of Appropriation Water Right No. 5063-c43D is hereby denied.
2. The denial of an Application for Change of Appropriation Water Right by the Department on the grounds that the water right does not exist does not preclude the Applicant from making an application for a Provisional Permit.

Done this 9th day of March, 1977.

Orrin Ferris
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

CASE # 5063

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

IN THE MATTER OF APPLICATION)
FOR CHANGE OF APPROPRIATION)
WATER RIGHT NO. 5063-c43D BY)
VERN KARR)

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use Act and to the Montana Administrative Procedures Act, after due notice, a hearing on objections to the above-described application was held in the second floor courtroom of the Carbon County Courthouse, Red Lodge, Montana, October 4, 1976, at 1:15 p.m., Daniel G. Diemert, Hearing Examiner, presiding.

Mr. Karr attended the hearing and presented on behalf of his application and also called his brother-in-law William Niemi.

Objections were received by the Department from William K. and Olivia M. Burris and Emil and Edith Sekora. Mr. Burris and Mr. Sekora attended the hearing and presented testimony on behalf of their objections. Also attending the hearing were Oliver Wilson representing Rocky Fork Decreed Users, Inc., and Larry Pillaja.

Mr. Don Riddle attended the hearing on behalf of the Department of Natural Resources and Conservation.

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

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PROPOSED FINDINGS OF FACT

1. Under the provisions of Section 89-892, R.C.M. 1947, the approval of the Department is required to effectuate a change of appropriation water right, the source of said water right being Cow Creek, a tributary of Rock Creek in Carbon County, Montana.

2. On October 17, 1975 the Department received an Application for Change of Appropriation Water Right No. 5063-c43D from Vern Karr who sought to change the point of diversion of the following water right: a filed appropriation by Adamson H. Walker, dated 1898, for five cubic feet of water per second or 200 miners inches of water from Cow Creek, a tributary of Rock Creek, as recorded in Book 1 of Water Rights, Page 354, Carbon County, Montana. Of the above water, 156 acre-feet of water per annum have been diverted from Cow Creek at a point in the SE1/4 SE1/4 SW1/4 of Section 31, Township 4 South, Range 22 East, M.P.M., and used for stockwatering from November 1 to April 30, inclusive, of each year and for irrigation on a total of 58 acres, more or less, in Sections 30 and 31, Township 4 South, Range 22 East, M.P.M., from May 1 to October 15, inclusive, of each year. The proposed change is to change the point of diversion to the NW1/4 SE1/4, with an additional point in the NW1/4 NW1/4 NE1/4, all in Section 31, Township 4 South, Range 22 East, M.P.M. The proposed change is for the point of diversion and for no other reason.

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3. The Department received objections from William K. and Olivia M. Burris, and Emil and Edith Sekora. Both Objectors alleged that no water has been appropriated pursuant to the above-mentioned water right in at least 27 years.

4. The last time water was appropriated pursuant to the water right filed by Adamson Walker was 1948 or 1950.

5. The ditches which once were used to appropriate water pursuant to the claimed water have since been plowed under.

PROPOSED CONCLUSIONS OF LAW

1. The Application for Change of Appropriation Water Right No. 5063-c43D should be denied in accordance with the provisions of Chapter 8, Title 89 of the Revised Codes of Montana.

2. Evidence of a 1898 filing of an appropriation water right, in and of itself, is not conclusive as to the validity of that right.

PROPOSED ORDER

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

1. The Application for Change of Appropriation Water Right No. 5063-c43D is hereby denied.

2. The denial of an application for change of appropriation water right by the Department on the grounds that the existence of said water right has not been proven ^{and} does not preclude the Applicant for making application for a Provisional Permit.

NOTICE

This is a Proposed Order and will not become final until accepted by the Administrator of the Water Resources Division

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of the Department of Natural Resources and Conservation. Written exceptions to the Proposed Order, if any, shall be mailed to the Department within ten (10) days of service upon 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 12 day of ~~December, 1976~~
January, 1977.

Daniel G. Diemert
DANIEL G. DIEMERT
HEARING EXAMINER *14*

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