

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 5698-s76H BY
THOMAS D. AND ALICE M. HARVEY

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER
APR 3 1990

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on September 30, 1976, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

FINAL ORDER

The Applicants' Provisional Permit No. 5698-s76H is hereby denied.

Done this 3rd day of November, 1976.

Orvin 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 # 5698



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
5698-s76H, by THOMAS D. AND ALICE)
M. HARVEY)

Pursuant to the Montana Water Use and to the Montana Administrative Procedures Act, after due notice, a hearing on objections to the above-described application was held in the Courtroom of the Ravalli County Courthouse, in Hamilton, Montana, on Thursday, August 12, 1976 at approximately 9:30 a.m., Daniel G. Diemert, Hearing Examiner, presiding.

Mr. and Mrs. Harvey attended the hearing and presented evidence in support of the application.

Objections to the application were received by the Department from Thomas and Iris Kroll, Norman E. Crawford, Delwyn N. and Sheila A. Sullivan and East Bitterroot Development, Inc., by Stanley F. Peterson. Of the objectors, only Mr. and Mrs. Kroll attended the hearing.

Mr. Jim Rehbein attended the hearing on behalf of the Department of Natural Resources.

Originally H. K. and Doris J. Petersen were Applicants along with Mr. and Mrs. Harvey in this matter, but have since sold their interest in the land to the Harveys.

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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 of the Water Resources Division, Department of Natural Resources and Conservation:

PROPOSED FINDINGS OF FACT

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit is required to appropriate water from an unnamed tributary of Three Mile Creek in the SE1/4 SE1/4 NE1/4 of Section 16, Township 9 North, Range 19 West, M.P.M., in Ravalli County, Montana.

2. On June 13, 1975 the Department received an Application for Beneficial Water Use Permit No. 5698-s76H from Thomas D. and Alice M. Harvey who sought to appropriate 0.20 cubic feet of water per second or 90 gallons of water per minute, not to exceed 22 acre-feet of water per annum for irrigation and 5 acre-feet of water per annum for stockwatering, for a total of 27 acre-feet of water per annum from an unnamed tributary of Three Mile Creek, in Ravalli County, Montana, to be impounded in a new 5 acre-foot reservoir on said unnamed tributary at a point in the SE1/4 SE1/4 NE1/4 of Section 16, Township 9 North, Range 19 West, M.P.M., and used for new irrigation on a total of 9 acres, more or less, in said Section 16, from April 1 to October 15, inclusive, of each year, and for stockwatering from January 1 to December 31, inclusive, of each year.

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3. Timely objections were received by the Department from Norman E. Crawford, Delwyn and Sheila Sullivan, East Bitterroot Development, Inc., by Stanley F. Peterson and Thomas and Iris Kroll.

4. Based upon testimony of Mr. Thomas Kroll and the allegation of the other three Objectors, it is evident that there are no unappropriated waters in the source of supply.

5. Construction of a dam in the unnamed tributary of Three Mile Creek would adversely affect the rights of prior appropriators.

6. All of the criteria of Section 89-885 have been met other than those specifically addressed in Findings of Fact No. 4 and No. 5.

PROPOSED CONCLUSIONS OF LAW

1. The Application for Beneficial Water Use Permit No. 5698-s76H cannot be granted in accordance with provisions of Chapter 8, Title 89 of the Revised Codes of Montana.

2. The Application must fail because the Department pursuant to Section 89-886(1), R.C.M. 1947, must protect the valid rights of prior appropriators when considering Applications for a Beneficial Water Use Permit.

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

PROPOSED ORDER

1. The Applicants Provisional Permit No. 5698-s76H is hereby denied.

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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 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 30th day of September, 1976.



DANIEL G. DIEMERT
HEARING EXAMINER

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AFFIDAVIT OF SERVICE
(Proposed Order)

STATE OF MONTANA)
) ss.
County of Lewis and Clark)

Ronald J. Guse, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: "That, on October 6, 1976, he deposited in the United States mail, "certified mail, return receipt requested," a copy of the Proposed Order by the Department Hearing Examiner on the application by Thomas D. and Alice M. Harvey, Application No. 5698-s76H, for a permit to appropriate water, addressed to each of the following persons or agencies:

Cert. No. 728266 - 728271

1. Mr. Thomas D. and Ms. Alice M. Harvey, Route 1, Box 247H, Stevensville, MT 59870
2. Mr. Norman E. Crawford, Stevensville, MT 59870
3. Mr. Robert B. Brown, Attorney at Law, P.O. Box 9, Stevensville, MT 59870
4. Msgt. Delwyn N. Sullivan, USAF, and Ms. Sheila A. Sullivan, 36th Combat Spt. Gp/CMR 3301, APO, New York, NY 09132
5. Mr. Stanley F. Peterson, East Bitterroot Development, Inc., 506 West Crestline Drive, Missoula, MT 59801
6. Mr. Thomas and Ms. Iris Kroll, 4221 South Avenue West, Missoula, MT 59801
7. Mr. James Rehbein, Water Rights Bureau Field Office, Department of Natural Resources and Conservation, P.O. Box 224, Kalispell, MT 59901 (reg. mail)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Ronald J. Guse

STATE OF MONTANA)
) ss.
County of Lewis and Clark)

On this sixth day of October, 1976, before me, a Notary Public in and for said State, personally appeared Ronald J. Guse, known to me to be the Assistant Chief, Water Rights Bureau, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

T. J. Reynolds
Notary Public for the State of Montana

Residing at _____
NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires July 23, 1977

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