

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

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IN THE MATTER OF APPLICATION FOR  
BENEFICIAL WATER USE PERMIT NO.  
7360-s41S BY RANDAL G. RIDGEWAY

FILMED

APR

1977 } FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER  
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The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on March 14, 1977, 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 Provisional Permit No. 7360-s41S is hereby granted allowing for the appropriation of 1.11 cubic feet per second or 500 gallons per minute of water and not to exceed 237 acre-feet per annum, from Sage Creek, a tributary of the Judith River, in Judith Basin County, Montana, to be diverted from Sage Creek at a point in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 13, Township 15 North, Range 12 East, M,P.M., and used for supplemental irrigation on a total of 170 acres, more or less, in said Section 13 from April 1 to September 1, inclusive, of each year.

2. The Provisional Permit is granted subject to all prior water rights in the source of supply, including, but not limited to, those appurtenant to the lands owned by the Objectors herein and subject to any final determination of prior existing water rights in the source of supply as provided by Montana law.

3. The issuing of a Provisional Permit by the Department in no way reduces the Applicant's liability for damage caused by the Applicant's exercise of his Provisional Permit nor does the Department, in issuing a Provisional Permit, in any way acknowledge liability for damage caused by the Applicant's exercise of his Provisional Permit.

4. The Applicant shall also install and maintain an adequate flow meter or other applicable measuring device on the pumping facility at Sage Creek, which

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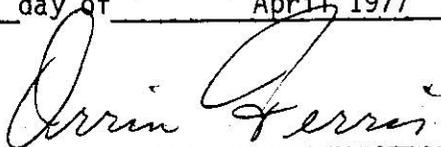
will pump the water to the sprinkler system. Records must also be kept and maintained and shall be supplied upon request to the Department.

5. The Applicant shall also establish some type of measuring system along Sage Creek in the vicinity either immediately upstream or immediately below stream, the point of diversion. The two culverts that were discussed at the hearing may be used for this particular purpose. The Applicant shall keep records as to the flows of Sage Creek during periods of withdrawal and the records shall be supplied upon request to the Department. The Applicant shall cooperate with other water users in scheduling withdrawals so that the periods of diversion will not adversely affect prior water rights.

Recommendation

The Department recommends that all parties in this matter install and maintain adequate measuring devices to fit their particular individual situation, and keep a log of records of water used for their own proof of their water rights and protection.

Done this 21<sup>st</sup> day of April 1977.

  
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Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

CASE # 1500

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

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IN THE MATTER OF APPLICATION FOR )  
BENEFICIAL WATER USE PERMIT NO. ) PROPOSAL FOR DECISION  
7360-s41S BY RANDAL G. RIDGEWAY )  
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Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing on objections to the above-described application was held in the courtroom of the Judith Basin County Courthouse, Standford, Montana on Thursday, March 3, 1977, beginning at 1:30 p.m., Gary L. Spaeth, Hearing Examiner, presiding.

Mr. Randal G. Ridgeway, the Applicant, personally appeared on behalf of the application and presented testimony.

Mr. T. J. Reynolds personally appeared on behalf of the Department of Natural Resources and Conservation.

Objections were received by the Department from Mary and John Tripp, D. L. Metrovich on behalf of Metrovich Ranch Co., Raymond W. and Marion A. Deegan, George D. Deegan, Walter Hajenga, Eddy Neill, G. W. and Joyce Clark, James Dye, Kenneth C. Dye, and Tucker Hugher on behalf of Hughes and Sons Cattle Co. The following Objectors were present at the hearing and presented testimony on behalf of their objection: John Tripp on behalf of the objection of Mary and John Tripp; D. L. Metrovich on behalf of himself and the Metrovich Ranch Co.; Raymond and Marion A. Deegan; George D. Deegan, G. W. and Joyce Clark; James Dye; Kenneth C. Dye; and Tucker Hughes on behalf of Hughes and Sons Cattle Co.

Sage Creek is a small natural flowing stream in Judith Basin County. There is generally not much water in the creek in the middle of the season from the middle of July into the fall. Generally the use of Sage Creek is for stockwatering and domestic purposes. Some waters of Sage Creek have been used in the past and still are being used at the present for minimal irrigation.

The Applicant has a center pivot located in Section 13, Township 15 North, Range 12 East, M.P.M. which covers a total of 170 acres. The Applicant has drilled a well at the pivot location and had sought to use the water from that well to run the sprinkler system. From testimony at the hearing it was indicated that it takes approximately 800 gallons per minute and the well will provide only about 300 gallons per minute. Thus the Applicant is seeking to obtain another source of water and submitted this application. The Applicant plans on digging a short ditch from the creek upstream at which point he will place a pump and would pump 500 gallons per minute by way of a pipe to the center pivot where it would join the 300 gallons per minute from the well which would then be pumped through the pivot system.

The Applicant testified that the stream normally has available water from early spring to the later part of July or early August. That many years the system could be used from April 1 to August 10 without much difficulty and would not adversely affect other water users in Sage Creek during those periods. The Applicant would only use the system during approximately 60% of the irrigation season or 60 days. At present the Applicant does not feel that it would be necessary to pump from Sage Creek much in August nor would the water be available in many years in August.

The Objectors all expressed deep concern about the effect upon their usage of Sage Creek. Several Objectors have wells that in some way connect with Sage Creek because as Sage Creek goes dry their wells go dry. All of the Objectors use the water of Sage Creek for livestock watering purposes. If Sage Creek were to run dry it could cause a severe hardship upon not only the present Objectors, but all the farmers and ranchers located along Sage Creek who depend upon the waters for stockwatering purposes. There are some minor diversions for irrigation by the Objectors and some sub-irrigation by some of the Objectors. The Objectors generally admitted that there were times of the year particularly during spring run-off and the early irrigation season when diversions by the Applicant would have little or no effect upon their usage of the waters of Sage Creek. The Objectors felt that the Applicant should be allowed to use the waters of Sage Creek during such times and were concerned about how those times could be determined. They felt there was just not enough data about Sage Creek to allow the granting of this Application at this time without a trial period of some sort and to allow for the collection of additional information. The Objectors also voiced some concern about measurements of water particularly near the point of diversion. The Applicant indicated that there was both a culvert upstream and downstream from the point of diversion which might be used to compile some measurements.

While it would be desirable to have more data on Sage Creek, it is not in the best interests of the people of Sage Creek nor the people of the State of Montana to allow Sage Creek waters to flow on through the

drainage without being used by the farmers and ranchers in the area. Thus it is important to emphasize that this is a Provisional Permit and can be modified at a later date when additional information and data becomes available. It is also important for the Applicant as well as the Objectors to work together to try and work out some system by which the Applicant can know when he is able to pump without effecting the other water users. By that it is hoped that the Objectors will monitor the water in their particular areas during the summer and that the Applicant will obtain sufficient data to aid in a final determination of the waters of this area.

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:

PROPOSED FINDINGS OF FACT

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit is required to appropriate water from Sage Creek, a tributary of the Judith River, in Judith Basin County, Montana.
2. On January 26, 1976, the Department received an Application for Beneficial Water Use Permit No. 7360-s41S by Randal G. Ridgeway requesting to appropriate 1.11 cubic feet per second or 500 gallons per second of water and not to exceed 295 acre-feet of water per annum from Sage Creek, a tributary of the Judith River, in Judith Basin, Montana, to be diverted from Sage Creek at a point in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 13, Township 15 North, Range 12 East, M.P.M., and used for supplemental irrigation on a total of 212 acres, more or less, in said Section 13 from April 1 to September 1, inclusive of each year.
3. The Department received timely objections from Mary and John Tripp, D. L. Metrovich on behalf of Metrovich Ranch Company, Raymond W.

and Marion A. Deegan, George D. Deegan, Walter Hajenga, Eddy Neill, G. W. and Joyce Clark, James Dye, Kenneth C. Dye, and Hughes and Sons Cattle Co.

4. There are at times of the year when there are unappropriated waters in the source of supply available for appropriation by the Applicant for the purposes herein applied for.

5. The Objector, John Tripp, is located below the Applicant's ranch and has about 320 acres. He generally runs cattle on his ranch and has about 30 in the summer and about 200 in the fall and uses the Sage Creek for stock purposes. Mr. Tripp has two wells and are between 11 and 15 feet deep. The well at the house has never gone dry, but the other well went dry last year. Mr. Tripp remembers 1959 as being a pretty dry year when Sage Creek was extremely low.

6. The Objector, Mr. Metrovich, is upstream from the Applicant about 7 or 8 miles. Mr. Metrovich irrigates about 50 acres of hay and waters about 200 head of cattle in the summer and 150 head in the winter. Mr. Metrovich has three apparent prior water rights with an 1892 priority date. The water was used to irrigate approximately 100 acres; that acreage has since been considerably reduced because of water availability. Mr. Metrovich has one well about 18 feet in depth which is used for stock-watering purposes. Mr. Metrovich pointed out that Sage Creek generally floods in April and goes down as the summer progresses and dries up pretty much during the middle of the summer.

7. The Objector, Raymond E. Deegan, is about 15 miles downstream from the point of diversion and uses the water of Sage Creek primarily for

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stockwatering purposes. He is in partnership with his brother George and together they run approximately 300 head of cattle year round and use Sage Creek for stockwatering purposes. Mr. Deegan has a well 1308 feet deep which generally provides sufficient water for his needs.

8. The Objector, George Deegan, is approximately 13 miles downstream from the point of diversion. Along with his brother, he runs approximately 800 head of cattle using the waters of Sage Creek for stockwatering purposes. He has one artesian well which is approximately 1280 feet deep with a well head pressure of 150 pounds.

9. The Objectors, Mr. and Mrs. Clark, are approximately 3 miles downstream from the Applicant and water approximately 30 head of cattle and 350 head of sheep from Sage Creek. They also use the waters of Sage Creek for garden and lawn purposes. They have two wells, both of which are about 20 feet deep and both of which went dry in 1959. One is approximately 20 feet from the stream and the other 500 feet from the stream. According to the Clarks, there is a connection between the stream and the water in their wells.

10. Mr. James Dye is located approximately 2 miles downstream from the Applicant's point of diversion and just upstream from the Clarks. He is leasing the place from his dad and uses the water of Sage Creek to water approximately 150 head of cattle from March 1 to June 15 and between 30 and 40 head of cattle from June 15 to October 1 of each year. He has approximately 60-70 acres of hay land meadows located near Sage Creek which are sub-irrigated by Sage Creek.

11. Mr. Kenneth Dye is the father of James and was very helpful in giving us some history as to the water levels of Sage Creek. Mr. Dye

remembers that during the 30's he had to dig the well deeper for the house and dug another well for livestock. There was irrigation in the later 20's but this was discontinued in the 30's and has not commenced since then. During the sixty-four years with which he is familiar with Sage Creek, the creek generally starts drying up during the middle of the summer and continues to dry up until fall when it generally is the driest.

12. Mr. Hughes is located at the head of the creek about 10 miles upstream from the point of diversion and is a neighbor of the Objector, Mr. Metrovich. Mr. Hughes has an apparent prior water right to approximately 35 to 50 miners inches, which would be approximately 1 cfs, and irrigates about 30 to 40 acres of hay. Mr. Hughes also uses the water of Sage Creek to water between 300 to 350 head of livestock. Mr. Hughes has one well which was six feet deep and is used for houses and yard and generally has plenty of water. Mr. Hughes also uses the water for stock-watering for about 200 head of cattle.

13. Approximately 100 head of antelope and 100 head of deer also use the waters of Sage Creek year round for watering purposes.

14. The waters which the Applicant would generally depend upon would come from the general runoff and also one big spring located on the Soulsby place, which is approximately 2 miles upstream from the point of diversion.

15. There was no representative from the Kochivar Ranch at the hearing, but from testimony it appears that the ranch does use

the waters of Sage Creek for some irrigation and that they probably have the first right along the creek.

16. Based upon the above Proposed Findings of Fact, the following Proposed Conclusions of Law are hereby made:

PROPOSED CONCLUSIONS OF LAW

1. The Application for Beneficial Water Use Permit No. 7360-s41S should be granted in accordance with the provisions of Chapter 8, Title 89 of the Revised Codes of Montana.

2. Pursuant to Section 89-886(1), R.C.M. 1947, valid rights of prior appropriators must be protected in the issuance of a beneficial water use permit.

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

4. The issuing of a Provisional Permit in no way reduces the Applicant's liability for damage caused by the appropriation nor does the Department in issuing a Provisional Permit in any way acknowledge liability for damage caused by the Applicant's exercise of his Provisional Permit.

5. 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 herein applied for, to the extent necessary to reach a conclusion herein.

6. Mr. Ridgeway's request that the application be amended to correspond with the number of acres actually being irrigated is hereby

granted. The application shall be amended to include irrigation of 170 acres instead of the 212 acres originally applied for and the per annum consumption of water shall be reduced from 295 acre-feet to 237 acre-feet per annum.

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

PROPOSED ORDER

1. Subject to the conditions cited below, the Applicant's Provisional Permit No. 7360-s41S is hereby granted allowing for the appropriation of 1.11 cubic feet per second or 500 gallons per minute of water and not to exceed 237 acre-feet per annum, from Sage Creek, a tributary of the Judith River, in Judith Basin County, Montana, to be diverted from Sage Creek at a point in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 13, Township 15 North, Range 12 East, M.P.M., and used for supplemental irrigation on a total of 170 acres, more or less, in said Section 13 from April 1 to September 1, inclusive, of each year.

2. The Provisional Permit is granted subject to all prior water rights in the source of supply, including, but not limited to, those appurtenant to the lands owned by the Objectors herein and subject to any final determination of prior existing water rights in the source of supply as provided for by Montana Law.

3. The issuing of a Provisional Permit by the Department in no way reduces the Applicant's liability for damage caused by the Applicant's exercise of his Provisional Permit nor does the Department, in issuing a Provisional Permit, in any way acknowledge liability for damage caused by the Applicant's exercise of his Provisional Permit.

4. The Applicant shall also install and maintain an adequate flow meter or other applicable measuring device on the pumping facility at Sage Creek which will pump the water to the sprinkler system. Records must also be kept and maintained and shall be supplied upon request to the Department.

5. The Applicant shall also establish some type of measuring system along Sage Creek in the vicinity either immediately upstream or immediately below stream, the point of diversion. The two culverts that were discussed at the hearing may be used for this particular purpose. The Applicant shall keep records as to the flows of Sage Creek during periods of withdrawal and the records shall be supplied upon request to the Department. The Applicant shall cooperate with other water users in scheduling withdrawals so that the periods of diversion will not adversely affect prior water rights.

NOTICE

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

DATED this 14<sup>th</sup> day of March, 1977.

  
GARY L. SPAETH  
HEARING EXAMINER