

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR
BENEFICIAL WATER USE PERMIT NO. 7486-s42M BY DOHRMANN ENTERPRISES INC. }
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

ATK 1980

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on December 22, 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 stipulations cited below, the Applicant's Provisional Permit No. 7486-s42M is hereby granted allowing the appropriation at a rate not to exceed 1.64 cubic feet of water per second or 737.1 gallons of water per minute and a quantity not to exceed 459 acre-feet of water per annum for irrigation and 1 acre-foot of water per annum for stock watering, totaling 460 acre-feet of water per annum, to be diverted from an unnamed tributary of the South Fork of Cottonwood Creek, in Wibaux County, Montana, to be impounded in an enlarged, existing reservoir with a new capacity of 350 acre-feet on said unnamed tributary at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 16 North, Range 59 East, M.P.M., and used for new irrigation purposes on 50 acres in the SE $\frac{1}{4}$ of Section 14, 80 acres in the NE $\frac{1}{4}$ and 40 acres in the NW $\frac{1}{4}$ of Section 23, all in Township 16 North, Range 59 East, M.P.M., Wibaux County, Montana, and containing a total of 170 acres, more or less, from May 1 to November 1, inclusive, of each year, and to be used for stock-watering purposes from January 1 to December 31, inclusive, of each year.

2. Construction of diversion and storage facilities shall not commence until such time as the Applicant has submitted to the Department of Natural Resources and Conservation, for approval by the Engineering Bureau of the Department, plans and specifications for an adequate drainage device consisting of at least a 6- to 8-inch diameter gated tube located at the base of the proposed structure, plus a stabilized emergency spillway. The proposed diversion and storage facilities shall not be constructed without such adequate drainage devices, as approved by the Department.

3. The Provisional Permit is issued subject to any final determination of the existing water rights, as provided by Montana Law.

4. The Provisional Permit is granted subject to any and all prior water rights in the source of supply.

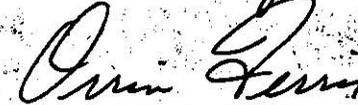
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5. The Issuing of a Provisional Permit by the Department in no way reduces the Applicant's liability for damage caused by the Applicant's exercise of his Provisional Permit, nor does the Department in issuing a Provisional Permit in any way acknowledge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

Recommendation

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

Done this 4th day of February, 1977.



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)	
No. 7486-s42M, BY DOHRMANN)	<u>PROPOSAL FOR DECISION</u>
ENTERPRISES, INC.)	

Pursuant to the Montana Water Use Act and to the Montana Administrative Procedures Act, after due notice, a hearing requested by the Applicant in the above-described matter was held in the Jury Room of the Dawson County Courthouse, Glendive, Montana, on Monday, November 22, 1976, at 1:30 p.m., Richard Gordon, Legal Counsel and Hearing Examiner for the Department of Natural Resources and Conservation, presiding.

Mr. Terry Dohrmann, Vice-President of Dohrmann Enterprises, Inc., personally appeared on behalf of the Applicant herein. Mr. Fran Mertes also appeared on behalf of the Applicant.

Mr. Don Riddle personally appeared on behalf of the Department of Natural Resources and Conservation. Mr. Keith O. Nelson of the United States Soil Conservation Service also appeared personally as a Department witness in response to a subpoena issued by the Hearing Examiner at the request of the Department.

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

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On February 13, 1976, the Department received Application for Beneficial Water Use Permit No. 7486-s42M, from Dohrmann Enterprises, Inc., requesting to appropriate 1.64 cubic feet of water per second or 737.1 gallons of water per minute, and not to exceed 459 acre feet of water per annum for irrigation, and 1 acre-foot of water per annum for stockwatering, constituting a total of 460 acre feet of water per annum, from an unnamed tributary of the South Fork of Cottonwood Creek in Wibaux County, Montana, to be impounded in an enlarged existing reservoir with a new capacity of 350 acre feet on said unnamed tributary at a point in the SE1/4 SW1/4 SW1/4 of Section 14, Township 16 North, Range 59 East of the Montana Principal Meridian, and used for new irrigation on 50 acres in Section 14, and 120 acres in Section 23, all in Township 16 North, Range 59 East of the Montana Principal Meridian, and containing a total of 170 acres, more or less, from May 1 to November 1, inclusive, of each year, and to be used for stockwatering from January 1 to December 31, inclusive, of each year.

2. No objections were received to the above-described Application. The Applicant requested a hearing to determine what the Department was requiring of the Applicant in issuing the requested Provisional Permit, "subject to the permanent installation of an adequate drainage device".

3. Pursuant to 89-886(1), R. C.M. 1947, the Department may require modification of plans and specifications for the appropriation or related diversion or construction.

4. Pursuant to 82-4209(4), R.C.M. 1947, unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed statement, consent order or default.

5. Such informal disposition is not precluded by law in the instant matter.

6. At hearing it was orally stipulated to by all parties that the "adequate drainage device" requirement could be met in the instant matter through the submission to the Department by the Applicant of specific plans to include at least a 6 to 8 inch diameter gated tube located at the base of the proposed structure, plus a stabilized emergency spillway, conditioned further upon subsequent approval of such plans by the Engineering Bureau of the Department of Natural Resources and Conservation.

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

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PROPOSED ORDER

1. Subject to the stipulations cited below, the Applicant's Provisional Permit No. 7486-s42M is hereby granted allowing the appropriation at a rate not to exceed 1.64 cubic feet of water per second or 737.1 gallons of water per minute and a quantity not to exceed 459 acre feet of water per annum for irrigation and 1 acre foot of water per annum for stockwatering, totaling 460 acre feet of water per annum, to be diverted from an unnamed tributary of the South Fork of Cottonwood Creek in Wibaux County, Montana, to be impounded in an enlarged existing reservoir with a new capacity of 350 acre-feet on said unnamed tributary at a point in the SE1/4 SW1/4 SW1/4 of Section 14, Township 16 North, Range 59 East of the Montana Principal Meridian and used for new irrigation purposes on 50 acres in the SE1/4 of Section 14, 80 acres in the NE1/4 and 40 acres in the NW1/4, both in Section 23, all in Township 16 North, Range 59 East of the Montana Principal Meridian, Wibaux County, Montana, and containing a total of 170 acres, more or less, from May 1 to November 1, inclusive, of each year, and to be used for stockwatering purposes from January 1 to December 31, inclusive, of each year.

2. Construction of diversion and storage facilities shall not commence until such time as the Applicant has submitted to the Department of Natural Resources and Conservation, for approval by the Engineering Bureau of the Depart-

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ment, plans and specifications for an adequate drainage device consisting of at least a 6 inch to 8 inch diameter gated tube located at the base of the proposed structure, plus a stabilized emergency spillway. The proposed diversion and storage facilities shall not be constructed without such adequate drainage devices, as approved by the Department.

3. The Provisional Permit is issued subject to any final determination of the existing water rights, as provided by Montana Law.

4. The Provisional Permit is granted subject to any and all prior water rights in the source of supply.

5. 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 its 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 its Provisional Permit.

NOTICE

This is a Proposed Order and will not become final until accepted by the Administrator of the Water Resources Division, Department of Natural Resources and Conservation. Written exceptions to the this Proposed Order, if any, shall

be filed with 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 22nd day of December, 1976.

Richard Gordon

RICHARD GORDON
HEARING EXAMINER