

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR
BENEFICIAL WATER USE PERMIT NO.
7853-g41B BY SPENCE STODDARD

} FINDINGS OF FACT, CONCLUSIONS OF
} LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on August 4, 1977, by the hearing examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

FINAL ORDER

1. Application for Beneficial Water Use Permit No. 7853-g41B by Spence Stoddard is hereby granted allowing the applicant to appropriate 1.78 cubic feet per second or 800 gallons per minute of water and not to exceed 240 acre-feet per annum, in Beaverhead County, Montana, to be diverted by means of a well, approximately 70 feet deep, at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, Township 7 South, Range 8 West, M.P.M., and used for new irrigation on 40 acres in Section 32, Township 6 South, Range 8 West, M.P.M., and 40 acres in Section 5, Township 7 South, Range 8 West, M.P.M., and containing a total of 80 acres, more or less, from May 1 to November 1, inclusive, of each year.
2. The total appropriation granted by this provisional permit and any documented prior ground-water rights the Applicant may claim and establish at some future time for the same point of diversion shall not exceed a rate and volume in excess of the greater of this permit or the prior ground-water rights.
3. The Applicant's permit is granted subject to all prior existing water rights in the source of supply, and any final determination of existing water rights as provided by Montana law.
4. Upon receipt of notification from the Department of Natural Resources and Conservation that prior appropriators on the source of supply are being unduly adversely affected by this appropriation, applicant, or his successor, shall

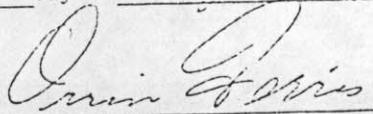
CASE # 7853

immediately cease withdrawing water from the source and shall not resume pumping until such time as the Department provides written notice to the Applicant or his successor to that effect.

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 record of water used for their own proof of their water rights and use.

Done this 8th day of September, 1977.



Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 7853

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) PROPOSAL FOR DECISION
7853-g41B BY SPENCE STODDARD)

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice a hearing on objections to the above application was held in the Courtroom of the Beaverhead County Courthouse at Dillon, Montana, on July 7, 1977, William F. Throm, Hearing Examiner, presiding.

Mr. Spence Stoddard, the Applicant, appeared on his own behalf and presented testimony in support of the application. No exhibits were entered into evidence by Mr. Stoddard, nor was he represented by legal counsel. Also appearing to testify in support of the application were Lucy M. Hayden and George Laknar.

Twenty-one timely objections to this application were received by the Department of Natural Resources and Conservation. Seven of these objectors appeared at the hearing to present testimony in objection to issuance of the permit. They were: Messers Holger and Marle Carlson, Mrs. James H. Knapp, Mr. and Mrs. Lloyd T. Dodd, Mr. Herman I. Kamp, Mr. William D. Eddie, Mr. and Mrs. James A. Watkins, and Mrs. Virginia L. Schreiber. No exhibits were entered into evidence by the Objectors. No Objector was represented by counsel.

Mr. Tom Patton, Water Resources Division Geologist, appeared at the hearing to present testimony and evidence on behalf of the Department. Mr. Patton introduced into evidence Department's Exhibit A, a report "Summary Relationships (7853-g41B)" with 4 attachments. Attachment No. 1 is a Memorandum from himself to file No. 7853-g41B dated November 22, 1976. Attachment No. 2 and 3 are draw-down graphs in time in days and distance in feet respectively; Attachment No. 4 is a map of the area depicting generalized water table, drawdown cone, and the

CASE # 7853

location of points of diversion for Objectors appearing at the hearing.
Department's Exhibit A was entered into evidence without objection.

PROPOSED FINDINGS OF FACT

1. On March 30, 1976, the Department of Natural Resources received Application for Beneficial Water Use Permit No. 7853-g41B from Spence Stoddard to appropriate 1.78 cubic feet per second or 300 gallons per minute of water and not to exceed 240 acre-feet per annum, in Beaverhead County, Montana, to be diverted by means of a well, approximately 70 feet deep, at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, Township 7 South, Range 8 West, M.P.M., and used for new irrigation on 40 acres in Section 32, Township 6 South, Range 8 West, M.P.M., and 40 acres in Section 5, Township 7 South, Range 8 West, M.P.M., and containing a total of 80 acres, more or less, from May 1 to November 1, inclusive, of each year.

2. On October 1, 8 and 15, 1976 the Department caused to be duly published in the Tribune-Examiner, Dillon, Montana, Notice of said Application for Beneficial Water Use Permit No. 7853-g41B.

3. Timely objections to this application were received by the Department as follows:

October 8, 1976	from	Herman I. Kamp
October 15, 1976	from	Evelyn I. Dodd
October 15, 1976	from	Arlo Richard Herman
October 26, 1976	from	David L. and Linda L. Martin
November 18, 1976	from	Ed P. Clark
November 18, 1976	from	Holger Carlson and Marle Carlson
November 18, 1976	from	Mr. & Mrs. James H. Knapp

The following untimely objections were received by the Department:

November 22, 1976	from	Clarence J. Ruff
November 22, 1976	from	A petition signed by 61 property owners in the Dillon area
December 9, 1976	from	Mrs. Virginia L. Schreiber
December 9, 1976	from	August J. Schreiber
December 10, 1976	from	Robert F. Boka and Lois M. Boka
December 14, 1976	from	William D. Eddie

December 15, 1976	from	Ira L. Walker
December 15, 1976	from	John and Lois Schuler
December 17, 1976	from	James A. and Theola Watkins
December 17, 1976	from	Lloyd T. Dodd and Evelyn Dodd
December 17, 1976	from	Clarence J. and Corolin L. Ruff
December 22, 1976	from	Richard Herman
December 22, 1976	from	Fred Stokke
December 22, 1976	from	Mr. & Mrs. Kale Kivinen
December 22, 1976	from	Mrs. Jackie Roberts
December 22, 1976	from	Orlando and Gaylia Otero

4. Mr. Spence Stoddard testified that the point of diversion consists of a new well drilled to a depth of about 61 feet in the same location as an old hand dug well which was about 20 feet in depth and filed on in 1963 by Mr. Ray Nelson. The original well was used for irrigation on the 80 acres which he (Spence Stoddard) is now proposing to irrigate with the new drilled well by means of an 800 gallon per minute turbine pump, 40 horsepower motor, and portable mainline with hand placed laterals. He further testified that he did not believe there would be an adverse affect to prior appropriators but should such affect result he would honor all prior rights and shut down his pump.

5. Mrs. Lucy M. Hayden presented testimony on behalf of the Applicant which substantially verified the location and purpose of use of the old hand dug well and the date of appropriation. She further testified to the effect that a high water table exists in the area and that she did not believe applicant's appropriation would adversely affect prior water rights holders.

6. Mr. George Laknar presented testimony on behalf of the Applicant substantially verifying the presence of an old hand dug well at the same location, within a few feet, of the present drilled well and the purpose of use being to irrigate the 80 acres applicant proposed to irrigate.

7. Objectors Holger Carlson, Mrs. James Knapp, Mr. and Mrs. Lloyd Dodd, Herman Kamp, William Eddie, James Watkins and Mrs. Virginia L. Schreiber testified that they feared the appropriation from the 61 foot depth would dry up their wells. They further expressed a concern that the new well at a

61 foot depth was penetrating an aquifer different from the aquifer that the old hand dug well was taking water from. Mrs. Schreiber questioned whether the new well was drilled at the exact location of the old well to which Spence Stoddard responded that it was as close as the equipment could get and within a very few feet.

8. Tom Patton, Water Resources Division Geologist, presented testimony on behalf of the Department and included in Department's Exhibit "A" with attachments, showing that in his professional judgement that only one aquifer exists from shallow depths to 60 feet; that the aquifer is recharged from the Beaverhead River; that based on present data Applicant's appropriation would have no significant adverse affect on prior water rights appropriators from the source of supply; that the amount of drawdown should not exceed 2.6' at a 1000' radius from the pumping well; that relatively few domestic wells exist within this radius (1000'); that the average well in this area has 25.9' of water standing in it (based on appropriation forms) and 25.9' based on 10 wells measured 6-30-77; that all wells known to the Department will still produce adequate water to accommodate their water rights; and that there is no evidence to show that the aquifer is overappropriated. For example, recharge exceeds discharge in the summer season.

9. Don Nye, Beaverhead County Planner, appeared and questioned the availability of a sufficient ground water supply to provide for future home site developments in the area. The Beaverhead County Planning Board did not file a timely objection to this application, nor was it considered within the jurisdiction of this hearing to consider projected future adverse affects; therefore, Mr. Nye's remarks were ruled irrelevant to this issue.

10. There is a high ground water table in the general area of the point of diversion and there is unappropriated water in the source of supply.

PROPOSED CONCLUSIONS OF LAW

1. The Objectors to this application have apparent prior appropriations to the ground waters from the source of supply.
2. Under the provisions of Section 89-830, R.C.M. 1947, a permit is required to appropriate water from the source of supply.
3. Although the Applicant has an apparent filed groundwater right, this Application for Beneficial Water Use Permit is for a new well and has been duly considered and processed as such which does not preclude Applicant from exercising priority rights based on such filed right if properly documented and adjudicated at some future date.
4. There are unappropriated waters in the source of supply.
5. The rights of prior appropriators will be protected if the permit is conditioned to protect those rights.
6. The proposed means of diversion is adequate.
7. The proposed use of water is a beneficial use.
8. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.
9. The criteria for issuance of a permit set forth in Section 89-885, R.C.M. 1947, have been met.
10. The Application for Beneficial Water Use Permit may be granted in accordance with the provisions of Chapter 3 of Title 89 of the Laws of the State of Montana.

Based upon the above proposed Findings of Fact and Conclusions of Law, the following Order is proposed.

PROPOSED ORDER

1. Application for Beneficial Water Use Permit No. 7853-g41B by Spence Stoddard is hereby granted allowing the applicant to appropriate 1.78 cubic feet per second or 800 gallons per minute of water and not to exceed 240 acre-feet per annum, in Beaverhead County, Montana, to be diverted by means of a well, approximately 70 feet deep, at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, Township 7 South, Range 8 West, M.P.M., and used for new irrigation on 40 acres in Section 32, Township 6 South, Range 8 West, M.P.M., and 40 acres in Section 5, Township 7 South, Range 8 West, M.P.M., and containing a total of 80 acres, more or less, from May 1 to November 1, inclusive, of each year.

2. The total appropriation granted by this provisional permit and any documented prior groundwater rights the Applicant may claim and establish at some future time for the same point of diversion shall not exceed a rate and volume in excess of the greater of this permit or the prior ground water rights.

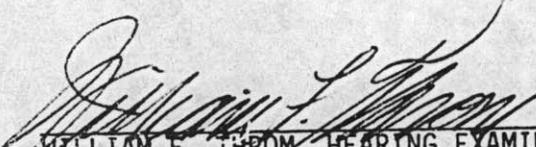
3. The Applicant's permit is granted subject to all prior existing water rights in the source of supply, and any final determination of existing water rights as provided by Montana law.

4. Upon receipt of notification from the Department of Natural Resources and Conservation that prior appropriators on the source of supply are being unduly adversely affected by this appropriation, applicant, or his successor, shall immediately cease withdrawing water from the source and shall not resume pumping until such time as the Department provides written notice to the Applicant or his successor to that effect.

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 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 4th day of August, 1977.


WILLIAM F. THROM, HEARING EXAMINER

CASE # 7853