STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMITS NOS. 7887-g76H AND 7889-s76H BY LOYAL M. AND JANET C. DOPP

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FILED
APR 9 1990

The proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on November 9, 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 conditions cited below, the Applicants' Provisional Permit No. 7887-g76H is hereby granted allowing the appropriation of 0.44 cubic feet of water per second, equivalent to 200 gallons of water per minute, not to exceed 51 acre-feet of water per annum for irrigation and 1.5 acre-feet of water per annum for fish, wildlife, and stockwatering purposes, constituting a total of 52.5 acre-feet of water per annum, from undeveloped springs, tributaries of Little Creek, in Ravalli County, Montana, to be diverted from said springs at a point in the E½ SW¼ SW¼ of Section 32, Township 9 North, Range 20 West, M.P.M., and impounded in two ponds having capacities of one acre-foot and 0.5 acre-foot, respectively, and used for supplemental irrigation on a total of 20 acres, more or less, in said Section 32, from April 1 to October 1, inclusive, of each year, and for fish, wildlife, and stockwatering purposes from January 1 to December 31, inclusive, of each year.

2. Subject to the conditions cited below, the Applicants' Provisional Permit No. 7889-s76H is hereby granted allowing the appropriation of 1 cubic foot of water per second, equivalent to 449 gallons of water per minute, not to exceed 20 acre-feet of water per annum from waste water and overflow, carried by a ditch from Carl Baldwin, Sr., irrigation, a tributary of Little Creek (Westler Gulch) in Ravalli County, Montana, to be diverted from said ditch at a point in the E½ SW¼ SW¼ of Section 32, Township 9 North, Range 20 West, M.P.M., and used for supplemental irrigation on a total of 5 acres, more orless, in said Section 32, from February 1 to October 31, inclusive, of each year.

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Provisional Permits are granted subject to all prior water rights in the source of supply, including but not limited to those objecting to the applications and claiming existing water rights.

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

5. This Provisional Permit is granted subject to any final determination of prior existing water rights in the source of supply as provided by Montana law.

6. During the irrigation season the Applicants, in the exercise of their Provisional Permit No. 7889-s76H, shall observe the irrigation practice of Mr. and Mrs. Dennis H. Barbian, Objectors herein, and the Applicants may divert water pursuant to said Provisional Permit only if Mr. and Mrs. Barbian either are not appropriating water or are allowing water to flow by their point of diversion.

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 11th day of January, 1976.

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

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

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NOS. 7887-g76H and 7889-s76H BY LOYAL M. AND JANET C. DOPP

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 applications was held in the courtroom of the Ravalli County Courthouse, Hamilton, Montana, on Wednesday, September 22, 1976, at approximately 1:15 p.m., Daniel G. Diemert, Hearing Examiner, presiding.

Mr. and Mrs. Dopp appeared at the hearing and presented testimony in support of their application.

After explaining the applications to the objectors present at the hearing, it was determined that there was no objection to the Application No. 7887-g76H. The Objectors, however, did maintain their opposition to Application No. 7889-s76H. Objections to the applications were received from Mr. and Mrs. Tom Powers, Roy L. Trotter, Kyle Brinkerhoff, Aletha Brown, Mr. and Mrs. Dennis H. Barbian and Roberta A. Hartford. Attending the hearing in opposition to the application were Mrs. Tom Powers, Roy L. Trotter, Mr. and Mrs. Barbian, Mr. Hartford and Mrs. Schaffer.

John and Joyce Ciemny and Vickie Myerson attended the hearing in support of the application.

Mr. Jim Rehbein 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

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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, permits are required to appropriate waste water carried by a ditch which is tributary to Little Creek and to develop springs which are tributaries of Little Creek, in Ravalli County, Montana.

2. On April 2, 1976, the Department received an Application for Beneficial Water Use Permit No. 7887-g76H from Loyal M. and Janet C. Dopp who sought to appropriate 0.44 cubic feet of water per second, equivalent to 200 gallons of water per minute, and not to exceed 51 acre-feet of water per annum for irrigation and 1.5 acre-feet of water per annum for fish and wildlife, for stockwatering purposes, constituting a total of 52.5 acre-feet of water per annum, from undeveloped springs, tributaries of Little Creek, in Ravalli County, Montana, to be diverted from said springs at a point in the E1/2 SW1/4 SW1/4 of Section 32, Township 9 North, Range 20 West, Montana Principal Meridian, and impounded in two new ponds having capacities of 1 acre-foot and 0.5 acre-foot respectively, and used for supplemental irrigation on a total of 20 acres, more or less, in said Section 32, from April 1 to October 1, inclusive, of each year, and for fish, wildlife, and stockwatering purposes from January 1 to December 31, inclusive, of each year.

3. On April 2, 1976, the Department received an Application for Beneficial Water Use Permit No. 7889-s76H from Loyal M. and Janet C. Dopp who sought to appropriate 1 cubic-foot of water per second, equivalent to 449 gallons of water per minute, not to exceed 20 acre-feet of water per annum from waste and overflow, carried by a ditch from Carl Baldwin, Sr., irrigation, a tributary of Little Creek (Westler Gulch), in Ravalli County, Montana, to be diverted from

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said ditch at a point in the E1/2 SW1/4 SW1/4 of Section 32, Township 9 North, Range 20 West, M.P.M., and used for supplemental irrigation on a total of 5 acres, more or less, in said Section 32, from February 1 to October 31, inclusive, of each year.

4. At the hearing it was determined that those persons who had submitted objections had misunderstood the applications and all objections were amended to reflect an objection to Application No. 7889-s76H only and not Application No. 7887-g76H.

5. There are times of the year when there are unappropriated waters in the sources of supply.

6. If Application No. 7889-s76H is conditioned to allow the appropriation of water at times when there are unappropriated waters available, the rights of prior appropriators will not be adversely affected.

7. It appears that the proposed means of diversion or construction are adequate.

8. The proposed use of water to irrigate and for fish, wildlife, and stockwatering purposes are beneficial uses.

9. 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.

10. The Applicant has not asked for an appropriation of 15 cubic feet per second or more in either of the applications. It therefore is not necessary to prove by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected.

PROPOSED CONCLUSIONS OF LAW

1. The Application for Beneficial Water Use Permit No. 7887-g76H should be granted in accordance with the provisions of Chapter 8, Title 89 of the

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Revised Codes of Montana.

2. The Application for Beneficial Water Use Permit No. 7889-s76H should be granted in accordance with the provisions of Chapter 8, Title 89 of the Revised Codes of Montana.

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

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

5. The issuing of a Provisional Permit in no way reduces the Applicants' 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 Applicants' exercise of their Provisional Permit.

6. Nothing decided herein has bearing on the status of water rights claimed by the Applicants 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.

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 Applicants' Provisional Permit No. 7887-g76H is hereby granted allowing the appropriation of 0.44 cubic feet of water per second, equivalent to 200 gallons of water per minute, not to exceed 51 acre-feet of water per annum for irrigation and 1.5 acre-feet of water per annum for fish, wildlife, and stockwatering purposes, constituting a total of 52.5 acre-feet of water per annum, from undeveloped springs,

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tributaries of Little Creek, in Ravalli County, Montana, to be diverted from said springs at a point in the E1/2 SW1/4 SW1/4 of Section 32, Township 9 North, Range 20 West, M.P.M., and impounded in two ponds having capacities of one acre-foot and 0.5 acre-foot, respectively, and used for supplemental irrigation on a total of 20 acres, more or less, in said Section 32, from April 1 to October 1, inclusive, of each year, and for fish, wildlife, and stockwatering purposes from January 1 to December 31, inclusive, of each year.

2. Subject to the conditions cited below, the Applicants' Provisional Permit No. 7889-s76H is hereby granted allowing the appropriation of 1 cubic foot of water per second, equivalent to 449 gallons of water per minute, not to exceed 20 acre-feet of water per annum from waste water and overflow, carried by a ditch from Carl Baldwin, Sr., irrigation, a tributary of Little Creek (Westler Gulch) in Ravalli County, Montana, to be diverted from said ditch at a point in the E1/2 SW1/4 SW1/4 of Section 32, Township 9 North, Range 20 West, M.P.M., and used for supplemental irrigation on a total of 5 acres, more or less, in said Section 32, from February 1 to October 31, inclusive, of each year.

3. The Provisional Permits are granted subject to all prior water rights in the source of supply, including but not limited to those objecting to the applications and claiming existing water rights.

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

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5. This Provisional Permit is granted subject to any final determination of prior existing water rights in the source of supply as provided by Montana law.

6. During the irrigation season the Applicants, in the exercise of their Provisional Permit No. 7889-s76H, shall observe the irrigation practice of Mr. and Mrs. Dennis H. Barbian, Objectors herein, and the Applicants may divert water pursuant to said Provisional Permit only if Mr. and Mrs. Barbian either are not appropriating water or are allowing water to flow by their point of diversion.

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 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 9th day of November, 1976.

Daniel G. Diemert

DANIEL G. DIEMERT
HEARING EXAMINER

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