

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. )  
8631-s39G BY ROBERT MORRISON )

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 2, 1978, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order, except that the Proposed Order is hereby modified by adding items 4, 5 and 6.

FINAL ORDER

1. Subject to the conditions cited below, the Application for Beneficial Water Use Permit No. 8631-s39G by Robert Morrison is hereby granted to appropriate 11.13 cubic feet of water per second or 5,000 gallons of water per minute, not to exceed 75 acre-feet per annum to be diverted from an unnamed west fork of Beaver Creek, a tributary of Beaver Creek in Fallon County, Montana, by means of a pump at a point in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 3, Township 9 North, Range 60 East, M.P.M., and used on a total of 50 acres, more or less, in said Section 3, for new irrigation purposes by water spreading from January 1, to September 1, inclusive, of each year.

2. The Permit is provisional and is subject to all prior existing water rights in the source of supply, including but not limited to prior decreed water rights, if any, and not necessarily limited to all existing water rights of those objecting herein, and subject to any final determination of prior existing water rights, as provided by Montana law.

3. The Provisional Permit is subject to the following additional conditions:

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6. The above conditions to the granting of this Provisional Permit shall hold in effect for any successor in interest to the Permittee herein named.

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 14<sup>th</sup> day of April, 1978.



Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

**CASE # 8631**

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 ) PROPOSAL FOR DECISION  
NO. 8631-s39G )  
BY ROBERT MORRISON )

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Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on November 15, 1977, at Baker, Montana, for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit No. 8631-s39G by Robert Morrison, William F. Thom, Hearing Examiner, presiding.

The Applicant, Robert Morrison, appeared at the hearing and presented testimony in support of the application. Mr. Morrison was not represented by legal counsel. No exhibits were introduced supporting the application. No other witnesses appeared at the hearing to offer testimony in support of the application.

Three Objectors attended the hearing and presented testimony or statements. The Objectors were not represented by legal counsel. The Objectors introduced 9 exhibits supporting their objection to wit: Exhibit No. 1, records pertaining to Ralph Rustad's dikes; Exhibit No. 2, map showing drainage area and proposed development; Exhibit No. 3, Notice of Completion of Ground Water Appropriation By Means of Well, including Driller's Log; Exhibit No. 4, Water Quality Sample taken near Ollie, Montana to prove evidence of salinity; Exhibit No. 5, areal photo copy showing areas of salinity; Exhibit No. 6, Yellowstone-Tongue A.P.O. Report; Exhibit No. 7, Saline Seep Detection by Visual Observations; Exhibit No. 8, Cultural Practices for Control of Saline Seep in the Northern Plains; and Exhibit No. 9, Safflower Growing is Better than Summer - Fallowing. The Objector's exhibits were marked

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On August 31, 1976, the Department received an objection to the same application from Iron Rod Ranches, Inc., by Ralph Rustad, President.

4. Mr. Robert Morrison testified that his proposed irrigation system will be by means of a water spreading system on 50 acres or less. The diversion will be by means of a pump with a capacity of 13 cubic feet per second. A dug-out or pit would be excavated adjacent to the channel of the unnamed west fork tributary of Beaver Creek at the point of diversion. Overflow from the source would fill the pit from which the water would be pumped. There would be no dam or excavation in the creek bed itself. Mr. Morrison testified that he has consulted with Soil Conservation Service technicians concerning the project and they have assured him that in a normal year there should be plenty of water for the project without adversely affecting the Rustad's prior water rights. He testified that the Soil Conservation Service technicians have also assured him that they do not expect his project to cause saline seep problems that would adversely affect the Rustads. Mr. Morrison further testified that he would construct the project in accordance with Soil Conservation Service plans and specifications.

5. Mr. Stan Jones testified that the source of supply for the point of the proposed diversion consists of about 10,000 acres and that by using Soil Conservation Service estimates of normal yields from such a watershed during an average year 240 acre-feet could be expected from a 2 year frequency storm and 500 acre-feet from snowmelt. This would produce a total average annual yield of 740 acre-feet run-off. Mr. Jones also cited a soil Conservation Service trip report (Department Exhibit No. 3) in which it was stated that the soil (of the proposed project area) is a gravelly clay loam that would benefit from additional water and that a water spreading system should increase production on this soil. The trip report further stated that if soil is properly irrigated so that only that amount needed for hay production is applied, no water should move through the profile to cause seeps

the creek water is high in salt, he stated that the water analysis was made by the Yellowstone-Tongue A.P.O. and if the Yellowstone Tongue management plan is approved by the Governor then the Environmental Protection Agency, the Agricultural Stabilization Service, among others, will be called upon to make an evaluation of the potential for salinity problems prior to funding irrigation related projects. He stated that it is his personal belief that a technical evaluation needs to be made of every proposed project in the highly sensitive seep areas in Fallon County in accordance with the Yellowstone-Tongue Report. Mr. Rustad further testified that as the water level in the creek dwindles the salt content increases and that return flows from the proposed irrigation project will pick up salts and further increase the salinity of the water which, in turn, will adversely affect their prior water rights for irrigation and stock water uses. Mr. Rustad testified that their (the Rustad's) total irrigation consisted of about 70 acres.

8. Allen Rustad testified that from his personal standpoint as an elected member of the Little Beaver Conservation District, that he could not condone this project in view of its potential devastating affects on the proposed or surrounding acreage. Further, he stated that it is his belief that the proposed project is not in the best interests of land conservation. He stated that there is approximately 5,100 acres less drainage area for the Applicants source of supply than there is for the point of diversion for the Rustad project and with the 12 years of record showing that in only 4 years of that time has there been an adequate supply, and only 3 years with a surplus, he questioned the potential of the smaller watershed to produce sufficient runoff to support the Applicant's project.

9. High water table and saline seep problems presently exist in the area, however, the Objector's testimony that their reservoir and water spreading system, to their knowledge, has not resulted in seep problems,

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5. The proposed means of diversion or construction will be adequate if built in accordance with Soil Conservation Service plans and specifications and if said plans and specifications are approved by the Department prior to the start of construction.

6. The proposed use of water is a beneficial use.

7. 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.

8. The Application for Beneficial Water Use Permit No. 8631-s39G by Robert Morrison may be granted in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana.

PROPOSED ORDER

1. Subject to the conditions cited below, the Application for Beneficial Water Use Permit No. 8631-s39G by Robert Morrison is hereby granted to appropriate 11.13 cubic feet of water per second or 5,000 gallons of water per minute, not to exceed 75 acre-feet per annum to be diverted from an unnamed west fork of Beaver Creek, a tributary of Beaver Creek in Fallon County, Montana, by means of a pump at a point in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 3, Township 9 North, Range 60 East, M.P.M., and used on a total of 50 acres, more or less, in said Section 3, for new irrigation purposes by water spreading from January 1 to September 1, inclusive, of each year.

2. The Permit is provisional and is subject to all prior existing water rights in the source of supply, including but not limited to prior decreed water rights, if any, and not necessarily limited to all existing water rights, of those objecting herein, and subject to any final determination of prior existing water rights, as provided by Montana Law.

3. The Provisional Permit is subject to the following additional conditions:

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make oral arguments before the Administrator of the Water Resources Division.

DATED this 2<sup>nd</sup> day of March, 1978.

  
WILLIAM F. THROM  
HEARING EXAMINER

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