

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.)
9314-s76D BY WILLIAM A. STEVENS)

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on July 27, 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. 9314-s76D is hereby granted allowing for the appropriation of 0.33 cubic feet per second or 150 gallons per minute of water and not to exceed 240 acre-feet per annum from Therriault Creek, a tributary of Mud Creek, in Lincoln County, Montana. The water is to be impounded in an offstream 10-acre-foot reservoir. The water is to be diverted from Therriault Creek at a point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, Township 36 North, Range 26 West, M.P.M., Lincoln County, Montana, and used for fish purposes from January 1 to December 31, inclusive, of each year.

2. This Provisional Permit is granted provided the inlet structure is properly maintained and operated so as to be able to be shut off or closed down at certain times when there is not water available for this appropriation or when this appropriation adversely affects downstream appropriations; and further, the outlet of the offstream reservoir is capable and does release an amount reasonably equal to the inflow back to Therriault Creek; and further, the initial filling of the reservoir be accomplished during the high, spring runoff period; and further, that the upper 1.5 feet of storage of the present reservoir pond also be filled during the high, spring runoff and then released to meet the evaporation losses during a time during the irrigation season when such evaporation losses might adversely affect downstream appropriators who have herein objected. This appropriation shall still be limited to 240 acre-feet per annum.

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3. The Applicant shall install and maintain an adequate measuring device, and keep a record of all quantities of water diverted as well as the period of diversion. Such record shall be presented to the Department for inspection upon demand by the Department.

4. 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.

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.

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

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 1st day of September, 1977.

Orvin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
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PROPOSAL FOR DECISION

Pursuant to the Montana Water Use Act and to the Montana Administrative Procedures Act, after due notice a hearing on the objections to the above-described application was held in the Lincoln Electric Co-Op Meeting Room No. 2, at Eureka, Montana, beginning at 2 p.m., Laurence J. Siroky, hearing examiner, presiding.

William A. Stevens attended the hearing and presented testimony in support of his application.

The objector, Glen Lake Irrigation District of Eureka, Montana, appeared through Richard Brinton of Eureka, Montana.

Objector Edric W. Vredenburg III of Eureka appeared personally and was represented by Douglas D. Dasinger, associate of Murphy, Robinson, Heckathorn & Phillips of Kalispell, Montana.

James Rehbein attended the hearing on behalf of the Department of Natural Resources and Conservation.

EXHIBITS

The Applicant offered into evidence eleven exhibits, to wit:

1. Photograph of the inlet structure from Therriault Creek, located at a point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, Township 36 North, Range 26 West, M.P.M., Lincoln County, Montana, for this application.
2. Photograph of the offstream storage reservoir for this application.
3. Photograph of the 18-inch C.M.P. outlet and emergency spillway of the offstream storage reservoir for this application.
4. Photograph of the offstream storage reservoir showing the water level after drainage.
5. Photograph of the inlet ditch to the offstream storage reservoir from Therriault Creek for this application.
- 6 and 7. Photographs of storage ponds in the Bitterroot Valley.
8. Drawing by the applicant of the cross-section of the offstream reservoir embankment materials.
9. Drawing by the Applicant of a hydrologic cycle.

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Permit is conditioned to allow the appropriation only at such times when the appropriation will not adversely affect existing water rights.

6. It appears that the proposed means of diversion and construction are adequate. The proposed use of water for fish 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 Applicant has not asked for an appropriation of 15 cubic feet per second or more. 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. Pursuant to Sections 89-880 and 89-889, R.C.M. 1947, a Beneficial Water Use Provisional Permit is required to appropriate the water sought to be appropriated by the Applicant herein.

2. If granted, the Application for Beneficial Water Use Permit No. 9314-s76D must be granted in accordance with the provisions in Chapter 8, Title 89, of the Revised Codes of Montana.

3. Based upon the above Proposed Findings of Fact and any provisional conditions and limitations appearing therein, it is concluded that the criteria for issuance of a Provisional Permit delineated at Section 89-885, R.C.M. 1947, have been met.

4. 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.

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

6. 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.

7. Nothing decided herein has bearing on the status of water rights claimed by the Applicant other than those applied for, nor does anything decided herein have bearing on 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.

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

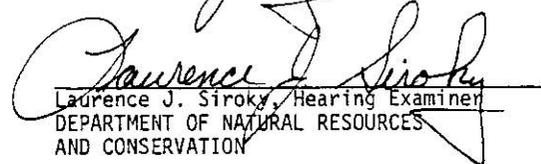
RECOMMENDATION

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.

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 mailed to the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions opportunity will be granted to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

Dated this 27th day of July, 1977.


Laurence J. Siroky, Hearing Examiner
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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