

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. )  
9847-s40J BY PAMELA D. AND ORLIE )  
LINN )

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 November 30, 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 Applicants' Pamela D. and Orlie Linn, Provisional Permit No. 9847-s40J is hereby granted allowing the appropriation of no more than 4.45 cubic feet of water per second or 2,000 gallons per minute, not to exceed 80 acre-feet per annum from the Milk River, in Phillips County, Montana, to be diverted from the Milk River by means of a pump at a point in Lot 9, Section 17, Township 32 North, Range 34 East, M.P.M., and used for new irrigation on 20 acres in Section 17, and 20 acres in Section 20, all in said township and range and containing a total of 40 acres, more or less, from April 15 to October 15, inclusive, of each year.

2. The above Provisional Permit is granted subject to all prior existing water rights in the source of supply, including but not necessarily limited to all valid prior existing rights in the source of supply of those objecting herein.

3. Any final determination of existing water rights as provided by Montana Law.

4. The Permittees may appropriate water only at such times when said appropriation will not adversely affect prior existing water rights in the source of supply.

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5. The Permittees shall install and maintain adequate measuring devices and keep a record of all quantities of water diverted and the periods of diversion and shall supply said records to the Department upon request.

6. The waters appropriated may be diverted only during extreme, high, spring runoff through June 15, or when the Bureau of Reclamation is spilling at Vandalia Diversion Dam. During all other periods the Permittees shall allow the flow to pass their diversion to satisfy prior existing water rights.

7. The Permittees shall contact the Bureau of Reclamation at Malta at the start of each irrigation season to determine the current water supply conditions and the availability of water for their use.

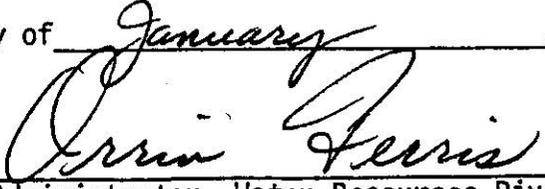
8. The Permittees shall contact the Glasgow and Malta Irrigation Districts at the start of each irrigation season to determine current water supply conditions and the availability of water for their use.

9. The conditions specified above relating to Vandalia Diversion Dam may be modified by the Department upon receipt of further evidence or determinations by the Department pertaining to the water rights of the United States Government in the source of supply and in storage reservoirs on the Milk River.

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 log of records of water used for their own proof of their water rights and protection.

Done this 3<sup>rd</sup> day of January, 1978.

  
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Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

\* \* \* \* \*

IN THE MATTER OF APPLICATION FOR )	
BENEFICIAL WATER USE PERMIT )	
NO. 9847-s40J BY )	<u>PROPOSAL FOR DECISION</u>
PAMELA D. AND ORLIE LINN )	
AND NO. 9966-s40J BY )	
COLGATE ROBINSON )	

\* \* \* \* \*

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice, a hearing was held August 24, 1977 at Malta, Montana, for the purpose of hearing objections to the above named Applications for Beneficial Water Use Permits, William F. Throm, Hearing Examiner, presiding.

The Applicants Pamela D. and Orlie Linn appeared at the Hearing and presented testimony in support of their Application No. 9847-s40J. They were not represented by legal counsel, nor did they present any exhibits in support of their Application.

Mr. Colgate Robinson appeared at the Hearing to testify on behalf of his Application No. 9966-s40J. He was not represented at the Hearing by legal counsel, nor did he present any exhibits in support of his Application.

Objectors present at the Hearing were the U.S. Bureau of Reclamation and the Malta and Glasgow Irrigation Districts. The Bureau of Reclamation was represented by Mr. Ed Bartlett, Attorney at Law and by Mr. Gordon Aycock, both from the Bureau of Reclamation Regional Office, Billings, Montana. The Malta Irrigation District was represented by Ted Ereaux, President, Robert McEwen, Commissioner, Frederick Mavincamp, Project

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Manager, and Ms. Faye E. Seel, Secretary. The Glasgow Irrigation District was represented by Sever Enkrud, President, Mark Etchart, Commissioner, Vern Steiner, Project Manager, and Ms. Faye E. Seel, Secretary. Mr. Ed Bartlett of the Bureau of Reclamation caused to be introduced into evidence two exhibits to wit: Fresno Reservoir Storage graph and Milk River Basin flow records at Vandalia, Montana. These exhibits were received into the record without objection and were marked as USBR Exhibit No. 1 and No. 2 respectively.

Ms. Vivian Lighthizer, Officer Manager, Water Rights Bureau Field Office, Glasgow, Montana presented testimony on behalf of the Department of Natural Resources and Conservation and introduced into evidence eight exhibits to wit: Exhibit No. 1, Listing of Water Rights on the Milk River consisting of 9 pages; Exhibit No. 2, Monthly Flow Figure Averages of Milk River at Havre; Exhibit No. 3, Monthly Flow Figure Averages of Milk River at Harlem, Vandalia and Tampico; Exhibit No. 4, Monthly Discharge Records Milk River Basin consisting of 16 pages; Exhibit No. 5, a photo of the Linn pumpsite; and Exhibits No. 6, 7, and 8 consisting of a series of 3 photos of the Robinson pumpsite. These Exhibits were received into evidence without objection and were marked as Department Exhibits 1 to 8 respectively.

PROPOSED FINDINGS OF FACT

1. On September 13, 1976 the Department received Application for Beneficial Water Use Permit No. 9847-s40J from Orlie and Pamela D. Linn wherein the Applicants requested to appropriate

4.45 cfs or 2000 gpm of water, not to exceed 80 acre-feet per annum from the Milk River, in Phillips County, Montana, to be diverted from the Milk River by means of a pump at a point in Lot 9, Section 17, Township 32 North, Range 34 East, M.P.M., and used for new irrigation on 20 acres in Section 17 and 20 acres in Section 20, all in said township and range and containing a total of 40 acres, more or less, from April 15 to October 15, inclusive, of each year.

2. On October 19, 1976 the Department received Application for Beneficial Water Use Permit No. 9966-s40J from Colgate Robinson wherein the Applicant requested to appropriate 13.36 cfs or 6000 gpm of water, not to exceed 420 acre-feet per annum from the Milk River, in Phillips County, Montana, to be diverted from the Milk River by means of two pumps at points in the NE 1/4 NE 1/4 SE 1/4 of Section 5 and the SE 1/4 NE 1/4 SW 1/4 of Section 10, all in Township 32 North, Range 32 East, M.P.M., and used for new irrigation on 118 acres in Section 4, 20 acres in Section 5, 23 acres in Section 9, 44 acres in Section 10, and 5 acres in Section 11, all in the aforementioned township and range and containing a total of 210 acres, more or less, from April 15 to September 15, inclusive, of each year.

3. On December 9, 16 and 23, 1976 the Department caused to have published in the Phillips County News, Malta, Montana, a Public Notice of Application No. 9966-s40J, and on January 20, 27 and February 3, 1977 the Department caused to have published in the same newspaper a Public Notice of Application No. 9847-s40J.

4. The Department received Objections to Application No. 9966-s40J as follows:

- (1) December 16, 1976 from Malta Irrigation District and Glasgow Irrigation District.
- (2) January 6, 1977 from Bryan J. Edwards, for Robert L. McPhail, Regional Director, U.S. Bureau of Reclamation.
- (3) January 27, 1977 from Stuart MacKenzie, Attorney at Law representing Fort Belknap, Paradise Valley, Alfalfa, Zurich, Harlem, Dodson, Malta, and Glasgow Irrigation Districts.

5. The Department received Objections to Application No. 9847-s40J as follows:

- (1) January 27, 1977 from Stuart MacKenzie, Attorney at Law representing Fort Belknap, Paradise Valley, Alfalfa, Zurich, Harlem, Dodson, Malta, and Glasgow Irrigation Districts.
- (2) February 11, 1977 from Faye E. Seel representing the Malta and Glasgow Irrigation Districts.
- (3) March 4, 1977 from Bryan J. Edwards for Robert L. McPhail, Regional Director, U.S. Bureau of Reclamation, Billings, Montana.

6. Mrs. Pamela D. Linn testifying in support of the Linn Application for Beneficial Water Use Permit No. 9847-s40J stated that additional water is needed from the Milk River in order to

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increase production from their lands; that runoff from lands they own is contributing to the supply of the Milk River and that they should be allowed to use this water and further that they, being users of the waters of the Milk River, are well aware of the shortage of water supply and feel that this application should serve as a mandate to the proper authorities to take the necessary steps to supply supplemental water to the Milk River water users. Mrs. Linn further described their intentions concerning the proposed project.

7. Mr. Colgate Robinson testified on behalf of his Application for Beneficial Water Use Permit No. 9966-s40J. He stated he would rather obtain water from the Milk River on contract from the Bureau of Reclamation, but that the Bureau maintains there is no more water available therefore his only recourse is to obtain a permit for pumping of water, when available, from the Milk River. Mr. Robinson testified that at times water is available and at such times he would apply the water to irrigate the additional acreage as specified in his Application.

8. Mr. Ed Bartlett, U.S. Bureau of Reclamation, testified as to the Bureau of Reclamations rights and responsibilities to water users in the various Irrigation Districts on the Milk River. He reviewed reservoir management schemes and testified as to how the Bureau of Reclamation uses the Milk River as a carrier to supply stored water flow. He further testified that he felt the Milk River was already over-appropriated but recognized that at times, during flood seasons, there is excess water. Mr. Bartlett reviewed conditions under which the Bureau of Reclamation would

not object to the granting of permits to the Applicants. Specifically these conditions were:

- (1) Subject to all existing water rights in the source of supply.
- (2) Any final determination of existing water rights as provided by Montana Law.
- (3) The Applicants may appropriate water only at such times when said appropriation will not adversely affect prior existing water rights in the source of supply.
- (4) The permittees shall install and maintain adequate measuring devices and keep a record of all quantities of water diverted and the periods of diversions and shall supply said records to the Department upon request.
- (5) The waters appropriated may be diverted<sup>t</sup> only during extreme, high, spring runoff through June 15 or when the Bureau of Reclamation is spilling at Vandalia Diversion Dam. During all other periods the permittees shall allow the flow to pass their diversion to satisfy prior existing water rights.
- (6) The permittees shall contact the Bureau of Reclamation at Malta at the start of each irrigation season to determine the current water supply conditions and the

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availability of water for his use.

(7) The permittees shall contact the Glasgow and Malta Irrigation Districts at the start of each irrigation season to determine the current water supply conditions and the availability of water for his use.

(8) The conditions contained above relating to Vandalia Diversion Dam may be modified by the Department upon receipt of further evidence or determinations by the Department pertaining to the water rights of the United States Government in the source of supply and in storage reservoirs on the Milk River.

9. All objectors present at the Hearing agreed to the above stated conditions.

10. The Applicants for Beneficial Water Use Permits No. 9847-s40J and No. 9966-s40J agreed to the above stated conditions.

11. The above stated conditions are substantially as proposed by the Department prior to scheduling of the Hearing.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880 R.C.M. 1947, a Beneficial Water Use Permit is required by the Applicants to appropriate water from the proposed source of supply.

2. The objectors have apparent existing water use rights which by law must be protected, however, the final determination of such rights must await the adjudication process mandated by

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Section 89-870 et seq., of the Montana Water Use Act, and any permits issued must be subject to that final determination.

3. There are at times unappropriated waters in the source of supply, however, said unappropriated waters are normally available only during periods of high spring runoff or other periods of extremely high, long duration precipitation over a wide area of the watershed. Such unappropriated water may not be available at times when the water can be put to the use proposed by the Applicants, nor in the amount the Applicants seek to appropriate, nor throughout the period during which the Applicants seek to appropriate the amount requested.

4. The rights of prior appropriations will not be adversely affected if the permits are conditioned so as to protect those rights.

5. The proposed means of diversion will be adequate.

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 Applications for Beneficial Water Use Permit No's. 9847-s40J and 9966-s40J 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 Applicants; Pamela D. and Orlie Linn, Provisional Permit No. 9847-s40J is hereby granted allowing the appropriation of no more than 4.45

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cubic feet of water per second or 2,000 gallons per minute, not to exceed 80 acre-feet per annum from the Milk River, in Phillips County, Montana, to be diverted from the Milk River by means of a pump at a point in Lot 9, Section 17, Township 32 North, Range 34 East, M.P.M., and used for new irrigation on 20 acres in Section 17, and 20 acres in Section 20, all in said township and range and containing a total of 40 acres, more or less, from April 15 to October 15, inclusive, of each year.

2. Subject to the conditions cited below, the Applicant; Colgate Robinson's, Provisional Permit No. 9966-s40J is hereby granted allowing the appropriation of no more than 13.36 cubic feet of water per second or 6,000 gallons per minute, not to exceed 420 acre-feet per annum from the Milk River, in Phillips County, Montana, to be diverted from the Milk River by means of two pumps at points in the NE 1/4 NE 1/4 SE 1/4 of Section 5, and the SE 1/4 NE 1/4 SW 1/4 of Section 10, all in Township 32 North, Range 32 East, M.P.M., and used for new irrigation on 118 acres in Section 4, 20 acres in Section 5, 23 acres in Section 9, 44 acres in Section 10, and 5 acres in Section 11, all in aforementioned township and range and containing a total of 210 acres, more or less, from April 15 to September 15, inclusive, of each year.

3. The above Provisional Permits are granted subject to all prior existing water rights in the source of supply, including but not necessarily limited to all valid prior existing rights in the source of supply of those objecting herein.

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5. The Permittees may appropriate water only at such times when said appropriation will not adversely affect prior existing water rights in the source of supply.

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8. The Permittees shall contact the Bureau of Reclamation at Malta at the start of each irrigation season to determine the current water supply conditions and the availability of water for their use.

9. The Permittees shall contact the Glasgow and Malta Irrigation Districts at the start of each irrigation season to determine current water supply conditions and the availability of water for their use.

10. The conditions specified above relating to Vandalia Diversion Dam may be modified by the Department upon receipt of further evidence or determinations by the Department pertaining to the water rights of the United States Government in the source of supply and in storage reservoirs on the Milk River.

NOTICE

This is a Proposal for Decision and will not become final until accepted by the Administrator of the Water Resources

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Division, Department of Natural Resources and Conservation.  
Written exceptions to the Proposal, if any, should be filed with  
the Department within ten (10) days of service herein. Upon  
receipt of any written exceptions, opportunity will be provided  
to the exceptor and to all adversely affected parties to file  
briefs and make oral arguments before the Administrator of the  
Water Resources Division.

Dated this 30<sup>th</sup> day of November, 1977.

  
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WILLIAM F. THROM  
Hearing Examiner

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