

EXHIBIT "B"

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) FINDINGS OF FACT, CONCLUSIONS
9969-g76L BY RONALD JACOBSON) OF LAW, AND ORDER

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 clarifying Item 1, revising Item 3(f) and adding new Items 4, 5 and 6.

FINAL ORDER

1. Subject to the conditions cited below, the Application for Beneficial Water Use Permit No. 9969-g76L by Ronald Jacobson is hereby granted as amended at the hearing to appropriate and not to exceed 90 acre-feet of water per annum, in Lake County, Montana, to be diverted from an existing flowing well, approximately 240 feet deep, at a rate of 15 gallons per minute for an existing stock-watering right during the nonirrigation season, and at a rate of 125 gallons per minute during the irrigation season, at a point in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 22 North, Range 23 West, M.P.M., and stored in a new 21.4 acre-foot pit reservoir and pumped from said pit reservoir from April 15 to October 15, inclusive, of each year, at a rate of 200 gallons per minute and used for new irrigation on 20 acres in the SE $\frac{1}{4}$ and supplemental irrigation on 20 acres in the SW $\frac{1}{4}$ in said Section 28, and containing a total of 40 acres, more or less.

2. The above is a Provisional Permit and is granted subject to all prior existing water rights in the source of supply including, but not limited to, prior decreed rights, if any, and not necessarily limited to all existing water rights

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in the source of supply of those objecting herein, and is further subject to any final determination of prior existing water rights as provided by Montana law.

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

- a) This permit is inclusive of, not additional to, prior use rights the Permittee may establish from the same source of supply and point of diversion.
- b) The Permittee shall install and maintain a satisfactory flow-meter on the diversion from the pit and shall keep record of the periods, rate of flow, and volumes of water diverted and shall make such records available to the Department upon request.
- c) The Permittee shall install and maintain a satisfactory control valve on the well and shall operate same so as to manage water levels in the pit reservoir to preclude overflow through either the mechanical or principle spillway of the structure.
- d) The Permittee shall manage the pit reservoir water level in such a manner that at the end of each irrigation season and not later than October 15 of each year, the reservoir is depleted to the extent that a volume of not to exceed 9.5 acre-feet remains in storage.
- e) During the period October 15 to April 15 of each water year, the Permittee shall operate the control valve on the well in such a manner that the flow from the well shall not exceed 15 gallons per minute.

f) The Permittee shall submit plans and specifications for this project to the Department for review and approval prior to the start of construction, within 180 days after receipt of the Provisional Permit or within an extension of time authorized by the Department.

4. The Provisional Permit is granted subject to the right of the Department to revoke the permit in accordance with Section 89-387, R.C.M. 1947, and to enter onto the premises for investigative purposes in accordance with Section 89-393, R.C.M. 1947.

5. The issuing of a Provisional Permit by the Department in no way reduces the Permittee's liability for damage caused by the Permittee'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 Permittee's exercise of his Provisional Permit.

6. The above condition 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 14th day of April, 1978.



Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 9966

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 9969-g76L)
BY RONALD JACOBSON)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on November 2, 1977, at Plains, Montana, for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit, William F. Throm, Hearing Examiner, presiding.

The Applicant, Ronald Jacobson, appeared at the hearing and presented testimony in support of the application. Mr. Jacobson was represented by legal counsel, Mr. Leonard L. Kaufman, Attorney at Law. One exhibit was introduced supporting the application, to wit: Applicant's Exhibit No. 1, a map of the proposed project showing the location of the dam and fields numbered parcels A, B, and C. The Applicant's exhibits were marked accordingly and received into the record without objections.

Others appearing at the hearing and testifying in support of the application were Howard A. Orr, Soil Conservation Technician, Plains Field Office, Soil Conservation Service.

Six Objectors attended the hearing and presented testimony or statements. The Objectors were not represented by legal counsel. The Objectors introduced no exhibits supporting their objections. Objectors present were Mr. Arvid Kopp, Mr. Raymond M. Hughes, Mr. Dwight Preston, Mr. Charles E. Baxter, Mr. Don L. Perrin, and Mr. Leon Perrin.

Montana Department of Natural Resources and Conservation personnel and witnesses present and testifying on behalf of the Department were Jim

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Scabain, Kalispell Field Office Manager, Water Rights Bureau, and Steve White, Department Geologist. The Department was not represented by legal counsel. Six exhibits were introduced by the Department to wit: Exhibit No. 1-A to 1-F, a series of six photos of the existing well and surroundings; Exhibit No. 2, a photo of the proposed dam site; Exhibit No. 2-A and 2-B, two photos of the new acreage to be irrigated; Exhibit No. 3, a photo of the Jacobson existing artesian well and valve; Exhibit No. 4, a copy of a topographic map showing the proposed point of diversion; and Exhibit No's. 5 and 6, photos of the existing flowing well and stock watering facilities. The Department exhibits were marked accordingly and received into the record without objections.

PROPOSED FINDINGS OF FACT

1. On October 21, 1976, the Department received an Application for Beneficial Water Use Permit No. 9969-g76L by Ronald L. Jacobson to appropriate 0.44 cubic feet per second or 200 gallons per minute of water and not to exceed 90 acre-feet per annum in Lake County, Montana, to be diverted by means of a well, approximately 240 feet deep, at a point in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 22 North, Range 23 West, M.P.M., and impounded in a new 60-acre-foot pit and used for new irrigation on 40 acres and supplemental irrigation on 40 acres in said Section 28, and containing a total of 80 acres, more or less, from April 15, to October 15, inclusive, of each year.

2. On March 10, 17, and 24, 1977, the Department caused to be duly published in the Flathead Courier, Polson, Montana, notice of the above application for Beneficial Water Use Permit No. 9969-g76L.

3. On May 27, 1977, the Department received from John R. Gordon, Attorney at Law of the firm Murray, Donahue and Kaufman, representing the Applicant, a correction to the above application brought about by the final design computations as follows: The surface area of the designed reservoir

will be approximately 3.6 acres with an average depth of 3.5 feet. The estimated storage capacity will be 21.4 acre-feet, not 60 acre-feet. An amendment to the above application was also requested for a beneficial use of supplemental irrigation on 20 acres of existing irrigation in the southeast quarter and 20 acres of new irrigation in the southwest quarter for a total application of 40 acres, not 80 acres.

4. The Department received objections to the above application from the following:

- April 5, 1977 from Arvid Kopp
- April 8, 1977 from Raymond J. and Marian Oberlander
- April 14, 1977 from Helen J. Perrin
- April 15, 1977 from Raymond M. Hughes
- April 15, 1977 from Charles E. Baxter
- April 26, 1977 from Dwight Preston
- April 26, 1977 from Leon Perrin

5. The Applicant testified that in view of final design figures received from the Soil Conservation Service for the proposed structure that the original application was necessarily amended. The Applicant testified the proposed reservoir would have a storage capacity of 21.4 acre-feet. The reservoir would be an off-channel structure with controlled inflow from an artesian flowing well, from which water would be pumped at the rate of 200 gallons per minute during the irrigation season and used for irrigation by a wheel-line sprinkler system on 20 acres of existing irrigated land and 20 acres of new irrigated land. During periods other than the irrigation season the flowing well would be reduced by means of a control valve, to a rate of flow of 15 gallons per minute, for livestock watering purposes. The Applicant further testified that his management plans are to deplete the reservoir storage at the time of the last fall irrigation at which time the inflow from the artesian flow-

ing well will be reduced to 15 gallons per minute during winter months for storage in the reservoir for livestock water. At the beginning of the irrigation season the valve on the flowing well would again be opened for full flow of approximately 125 gallons per minute to fill the reservoir for irrigation purposes. The Applicant testified that under his present method of operation there is inefficient uses of water and labor and that the proposed method of irrigation and livestock water use would result in less groundwater withdrawal. The Applicant testified that he has an established use right dating from the mid 60's when he purchased the property; that the well was drilled in the late 50's and was initially used for flood irrigation of about 20 acres; that approximately four years ago he installed a hand carried line and increased the irrigated land to 40 acres of irrigated land identified as parcels "A" and "B" on his Exhibit No. 1 in addition to a livestock water use right. He testified that this application is for a change in purpose and place of use of that water and for no more than has been established by this use. He testified that when this system is installed and in operation he will discontinue irrigation of the 20 acres in parcel "A" and will change the place of use to parcel "C" as identified on his Exhibit No. 1.

Mr. Howard Orr testified as to the design of the proposed impoundment structure. He stated that the foundation studies for the original structure across the tributary revealed that materials in the left abutement were unsatisfactory. Plans were, therefore, revised to provide for an off-channel impoundment with flow from the existing artesian well providing the source of supply. He testified that geology investigations for this alternate site revealed that a safe structure could be built and that the plans and specifications for this proposed structure would be in accordance with Soil Conservation Service standards. Mr. Orr further testified that the acreage to be irrigated consisted of good irrigable silt loam soils.

6. Mr. Rehbein testified that the Applicant's amended application is for 20 acres of new irrigation and 20 acres of supplemental irrigation and that the volume of 90 acre-feet requested is excessive. Mr. Rehbein testified that the beneficial use requirements for the 20 acres of new irrigation should not exceed 2.5 acre-feet per annum or 50 acre-feet and that possibly the beneficial use requirements for the supplemental irrigation on 20 acres should be limited ^{to} 1.0 acre-foot per annum or 20 acre-feet for a total beneficial use for new and supplemental irrigation of 70 acre-feet per annum.

7. Mr. Steve White testified that since the application is for the use of water from a well which has been flowing, and is for no additional volume than has been withdrawn from the source in the past, that he could offer no testimony to the effect that prior appropriators would be adversely affected by the granting of this permit. Mr. White did recommend that the withdrawal by the Applicant be capable of being monitored by requiring the installation of a flow meter on the pump line.

8. Mr. Dwight Preston testified that Mr. Jacobson has a record for complete disregard of water law, the rights of prior appropriators, and to the conditions placed upon previous permits granted to him by the Department. Mr. Preston stated that his concern was that Mr. Jacobson would not abide by conditions which might be placed upon this permit, if granted, any more than he had in the past and that he would continue to waste water and illegally withdraw from the ground water source thereby adversely affecting Mr. Preston's existing wells from this source as well as those of others.

9. Mr. Don Perrin testified that his objection to the issuance of the permit is because the reservoir is located approximately 200 feet from his house and that he is fearful of the safety hazard should the dam fail by reason of washout or seepage. He further stated he objects to the visual obstruction of the dike section and that the valuation of his property

would be adversely affected by the close proximity of the proposed structure.

10. Mr. Charles Baxter testified that nobody knows what affects the continual withdrawal of water from the source of supply will have on prior water rights and that a monitoring program should be initiated by the state so that these affects, if any, can be determined.

11. Mr. Arvid Kopp testified that the wells in this area are all interconnected and that withdrawal from one well will affect the supply from another. He testified that there should be a monitoring program and that reasonable limits should be placed upon the use of that water. He stated that he is convinced that 1.5 acre-feet per acre per annum would be ample. He stated that many years he gets by with 1.0 acre-foot per acre or less and gets two irrigations per season. He further stated that he does not have any particular objection to Mr. Jacobson's application, but that a flowing well, uncapped, will adversely affect other wells within a mile to a mile and one half.

PROPOSED CONCLUSIONS OF LAW

1. In spite of the Applicant's testimony that he has established a beneficial water use right for the rate of flow, period of time, and in the volume applied for and that this application is merely for a change in place and purpose of use of those waters, it is not within the scope of this hearing to rule on such matters. The quantification and final determination of the validity of beneficial use rights must be established in accordance with the procedures mandated by Section 89-870 et seq., of the Montana Water Use Act.

2. The application, as submitted and amended, was for a new appropriation and in accordance with the provisions of Section 89-880, R.C.M. 1947, a Beneficial Water Use Permit is required by the Applicant to appropriate water from the proposed source of supply.

3. The Objectors have apparent prior existing water rights from the proposed source of supply which by law must be protected. The quantification and final determination of the validity of such rights must also await

the adjudication process mandated by Section 89-870 et seq., of the Montana Water Use Act.

4. The evidence submitted by the Objectors failed to show that their prior existing water rights from the source of supply would be adversely affected.

5. The rights of prior appropriators will not be adversely affected if the permit is conditioned to protect those rights.

6. 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.

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 Application for Beneficial Water Use Permit No. 9969-g76L by Ronald Jacobson 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. 9969-g76L by Ronald Jacobson is granted as amended to appropriate 0.44 cubic feet per second or 200 gallons of water per minute not to exceed 90 acre-feet per annum, in Lake County, Montana, to be diverted by means of an existing well, approximately 240 feet deep, at a point in the SW $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 28, Township 22 North, Range 23 West, M.P.M., and impounded in a new 21.4 acre-foot pit and used for new irrigation on 20 acres and supplemental irrigation on 20 acres in said Section 28, and containing a total of 40 acres, more or less, from April 15 to October 15, inclusive, of each year.

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

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

- a) This Permit is inclusive of, not additional to prior use rights the Permittee may establish from the same source of supply and point of diversion.
- b) The Permittee shall install and maintain a satisfactory flow-meter on the diversion from the pit and shall keep record of the periods, rate of flow, and volumes of water diverted and shall make such records available to the Department upon request.
- c) The Permittee shall install and maintain a satisfactory control valve on the well and shall operate same so as to manage water levels in the pit reservoir to preclude overflow through either the mechanical or principle spillway of the structure.
- d) The Permittee shall manage the pit-reservoir water level in such a manner that at the end of each irrigation season and not later than October 15 of each year, the reservoir is depleted to the extent that a volume of not to exceed 9.5 acre-feet remains in storage.
- e) During the period October 15 to April 15 of each water year, the Permittee shall operate the control valve on the well in such a manner that the flow from the well

shall not exceed 15 gallons per minute.

- f) The Permittee shall submit plans and specifications for this project to the Department for review and approval prior to the start of construction.

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 after receipt of service of the Proposal for Decision upon parties herein. No extensions of time for filing exceptions will be granted. 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 20th day of March, 1978.


WILLIAM F. THROM
HEARING EXAMINER

AFFIDAVIT OF SERVICE
(Proposed Order)

STATE OF MONTANA)
) ss.
County of Lewis and Clark)

Ronald J. Guse, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That, on March 3, 1978, he copied in the United States mail, "certified mail, return receipt requested," a copy of the Proposed Order by the Department Hearing Examiner on the application by Ronald Jacobson, Application No. 9969-g76L, for a permit to appropriate water, addressed to each of the following persons or agencies: Certified No.'s 50806 to 50814

1. Mr. Ronald Jacobson, Hot Springs, MT 59845 (Applicant)
2. Mr. Raymond J. & Mrs. Marion Oberlander, Rural Route 1, Hot Springs, MT 59845
3. Mr. Arvid Kopp, Rural Route 3, Box 418, Hot Springs, MT 59845
4. Mr. Raymond M. Hughes, P.O. Box 457, Hot Springs, MT 59845
5. Mr. Dwight Preston, P.O. Box 636, Hot Springs, MT 59845
6. Mr. Charles E. Baxter, Hot Springs, MT 59845
7. Mr. Don L. & Ms. Helen J. Perrin, Rural Route 3, Box 467, Hot Springs, MT 59845
8. Mr. Leon Perrin, Rural Route 3, Box 395, Hot Springs, MT 59845
9. Mr. John L. Gordon, Attorney at Law, P.O. Box 899, Kalispell, MT 59901
and Mr. Leonard L. Kaufman, Attorney at Law, P.O. Box 899, Kalispell, MT 59901
10. Mr. James H. Rehbein, Water Rights Bureau Field Office, Department of Natural Resources & Conservation, P.C. Box 224, Kalispell, MT 59901 (Regular Mail).

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Ronald J. Guse

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this third day of March, 1978, before me, a Notary Public in and for said State, personally appeared Ronald J. Guse, known to me to be the Asst. Chief, Water Rights Bureau, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

T. J. Reynolds
Notary Public for the State of Montana

Residing at _____ NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires July 16, 1980

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