

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.)
10,021-g41H BY ESTELLE ACCOLA)
BACON)

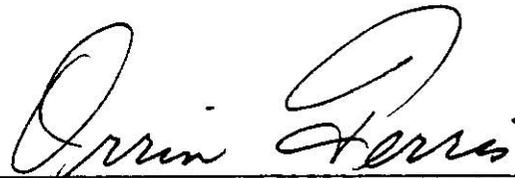
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on January 24, 1978 by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

FINAL ORDER

1. Application for Beneficial Water Use Permit No. 10,021-g41H by Estelle Accola Bacon, proposing to appropriate 2.89 cubic feet of water per second or 1,300 gallons of water per minute and not to exceed 600 acre-feet per annum in Gallatin County, Montana, by means of a well, approximately 50 feet deep, at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 3 North, Range 5 East, M.P.M., is hereby denied.

Done this 3rd day of March, 1978.



Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 10021

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. 10,021-g41H)
BY ESTELLE ACCOLA BACON)

Pursuant to the Montana Water Use Act and to the Montana Administrative Procedures Act, after due notice, a hearing was held on October 14, 1977, at Bozeman, 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 did not appear at the hearing, but was represented by R.H. Bacon, Jr. (Manager with power of attorney). Also present to testify on behalf of the Applicant was Mr. James E. Moore, tennant. The Applicant was not represented by legal counsel. Two exhibits were introduced in support of the application to wit: Exhibit No. 1, a copy of an ASC photo map of the project area, and Exhibit No. 2, a copy of USDA, Soil Conservation Service Letter dated May 23, 1977, Subject: ENG - Irrigation Well for James Moore, Bozeman, Montana, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 17, T. 3 N., R. 5 E. Both exhibits were received into the record without objection and were marked as Applicant's Exhibit No. 1 and 2 respectively.

Objectors present at the hearing were Robert E. and Neva Brownell, Irving Snyder, Laurence L. Aten and Frank DeHaan. The Objectors were represented by H.A. Bolinger, Attorney at Law. Darrel E. Dunn, consulting hydro-geologist, appeared to testify on behalf of the Objectors. The Objectors introduced into evidence a copy of United States Geological Survey Geology Map I-452. This map was received into evidence without objection and was marked as Objector's Exhibit No. 1.

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Mr. Steve White, Department of Natural Resources and Conservation Geologist appeared and gave testimony on behalf of the Department. No exhibits were introduced by the Department.

PROPOSED FINDINGS OF FACT

1. On November 1, 1976, the Department received Application for Beneficial Water Use Permit No. 10,021-g41H from Estelle Accola Bacon to appropriate 2.89 cubic feet per second or 1,300 gallons per minute of water and not to exceed 600 acre-feet per annum in Gallatin County, Montana, to be diverted by means of a well, approximately 50 feet deep, at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 17, T. 3 N., R. 5 E., M.P.M., and used for new irrigation on a total of 280 acres, more or less, in said Sec. 17, from April 15 to October 15, inclusive, of each year.

2. On March 31 and April 7 and 14, 1977 the Department caused to be duly published in the Bozeman Daily Chronicle, Bozeman, Montana, notice of the above Application for Beneficial Water Use Permit No. 10,021-g41H.

3. On May 17, 1977 the Department received an objection to the above application from Richard, Horace and Frank Morgan, Inc.

4. On May 18, 1977 the Department received objections to the above application from the following: Irving Snyder, Neva Brownell, Robert E. and Clara M. Brownell, Alfred C. and Laurence L. Aten, James Earl Craver, and Gallatin-Madison Ranch Company by Frank DeHaan.

5. Mr. R.H. Bacon testified on behalf of the Applicant that the proposed development will consist of the construction of a large diameter-shallow well with tile interceptors 6 feet to 8 feet in depth which will cross a swampy area on the Applicant's property and outlet into the well from which water will be pumped at the rate of 1,300 gallons per minute to provide new irrigation by means of a sprinkler system to a total of 280 acres, more or less, of hay, pasture and small grains. Mr. Bacon testified that the land now covered

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by swamps is unproductive; that water being consumed by the phreatophytes now present and lost through evaporation would be put to a more beneficial use by this proposal and that by construction of the project it could be possible that more water might be available to the Objectors and other prior appropriators from the source of supply than is presently available. Mr. Bacon and Mr. James E. Moore testified that there are no well defined channels for the swampy areas that would provide surface flow to the tributaries of Dry Creek and that they did not believe the objectors or prior water rights holders would be adversely affected by construction of the project and the appropriation of the water requested by this application.

6. The Objectors testified that Dry Creek is an adjudicated stream for which there are no surplus waters during many years and during the irrigation season of most normal years; that they have prior rights on Dry Creek and that the Applicant's proposed source of supply would adversely affect their prior rights by withdrawing ground water which stabilizes the flow of Dry Creek during summer months and dry periods.

7. Mr. Steve White, Department Geologist and Mr. Darrel E. Dunn, consulting Hydro-Geologist presented substantially the same testimony, i.e., the proposed source of supply is hydrologically connected to tributary sources of Dry Creek; that any withdrawals from the ground water supply would deplete the supply of Dry Creek by the amount of the volume withdrawn; that it is doubtful if the volume of water salvaged by the elimination of phreatophytes would enhance the supplies to Dry Creek as the water consumed by crops grown on the reclaimed land and remaining phreatophytes in areas not reclaimed would leave little net benefits, if any, to Dry Creek. The Applicant's Exhibit No. 2, consisting of an evaluation of the potential of the proposed project to yield a supply of water for irrigation purposes indicated that yields at the rate of

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500 to 800 gallons per minute could be expected. Mr. White's and Mr. Dunn's testimony substantiated the estimate which was made by Mr. Eddie Juvan, Engineering Geologist, Soil Conservation Service, and is substantially less than the 1,300 gallons per minute requested by the Applicant.

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 Applicant to appropriate water from the proposed source of supply.

2. The Objectors have apparent prior existing and/or decreed water rights from the source of supply which, by law, must be protected, however, the quantification and final determination of the validity of such rights must await the adjudication process mandated by Section 89-870 et seq., of the Montana Water Use Act.

3. There are not unappropriated waters in the source of supply in the amount the Applicant seeks to appropriate; and throughout the period during which the Applicant seeks to appropriate, the amount requested is not available.

4. The rights of prior appropriators will be adversely affected.

5. The Application for Beneficial Water Use Permit No. 10,021-g41H by Estelle Accola Bacon should be denied.

PROPOSED ORDER

1. The Application for Beneficial Water Use Permit No. 10,021-g41H by Estelle Accola Bacon is denied to appropriate 2.89 cubic feet per second or 1,300 gallons per minute and not to exceed 600 acre feet per annum in Gallatin County, Montana, by means of a well, approximately 50 feet deep, at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 17, T. 3 N., R. 5 E., M.P.M.

NOTICE

This is a Proposed Order and will not become final until accepted by the

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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 24th day of January, 1978.


WILLIAM F. THROM
HEARING EXAMINER

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