

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR EXTENSION OF TIME TO PERFECT)
CHANGE CLAIMED WATER RIGHT) FINAL ORDER
AUTHORIZATION NO. G10442-41S)
GRANTED TO JOYCE POSPISIL)

* * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the April 26, 1990 Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

The Application for Extension of Time to Perfect Authorization to Change Appropriation Water Right No. G10442-41S is granted. Appropriator shall complete the appropriation works and put the water to beneficial use as specified in the Authorization on or before November 30, 1990, and file the Notice of Completion of Change of Appropriation Water Right, Form No. 618, on or before said date.

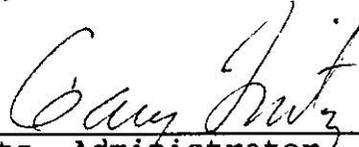
NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a peti-

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tion in the appropriate court within 30 days after service of the Final Order.

Dated this 25 day of July, 1990.



Gary Fritz, Administrator
Department of Natural Resources
and Conservation
Water Resource Division
1520 East 6th Avenue
Helena, Montana 59620-2301
(404).444-6605

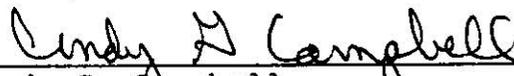
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 25th day of July, 1990 as follows:

Joyce Pospisil
P.O. Box 4
Moore, MT 59464

Charles R. Taylor
P.O. Box 131
Moore, MT 59464

Sam Rodriguez, Field Manager
Lewistown Field Office
P.O. Box 438
Lewistown, MT 59457



Cindy G. Campbell
Hearings Unit Secretary

BB

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

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR EXTENSION OF TIME TO PERFECT)	
CHANGE CLAIMED WATER RIGHT)	PROPOSAL FOR DECISION
AUTHORIZATION NO. G10442-41S)	
GRANTED TO JOYCE POSPISIL)	

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on April 11, 1990 in Lewistown, Montana.

Appropriator Joyce Pospisil appeared at the hearing pro se. George Pospisil appeared as a witness for the Applicant. Objector Charles R. Taylor did not appear at the hearing.

EXHIBITS

No exhibits were offered for inclusion in the record in this matter.

The Department file on the Application for Extension, which contains the originals of the Application and the Objection, photocopies of the Claim and of two previously issued Extensions of Time, correspondence between the Department and the parties, and Department processing documents, was made available at the hearing for review by all parties. No party made objection to any part of the file. Therefore, the Department file in this matter is included in the record in its entirety.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make

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the following proposed Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Section 85-2-402(7), MCA, states in relevant part:

The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

Section 85-2-312(3) states in relevant part:

The department may, upon a showing of good cause, extend time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. All requests for extensions of time must be by affidavit and must be filed with the department prior to the expiration of the time limit specified in the permit or any previously authorized extension of time. The department may issue an order temporarily extending the time limit specified in the permit for 120 days or until the department has completed its action under this section, whichever is greater. Upon receipt of a proper request for extension of time, the department shall prepare a notice containing the facts pertinent to the request for extension of time and shall publish the notice in a newspaper of general circulation in the area of the source. The department may serve notice by first-class mail upon any public agency or other person the department determines may be interested in or affected by the request for extension of time. The department shall hold a hearing on the request for extension of time on its own motion or if requested by an interested party. . . .

2. On June 7, 1984, Authorization to Change Appropriation Water Right No. W010442-41S was granted to George K. Pospisil with a claimed priority date of August, 1881. The Authorization was to change the place of use, and add a place of storage. The old places of use were 10 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, Township 15 North, Range 16 East; 4 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, Township 15 North, Range 16 East; 41 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 31, Township 15 North, Range 16 East; and 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, Township 15 North, Range 16 East, for a total of 58 acres. The proposed new place of use is 58 acres in the NW $\frac{1}{4}$ of Section 29, Township 15 North, Range 16 East. The additional place of storage would be located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, Township 15 North, Range 16 East, all in Fergus County. Appropriator was required by the terms of the Authorization to complete the appropriation works and apply the water to the beneficial use of irrigation on or before December 1, 1985. (Department file.)

3. An Application for Extension of Time in which to complete the proposed changes was received by the Department on November 7, 1985. The reasons given for noncompletion was a) time shortage and b) money shortage. The progress toward completion was that the reservoir was completed. An Extension of Time for an additional two years to November 30, 1987, was granted. (Department file.)

4. On October 26, 1987, a second Application for Extension of time was received by the Department. The reasons given for

needing an extension were three years of low farm income and the storage dam had washed out during a flash flood in July of 1987. A second two-year extension of time in which to complete the project was granted to November 30, 1989. (Department file.)

5. A Water Right Transfer Certificate was received by the Department on November 28, 1988, transferring the water right to Joyce Pospisil from George K. Pospisil and Albert Pospisil. (Department file.)

6. A third Application for Extension of Time was received by the Department on November 21, 1989. The pertinent portions of the Application for Extension of Time were published in the News Argus, a newspaper of general circulation on the area of the source, on December 20, 1989. (Department file.)

7. The reason given for the third extension was that the storage dam had been washed out again in March of 1989. (Department file.)

8. An objection by Charles R. Taylor was received by the Department on January 5, 1990. The basis of his objection was that Mrs. Pospisil has no intention of personally completing the project and that the extension had been requested to enhance resale value of the property which was listed for sale. (Department file.)

9. Progress up to the time of the third extension request includes completion of the reservoir before November 7, 1985; the reservoir was cleaned out and rebuilt in 1986; Applicant made initial search for irrigation equipment before October 26, 1987;

the dam was rebuilt again in the 1987 and 1988 seasons; the land was prepared, and the pump was reconditioned. (Department file)

10. Mrs. Joyce Pospisil was injured in an accident in the summer of 1989 and was in and out of hospitals throughout the remainder of the year so little or no progress was made during the 1989 season. (Testimony of Joyce Pospisil.)

Based upon the foregoing Findings of Facts and upon the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and over the parties hereto.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule appearing fulfilled, the matter is properly before the Examiner. See Findings of Fact 1 and 2.

3. The Applicant for Extension of Time must show good cause why the time limit set forth on the Authorization to Change Appropriation Water Right and granted Extensions of Time should be extended. See §§ 85-2-312(3) and 85-2-402(7), MCA. This may be done by demonstrating that due diligence toward perfecting the Authorization, or by showing good cause why the Authorization has not been perfected.

4. Applicant has shown due diligence. The dam has been repaired, cleaned, and completely rebuilt after washing out. The land has been prepared for irrigation and the pump reconditioned. In all likelihood, the project would have been completed if the

dam had not again washed out in the spring of 1989 and if Mrs. Joyce Pospisil had not been in an accident that required long periods of hospitalization. See Findings of Facts 3, 4, 6, and 7.

5. The one year requested to perfect the Authorization to Change is reasonable.

WHEREFORE, based upon the foregoing Proposed Findings of Fact and Conclusions of Law, and upon the record in this matter, the Hearing Examiner makes the following:

ORDER

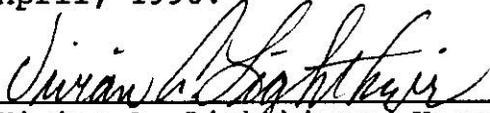
The Application for Extension of Time to Perfect Authorization to Change Appropriation Water Right No G10442-41S is granted. Appropriator shall complete the appropriation works and put the water to beneficial use as specified in the Authorization on or before November 30, 1990, and file the Notice of Completion of Change of Appropriation Water Right, Form No. 618, on or before said date.

NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party within 20 days after service of the exception. However, no new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 26th of April, 1990.



Vivian A. Lighthizer, Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, MT 59620-2301
(406) 444-6625

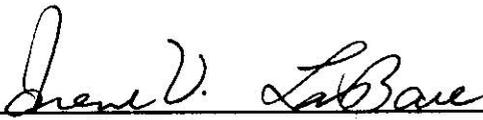
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record at their address or addresses this 26th day of April, 1990 as follows:

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P.O. Box 4
Moore, MT 59464

Charles R. Taylor
P.O. Box 131
Moore, MT 59464

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P.O. Box 438
Lewistown, MT 59457



Irene V. LaBare
Legal Secretary