STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 10,612-g39G BY DAYTON JENDRO	)))	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law and Order in this matter as entered on June 30, 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 adding new items 3, 4 and 5.

FINAL ORDER

1. Application for Beneficial Water Use Permit No. 10,612-g39G by Dayton Jendro is hereby granted to appropriate 0.44 cubic foot per second or 200 gallons per minute of water, not to exceed 67 acre-feet per annum for irrigation and 0.02 cubic foot per second or 10 gallons per minute, not to exceed 1 acre-foot per annum for stock watering, for a total of 68 acre-feet per annum to be diverted by means of a well, approximately 145 feet deep at a point in the SW¼ SE¼ NE¼ of Section 7, Township 15 North, Range 60 East, M.P.M., and used for new irrigation on a total of 25 acres, more or less, in said Section 7, from April 15 to October 15, inclusive, of each year and for stock watering from October 15 to May 15, inclusive, of each year.

2. The above is a Provisional Permit and is granted subject to all prior water rights in the source of supply and is further conditioned as follows:

A. The Permittee shall install and maintain a flow meter on the well and shall keep satisfactory records of the rate, time and volume of flow appropriated and shall submit such records to the Department upon request.

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B. The granting of this permit in no way relieves the Permittee of any liability relating to the exercise of the permit, including but not necessarily limited to, liability for the damages to prior appropriators caused by the lowering of a water table, artesian pressure or water level, if the prior appropriator cannot reasonably exercise his water rights under the changed conditions.

3. The Provisional Permit is granted subject to the right of the Department to revoke the permit in accordance with Section 89-887, R.C.M. 1947, and to enter onto the premises for investigative purposes in accordance with Section 89-898, R.C.M. 1947.

4. The issuing of the 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 the Provisional Permit, in any way acknowledge liability for damage caused by the Permittee's exercise of his Provisional Permit.

5. The above conditions to the granting of this Provisional Permit shall hold in full 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 13th day of September, 1978.

Orrin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO.'s 10,611-g39G and 10,612-g39G BY DAYTON JENDRO	))))	PROPOSAL FOR DECISION

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on April 25, 1978 at Glendive, Montana, for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit No's 10,611-g39G and 10,612-g39G by Dayton Jendro, William F. Throm, Hearing Examiner presiding.

The Applicant, Dayton Jendro, appeared at the hearing and presented testimony in support of the application. Mr. Jendro was not represented by legal counsel. No exhibits were introduced supporting the applications. No others appeared at the hearing to testify in support of the applications.

Three Objectors attended the hearing and presented testimony or statements. The Objectors were represented by legal counsel Mr. Richard Heinman, Attorney-at-Law, Wibaux, Montana. The Objectors introduced no exhibits supporting their objection, however, the objectors did cite supporting documents to their written objections which are contained in the Department File No.'s 10,611-g39G and 10,612-g39G and which were made an entry into this hearing by reference. Objectors present were Mr. John Dukart, Mr. Harold Bakken and Mr. Dave Welliever.

Montana Department of Natural Resources and Conservation personnel and witnesses present and testifying on behalf of the Department was Mr. Steve White, Department Geologist. The Department was not represented

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by legal counsel. Two exhibits were introduced by the Department to wit: Exhibit D-1, General Highway Map, Wibaux County, Montana showing well data prepared by Steve White and Exhibit D-2, General Highway Map, Wibaux County, Montana showing well data information as described by the Applicant and the Objectors. The Department Exhibits were marked accordingly and received into the record without objections.

SUMMARY OF THE RECORD

1. On December 3, 1976, the Department received Application for Beneficial Water Use Permit No. 10,611-g39G, by Dayton Jendro to appropriate 0.57 cubic foot per second or 260 gallons per minute of water, not to exceed 94 acre-feet per annum to be diverted by means of a well, approximately 150 feet deep, at a point in the NE¼ NW¼ NW¼ of Section 8, Township 15 North, Range 60 East, M.P.M., and used for new irrigation on a total of 35 acres, more or less, from April 15 to October 15, inclusive of each year; and No. 10,612-g39G also by Dayton Jendro to appropriate 0.44 cubic foot per second or 200 gallons per minute of water, not to exceed 67 acre-feet per annum for irrigation and 0.02 cubic foot per second or 10 gallons per minute, not to exceed 1 acre-foot per annum for stock-watering, for a total of 68 acre-feet per annum to be diverted by means of a well, approximately 145 feet deep, at a point in the SW¼ SE¼ NE¼ of Section 7, Township 15 North, Range 60 East, M.P.M., and used for new irrigation on a total of 25 acres, more or less, in said Section 7, from April 15 to October 15, inclusive, of each year and for stock-watering from October 15 to May 15, inclusive, of each year.

2. On February 16 and 23, and March 2, 1977, the Department caused to be duly published in the Wibaux Pioneer-Gazette, Wibaux, Montana, notice of the above Applications for Beneficial Water Use Permit No.'s 10,611-g39G and 10,612-g39G.

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3. On April 4, 1977 the Department received an Objection to Application for Beneficial Water Use Permit No.'s 10,611-g39G and 10,612-g39G from John Dukart.

4. Mr. Dayton Jendro testified that he had a test well drilled in the NE¼ of Section 7 by a seismograph crew in the 1950's. An artesian aquifer was reached at a depth of 145 to 150 feet which produced a flowing well of about 250 gallons per minute. The well was eventually plugged with a cement seal by the Halliburton Company and is no longer flowing. Mr. Jendro testified that in about 1973 he had another well drilled in the NE¼ of Section 7 by Rue Cale and artesian water was reached in this well at a depth of about 140 to 150 feet. The well was cased with a 5" casing and produced a flow of about 150 gallons per minute, under a pressure of about 10 lbs. This well was choked down to 10-15 gallons per minute, and is used for stock watering. Mr. Jendro testified that this well has flowed continously at that rate for the past 2 to 3 years except for a period of about two months when the Shell Oil Company drilled 9 or 10 holes below him and the flow in his well ceased until the Shell Oil Company holes were plugged. Mr. Jendro testified that it is his intent to use the existing well in Section 7 and to drill a new well in Section 8 and use both wells to irrigate a total of about 50 acres by means of sprinkler irrigation. He further testified that it will be necessary to install a pump on each well in order to develop the pressure required for sprinkler irrigation.

Mr. Jendro acknowledged that this proposed ground water development could adversely affect prior water rights appropriators if not properly controlled. He testified that he would control the withdrawal so as not to adversely affect other water appropriators.

5. Mr. John Dukart testified that his wells were not adversely affected by the test well drilled by the seismograph crew for Mr. Jendro

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in the 1950's or 1960's but that the wells of other people within a radius of 4 miles went dry or were severely diminished in flow and that he felt that his wells would be adversely affected if the withdrawal by Mr. Jendro continued over a long period of time. (Reference John J. Dukart Affidavit dated April 1, 1977 attached to John J. Dukart Objection to Application No.'s 10,611-g39G and 10,612-g39G.)

6. Mr. Dave Welliever testified that he has a flowing well which he depends upon for livestock water and for operation of a dairy as well as for household use. He testified that his well was drilled in 1960 and produced 50 gallons per minute but is choked down to 1.5 gallons per minute and flowed continually until Mr. Dukart's test well was drilled and then in about 4 to 5 days Mr. Welliever's well quit flowing and that by the time Mr. Jendro was able to plug his test well the water level had receded to about 4 feet below the top of the casing in the Welliever well. Mr. Welliever also testified that Mr. Eugene Stagg drilled a well about 95 feet in depth approximately a quarter of a mile to the northeast of his well and has to flush it out periodically through a 4 inch valve and within 36 hours of flushing action the Welliever well slows up. The Welliever well recovers within 36 hours of discontinuance of the flushing. Mr. Welliever stated that the volume of flow from the Stagg well during flushing is about 250 gallons per minute at the most. Mr. Welliever testified that if he lost his artesian flow he would be required to drill a new well and pump his water which he estimated would cost $2,000 or more.

7. Mr. Harold Bakken testified that he has four wells in the area. Two of the wells are free flowing which he depends upon for livestock watering purposes. He testified that any time the water table drops these wells are the first to be affected and that the loss of the artesian

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flow would involve an economic loss to him because he would have to install pumps and heat the water during winter months.

8. Mr. Steve White testified that the evidence available to him indicates that all the wells in question are hydrologically connected with a common confined aquifer of undetermined size. He testified that after an extended period of pumping from the proposed wells the objector's wells would probably discontinue to flow but it is unlikely that they will dry up, however he testified, that in order for those affected to continue to obtain water it would be necessary to install pumps. Mr. White further testified that it is not so much a question of water supply but rather it is a question of a loss of pressure, should the permit be granted and the water be withdrawn.

PROPOSED FINDINGS OF FACT

1. Mr. Dayton Jendro, the Applicant for Beneficial Water Use Permit No.'s 10,611-g39G and 10,612-g39G, did on December 3, 1976 submit properly executed Applications for Beneficial Water Use Permit.

2. The Department caused to be duly published notice of the above Applications for Beneficial Water Use Permit.

3. The Department did receive timely and valid objections to issuance of the above permits.

4. The Applicant did, in the late 1950's and early 1960's, cause to have drilled into this groundwater aquifer a test well which was allowed to flow freely until the Applicant was required by letter of February 10, 1964 from Mr. Everett J. Darlinton, then State Engineer, to plug the well to prevent further waste of water.

5. By letter of March 20, 1964 from Mr. Everett Darlinton, then State Engineer, the Applicant was directed to take immediate steps to properly plug the flowing test well because of adverse affects that the flowing well was causing to neighboring wells.

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6. The Applicant did have the flowing test well plugged by the Haliburton Company and the neighboring wells adversely affected were apparently satisfactorily restored to their former conditions.

7. The Applicant's proposed wells and the objector's wells which were the subject matter of this Hearing derive their source of water from the same aquifer which is under internal pressure. Generally speaking when wells which are situated topographically lower in elevation are drilled to penetrate the aquifer then the pressure is reduced on those wells which are located higher in elevation and the water ceases to rise in the higher wells to its former elevation thus adversely affecting the availability of artesian water to the user although the supply of water may be relatively unaffected.

8. There is an undetermined volume of ground water in the aquifer which is the common source of the ground water supply of the wells in question. Even though the artesian flow may be reduced by granting of the permit the water would be available to prior appropriators by pumping methods. In some cases this would involve drilling of new wells with installation of larger diameter casings to accomodate deep well pump units.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880 R.C.M. 1947, a permit is required to appropriate water from the proposed source of supply.

2. The objectors to the subject applications for beneficial water use permits have apparent valid prior appropriation water rights to the source of supply which under the provisions of Section 89-886(1) R.C.M. 1947 must be protected in the issuance of beneficial water use permits. It is concluded that the rights of prior appropriators will be protected if the provisional permits are conditioned to protect these rights.

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3. There are unappropriated waters in the source of supply;

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

4. The rights of a prior appropriator will not be adversely affected;

5. The proposed means of diversion or construction are 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 criteria for issuance of a permit set forth under the provisions of Section 89-885 R.C.M. 1947, have been met and the Application for Beneficial Water Use Permit No.'s 10,611-g39G and 10,612-g39G by Dayton Jendro 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. Application for Beneficial Water Use Permit No. 10,611-g39G and 10,612-g39G by Dayton Jendro are hereby granted as follows:

a. Permit No. 10,611-g39G is to appropriate 0.57 cubic foot per second or 260 gallons per minute of water, not to exceed 94 acre-feet per annum to be diverted by means of a well, approximately 150 feet deep, at a point in the NE¼ NW¼ NW¼ of Section 8, Township 15 North, Range 60 East, M.P.M., and used for new irrigation on a total of 35 acres, more or less, from April 15 to October 15, inclusive, of each year.

b. Permit No. 10,612-g39G is to appropriate 0.44 cubic foot per second or 200 gallons per minute of water, not to exceed 67

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acre-feet per annum for irrigation and 0.02 cubic foot per second or 10 gallons per minute, not to exceed 1 acre-foot per annum for stock-watering, for a total of 68 acre-feet per annum to be diverted by means of a well, approximately 145 feet deep, at a point in the SW¼ SE¼ NE¼ of Section 7, Township 15 North, Range 60 East, M.P.M., and used for new irrigation on a total of 25 acres, more or less, in said Section 7, from April 15 to October 15, inclusive, of each year and for stock-watering from October 15, to May 15, inclusive, of each year.

2. The above are Provisional Permits and are granted subject to all prior water rights in the source of supply and are further conditioned as follows:

a. The Permittee shall install and maintain a flow meter on each well and shall keep satisfactory records of the rate, time and volume of flow appropriated and shall submit such records to the Department upon request.

b. The granting of this permit in no way relieves the Permittee of any liability relating to the exercise of the permit, including but not necessarily limited to liability for the damages to prior appropriators caused by the lowering of a water table, artesian pressure or water level, if the prior appropriator can not reasonably exercise his water right under the changed conditions.

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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 agruments before the Administrator of the Water Resources Division.

DATED this 30th day of June, 1978.

WILLIAM F. THROM
HEARING EXAMINER

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