

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
FOR BENEFICIAL WATER USE PERMIT NO.)
10754-s76D BY GLENN A. STEVENS)

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on July 29, 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 Applicant's Provisional Permit No. 10754-s76D is hereby granted allowing for the appropriation of 0.5 cubic foot per second or 225 gallons per minute of water, not to exceed 360 acre-feet per annum, to be impounded in a new 35-acre-foot offstream reservoir adjacent to Therriault Creek, a tributary to Mud Creek, at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, Township 36 North, Range 26 West, M.P.M. Diversion will be by means of a gravity ditch at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, Township 36 North, Range 26 West, M.P.M., Lincoln County, Montana, and used for fish and recreational purposes from January 1 to December 31, inclusive, of each year.

2. The Provisional Permit is granted provided the inlet structure is properly maintained and operated so as to be able to be shut off or closed down at certain times when there is not water available for this appropriation, or this appropriation adversely affects downstream appropriations; and further, the outlet of the offstream reservoir is capable and does release an amount reasonably equal to the inflow back to Therriault Creek; and further, the initial filling of the reservoir be accomplished during the high, spring runoff period; and further, that upper 1.5 feet of storage of the present reservoir pond also be filled during the high, spring runoff and then released to meet the evaporation losses during a time during the irrigation season when such evaporation losses might adversely affect downstream appropriators who have herein objected. This appropriation shall still be

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limited to 360 acre-feet per annum and total storage of 35 acre-feet.

3. The Applicant shall install and maintain an adequate measuring device and keep a record of all quantities of water diverted, as well as the period of diversion. Such records shall be presented to the Department for inspection upon demand by the Department.

4. The Provisional Permit is granted subject to all prior water rights in the source of supply.

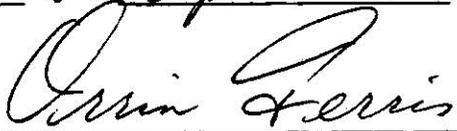
5. The issuance of a Provisional Permit by the Department in no way reduces the Applicant's liability for damage caused by the Applicant's exercise of his Provisional Permit, nor does the Department in issuing a Provisional Permit in any way acknowledge liability for damage caused by the Applicant's exercise of his Provisional Permit.

6. This Provisional Permit is granted subject to any final determination of existing rights in the source of supply as provided for by Montana law.

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 1st day of September, 1977.



Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 10754

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

IN THE MATTER OF APPLICATION FOR
BENEFICIAL WATER USE PERMIT NO.
10,754-s76D BY GLENN A. STEVENS

}
} PROPOSAL FOR DECISION
}

Pursuant to the Montana Water Use Act and to the Montana Administrative Procedures Act, after due notice a hearing on the objection received to the above-described application was held in the Lincoln Electric Co-Op Meeting Room No. 2, at Eureka, Montana, on Friday, June 10, 1977, beginning at 11 a.m., Laurence J. Siroky, hearing examiner, presiding.

Glenn A. Stevens attended the hearing and presented testimony in support of his application.

Objection was received by the Department from Wayne and Judith Renfro, Eureka, Montana. The objectors were not present nor represented at the hearing.

James Rehbein attended the hearing on behalf of the Department of Natural Resources and Conservation.

As required by law, the hearing examiner hereby makes the following Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order to the administrator of the Water Resources Division, Department of Natural Resources and Conservation.

EXHIBITS

The Applicant offered into evidence three exhibits, to wit:

1. Copy of an aerial photo of the general area of the application.
2. Photo of Therriault Creek, location shown on Exhibit No. 1
3. Photo of Griffith Creek, location shown on Exhibit No. 1.

Applicant's Exhibits 1 through 3, respectively, were admitted into evidence at the hearing.

PROPOSED FINDINGS OF FACT

1. On October 8, 1976, the Department received an Application for Water Use Permit, No. 10,754-s76D, from Glenn A. Stevens, who seeks to appropriate 0.5 cubic foot per second or 225 gallons per minute of water, not to exceed 360 acre-foot per annum, to be impounded in a new 35-acre-foot offstream reservoir adjacent to Therriault Creek, a tributary of Mud Creek. This offstream reservoir located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, Township 36 North, Range 26 West, M.P.M., Lincoln County, Montana, is filled by means of a ditch diverting from Therriault Creek at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, Township 36 North, Range 26

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West, M.P.M., Lincoln County, Montana, and used for fish and recreational purposes from January 1 to December 31, inclusive, of each year.

2. The Department received timely filed objection from Wayne and Judith Renfro. Such objection was based upon possible contamination of their water source located downstream and objection to ecological impact in forming the ponds.

3. For purposes herein, based upon testimony given at the hearing, there are times of the year when there are unappropriated waters in the source of supply available for appropriation by the Applicant for the purposes herein applied for.

4. The rights of prior appropriators will be protected if the permit is conditioned so as to protect those rights.

5. For purposes herein, based upon testimony given at the hearing, the proposed means of diversion or construction are adequate. The proposed use of water for fish and recreational purposes are beneficial uses.

6. For purposes herein, based upon testimony given at the hearing, 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.

7. The Applicant has not asked for an appropriation of 15 cubic feet per second or more. It therefore is not necessary to prove by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected.

PROPOSED CONCLUSIONS OF LAW

1. Pursuant to Sections 89-880 and 89-889, R.C.M. 1947, a Beneficial Water Use Permit is required to appropriate water sought to be appropriated by the Applicant herein.

2. If granted, Application for Beneficial Water Use Permit No. 10,754-s76D must be granted in accordance with the provisions of Chapter 8, Title 89, of the Revised Codes of Montana.

3. Based upon the Proposed Findings of Fact and any provisional conditions and limitations appearing therein, it is concluded that the criteria for issuance of a Provisional Permit delineated at Section 89-885, R.C.M. 1947, have been met.

4. Pursuant to Section 89-886(1), R.C.M. 1947, valid rights of prior appropriators must be protected in the issuance of a beneficial water use permit.

5. The rights of prior appropriators will be protected if the permit is conditioned so as to protect those rights.

6. The issuing of a Provisional Permit in no way reduces the Applicant's liability for damage caused by the appropriation, nor does the Department in issuing a Provisional Permit in any way acknowledge liability for damage caused

by the Applicant's exercise of his Provisional Permit.

7. Nothing decided herein has bearing on the status of water rights claimed by the Applicant other than those herein applied for, nor does anything decided herein have bearing on the status of claimed rights of any other party except in relation to those rights herein applied for, to the extent necessary to reach a conclusion herein.

PROPOSED ORDER

1. Subject to the conditions cited below, the Applicant's Provisional Permit No. 10,754-s76D is hereby granted allowing for the appropriation of 0.5 cubic foot per second or 225 gallons per minute of water, not to exceed 360 acre-feet per annum, to be impounded in a new 35-acre-foot offstream reservoir adjacent to Therriault Creek, a tributary to Mud Creek, at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, Township 36 North, Range 26 West, M.P.M. Diversion will be by means of a gravity ditch at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, Township 36 North, Range 26 West, M.P.M., Lincoln County, Montana, and used for fish and recreational purposes from January 1 to December 31, inclusive, of each year.

2. The Provisional Permit is granted provided the inlet structure is properly maintained and operated so as to be able to be shut off or closed down at certain times when there is not water available for this appropriation, or this appropriation adversely affects downstream appropriations; and further, the outlet of the offstream reservoir is capable and does release an amount reasonably equal to the inflow back to Therriault Creek; and further, the initial filling of the reservoir be accomplished during the high, spring runoff period; and further, that upper 1.5 feet of storage of the present reservoir pond also be filled during the high, spring runoff and then released to meet the evaporation losses during a time during the irrigation season when such evaporation losses might adversely affect downstream appropriators who have herein objected. This appropriation shall still be limited to 360 acre-feet per annum and total storage of 35 acre-feet.

3. The Applicant shall install and maintain an adequate measuring device and keep a record of all quantities of water diverted, as well as the period of diversion. Such records shall be presented to the Department for inspection upon demand by the Department.

4. The Provisional Permit is granted subject to all prior water rights in the source of supply.

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

6. This Provisional Permit is granted subject to any final determination of existing water rights in the source of supply as provided for by Montana law.

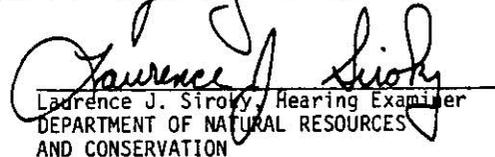
RECOMMENDATION

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.

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 of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be granted to file briefs and to make oral arguments before the administrator of the Water Resources Division.

Dated this 29th day of July, 1977.


Lawrence J. Siroy, Hearing Examiner
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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