STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO.'s 10,819-g76H AND 10,820-g76H BY JAY M. GASVODA	))))	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice, a hearing was held July 27, 1977 at Hamilton, Montana, for the purpose of hearing objections to the above named applications, William F. Throm, Hearing Examiner, presiding.

The Applicant, Mr. Jay M. Gasvoda, appeared at the hearing and presented testimony on behalf of both applications. Mr. Gasvoda was not represented by legal counsel nor did he present exhibits in support of the above applications.

Objectors present at the hearing for both applications were: Tom Shaughnessy, Mr. and Mrs. Ivan A. Sylvester, Henry A. Griffin, Ms. Wyvverne Cranmore, Bert A. Dye, Glen W. Scanland, Mrs. Colleen Joan Powell, Ms. Mary Ann Falk.

Objectors were not represented by legal counsel, nor did any Objector present exhibits in support of their objections.

The Department of Natural Resources and Conservation was represented at the Hearing by Mr. Steve White, Department Geologist and by Mr. Jim Rehbein, Kalispell Field Office Manager, Water Rights Bureau. Mr. White introduced into evidence, "Corvallis - Bing Area Map," showing proposed points of diversion for each application and locations of points of diversion for Objectors present. This map was received into evidence without objection and was marked "Department's Exhibit No. 1."

A Proposed Order (Proposal for Decision) dated August 30, 1977 was issued by the Hearing Examiner, William F. Throm.

The Proposed Order Notice as issued on August 30, 1977 provided that the Proposed Order would not become final until accepted by the Administrator of the Water Resources

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Division of the Department of Natural Resources and Conservation, and that written exceptions to the Proposed Order, if any, shall be filed with the Department within ten (10) days of service upon the parties herein, and upon receipt of any written exceptions, opportunity would be provided to file briefs and make oral arguments before the Administrator of the Water Resources Division.

On September 13, 1977 the Department received an Exception letter dated September 11, 1977 from Tom and Mary Shaughnessy opposing the Proposal for Decision as issued on August 30, by the Hearing Examiner in the matter of Application No. 10,819-g76H and 10,820-g76H.

The Department by letter of September 21, 1977 to Tom and Mary Shaughnessy, acknowledged receipt of their Exception letter and informed them that based on their testimony and the distance involved, their Exception letter of September 11, could only apply to Application No. 10,820-g76H and not to Application No. 10,819-g76H. They were further informed of their opportunity to file a Brief supporting their exceptions to Application No. 10,820-g76H by October 3, 1977. They were also requested to indicate to the Department if they wished to make oral argument on their Exception before the Water Resources Division Administrator. A copy of this letter and the exception was sent to the Applicant.

The Department did not receive any reply to its letter of September 21, 1977, therefore the Department sent a second letter dated October 20, 1977 to Tom and Mary Shaughnessy. The last paragraph of this letter stated as follows:

> "Please be informed that we have not received any written Brief nor request for oral argument from you by October 3, nor after that date. Therefore, please be advised that if we do not receive your written Brief and/or your request for an oral argument hearing by October 28, 1977, the Water Resources Division Administrator will proceed to prepare and issue a Final Order on Application No's. 10,819-g76H and 10,820-g76H, taking into full consideration you Exception letter of September 11, 1977."

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A copy of the above noted letter was also sent to the Applicant.

The Department didnot receive any reply to its second letter from the Exceptors. Therefore, since none of the parties in this matter specifically requested an oral argument hearing on the exception before the Water Resources Division Administrator, the Administrator hereby makes the following Final Order, based on the Hearing Examiner's Proposal for Decision of August 30, 1977, the objections, exception, and all other information of record in the application file.

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on August 30, 1977, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law and Order.

FINAL ORDER

1. The applications of Jay M. Gasvoda for Benefical Water Use Permits are granted as follows:

a. Application No. 10,819-g76H to appropriate 1.44 cfs or 650 gpm of water, not to exceed 175.5 acre-feet per annum, to be diverted by means of a well approximately 250 feet deep, in Ravalli County, Montana, at a point in the NW¼ SE¼ NW¼ of Sec. 34, T. 7 N., R. 20 W., M.P.M., and used for new irrigation on a total of 74 acres, more or less, in said Sec. 34, from April 15 to September 15, inclusive, of each year.

b. Application No. 10,820-g76H to appropriate 1.33 cfs or 600 gpm of water, not to exceed 195 acre-feet per annum, to be diverted by means of two wells, each approximately 350 feet deep, in Ravalli County, Montana, at points in the NE¼ NE¼ SE¼ and the SE¼ SE¼ SE¼ of Sec. 34, T. 8 N., R. 20 W., M.P.M., and used for new irrigation on a total of 80 acres, more or less, in said Sec. 34, from April 15 to October 15, inclusive, of each year. The above-described wells for this permit are proposed to be manifolded.

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

a. The ground-water appropriation for Provisional Permit No. 10,819-g76H shall be from an aquifer at approximately the 250 foot level, but in no case shall the

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appropriation be taken from an aquifer shallower than the 200 foot level below the natural ground surface at the well point.

b. The ground-water appropriation for Provisional Permit No. 10,820-g76H shall be from an aquifer at approxiamtely the 350 foot level, but in no case shall the appropriation be taken from an aquifer shallower than the 300 foot level below the natural ground surface at either well point.

c. To accomplish the above, no perforations of any type shall be permitted above the minimum depths specified and any vertical movement from aquifers intercepted above the minimum depths specified shall be sealed off in a satisfactory manner.

d. The pumps shall be equipped with a flow meter and the Applicant shall keep a satisfactory pumping record including days, hours, and volume pumped and shall submit a copy of the record to the Department of Natural Resources and Conservation upon request. Should the Department determine at any time that prior water rights holders are being unreasonably adversely affected by these appropriations the Applicant will be so informed and shall immediately cease or modify his appropriation as directed by the Department.

e. The Applicant shall provide the Department with copies of the drillers well logs and shall provide the Department with copies of plans and specifications for the irrigation distribution works when submitting his Notice of Completion for these appropriations.

3. These permits are granted subject to any final determination of prior existing water rights in the source of supply provided for by Montana law.

4. The above conditions to the granting of these Provisional Permits shall hold for any predecessor in interest to the Applicant herein named.

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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 30th day of January, 1978.

Irvin Harris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO'S 10,819-g76H AND 10,820-g76H BY JAY M. GASVODA	))))	PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice, a hearing was held July 27, 1977 at Hamilton, Montana, for the purpose of hearing objections to the above named applications, William F. Throm, Hearing Examiner, presiding.

The Applicant, Mr. Jay M. Gasvoda, appeared at the hearing and presented testimony on behalf of both applications. Mr. Gasvoda was not represented by legal counsel nor did he present exhibits in support of the above applications.

Objectors present at the hearing for both applications were: Tom Shaughnessy, Mr. and Mrs. Ivan A. Sylvester, Henry A. Griffin, Ms. Wyvverne Cranmore, Bert A. Dye, Glen W. Scanland, Mrs. Colleen Joan Powell, Ms. Mary Ann Falk.

Objectors were not represented by legal counsel nor did any Objector present exhibits in support of their objections.

The Department of Natural Resources and Conservation was represented at the Hearing by Mr. Steve White, Department Geologist and by Mr. Jim Rehbein, Kalispell Field Office Manager, Water Right Bureau. Mr. White introduced into evidence "Corvallis - Bing Area Map" showing proposed points of diversion for each application and locations of points of diversion for Objectors present. This map was received into evidence without objection and was marked "Department's Exhibit No. 1."

PROPOSED FINDING OF FACTS

1. On December 28, 1976, the Applicant, Jay M. Gasvoda, submitted to the Department of Natural Resources and Conservation Application for Beneficial Water Use Permit No. 10,819-g76H to appropriate 1.44 cfs or 650 gpm of water, not to exceed

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175.5 acre-feet per annum, to be diverted by means of a well approximately 250 feet deep, in Ravalli County, Montana, at a point in the NW¼ SE¼ NW¼ of Sec. 34, T. 7 N., R. 20 W., M.P.M., and used for new irrigation on a total of 74 acres, more or less, in said Sec. 34, from April 15 to September 15, inclusive of each year; and No. 10,820-g76H to appropriate 1.33 cfs or 600 gpm of water, not to exceed 195 acre-feet per annum, to be diverted by means of two wells, each approximately 350 feet deep, in Ravalli County, Montana, at points in the NE¼ NE¼ SE¼ and the SE¼ SE¼ SE¼ of Sec. 34, T. 8 N., R. 20 W., M.P.M., and used for new irrigation on a total of 80 acres, more or less, in said Sec. 34, from April 15 to October 15, inclusive, of each year. The above-described wells for Application No. 10,820-g76H are proposed to be manifolded.

2. On March 10, 17, and 24, 1977 the Department caused to be duly published in the Ravalli Daily Republic, Hamilton, Montana, notice of above applications No.'s 10,819-g76H and 10,820-g76H.

3. The Department received timely objections to the above applications as follows:

March 15, 1977 from Glen W. and Leona A. Scanland
March 16, 1977 from William M. Morrison
March 21, 1977 from Bert A. Dye
March 22, 1977 from Don R. Merkley
March 23, 1977 from Mrs. Lloyd Stevens
March 24, 1977 from Ivan A. Sylvester
March 28, 1977 from Roy and Wyvverne Cranmore
March 30, 1977 from Mr. and Mrs. James Kucera
March 30, 1977 from Val A. and Harriet Janet Loesch and James D. Loesch
April 4, 1977 from Tom and Mary Shaughnessy
April 5, 1977 from Henry A. Griffin
April 5, 1977 from Dean D. and N. Renae Jaques
April 13, 1977 from Darl T. Hoyt
April 14, 1977 from Martha D. Kane
April 18, 1977 from Roscoe Hall
April 22, 1977 from James G. Frost
April 22, 1977 from Roy L. Everson
April 27, 1977 from Pete and Viviette Sacks

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4. The above Objectors almost unanimously expressed the concern that appropriation of this much ground water would adversely affect the Objectors ground water supplies; that these appropriations were unnecessary since the Applicant has access to Hedge Ditch water, and a concern that the Applicant is intending to use the appropriations at a future date for housing or trailer park development.

5. Mr. Gasvoda testified that the purpose of his proposed ground water application is to get a reliable water supply for irrigation purposes. He cited numerous problems that he has encountered with his present ditch supply including pumping costs, weed and silt problems, and inadequate water supply at some periods. He testified that he does not know at this time whether or not he will obtain ground water in sufficient quantities from the aquifer, at the depth he proposes, to make this system feasible, however, he proposes to drill test wells to make this determination. He testified that he will not be drawing water from the shallower aquifers and will not perforate the casing except to intercept the deep aquifer through the bottom of the casing.

6. Mr. Tom Shaughnessy testified that his objection is primarily to Application No. 10,820-g76H. He stated that the point of diversion for the Applicant is about ½ mile from his well and that there is a lack of water and his concern is that a large well drilled to a lower level than his will dry his well up; that he uses his well for household use and for watering 100 head of livestock and that in the winter the well is the only source of water for his livestock; and further that in the winter the well is drawn down to the point that it is almost out of water, a case in point, he stated, was last winter when he did pump the well dry and it took about 10 days to recover to the point that air was not being pumped.

7. Mrs. Ivan A. Sylvester objecting to Application No. 10,819-g76H testified that she is afraid that a deep well such as the Applicant is proposing would dry their well up. She stated their well is 35' deep and has been in existance since

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1908. She stated that there is presently a high water table on their place as evidenced by water in their cellar and in a nearby pothole; that this water is coming from an unknown source and that drilling a deep well in the area may cut off the source.

8. Mr. Henry A. Griffin stated that he is concerned with Application No. 10,819-g76H. He stated that he owns 40 acres and has an interest in a Grade-A dairy with his son for which he has two wells, one for domestic purposes and the other for livestock watering purposes for 100 head and that he is fearful that if the Applicant's well is drilled to the depth planned that the casing will be perforated or otherwise constructed as as to draw water from aquifers at all depths. He stated that he has seen this done in Idaho where they have dried up existing wells and he doesn't want this to happen to his. He feels that the Applicant could get his water from the State (Hedge) Ditch like the rest of them do.

9. Mrs. Wyvverne Cranmore questioned whether or not the Applicant intended to install laterals in his well. She testified that she spoke from experience in California where the installation of deep wells with laterals dried up their well a mile away. She testified that she is fearful of the same thing happening here and strongly urged that the Applicant's permit be denied. She stated that if one gets by with a deep well others will follow and they could kiss the valley goodbye.

10. Mr. Bert A. Dye objecting to both applications testified that the deep wells would dry up their supply and they would be without water and would have to move off. The Dye well is 90 feet deep.

11. Mr. Glen W. Scanland objecting to Application No. 10,819-g76H supported the foregoing concerns. Mr. Scanland has two wells and a pond in the area. The pond is supplied from groundwater and the wells are 20 feet and 120 feet in depth. He is concerned that the Applicant's deep well will dry up his water supply.

12. Mrs. Colleen Powell and Mary Ann Falk representing their mother Mrs. Martha D. Kane testified that they have a well around 35 feet in depth which

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they are using and also a spring which they are not using. Mrs. Powell and Ms. Falk are afraid that both the well and the spring may dry up if Applicant's permit is granted. Mrs. Powell testified that even though they are not using the spring at present they simply like having it there. She questioned what action the Department could take to prevent the Applicant from cutting, breaking or perforating the well casing to take water from shallower aquifers than requested in the permit. Their objection is to the granting of Permit No. 10,820-g76H.

13. Steve White, Department Geologist, testified on behalf of the Department and stated that there is very little information available to him concerning the geology of the local valley aquifers to predict accurately what the affects of this appropriation, if granted, would be on nearby wells and springs. Mr. White testified that the valley was a deep glacial lake, since filled with glacial deposits composed of many layers of gravels, sands and silts that could confine two or three different aquifers, with some of the aquifers possibly interconnected. Mr. White testified that one of the problems is that he has been unable to obtain well logs or other information to determine the relationship between various aquifers at this depth or even to predict whether or not there is even an aquifer at the depth the Applicant has requested the permit. Mr. White further testified that it is his professional opinion that the shallower wells of the Objectors in the area are being supplied from surface sources and not from artesian pressures. He stated that he believes that in this area there is a water system below the shallow aquifer of the Objectors which is under artesian pressure, with the mountain streams leaking into gravels (recharging) at higher elevations and supplying the system. Mr. White further testified that in his professional opinion, based upon knowledge of similar geologic conditions in other areas, he does not believe that the Applicant's permit, if granted, would adversely affect the Objectors wells and springs, but he further emphasized that this opinion is based

upon an educated guess and not on factual knowledge of the local aquifers and their interconnections.

PROPOSED CONCLUSIONS OF LAW

1. The Objectors to these Applications have apparent prior appropriations to the shallow ground water aquifer which may or may not be interconnected with the Applicant's proposed source of supply.

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

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

4. The rights of prior appropriators will be protected if the permits are conditioned to protect those rights.

5. The proposed means of diversion is adequate.

6. The proposed use of water is a beneficial use.

7. The proposed use of water 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 in Section 89-885, R.C.M. 1947, have been met.

9. The Applications for Beneficial Water Use Permit may be granted in accordance with the provisions of Chapter 8 of the Title 89 of the Laws of the State of Montana.

PROPOSED ORDER

1. The applications of Jay M. Gasvoda for Beneficial Water Use Permits are granted as follows:

a. Application No. 10,819-g76H to appropriate 1.44 cfs or 650 gpm of water, not to exceed 175.5 acre-feet per annum, to be diverted by means of a well approximately 250 feet deep, in Ravalli County, Montana, at a point in the NW¼ SE¼ NW¼ of Sec. 34, T. 7 N., R. 20 W., M.P.M., and used for new irrigation on a total of

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74 acres, more or less, in said Sec. 34, from April 15 to September 15, inclusive, of each year.

b. Application No. 10,820-g76H to appropriate 1.33 cfs or 600 gpm of water, not to exceed 195 acre-feet per annum, to be diverted by means of two wells, each approximately 350 feet deep, in Ravalli County, Montana, at points in the NE¼ NE¼ SE¼ and the SE¼ SE¼ SE¼ of Sec. 34, T. 8 N., R. 20 W., M.P.M., and used for new irrigation on a total of 80 acres, more or less, in said Sec. 34, from April 15 to October 15, inclusive, of each year. The above-described wells for this permit are proposed to be manifolded.

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c. To accomplish the above, no perforations of any type shall be permitted above the minimum depths specified and any vertical movement from aquifers intercepted above the minimum depths specified shall be sealed off in a satisfactory manner.

d. The pumps shall be equipped with a flow meter and the Applicant shall keep a satisfactory pumping record including days, hours, and volume pumped and shall submit a copy of the record to the Department of Natural Resources and Conservation upon request. Should the Department determine at any time that prior water rights holders are being unreasonably adversely affected by these appropriations

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the Applicant will be so informed and shall immediately cease or modify his appropriation as directed by the Department.

e. The Applicant shall provide the Department with copies of the drillers well logs and shall provide the Department with copies of plans and specifications for the irrigation distribution works when submitting his Notice of Completion for these appropriations.

3. These permits are granted subject to any final determination of prior existing water rights in the source of supply provided for by Montana Law.

4. The above conditions to granting of this Provisional Permit shall hold for any predecessor in interest to the Applicant herein named.

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 filed with the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and make oral arguments before the Administrator of the Water Resources Division.

DATED the 30th day of August, 1977.

WILLIAM F. THROM, HEARING EXAMINER

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