

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) NOTICE OF
NO. 10,847-g76LJ BY CARL A. AND) CHANGE
GERTRUDE SEIFERT) IN FINAL ORDER

This is to inform you that entry one (1) on the Final Order should be changed to read:

"... and used for new irrigation on 80 acres in Section 26, and for supplemental irrigation on 80 acres in Section 23 and 80 acres in Section 26, all in Township 23 North, Range 21 West, M.P.M., . . ."

The underlined portion was inadvertently deleted from the Final Order.

DATED this 4th day of March, 1980.

David L. Pengelly

DAVID L. PENGELLY, D.N.R.&C
HEARING EXAMINER

CASE # 

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 10,847-g76LJ BY CARL A. AND) FINAL ORDER
GERTRUDE SEIFERT)

The Proposed Findings of Fact, Conclusions of Law and Order as entered by the Hearing Examiner on January 7, 1980, are hereby adopted as the Findings of Fact, Conclusions of Law and Final Order, except that "Applicant" is changed to read "Permittee" in conditions six (6) and seven (7) of the Final Order.

FINAL ORDER

1. Subject to the provisions and conditions imposed below, the Application for Beneficial Water Use Permit No. 10,847-g76LJ by Carl A. and Gertrude M. Seifert is hereby granted to appropriate 1.33 cubic feet per second or 600 gallons per minute of water, not to exceed 305 acre-feet per annum in Lake County, Montana, to be diverted by means of a well, approximately 301 feet deep, at a point in the S1/2 SE1/4 SW1/4 of Section 23, Township 23 North, Range 21 West, M.P.M., and used for new irrigation on 80 acres in Section 26, all in Township 23 North, Range 21 West, M.P.M., and containing a total of 240 acres, more or less, from April 15 to September 30, inclusive, of each year.

2. The Permit is granted subject to all prior reserved rights of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation in the source of supply.

3. The Permit is granted subject to all prior water rights.

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1 Since the hearing, Forrest Tevebuagh, Hearing Examiner, has resigned
2 and is no longer available to the Department. The undersigned has read
3 the entire hearing transcript and all evidence available in the file on
4 this matter.

5
6 DATED this *21st* day of *January*, 1980.

7
8 *David L. Pengelly*
9 DAVID L. PENGELLY, D.N.R. & C.
10 HEARING EXAMINER

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CASE # 10847

1 BEFORE THE DEPARTMENT
2 OF
3 NATURAL RESOURCES AND CONSERVATION
4 OF THE STATE OF MONTANA

5 * * * * *
6 IN THE MATTER OF APPLICATION)
7 FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
8 NO. 10,847-g76LJ BY CARL A. AND)
9 GERTRUDE SEIFERT)
10 * * * * *

11 Pursuant to the Montana Water Use Act and the Montana Administrative
12 Procedures Act, after due notice, a Hearing was held on August 24, 1978,
13 at Polson, Montana, for the purpose of hearing objections to the above-
14 named Application for Beneficial Water Use Permit No. 10,847-g76LJ, Forrest
15 Tevebaugh, Hearing Examiner, presiding.

16 The Applicant, Carl Seifert, appeared at the Hearing and presented
17 testimony in support of the application. Mr. Seifert was represented by
18 legal counsel, Mr. Keith McCurdy, of Polson, Montana. Seven exhibits were
19 introduced supporting the application, to wit:

20 APPLICANT'S EXHIBITS:

- 21 A-1 Notice of Completion of Ground Water Appropriation By Means Of
22 A Well in the Name of Carl and Gertrude Seifert
23 A-2 Letter Dated May 14, 1971 and Attached Well Log Dated April 15,
24 1971 From Liberty Drilling Company to Carl Seifert
25 A-3 Precipitation Records in the Affected Area for the Years 1973
26 thru 1977
27 A-4 Memorandum from D.N.R.&C. Dated November 7, 1977 to the Legislative
28 Committee on Indian Legal Jurisdiction
A-5 Recovery Graph by Mr. Arnold Boettcher, U.S.G.S., for the Seifert
Well
A-6 Monitoring Data from July 16, 1974 through February 3, 1977 for
the Seifert Well

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1 A-7 Record of Water Well Monitoring for Seifert Well

2 The Applicant's exhibits were marked accordingly and received into
3 the record with objections.

4 Also appearing at the Hearing and testifying in support of the Applica-
5 tion was Mr. Tom Smith of Kalispell, Manager of the Liberty Drilling Company.

6 Two Objectors attended the Hearing and presented testimony or statements.
7 The Objectors were Edmond B. Appelt and Glen V. Vergeront. The Objectors
8 were not represented by legal counsel. The Objectors introduced no exhibits
9 supporting their objections.

10 Present and testifying on behalf of the Department was Steve White,
11 Department geohydrologist. Also present was Janice M. Fishburn, Hearing
12 Recorder. The Department was not represented by legal counsel. No exhibits
13 were introduced by the Department.

14 PROPOSED FINDINGS OF FACT

15 1. On December 30, 1976, the Department received an Application for
16 Beneficial Water Use Permit No. 10,847-g76LJ by Carl M. and Gertrude Seifert
17 to appropriate 1.33 cubic feet per second or 600 gallons per minute of water,
18 not to exceed 305 acre-feet per annum in Lake County, Montana, to be diverted
19 by means of a well, approximately 301 feet deep, at a point in the S1/2 SE1/4
20 SW1/4 of Section 23, Township 23 North, Range 21 West, M.P.M., and used for
21 new irrigation on 80 acres in Section 26 and for supplemental irrigation on
22 80 acres in Section 23 and 80 acres in Section 26, all in Township 23 North,
23 Range 21 West, M.P.M., and containing a total of 240 acres, more or less,
24 from April 15 to September 30, inclusive, of each year.

25 2. On March 10, 17, and 24, 1977, the Department caused to be duly
26 published in the Flathead Courier, Polson, Montana, notice of the above
27 Application for Beneficial Water Use Permit No. 10,847-g76LJ.

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1 3. On March 21, 1977, an objection to Application No. 10,847-g76LJ
2 was received from Legal Counsel for the Confederated Salish and Kootenai
3 Tribes of the Flathead Reservation, Montana.

4 4. On March 28, 1977, an objection to Application No. 10,847-g76LJ
5 was received from E. L. Meredith, Field Solicitor, U.S. Department of the
6 Interior on behalf of the Flathead Indian Reservation.

7 5. On April 22, 1977, an objection was received to Application No.
8 10,847-g76LJ from Edmond Appelt.

9 6. On April 25, 1977, an objection to Application No. 10,847-g76LJ
10 was received from Glen V. Vergeront.

11 7. At the Pre-hearing Conference, held in Polson, Montana, on August
12 9, 1978, a motion was made by the Applicant that the Department lacked
13 jurisdiction to conduct this Hearing. That motion was denied by the
14 Hearing Examiner.

15 8. The Counsel for the Applicant renewed the motion that the Department
16 lacked the jurisdiction to conduct this Hearing on this matter and requested
17 that the renewal of the motion be entered into the record.

18 9. Counsel for the Applicant clarified that the application being
19 considered is for 600 gallons per minute only, and not 1200 gallons per
20 minute as was filed in the initial application.

21 10. The Hearing Examiner brought up a letter by Mr. Orrin Ferris, former
22 Administrator of the Water Resources Division of the Department of Natural
23 Resources and Conservation regarding due diligence on the part of the
24 Applicant in his initial well appropriation. In his letter to Mr. Seifert,
25 Mr. Ferris stated that "the form you filed on or about April 15, 1971 is a
26 water well completion form (GW-2) not a notice of appropriation of ground
27 water (GW-1) so we cannot say that you have been completing this project
28 with due diligence." Mr. Seifert later testified in the Hearing that he had
pursued this application with due diligence; that he had been testing the

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1 ground water source prior to developing his irrigation system.

2 11. Mr. Seifert testified that a well was drilled in 1971 and
3 completed with 8-inch casing. A pump test with a discharge of 500 gallons
4 per minute was run at the time of completion of the well. After recovery from
5 the initial pump test, the static water level in the Applicant's well was
6 113 feet. The well was monitored from July 16, 1974 through February 3,
7 1977. The Applicant's current appropriation is not sufficient to irrigate
8 the desired 240 acres. Currently the well is being pumped at 350 gallons
9 per minute during the irrigation season with little fluctuation in static
10 water level. Another household and stock well located 200 yards away did
11 not have a fluctuation in static water level with pumping of the larger
12 irrigation well.

13 12. Mr. Tom Smith of Liberty Drilling Company testified for the
14 Applicant that a series of pump tests were run on the Applicant's well in
15 March of 1978. The well was not capable of being pumped at yields greater
16 than 350 gallons per minute with the current 8-inch casing and pump system
17 utilized. Mr. Smith also testified that due to the broken up geological
18 strata in the area, it is possible to have two aquifers within a short
19 distance of each other that are not interconnected.

20 13. Steve White testified for the Department that since 1971 there
21 has been an average of a 10-foot per year decline in the static water level
22 in the Applicant's well. He feels that this is due to overpumping of the
23 aquifer relative to the available recharge in the area. Mr. White indicated
24 that the overpumping is primarily due to the high capacity well owned by
25 Mr. Stiles which pumps 1200 gallons per minute. Therefore, Mr. White
26 concluded that there are not unappropriated waters in the source of supply.
27 Upon cross-examination by Counsel for the Applicant, Mr. White testified
28 that there had been a 10-foot decline in static water level in the Applicant's

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1 well prior to the time when the Stiles well was installed and began
2 pumping. Mr. White also testified upon cross-examination that a larger
3 number of low yield, i.e. less than 100 gallon per minute wells, could
4 have a similar affect to one large capacity well regarding drawdown or
5 depletion of the aquifer.

6 14. Mr. Vergeront, an Objector, testified that he would like to see
7 more information available on water levels of wells in the area so that
8 more knowledgeable decisions could be made. The Hearing Examiner agreed
9 with him, but stated that the Department of Natural Resources and Conservation
10 had neither the funds nor the manpower to gather such information.

11
12 PROPOSED CONCLUSIONS OF LAW

13 1. Under the provisions of Section 85-2-311, MCA, "The Department shall
14 issue a permit if:

- 15 1. there are unappropriated waters in the source of supply;
16 a. at times when the water can be put to the use proposed
17 by the applicant;
18 b. in the amount the applicant seeks to appropriate; and
19 c. throughout the period during which the applicant seeks
20 to appropriate, the amount requested is available;
21 2. the rights of a prior appropriator will not be adversely
22 affected;
23 3. the proposed means of diversion or construction are adequate;
24 4. the proposed use of water is a beneficial use;
25 5. the proposed use will not interfere unreasonably with other
26 planned uses or developments for which a permit has been
27 issued or for which water has been reserved;"

28 2. For the purpose herein, based upon testimony given at the Hearing,
it is concluded that unappropriated water is available to the Applicant

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1 for the intended use.

2 3. Based upon testimony presented at the Hearing, it is concluded
3 that prior appropriators' rights will not be adversely affected by granting
4 this permit.

5 4. Objectors to this application do have valid prior appropriated
6 rights which must be protected.

7 5. It is concluded that granting Application for Beneficial Water Use
8 Permit No. 10,847-g76LJ in no way reduces the Applicant's liability for
9 damage caused by the Applicant's exercise of such Permit.

10 Based upon the above Proposed Findings of Fact and Proposed Conclusions
11 of Law, the following Proposed Order is hereby made.

12
13 PROPOSED ORDER

14 1. Subject to the provisions and conditions imposed below, the
15 Application for Beneficial Water Use Permit No. 10,847-g76LJ by Carl A.
16 and Gertrude M. Seifert is hereby granted to appropriate 1.33 cubic feet
17 per second or 600 gallons per minute of water, not to exceed 305 acre-feet
18 per annum in Lake County, Montana, to be diverted by means of a well,
19 approximately 301 feet deep, at a point in the S1/2 SE1/4 SW1/4 of Section
20 23, Township 23 North, Range 21 West, M.P.M., and used for new irrigation on 80
21 acres in Section 26, all in Township 23 North, Range 21 West, M.P.M., and
22 containing a total of 240 acres, more or less, from April 15 to September 30,
23 inclusive, of each year.

24 2. The permit is granted subject to all prior reserved rights of the
25 Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation
26 in the source of supply.

27 3. The Permit is granted subject to all prior water rights.

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