STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR CHANGE OF APPROPRIATION WATER RIGHT NO'S 11,345-c40J; 11,346-c40J; 11,347-c40J; 11,348-c40J; and 11,368-c40J BY JAMES R. BILLMAYER	)))))	CORRECTED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on January 18, 1978, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order, except the Proposed Order as issued on January 18, 1978 and the Final Order as issued on March 3, 1978 are hereby corrected, only where underlined below, to correct certain errors in land descriptions and dates to be consistent with the Provisional Permits previously issued and hereby authorized for change.

CORRECTED FINAL ORDER

Subject to the conditions cited below, the following Applications for Change of Appropriation Water Right filed by James R. Billmayer of Hogeland, Montana and described as follows are hereby authorized:

1. Application No. 11345-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3951-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 10, Page 119.

The authorized change is to change the point of diversion to the NE¼ SW¼ SE¼ and NE¼ NW¼ SE¼ SE¼ of Section 5, Township 35 North, Range 24 East, M.P.M. The water is to be diverted by means of two wells, having a combined flow of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total 130 acres, more or less, in the E½ of said Section 5.

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The authorized change is for the point of diversion and place of use and for no other reason.

2. Application No. 11346-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3952-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 4.

The authorized change is to change the point of diversion to the NE¼ NW¼ SE¼ SE¼ and the SE¼ SE¼ NE¼ of Section 5, Township 35 North, Range 24 East, M.P.M. The water is to be diverted by means of two wells, having a combined flow of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the E½ of said Section 5.

The authorized change is for the point of diversion and place of use and for no other reason.

3. Application No. 11347-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3949-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 1.

The authorized change is to change the point of diversion to the NE¼ NW¼ SE¼ NW¼ and the SW¼ NW¼ NE¼ of Section 10, Township 35 North, Range 24 East, M.P.M. The water is to be diverted by means of two wells, having a combined flow rate of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the N½ of said Section 10.

The authorized change is for the point of diversion and place of use and for no other reason.

4. Application No. 11348-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3948-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed

260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 7, Page 350.

The authorized change is to change the point of diversion to the center of the NE¼ and the SW¼ NW¼ NE¼ of Section 10, Township 35 North, Range 24 East, M.P.M. The water is to be diverted by means of two wells, having a combined flow rate of 1.67 cfs or 750 gpm of water and not exceeding 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the N½ of said Section 10.

The authorized change is for the point of diversion and place of use and for no other reason.

5. Application 11368-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3954-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 6.

The authorized change is as follows: 0.66 cfs or 300 gpm of water and not exceeding 210 acre-feet per annum, to be diverted by means of a well approximately 68 feet deep, at a point in the NW¼ SE¼ NW¼ of Section 9, Township 35 North, Range 24 East, M.P.M., to be used for new irrigation on a total of 240 acres, more or less, in the N½ of said Section 9, from April 15 to August 15, inclusive, of each year. The well is to converge into one manifold system with an existing well located in the N½ of said Section 9.

The authorized change is for the point of diversion and place of use and for no other reason.

6. Each Authorization to Change is SUBJECT TO ALL PRIOR WATER RIGHTS, and the following limitations, terms, conditions, and restrictions:

(A) Each Authorization is subject to any final determination of existing water rights, as provided by Montana Law.

(B) Each Authorization is subject to the installation of a flow-meter which will accurately measure the actual quantity of water pumped from each well. The Applicant shall keep records

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of the period, rate of flow, and volume of water pumped and shall make such records available to the Department upon request.

(C) All monitoring and measuring of the wells in question will be coordinated with and a part of the study of the Big Flat area, which is being undertaken by the Department.

(D) The Applicant and the Objectors will observe the water levels in their wells and keep an accurate record of the water levels during the peak irrigation season. Each record should include water level, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, and year, month, and day measured. The Applicant and Objectors shall submit copies of the above records to the Department at the end of each irrigation season, or upon request of the Department with adequate notice given. The records will be used to evaluate possible adverse effects to prior water rights and as data to be utilized in the Big Flat groundwater study.

(E) If it be determined that the Applicant's wells do interfere with those prior existing water rights, the authorizations will be modified so as not to interfere with those rights.

Done this 6th day of April, 1978.

Irvin Ferris

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 CHANGE OF APPROPRIATION WATER RIGHT NO's. 11,345-c40J, 11,346-c40J, 11,347-c40J, 11,348-c40J, and 11,368-c40J BY JAMES R. BILLMAYER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on January 18, 1978, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order.

FINAL ORDER

Subject to the conditions cited below, the following Applications for Change of Appropriation Water Right filed by James R. Billmayer of Hogeland, Montana and described as follows are hereby authorized:

1. Application No. 11345-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3951-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 10, Page 119.

The authorized change is to change the point of diversion to the NE¼ SW¼ SE¼ of Section 5, Township 35 North, Range 24 East, M.P.M. The water is to be diverted by means of two wells, having a combined flow of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the SE¼ of said Section 5.

The authorized change is for the point of diversion and place of use and for no other reason.

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2. Application No. 11346-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3952-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 4.

The authorized change is to change the point of diversion to the NE¼ SE¼ SE¼ and the SE¼ SE¼ NE¼ of Section 5, Township 35 North, Range 24 East, M.P.M. The water is to be diverted by means of two wells, having a combined flow of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in said Section 5.

The authorized change is for the point of diversion and place of use and for no other reason.

3. Application No. 11347-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3949-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 1.

The authorized change is to change the point of diversion to the NW¼ SE¼ NW¼ and the SE¼ NW¼ NE¼ of Section 10, Township 35 North, Range 24 East, M.P.M. The water is to be diverted by means of two wells, having a combined flow rate of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the NW¼ of said Section 10.

The authorized change is for the point of diversion and place of use and for no other reason.

4. Application No. 11348-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3948-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 7, Page 350. CASE: 11345

The authorized change is to change the point of diversion to the SW¼ NW¼ NE¼ of Section 10, Township 35 North, Range 24 East, M.P.M. The water is to be diverted by means of two wells, having a combined flow rate of 1.67 cfs or 750 gpm of water and not exceeding 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the NE¼ of said Section 10.

The authorized change is for the point of diversion and place of use and for no other reason.

5. Application 11368-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3954-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 6.

The authorized change is as follows: 0.66 cfs or 300 gpm of water and not exceeding 210 acre-feet per annum, to be diverted by means of a well approximately 68 feet deep, at a point in the NW¼ SE¼ NW¼ of Section 9, Township 35 North, Range 24 East, M.P.M., to be used for new irrigation on a total of 240 acres, more or less, in the NW¼ of said Section 9, from May 1 to September 30, inclusive, of each year. The well is to converge into one manifold system with an existing well located in the N½ of said Section 9.

The authorized change is for the point of diversion and place of use and for no other reason.

6. Each Authorization to Change is SUBJECT TO ALL PRIOR WATER RIGHTS, and the following limitations, terms, conditions, and restrictions:

(A) Each Authorization is subject to any final determination of existing water rights, as provided by Montana Law.

(B) Each Authorization is subject to the installation of a flow-meter which will accurately measure the actual quantity of water pumped from each well. The Applicant shall keep records of the period, rate of flow, and volume of water pumped and shall make such records available to the Department upon request.

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(C) All monitoring and measuring of the wells in question will be coordinated with and a part of the study of the Big Flat area, which is being undertaken by the Department.

(D) The Applicant and the Objectors will observe the water levels in their wells and keep an accurate record of the water levels during the peak irrigation season. Each record should include water level, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, and year, month, and day measured. The Applicant and Objectors shall submit copies of the above records to the Department at the end of each irrigation season, or upon request of the Department with adequate notice given. The records will be used to evaluate possible adverse effects to prior water rights and as data to be utilized in the Big Flat groundwater study.

(E) If it be determined that the Applicant's wells do interfere with those piror existing water rights, the authorizations will be modified so as not to interfere with those rights.

Done this 3rd day of March, 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 CHANGE)
OF APPROPRIATION WATER RIGHT NO.'S)
11,345-c40J, 11,346-c40J, 11,347-c40J,) PROPOSAL FOR DECISION
11,348-c40J and 11,368-c40J)
BY JAMES R. BILLMAYER)

* *

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, hearings were held on August 25, 1977 at Hogeland, Montana, for the purpose of hearing objections to the above named Applications for Change of Appropriation Water Rights, William F. Throm, Hearing Examiner, presiding.

The Applicant, James R. Billmayer, appeared at the hearing to present testimony in support of his applications. Mr. Billmayer was not represented by legal counsel but was represented by Jay Billmayer, a consulting engineer. No exhibits were introduced by the Applicant in support of the application.

Objectors appearing at the hearing were Edith L. Benson, Bruce W. Goodrich, Kenneth and Gary Johnson, Bill McGillivray, Donald and Helen McGuire, Ordway Rafter, Laurence N. Walker, and Burchard J. Windels. Stuart MacKenzie, Attorney at Law, appeared to represent Irvin Anderson, Edith L. Benson, and Leonard D. and Audrey C. Jungers. Stuart MacKenzie introduced, on behalf of his clients, and with Mr. Billmayer's consent, a diagram prepared by the Applicant showing the proposed irrigation project served by the above numbered applications for change. The diagram, "Billmayer Irrigation Project", dated June 1977, was marked as Objector's Exhibit No. 1 and was received into evidence without

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objection.

Mr. Tom Patton, Geologist, Montana Department of Natural Resources and Conservation, appeared at the hearing and presented testimony on behalf of the Department. Mr. Patton introduced into evidence a Memorandum dated October 15, 1976 from Allen B. Chronister, Legal Counsel, RE: Changes in Unperfected Permitted Water Rights, marked as Department Exhibit No. 1, and a Memorandum dated August 22, 1977 from Tom Patton, Geologist, Water Rights Bureau, Subject: Anticipated Impacts of These Proposed Changes." The Department Exhibits were received into evidence without objections, but with the stipulation by Mr. MacKenzie that he be allowed to review Department Exhibit No. 1 and submit objections, if any, at a later date. No further objections have been submitted.

PROPOSED FINDINGS OF FACT

1. On February 11, 1977 the Department received Application for Change of Appropriation Water Right Numbers 11,345-c40J, 11,346-c40J, 11,347-c40J and 11,348-c40J, from James R. Billmayer of Hogeland, Montana, and on February 16, 1977 Application for Change of Appropriation Water Right No. 11,368-c40J by James R. Billmayer was also received by the Department. The above applications are described as follows:

Application No. 11,345-c40J, the Applicant has requested to change a portion of the following water right: Permit to Appropriate Water No. 3951-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 10, Page 119.

The above water was to have been diverted by means of a well

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at a point in the SW1/4 NE1/4 NE1/4 of Sec. 29, T. 35 N., R. 24 E., M.P.M., and used for new irrigation on a total of 130 acres, more or less, in the NE1/4 of said Sec. 29 from April 15 to August 15, inclusive, of each year. The drilling of this well resulted in a dry hole.

The proposed change is to change the point of diversion to the NE1/4 SW1/4 SE1/4 of Sec. 5, T. 35 N., R. 24 E., M.P.M. The water is to be diverted by means of two wells, having a combined flow of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the SE1/4 of said Sec. 5.

The proposed change is for the point of diversion and place of use and for no other reason.

Application No. 11,346-c40J, the Applicant has requested to change a portion of the following water right: Permit to Appropriate Water No. 3952-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 4.

The above water was to have been diverted by means of a well at a point in the SW1/4 NE1/4 NE1/4 of Sec. 28, T. 35 N., R. 24 E., M.P.M., and used for new irrigation on a total of 130 acres, more or less, in the NE1/4 of said Sec. 28 from April 15 to August 15, inclusive, of each year. The drilling of this well resulted in a dry hole.

The proposed change is to change the point of diversion to the NE1/4 SE1/4 SE1/4 and the SE1/4 SE1/4 NE1/4 of Sec. 5, T. 35 N., R. 24 E., M.P.M. The water is to be diverted by means of two wells,

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having a combined flow of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in said Sec. 5.

The proposed change is for the point of diversion and place of use and for no other reason.

Application No. 11,347-c40J, the Applicant has requested to change a portion of the following water right: Permit to Appropriate Water No. 3949-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 1.

The above water was to have been diverted by means of a well at a point in the SW1/4 NE1/4 NE1/4 of Sec. 27, T. 35 N., R. 24 E., M.P.M., and used for new irrigation on a total of 130 acres, more or less, in the NE1/4 of said Sec. 27 from April 15 to August 15, inclusive, of each year. This well did not produce satisfactorily.

The proposed change is to change the point of diversion to the NW1/4 SE1/4 NW1/4 and the SE1/4 NW1/4 NE1/4 of Sec. 10, T. 35 N., R. 24 E., M.P.M. The water is to be diverted by means of two wells, having a combined flow rate of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the NW1/4 of said Sec. 10.

The proposed change is for the point of diversion and place of use and for no other reason.

Application No. 11,348-c40J, the Applicant has requested to change a portion of the following water right: Permit to Appro-

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priate Water No. 3948-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 7, Page 350.

The above water was to have been diverted by means of a well at a point in the NE1/4 NE1/4 SW1/4 of Sec. 35, T. 35 N., R. 24 E., M.P.M., and used for new irrigation on a total of 130 acres, more or less, in the SW1/4 of said Sec. 35, from April 15 to August 15, inclusive, of each year. This well did not produce satisfactorily.

The proposed change is to change the point of diversion to the SW1/4 NW1/4 NE1/4 of Sec. 10, T. 35 N., R. 24 E., M.P.M. The water is to be diverted by means of two wells, having a combined flow rate of 1.67 cfs or 750 gpm of water and not exceeding 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the NE1/4 of said Sec. 10.

The proposed change is for the point of diversion and place of use and for no other reason.

Application No. 11,368-c40J, the Applicant has requested to change a portion of the following water right: Permit to Appropriate Water No. 3954-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 6.

The above water was to have been diverted by means of a well at a point in the NW1/4 SE1/4 SE1/4 of Sec. 27, T. 35 N., R. 24 E., M.P.M., Blaine County Montana, and used for new irrigation on a total of 130 acres, more or less, in said Sec. 27 from April 15

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to August 15, inclusive, of each year. The drilling of this well resulted in a dry hole.

The Proposed change is as follows: 0.66 cfs or 300 gpm of water and not exceeding 210 acre-feet per annum, to be diverted by means of well approximately 68 feet deep, at a point in the NW1/4 SE1/4 NW1/4 of Sec. 9, T. 35 N., R. 24 E., M.P.M., to be used for new irrigation on a total of 240 acres, more or less, in the NW1/4 of said Sec. 9, from May 1 to September 30, inclusive, of each year. The proposed well is to converge into one manifold system with an existing well located in the N1/2 of said Sec. 9.

The proposed change is for the point of diversion and place of use and for no other reason.

2. On March 30 and April 6 and 13, 1977 the Department caused to be duly published in the Harlem News, Harlem, Montana, notice of the above Applications No. 11,345-c40J, 11,346-c40J, 11,347-c40J, and 11,348-c40J. On April 13, 20, and 27, 1977 the Department caused to be duly published in the same publication notice of Application No. 11,368-c40J.

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

April 11, 1977 from Gordon McGillivray to all but Application No. 11,368-c40J.

April 12, 1977 from Chester A. Boardman to all applications .

April 29, 1977 from Laurence N. Walker to all applications.

May 12, 1977 from Clayton I. Mejie to all but Application No. 11,368-c40J.

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May 13, 1977 from Ordway Rafter to all applications.

May 17, 1977 from Bruce W. Goodrich and Leonard D. and Audrey C. Jungers to all but Application No. 11,368-c40J; from Kenneth and Gary Johnson, Burchard J. Windels, and Donald and Helen McGuire to all applications.

May 18, 1977 from Edith L. Benson and from Irvin Anderson to all applications.

June 14, 1977 from Leonard D. and Audrey C. Jungers to Application No. 11,368-c40J.

4. James R. Billmayer, the Applicant, presented testimony explaining his project and the applications for changes he is requesting. He testified that the wells at the original locations for which the permits were granted did not produce a sufficient rate of flow and volume of water or were dry holes and that the changes are necessary in order to satisfactorily complete his irrigation project. He testified that he was not going to appropriate more water than that already permitted by the permits for which the changes are sought; that the water will come from the same source of supply as previously permitted; that the effects on prior appropriators will be the same as they would have been had the water been available at the permitted points of diversion and that there will be no increase in the acreage irrigated beyond that for which the permits were originally granted.

5. Stuart C. MacKenzie, legal consel for Edith L. Benson, Irvin Anderson and Leonard D. and Audrey C. Jungers alleged that his clients have prior water rights on the groundwater source of

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supply in the Big Flat area; that the only source of recharge of the groundwater supply is precipitation falling on the plateau under which the groundwater lies; that in the past few years several large irrigation projects have been built in the area which are drawing water from this groundwater supply, and that to grant these applications would result in withdrawal in the area in excess of the recharge of the groundwater aquifer. Mr. MacKenzie further alleged that in order to protect the prior rights of his clients it would be necessary to conduct further studies to determine the volume of the groundwater source of supply; the frequency and rate of recharge and the effects of further appropriations upon the source of supply and the affects to the rights of prior appropriators.

Mr. MacKenzie alleged that the applications are defective in that the Applicant had not perfected a right and had not appropriated and put to beneficial use the waters permitted by the permits for which the changes are sought and that the rate and volume of water that could apply to the applications for change could only apply to that determined to be the rate and volume pumped from the previously permitted wells and actually put to a beneficial use. Mr. MacKenzie argued that to grant the applications for change would constitute an enlargement of the Applicant's present permitted rights which, he stated is not the intent of Section 89-892 R.C.M. 1947. Mr. MacKenzie further alleged that the Applicant has illegally appropriated water from the new wells without a permit and that it is the Department's responsibility to enforce the law and stop such practices.

6. Mr. Tom Patton, DNR&C Geologist, addressed three questions

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in his testimony, which were: 1) Does the Flaxville gravel (the aquifer in this case) extend far enough south to underly the original sites of the permits and will the wells at the new site penetrate the same aquifer? 2) What affect will the operation of the wells at the new sites have on surrounding existing water wells and rights? and 3) Is the Flaxville gravel over appropriated or is the safe annual yield of the aquifer being exceeded? First, Mr. Patton's testimony concluded that all the wells in question do penetrate the Flaxville gravels and that water withdrawn from the proposed new well locations would be from the same source as from the old wells but that the aquifer at the new locations is capable of supporting a higher level of development because of higher permeability and greater aquifer thickness. Secondly, Mr. Patton testified that with the exception of four wells, those of Rafter, Anderson, Boardman, and Benson, all other wells appear to be too far distant to be affected within the first 78 days of pumping; that the aforementioned four wells are within the radius of influence of wells at the new locations and may be affected to some extent and that to establish whether or not they would be adversely affected would require careful monitoring of the drawdown as a result of pumping operations. Thirdly, because the accuracy of the estimated recharge is poor and data is lacking concerning total annual withdrawals, it is impossible to draw a conclusion as to whether or not the source of supply is over appropriated. Mr. Patton further testified that granting of the changes requested will put no more stress on the source of supply than there would have been if the water had been withdrawn from the original permitted wells.

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7. All objectors generally testified that they were fearful that the large ground water appropriations made in the last several years would adversely affect their domestic and stockwater wells. They testified that they were seeking assurance that their prior rights would be protected and that if they should be adversely affected that the Applicant be required to immediately cease pumping operations.

PROPOSED CONCLUSIONS OF LAW

1. The matter before the Department is application for change of appropriation water right consisting of the change in the point of diversion and place of use for five Permits to Appropriate Water, issued to the Applicant with priority date of October 18, 1974 and recorded in the State Record of Water Right Permits as follows:

Permit No. 3948-g40J, Volume 7, Page 350

Permit No. 3949-g40J, Volume 8, Page 1

Permit No. 3951-g40J, Volume 10, Page 119

Permit No. 3952-g40J, Volume 8, Page 4

Permit No. 3954-g40J, Volume 8, Page 6

The above are valid permits, issued by the Department in accordance with Section 89-886 R.C.M. 1947 and were not revoked or modified in any way by Department action, in accordance with the provisions of Section 89-887 R.C.M. 1947, or otherwise. It is therefore concluded that the Application for Change of Appropriation Water Right for each of the above permits is proper. Therefore, in accordance with Section 89-892 R.C.M. 1947, the Department shall approve the proposed changes if it determines that the proposed changes will not adversely affect the rights of other persons.

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2. Under the provisions of Section 89-892 R.C.M. 1947, an

appropriator may not change the place of diversion or place of use of a water right without having first received authorization for change of appropriation water right from the Department. Whether or not the Applicant did make such a change without authorization and is in violation of the Water Laws of the State of Montana, is not a matter for consideration at this Hearing and if pursued, must be addressed in another forum or a court of law.

3. The proposed changes are for changes in the place of diversion from the same source of supply and for the same beneficial use and for no other reason.

4. The objectors have apparent prior existing water rights from the source of supply which by law must be protected, however, the quantification and final determination of the validity of such rights must await the adjudication process mandated by Section 89-870 et seq., of the Montana Water Use Act, and any authorizations issued must be subject to that final determination.

5. The rights of prior appropriators will not be adversely affected if the authorizations are conditioned so as to protect those rights.

6. The proposed means of diversion or construction will be adequate.

7. The subject Applications for Change of Appropriation Water Right may be approved and authorizations granted by the Department.

PROPOSED ORDER

1. Subject to the conditions cited below, the following Applications for Change of Appropriation Water Right filed by James R. Billmayer of Hogeland, Montana and described as follows are hereby authorized:

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Application No. 11,345-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3951-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 10, Page 119.

The authorized change is to change the point of diversion to the NE1/4 SW1/4 SE1/4 of Sec. 5, T. 35 N., R. 24 E., M.P.M. The water is to be diverted by means of two wells, having a combined flow of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the SE1/4 of said Sec. 5.

The authorized change is for the point of diversion and place of use and for no other reason.

Application No. 11,346-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3952-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 4.

The authorized change is to change the point of diversion to the NE1/4 SE1/4 SE1/4 and the SE1/4 SE1/4 NE1/4 of Sec. 5, T. 35 N., R. 24 E., M.P.M. The water is to be diverted by means of two wells, having a combined flow of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in said Sec. 5.

The authorized change is for the point of diversion and place of use and for no other reason.

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Application No. 11,347-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3949-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 1.

The authorized change is to change the point of diversion to the NW1/4 SE1/4 NW1/4 and the SE1/4 NW1/4 NE1/4 of Sec. 10, T. 35 N., R. 24 E., M.P.M. The water is to be diverted by means of two wells, having a combined flow rate of 1.67 cfs or 750 gpm of water and not exceeding a combined total of 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the NW1/4 of said Sec. 10.

The authorized change is for the point of diversion and place of use and for no other reason.

Application No. 11,348-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3948-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 7, Page 350.

The authorized change is to change the point of diversion to the SW1/4 NW1/4 NE1/4 of Sec. 10, T. 35 N., R. 24 E., M.P.M. The water is to be diverted by means of two wells, having a combined flow rate of 1.67 cfs or 750 gpm of water and not exceeding 260 acre-feet per annum, to be used on a total of 130 acres, more or less, in the NE1/4 of said Sec. 10.

The authorized change is for the point of diversion and place of use and for no other reason.

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Application No. 11,368-c40J, to change a portion of the following water right: Permit to Appropriate Water No. 3954-g40J granted to James R. Billmayer, priority date October 18, 1974, for 1.67 cfs or 750 gpm of water and not to exceed 260 acre-feet per annum, as recorded in State Record of Water Right Permits, Volume 8, Page 6.

The authorized change is as follows: 0.66 cfs or 300 gpm of water and not exceeding 210 acre-feet per annum, to be diverted by means of a well approximately 68 feet deep, at a point in the NW1/4 SE1/4 NW1/4 of Sec. 9, T. 35 N., R. 24 E., M.P.M., to be used for new irrigation on a total of 240 acres, more or less, in the NW1/4 of said Sec. 9, from May 1 to September 30, inclusive, of each year. The well is to converge into one manifold system with an existing well located in the N1/2 of said Sec. 9.

The authorized change is for the point of diversion and place of use and for no other reason.

2. Each Authorization to Change is SUBJECT TO ALL PRIOR WATER RIGHTS, and the following limitations, terms, conditions, and restrictions:

(1) Each Authorization is subject to any final determination of existing water rights, as provided by Montana Law.

(2) Each Authorization is subject to the installation of a flowmeter which will accurately measure the actual quantity of water pumped from each well. The Applicant shall keep records of the period, rate of flow, and volume of water pumped and shall make such records available to the Department upon request.

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(3) All monitoring and measuring of the wells in question will be coordinated with and a part of the study of the Big Flat area, which is being undertaken by the Department.

(4) The Applicant and the Objectors will observe the water levels in their wells and keep an accurate record of the water levels during the peak irrigation season. Each record should include water level, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, and year, month, and day measured. The Applicant and Objectors shall submit copies of the above records to the Department at the end of each irrigation season, or upon request of the Department with adequate notice given. The records will be used to evaluate possible adverse effects to prior water rights and as data to be utilized in the Big Flat groundwater study.

(5) If it be determined that the Applicant's wells do interfere with those prior existing water rights, the authorizations will be modified so as not to interfere with those rights.

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

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filing exceptions will be granted. Upon receipt of any written exceptions opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 18th day of January, 1978.

WILLIAM F. THROM
HEARING EXAMINER

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