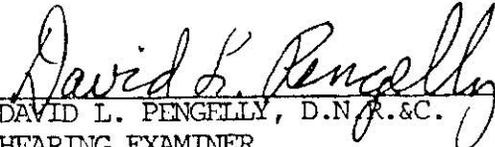


BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR) NOTICE OF
BENEFICIAL WATER USE PERMIT NO.) ERROR IN
13,589-g40J BY TURNER COLONY) FINAL ORDER

This is to notify you that there was an error made in the legal land description of this Application. The error is in paragraph 1, line 7 of the Final Order. The Order reads ". . . NW1/4 of Section 34 and 60 acres in the SW1/4 and 20 acres in the SE1/4 . . .". The error is in the Section number, it should read "Section 26", not Section 34.

DATED this 9th day of July, 1980.



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

CASE # 13589

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

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) FINAL ORDER
13,589-g40J BY TURNER COLONY)

The Proposed Findings of Fact, Conclusions of Law and Order, as entered by the Hearing Examiner on June 12, 1980, are hereby adopted as the Final Findings of Fact, Conclusions of Law and Order.

FINAL ORDER

1. Subject to the conditions and limitations listed below, Provisional Permit No. 13,589-g40J is hereby granted to appropriate 2 cubic feet per second or 900 gallons per minute of water, not to exceed 432 acre-feet per annum, to be diverted by means of a well approximately 40 feet deep at a point in the SW1/4 NE1/4 SE1/4 of Section 27, Township 35 North, Range 25 East, M.P.M., and used for new irrigation of 80 acres in the NW1/4 of Section 34 and 60 acres in the SW1/4 and 20 acres in the SE1/4 of Section 27, all in Township 35 North, Range 25 East, and containing a total of 160 acres, more or less, to be used for irrigation purposes from April 1 to November 15, inclusive, of each year, in Blaine County, Montana.
2. This Provisional Permit is granted subject to any final determination of existing water rights as provided by Montana law.
3. This Permit is granted subject to existing water rights in the source of supply.
4. This Provisional Permit is granted subject to Section 85-2-505, MCA, 1979, which requires that all wells be constructed so that they do not allow water to be wasted, contaminate other water supplies or sources,

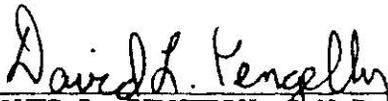
1 and that all flowing artesian wells be capped or equipped so that the
2 flow of water may be stopped when not being put to a beneficial use.
3 The final completion of the well shall include an access port of at
4 least 0.50-inch diameter, located so that the static water level in the
5 well may be accurately measured.

6 5. This Provisional Permit is granted subject to the following Big
7 Flat conditions:

- 8 a. The Permittee shall install an adequate flow metering
9 device in order to allow the flow rate and volume of
10 water diverted to be recorded. The Permittee shall
11 keep a written record of the flow rate and volume of all
12 waters diverted including the period of time and shall
13 submit said records to the Department upon request.
- 14 b. All monitoring and measuring of the well in question
15 will be coordinated with and a part of the study of
16 the Big Flat area, which is being undertaken by the
17 Department.
- 18 c. The Permittee shall observe the water level in the well
19 and keep an accurate record of precipitation and the
20 water levels during the irrigation season. Each
21 record shall include water level, method of measurement,
22 date and time of measurement, precipitation to date,
23 quantity of water pumped from the well, and year,
24 month, and day measured. The Permittee shall submit
25 copies of the above records to the Department at the
26 end of each irrigation season. The records will be used
27 to evaluate possible adverse affects to prior and existing
28 water rights and as data to be utilized in the Big Flat
ground water study.

1 with the Montana Administrative Procedures Act by filing a petition in
2 the appropriate court within thirty (30) days after service of the Final
3 Order.

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5 DATED this 3rd day of July, 1980.

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9 DAVID L. PENGELLY, D.N.R.&C.
10 HEARING EXAMINER
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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.) PROPOSAL FOR DECISION
13,589-g40J BY TURNER COLONY)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on April 17, 1980, in the American Legion Hall at Turner, Montana, for the purpose of hearing objections to Application for Beneficial Water Use Permit No. 13,589-g40J, David Pengelly, Hearing Examiner, presiding. The hearing was held in conjunction with the hearing on Application for Beneficial Water Use Permit No. 13,590-g40J.

The Applicant, Turner Colony, appeared at the hearing by Peter Hofer, Sr., and Peter Hofer, and presented testimony in support of the Application. The Turner Colony was not represented by legal counsel. No exhibits were introduced supporting the Application.

Six (6) objectors attended the hearing and presented testimony or statements. The Objectors present were Mr. Patrick Kimmel, Mr. Oliver Killam, Mr. Clayton Mejie, Mr. Herman Liese, Mr. Fred Mohar, Jr., and Mrs. Laurence Walker. None of the Objectors were represented by legal counsel. No exhibits were introduced by the Objectors.

Montana Department of Natural Resources and Conservation personnel present at the hearing were Mr. Roger Noble, Geologist; Mr. Bob Larson, Havre Water Rights Bureau Field Office Manager; and Ms. Vicki Woodrow, Hearings Recorder. The Department was not represented by legal counsel. Two (2) exhibits were introduced by the Department, to wit:

Department's Exhibits:

D-1 Copy of aerial photo of Applicant's property showing outline of areas to be irrigated under Application Nos. 13,589-g40J and 13,590-g40J.

D-2 Copy of map showing the general outline of the Big Flat ground water basin; the numbers and locations of permits issued by the Department within this basin; the location of the Applicant's pending Applications; and the location of the Objectors existing rights.

The Department's Exhibits were marked accordingly and received into the record without objections.

SUMMARY OF RECORD

1. On June 20, 1977, the Department received an Application for Beneficial Water Use Permit No. 13,589-g40J by Turner Colony to appropriate 2 cubic feet per second or 900 gallons per minute of water, not to exceed 432 acre-feet per annum. The water is to be diverted by means of a well approximately 40 feet deep at a point in the NW1/4 SW1/4 NW1/4 of Section 26 Township 35 North, Range 25 East, M.P.M., and used for new irrigation on a total of 160 acres, more or less, in the NW1/4 of said Section 26, and used for new irrigation purposes from April 1 to November 15, inclusive, of each year, in Blaine County, Montana.

2. On October 5, 12 and 19, 1977, the Department caused to be duly published in the Harlem News, Harlem, Montana, notice of Application for Beneficial Water Use Permit No. 13,589-g40J.

3. Application for Beneficial Water Use No. 13,589-g40J was revised following a check on the point of diversion by Bob Larson. The point of

1 diversion was changed from the NW1/4 SW1/4 NW1/4 of Section 26 to the
2 SW1/4 NE1/4 SE1/4 of Section 27. The place of use was changed from
3 a total of 160 acres in the NW1/4 of Section 26, to 80 acres in the
4 NW1/4 of Section 26 and 60 acres in the SW1/4 and 20 acres in the SE1/4
5 of Section 27, both in Township 35 North, Range 25 East and containing a
6 total of 160 acres, more or less.

7 4. On October 26, 1977, the Department received an objection to
8 the above Application from Mr. and Mrs. Laurence N. Walker.

9 5. On November 17, 1977, the Department received objections to the
10 above Application from Mr. Patrick M. Kimmel, Mr. Fred B. Mohar, Sr.,
11 Mr. Fred Mohar, Jr., Mr. Ordway Pafter, Mr. Herman Liese, Mr. Clayton I.
12 Mejie, and Mr. Oliver A. Killam.

13 6. On July 10, 1979, Mr. Clayton I. Mejie signed a form releasing
14 his objection to the above Application.

15 7. On July 17, 1979, Mr. Herman Liese signed a form releasing his
16 objection to the above Application.

17 8. On September 24, 1979, Mr. Oliver A. Killam signed a form
18 releasing his objection to the above Application.

19 9. On September 29, 1979, Mr. Fred Mohar, Jr., signed a form
20 releasing his objection to the above Application.

21 10. In a letter dated February 27, 1980, Mr. Patrick M. Kimmel
22 requested a formal hearing on the above Application.

23 PROPOSED FINDINGS OF FACT

24 For the purposes herein, based upon testimony given at the hearing
25 and information contained in the Department's file on this matter, it is
26 found:

27 1. That there are unappropriated waters in the source of supply,
28

1 the Flaxville Formation, at times when the water can be put to the use
2 proposed by the Applicant.

3 2. That it is not known whether 900 gallons per minute, the amount
4 requested by the Applicant, is available for appropriation.

5 3. That it is not known whether the 900 gallons per minute requested
6 by the Applicant is available throughout the period during which the
7 Applicant seeks to appropriate that amount.

8 4. That the Objectors to the above Application have valid existing
9 water rights which must be protected.

10 5. That the existing rights of the Objectors have not been adversely
11 affected in the past by the existing irrigation systems in the area.

12 6. That the proposed means of diversion or construction are not
13 adequately known; specifically, no irrigation plan has been submitted.

14 7. That the proposed use of water is a beneficial use.

15 8. That the proposed use of water will not interfere unreasonably
16 with other planned uses or developments for which a permit has been
17 issued or for which water has been reserved.

18 PROPOSED CONCLUSIONS OF LAW

19 1. Section 85-2-311, MCA, 1979, states that "The department shall
20 issue a permit if:

21 1. there are unappropriated waters in the source of supply:

22 a. at times when the water can be put to the use
23 proposed by the applicant;

24 b. in the amount the applicant seeks to appropriate; and

25 c. throughout the period during which the applicant
26 seeks to appropriate, the amount requested is
27 available;

- 1 2. the rights of a prior appropriator will not be adversely
- 2 affected;
- 3 3. the proposed means of diversion or construction are adequate;
- 4 4. the proposed use of water is a beneficial use;
- 5 5. the proposed use will not interfere unreasonably with
- 6 other planned uses or developments for which a permit
- 7 has been issued or for which water has been reserved; . . ."

8 2. Section 85-2-312, (1), MCA, 1979, states in part, "The department
9 may require modification of plans and specifications for the appropriation
10 or related diversion or construction. It may issue a permit subject to
11 terms, conditions, restrictions and limitations it considers necessary
12 to protect the rights of other appropriators, and it may issue temporary
13 or seasonal permits. A permit shall be issued subject to existing
14 rights and any final determination of those rights made under this
15 chapter."

16 3. It is concluded that there are unappropriated waters in the
17 source of supply at times when the water can be put to the use proposed
18 by the Applicant.

19 4. It is concluded that the amount of water available for appropriation
20 and the period of time that that amount is available is not known.
21 Therefore it is concluded that the Proposed Order should be conditioned
22 to grant the Applicant only that amount of water which is available and
23 can be put to beneficial use.

24 5. It is concluded that the rights of prior appropriators will not
25 be adversely affected; subject to certain conditions in the Proposed
26 Order.

27 6. It is concluded that the proposed means of diversion or construction
28 are adequate; subject to certain conditions in the Proposed Order.

1 4. This Provisional Permit is granted subject to Section 85-2-505,
2 MCA, 1979, which requires that all wells be constructed so that they do
3 not allow water to be wasted, contaminate other water supplies or sources,
4 and that all flowing artesian wells be capped or equipped so that the
5 flow of water may be stopped when not being put to a beneficial use.
6 The final completion of the well shall include an access port of at
7 least 0.50-inch diameter, located so that the static water level in the
8 well may be accurately measured.

9 5. This Provisional Permit is granted subject to the following Big
10 Flat conditions:

- 11 a. The Permittee shall install an adequate flow metering
12 device in order to allow the flow rate and volume of
13 water diverted to be recorded. The Permittee shall
14 keep a written record of the flow rate and volume of all
15 waters diverted including the period of time and shall
16 submit said records to the Department upon request.
- 17 b. All monitoring and measuring of the well in question
18 will be coordinated with and a part of the study of
19 the Big Flat area, which is being undertaken by the
20 Department.
- 21 c. The Permittee shall observe the water level in the well
22 and keep an accurate record of precipitation and the
23 water levels during the irrigation season. Each
24 record shall include water level, method of measurement,
25 date and time of measurement, precipitation to date,
26 quantity of water pumped from the well, and year,
27 month, and day measured. The Permittee shall submit
28 copies of the above records to the Department at the

1 end of each irrigation season. The records will be used
2 to evaluate possible adverse affects to prior and existing
3 water rights and as data to be utilized in the Big Flat
4 ground water study.

5 6. If it is determined that the Permittee's well does interfere
6 with those existing water rights, the Provisional Permit will be modified
7 so as not to interfere with those rights.

8 7. Plans and specifications for this project, including diversion
9 facilities and the distribution system shall be presented to the Department
10 by the Permittee for approval prior to appropriation of the water granted
11 herein.

12 8. The issuance of this Provisional Permit by the Department in no
13 way reduces the Permittee's liability for damages caused by the Permittee's
14 exercise of this Provisional Permit, nor does the Department in issuing
15 this Provisional Permit in any way acknowledge liability for damage
16 caused by the Permittee's exercise of this Provisional Permit.

17 9. This Provisional Permit allows the Permittee to appropriate up
18 to 900 gallons per minute of water, however, the actual water right
19 perfected will be that amount of water which the Permittee can divert
20 from the well and beneficially use. If the Permittee is not able to
21 appropriate the 900 gallons per minute of water from the single well
22 applied for under this Application and wishes to put in another well or
23 wells, the Permittee must make an Application for change for additional
24 points of diversion with the Department.

25 RECOMMENDATION

26 It is recommended that the Objectors maintain records of their
27 water rights in a manner similar to that required of the Permittee under
28 Condition 5(c) of the Proposed Order.

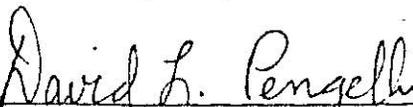
NOTICE

This Proposed Order is offered for the review and comment of all parties of record. The review and comment period shall commence with the service of this Proposed Order and shall end ten (10) days thereafter. No extensions of time for comment will be granted.

The Final Order in this matter will be sent to all parties by certified mail.

The Hearing Examiner's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DATED this 12th day of June, 1980.



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