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

* *

IN THE MATTER OF APPLICATIONS FOR BENEFICIAL WATER USE PERMIT NOS. 13,003-g40-0, 13,188-g40-0 AND 13,701-g40-0 BY GEORGE GREENWOOD TRUST	))))	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

* *

An administrative hearing scheduled pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act for 2:00 p.m. on August 1, 1978, at Glasgow, Montana, was cancelled due to failure of additional Objectors of record to appear.

This intended hearing was for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit Nos. 13,003-g40-0, 13,188-g40-0 and 13,701-g40-0 by George Greenwood (Trust).

A Pre-hearing Conference stipulation entered into by Mr. Kenneth R. Greenwood, Trustee, representing the Applicant George Greenwood (Trust), and John A. Langen Esq., Counsel for the Objector, Mrs. Goldyn C. Birkoski, was accepted by Forrest Tevebaugh, Hearing Examiner.

No other objectors or witnesses were present.

No additional exhibits were offered.

The other objectors of record, Mrs. Mabel Soper (Guardianship), Mr. Stanley B. Russell and Mr. Stanley G. Olson, did not appear at the time and place appointed for hearing, nor were they represented by counsel.

FINDINGS OF FACT

1. The Department received three Applications for Beneficial Water Use Permits from George Greenwood (Trust). The dates received and the file numbers are as follows:

May 16, 1977	No. 13,003-g40-0
June 2, 1977	No. 13,188-g40-0
June 27, 1977	No. 13,701-g40-0

2. The purposes of the applications are as follows;

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a. Application No. 13,003-g40-0 is to appropriate 7.13 cubic feet per second or 3,200 gallons per minute of water, not to exceed 1,742 acre-feet per annum, to be diverted by means of a well approximately 300 feet deep at a point in the SE¼ SE¼ SW¼ of Section 31, Township 35 North, Range 42 East, M.P.M., and used for irrigation on 155 acres in the NE¼ and 155 acres in the NW¼ of Section 6, Township 34 North, Range 42 East, M.P.M., 160 acres in the SW¼ and 160 acres in the NW¼ of Section 31, and 15 acres in the SW¼ of Section 30, Township 35 North, Range 42 East, M.P.M., and containing a total of 645 acres, more or less, from May 1 to September 1, inclusive, of each year.

b. Application No. 13,188-g40-0 is to appropriate 3.0 cubic feet per second or 1,350 gallons per minute of water, not to exceed 972 acre-feet per annum, to be diverted by means of a well approximately 300 feet deep at a point in the NE¼ NE¼ NE¼ of Section 25, Township 35 North, Range 41 East, M.P.M., and used for new irrigation of 160 acres in the NE¼ and 80 acres in the SE¼ of Section 25, Township 35 North, Range 41 East, and 120 acres in the SW¼ of Section 30, Township 35 North, Range 42 East, M.P.M., and containing a total of 360 acres, more or less, from April 15 to October 31, inclusive, of each year.

c. Application No. 13,701-g40-0 is to appropriate 6.01 cubic feet per second or 2,700 gallons per minute of water, not to exceed 810 acre-feet per annum in Valley County, Montana, to be diverted by means of a well approximately 300 feet deep at a point in the SE¼ SW¼ SW¼ of Section 6, Township 34 North, Range 42 East, M.P.M., and used for new irrigation on 150 acres in the SW¼ of said Section and 150 acres in the NW¼ of Section 7, Township 34 North, Range 42 East, M.P.M., and containing a total of 300 acres, more or less, from April 1 to October 31, inclusive, of each year.

3. On September 29, October 6, and 13, 1977, the Department caused to be duly published in the Glasgow Courier, Glasgow, Montana, notices of the above Applications for Beneficial Water Use Permit Nos. 13,003-g40-0, 13,188-g40-0 and 13,701-g40-0. Due to an error in

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publication Application for Beneficial Water Use Permit No. 13,701-g40-0 was re-advertised on November 2, 9 and 16, 1977, in the same newspaper.

4. On November 14, 1977, the Department received objections to the three above applications from Ms. Mabel Soper (Guardianship), Mr. Stanley G. Russell and Mr. Stanley G. Olson.

5. On December 22, 1977, the Department received an objection to Application No. 13,701-g40-0 from Ms. Goldyn C. Birkoski.

6. On August 1, 1978, at a Pre-hearing Conference, John A. Langen, representing Objector Birkoski and Kenneth R. Greenwood, representing George Greenwood (Trust), entered the following stipulation to resolve Birkoski's objection:

a. That in the interest of curtailing groundwater overdraft in the affected area only the one existing well (No. 13,701-g40-0) be developed and put to the intended use during the next two year period.

b. That the second proposed well (No. 13,188-g40-0) not be brought into production until two years after the commencement of use of the first well.

c. That the third proposed well (No. 13,003-g40-0) not be brought into production until two years after the commencement of use of the second well.

d. That the intent of this proposal for stipulation is to make the development of the groundwater resource in the affected area more gradual and for no other reason.

e. That the Permittee shall install and maintain an adequate flow meter measuring device to accurately measure the rate and volume of water diverted from the well. The Permittee shall keep an accurate written log record of periods of diversion. This includes the times and dates the pump was started and shut off, the rate water is diverted during each pumping period, and the total volume of water diverted during each period. Such records shall be presented to the Department upon demand by the Department.

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CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, Beneficial Water Use Permits are required by the Applicant to appropriate water from the proposed source of supply.

2. The Objectors to the subject Application for Beneficial Water Use Permits have apparent valid prior appropriation water rights to the source of supply which under the provisions of Section 89-886 (1), R.C.M. 1947, must be protected in the issuance of Beneficial Water Use Permits. It is concluded that the rights of prior appropriators will be protected if the provisional permits are conditioned to protect those rights.

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

   a. At times when the water can be put to the use proposed by the Applicant;

   b. Throughout the period during which Applicant seeks to appropriate, the amount requested is available;

   c. The rights of a prior appropriator will not be adversely affected;

   d. The proposed means of diversion or construction are adequate;

   e. The proposed use of water is a beneficial use;

   f. The proposed use will not interfere unreasonably with other planned uses or development for which a permit has been issued or for which water has been reserved.

4. The criteria for issuance of a permit set forth under the provisions of Section 89-885, R.C.M. 1947, have been met and the Application(s) for Beneficial Water Use Permit(s) Nos. 13,003-g40-0, 13,188-g40-0 and 13,701-g40-0 by George Greenwood (Trust) may be granted in accordance with the provisions of Chapter 8 of Title 89 of the laws of the State of Montana.

FINAL ORDER

1. Application for Beneficial Water Use Permit Nos. 13,003-g40-0, 13,188-g40-0 and 13,701-g40-0 be George Greenwood (Trust) are hereby granted as follows:

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a. Provisional Permit No. 13,701-g40-0 to appropriate 6.01 cubic feet per second or 2,700 gallons per minute of water, not to exceed 810 acre-feet per annum in Valley County, Montana, to be diverted by means of a well approximately 300 feet deep at a point in the SE¼ SW¼ SW¼ of Section 6, Township 34 North, Range 42 East, M.P.M., and used for new irrigation on 150 acres in the SW¼ of said Section 6 and 150 acres in the NW¼ of Section 7, Township 34 North, Range 42 East, M.P.M., and containing a total of 300 acres, more or less, from April 1 to October 31, inclusive, of each year. Appropriation may be made only from this well during the two year period following the hearing date, as stipulated.

b. Provisional Permit No. 13,188-g40-0 to appropriate 3.0 cubic feet per second or 1,350 gallons per minute of water, not to exceed 972 acre-feet per annum, to be diverted by means of a well approximately 300 feet deep at a point in the NE¼ NE¼ NE¼ of Section 25, Township 35 North, Range 41 East, M.P.M., and used for new irrigation on 160 acres in the NE¼ and 80 acres in the SE¼ of Section 25, Township 35 North, Range 41 East, and 120 acres in the SW¼ of Section 30, Township 35 North, Range 42 East, M.P.M., and containing a total of 360 acres, more or less, from April 15 to October 31, inclusive, of each year. This well shall not be brought into production until two years after the legal commencement of use of the first well, No. 13,701-g40-0, as stipulated.

c. Provisional Permit No. 13,003-g40-0 to appropriate 7.13 cubic feet per second or 3,200 gallons per minute of water, not to exceed 1,742 acre-feet per annum, to be diverted by means of a well approximately 300 feet deep at a point in the SE¼ SE¼ SW¼ of Section 31, Township 35 North, Range 42 East, M.P.M., and used for new irrigation on 155 acres in the NE¼ and 155 acres in the NW¼ of Section 6, Township 34 North, Range 42 East, M.P.M., 160 acres in the SW¼ and 160 acres in the NW¼ of Section 31, and 15 acres in the SW¼ of Section 30, Township 35 North, Range 42 East, M.P.M., and containing a total of 645 acres, more or less, from May 1 to September 1, inclusive, of each year. This well shall not be brought into production until two years after the legal commencement of use of the second well, No. 13,188-g40-0, as stipulated.

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

a. The Permittee shall install and maintain an adequate flow meter measuring device to accurately measure the rate and volume of water diverted from the well. The Permittee shall keep an accurate written log record of periods of diversion. This includes the times and dates the pump was started and shut off, the rate water is diverted during each pumping period, and the total volume of water diverted during each period. Such records shall be presented to the Department upon demand by the Department.

b. The Permittee and the Objectors will observe the water levels and flows of their wells and springs and keep an accurate record of such water levels and flows during the irrigation season. Each record should include water level, rate of flow, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from their wells and year, month, and day measured. The Permittee and the 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 made available for any future groundwater study in the affected area.

c. The granting of these Provisional Permits in no way relieves the Permittee of liability for damages caused to others by the interruption of artesian flows or the lowering of the water table so as to necessitate the drilling and casing of new wells, installation of pumps and appurtenant equipment, or other required means to continue to make available the water they are rightfully and legally entitled.

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NOTICE

The Hearing Examiner's final decision 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 Decision and Order.

DATED this 12th day of July, 1979.

FORREST TEVEBAUGH, D. N. R. & C.
Hearing Examiner

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

* *

IN THE MATTER OF APPLICATIONS FOR)
BENEFICIAL WATER USE PERMITS NOS.)
13,003-g40-O, 13,188-g40-0 AND) PROPOSAL FOR DECISION
13,701-g40-0 BY GEORGE GREENWOOD)
TRUST)

* *

An administrative hearing scheduled pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act for 2:00 p.m. on August 1, 1978, at Glasgow, Montana, was cancelled due to failure of additional Objectors of record to appear.

This intended hearing was for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permits Nos. 13,003-g40-0, 13,188-g40-0 and 13,701-g40-0 by George Greenwood (Trust).

A Pre-hearing Conference stipulation entered into by Mr. Kenneth R. Greenwood, Trustee, representing the Applicant George Greenwood (Trust), and John A. Langen Esq., counsel for Objector, Mrs. Goldyn C. Birkoski, was accepted by Forrest Tevebaugh, Hearing Examiner.

No other objectors or witnesses were present.

No additional exhibits were offered.

The other objectors of record, Mrs. Mabel Soper (Guardianship), Mr. Stanley G. Russell and Mr. Stanley G. Olson, did not appear at the time and place appointed for the hearing, nor were they represented by counsel.

PROPOSED FINDINGS OF FACT

1. The Department received three Applications for Beneficial Water Use Permits from George Greenwood (Trust). The dates received and the file numbers are as follows:

May 16, 1977	No. 13,003-g40-0
June 2, 1977	No. 13,188-g40-0
June 27, 1977	No. 13,701-g40-0

2. The purposes of the applications are as follows:

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a. Application No. 13,003-g40-0 is to appropriate 7.13 cubic feet per second or 3,200 gallons per minute of water, not to exceed 1,742 acre-feet per annum, to be diverted by means of a well approximately 300 feet deep at a point in the SE¼ SE¼ SW¼ of Section 31, Township 35 North, Range 42 East, M.P.M., and used for irrigation on 155 acres in the NE¼ and 155 acres in the NW¼ of Section 6, Township 34 North, Range 42 East, M.P.M., 160 acres in the SW¼ and 160 acres in the NW¼ of Section 31, and 15 acres in the SW¼ of Section 30, Township 35 North, Range 42 East, M.P.M., and containing a total of 645 acres, more or less, from May 1 to September 1, inclusive, of each year.

b. Application No. 13,188-g40-0 is to appropriate 3.0 cubic feet per second or 1,350 gallons per minute of water, not to exceed 972 acre-feet per annum, to be diverted by means of a well approximately 300 feet deep at a point in the NE¼ NE¼ NE¼ of Section 25, Township 35 North, Range 41 East, M.P.M., and used for new irrigation on 160 acres in the NE¼ and 80 acres in the SE¼ of Section 25, Township 35 North, Range 41 East, and 120 acres in the SW¼ of Section 30, Township 35 North, Range 42 East, M.P.M., and containing a total of 360 acres, more or less, from April 15 to October 31, inclusive, of each year. R.L.D.

c. Application No. 13,701-g40-0 is to appropriate 6.01 cubic feet per second or 2,700 gallons per minute of water, not to exceed 810 acre-feet per annum in Valley County, Montana, to be diverted by means of a well approximately 300 feet deep at a point in the SE¼ SW¼ SW¼ of Section 6, Township 34 North, Range 42 East, M.P.M., and used for new irrigation on 150 acres in the SW¼ of said Section 6 and 150 acres in the NW¼ of Section 7, Township 34 North, Range 42 East, M.P.M., and containing a total of 300 acres, more or less, from April 1 to October 31, inclusive, of each year.

3. On September 29, October 6 and 13, 1977, the Department caused to be duly published in the Glasgow Courier, Glasgow, Montana, notices of the above Applications for Beneficial Water Use Permits Nos. 13,003-g40-0, 13,188-g40-0

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and 13,701-g40-0. Due to an error in publication Application for Beneficial Water Use Permit No. 13,701-g40-0 was re-advertised on November 2, 9 and 16, 1977, in the same newspaper.

4. On November 14, 1977, the Department received objections to the three above applications from Ms. Mabel Soper (Guardianship), Mr. Stanley G. Russell and Mr. Stanley G. Olson.

5. On December 22, 1977, the Department received an objection to Application No. 13,701-g40-0 from Ms. Goldyn C. Birkoski.

6. On August 1, 1978, at a Pre-hearing Conference, John A. Langen, representing Objector Birkoski and Kenneth R. Greenwood, representing George Greenwood (Trust), entered the following stipulation to resolve Birkoski's objection:

a. That in the interest of curtailing groundwater overdraft in the affected area only the one existing well (No. 13,701-g40-0) be developed and put to the intended use during the next two year period.

b. That the second proposed well (No. 13,188-g40-0) not be brought into production until two years after the commencement of use of the first well.

c. That the third proposed well (No. 13,003-g40-0) not be brought into production until two years after the commencement of use of the second well.

d. That the intent of this proposal for stipulation is to make the development of the groundwater resource in the affected area more gradual and for no other reason.

e. That the Permittee shall install and maintain an adequate flow meter measuring device to accurately measure the rate and volume of water diverted from the well. The Permittee shall keep an accurate written log record of periods of diversion. This includes the times and dates the pump was started and shut off, the rate water is diverted during each pumping period, and the total volume of water diverted during each period. Such records shall be presented to the Department upon demand by the Department.

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7. The written objections submitted by Objectors Soper, Russell and Olson will be considered for the purpose of this decision.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, Beneficial Water use Permits are required by the Applicant to appropriate water from the proposed source of supply.

2. The Objectors to the subject Application for Beneficial Water Use Permits have apparent valid prior appropriation water rights to the source of supply which under the provisions of Section 89-886(1), R.C.M. 1947, must be protected in the issuance of Beneficial Water Use Permits. It is concluded that the rights of prior appropriators will be protected if the provisional permits are conditioned to protect those rights.

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

a. At times when the water can be put to the use proposed by the Applicant;

b. Throughout the period during which Applicant seeks to appropriate, the amount requested is available;

c. The rights of a prior appropriator will not be adversely affected;

d. The proposed means of diversion or construction are adequate;

e. The proposed use of water is a beneficial use;

f. The proposed use will not interfere unreasonably with other planned uses or development for which a permit has been issued or for which water has been reserved.

4. The criteria for issuance of a permit set forth under the provisions of Section 89-885, R.C.M. 1947, have been met and the Application(s) for Beneficial Water Use Permit(s) No's 13,003-g40-0, 13,188-g40-0 and 13,701-g40-0 by George Greenwood (Trust) may be granted in accordance with the provisions of Chapter 8 of Title 89 of the laws of the State of Montana.

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PROPOSED ORDER

1. Application for Beneficial Water Use Permit No.'s 13,003-g40-0, 13,188-g40-0 and 13,701-g40-0 by George Greenwood (Trust) are hereby granted as follows:

a. Provisional Permit No. 13,003-g40-0 to appropriate 7.13 cubic feet per second or 3,200 gallons per minute of water, not to exceed 1,742 acre-feet per annum, to be diverted by means of a well approximately 300 feet deep at a point in the SE¼ SE¼ SW¼ of Section 31, Township 35 North, Range 42 East, M.P.M., and used for new irrigation on 155 acres in the NE¼ and 155 acres in the NW¼ of Section 6, Township 34 North, Range 42 East, M.P.M., 160 acres in the SW¼ and 160 acres in the NW¼ of Section 31, and 15 acres in the SW¼ of Section 30, Township 35 North, Range 42 East, M.P.M., and containing a total of 645 acres, more or less, from May 1 to September 1, inclusive, of each year.

b. Provisional Permit No. 13,188-g40-0 to appropriate 3.0 cubic feet per second or 1,350 gallons per minute of water, not to exceed 972 acre-feet per annum, to be diverted by means of a well approximately 300 feet deep at a point in the NE¼ NE¼ NE¼ of Section 25, Township 35 North, Range 41 East, M.P.M., and used for new irrigation on 160 acres in the NE¼ and 80 acres in the SE¼ of Section 25, Township 35 North, Range 41 East and 120 acres in the SW¼ of Section 30, Township 35 North, Range 42 East, M.P.M., and containing a total of 360 acres, more or less, from April 15 to October 31, inclusive, of each year.

c. Provisional Permit No. 13,701-g40-0 to appropriate 6.01 cubic feet per second or 2,700 gallons per minute of water, not to exceed 810 acre-feet per annum in Valley County, Montana, to be diverted by means of a well approximately 300 feet deep at a point in the SE¼ SW¼ SW¼ of Section 6, Township 34 North, Range 42 East, M.P.M., and used for new irrigation on 150 acres in the SW¼ of said Section 6 and 150 acres in the NW¼ of Section 7, Township

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34 North, Range 42 East, M.P.M., and containing a total of 300 acres, more or less, from April 1 to October 31, inclusive, of each year.

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

a. The Permittee shall install and maintain an adequate flow meter measuring device to accurately measure the rate and volume of water diverted from the well. The Permittee shall keep an accurate written log record of periods of diversion. This includes the times and dates the pump was started and shut off, the rate water is diverted during each pumping period, and the total volume of water diverted during each period. Such records shall be presented to the Department upon demand by the Department.

b. The Permittee and the Objectors will observe the water levels and flows of their wells and springs and keep an accurate record of such water levels and flows during the irrigation season. Each record should include water level, rate of flow, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from their wells and year, month, and day measured. The Permittee and the 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 made available for any future groundwater study in the affected area.

c. The granting of these Provisional Permits in no way relieves the Permittee of liability for damages caused to others by the interruption of artesian flows or the lowering of the water table so as to necessitate the drilling and casing of new wells, installation of pumps and appurtenant equipment, or other required means to continue to make available the water to which they are rightfully and legally entitled.

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NOTICE

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

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

The Hearing Examiner's final decision 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 Decision and Order.

DATED this 8th day of January, 1979.

FORREST TEVEBAUGH, Hearing Examiner

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