

BEFORE THE MONTANA
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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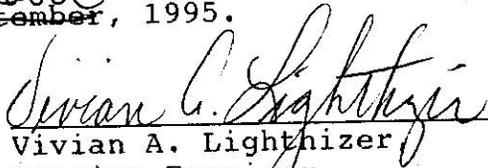
IN THE MATTER OF THE)
AUTHORIZATION TO CHANGE)
APPROPRIATION WATER RIGHT) ORDER
G(W)0016111-41H BY MARSHALL)
S. ASHCRAFT)

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held on July 20, 1995, to allow Marshall Ashcraft an opportunity to show cause why Authorization to Change Appropriation Water Right G(W) 016111-41H should not be revoked. Prior to the hearing, the Department had concluded that the well to be drilled under the change authorization was not drilled as approved. After the hearing and further consideration, the Department's conclusion will not be changed. However, the circumstance that this well has been pumping for seven years without complaint or objection by other water users suggests that there may be legal alternatives for the well. Further, the end of the irrigation season negates any remaining need for immediate agency action.

Wherefore, the Department hereby orders that Marshall Ashcraft shall have until April 1, 1996, to bring the well that is subject of these proceedings into compliance with the Montana Water Use Act.

Dated this 4th day of ~~September~~ ^{October}, 1995.


Vivian A. Lighthizer
Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6615

MEMORANDUM

As stated above Mr. Ashcraft's well has been in place for an extended period of time (seven years) seemingly without adverse effect to other water users. These circumstances suggest that the well might be legal under an appropriate permit or change authorization. Two possibilities that Mr. Ashcraft might consider are: 1) applying for a permit to appropriate water from the well; or 2) applying for a new change authorization for a well 153 feet deep. There may also be other less readily apparent alternatives that Mr. Ashcraft is encouraged to explore.

Any new permit or change authorization application before the Department will require the submission of factual information not currently before the Department, and the Department cannot prejudge that evidence. Nothing herein may be taken as a guarantee that any necessary permits or change authorizations will be issued by the Department.

Mr. Ashcraft has commented that when he purchased his property that everything with respect to the well appeared legal and that he stands in the shoes of an "innocent purchaser." The Department is without jurisdiction to consider such issues. The Department can only determine whether or not the well was drilled

as authorized. In this case, a shallow well which would divert Gallatin River alluvial water was authorized. The well owned by Mr. Ashcraft taps deeper groundwater aquifers and is therefore unauthorized.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Order was duly served upon all parties of record, first class mail, at their address or addresses this 4th day of October, 1995, as follows:

Marshall S. Ashcraft
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Cindy G. Campbell
Cindy G. Campbell
Hearings Unit Legal Secretary

CASE # 16111