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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR CHANGE OF APPROPRIATION WATER)
RIGHT NO. G 18583-43Q BY DENNIS N.)
AND ELLEN B. SMITH)

FINAL ORDER

* * * * *

There have been no exceptions or objections to Proposal for Decision in the above-referenced matter as entered by the Hearing Examiner on March 5, 1984. Therefore, the Proposed Findings of Fact, Conclusions of Law and Order are hereby adopted as Final.

FINAL ORDER

1. Application for Change of Appropriation Water Right No. 18583-g43Q is hereby authorized to Dennis N. and Ellen B. Smith. The Applicants are authorized to change their diversion point from a developed spring to a point in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 12, Township 2 North, Range 27 East, Yellowstone County. The Applicants are also authorized to store water from the developed spring in a 1000-gallon concrete holding tank and to pump water from this tank for sprinkler irrigation purposes and domestic purposes, not to exceed the rates and volumes specified in Certificate of Water Right No. 18583-g43Q, dated June 16, 1981.

NOTICE

The Department'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.

DONE this 6th day of April, 1984.

Gary Fritz

Gary Fritz, Administrator
Department of Natural
Resources and Conservation
32 S. Ewing, Helena, MT
(406) 444 - 6605

David H. Pengelly

David Pengelly, Hearing Examiner
Department of Natural Resources
and Conservation
P.O. Box 5004, Missoula, MT 59806
(406) 721 - 4284

CASE # 18583

AFFIDAVIT OF SERVICE

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on April 11, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by Dennis N. & Ellen B. Smith, Application No. G18583-43Q, for an Application for Change of Appropriation Water Right, addressed to each of the following persons or agencies:

1. Dennis N. & Ellen B. Smith, 7927 Spear Dr., Shepherd, MT 59079
2. Jeffrey O. & Diana K. Hughes, 7619 Buckskin Dr., Shepherd, MT 59079
3. Daniel R. Landon, 7909 Spear Dr., Shepherd, MT 59079
4. Keith Kerbel, Billings Area Officer Supervisor (inter-departmental mail)
5. David L. Pengelly, Hearing Examiner (inter-departmental mail)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Donna K. Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 11th day of April, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Beth Lamberson
Notary Public for the State of Montana
Residing at Helena Montana
My Commission expires 6 Oct 1985

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR CHANGE OF APPROPRIATION WATER) PROPOSAL FOR DECISION
RIGHT NO. G 18583-43Q BY DENNIS N.)
AND ELLEN B. SMITH)

* * * * *

Pursuant to the Montana Water Use Act and the Contested Case Provisions of the Montana Administrative Procedures Act, a hearing in the above-entitled matter was held in Billings, Montana, on January 12, 1984.

STATEMENT OF THE CASE

On July 25, 1983, an Application for Change in point of diversion and place of storage of Appropriation Water Right No. 18583-g43Q was filed with the Department of Natural Resources and Conservation (hereafter, "Department") by Dennis N. and Ellen B. Smith. The Applicants are generally seeking to change an existing flood irrigation system to a sprinkler irrigation system. To accomplish this purpose, water will be piped from an existing diversion dam to a 1000-gallon concrete holding tank from which water will be pumped for domestic and sprinkler irrigation purposes. The proposed diversion point is in the NE¼NW¼NE¼, Section 12, Township 2 North, Range 27 East, Yellowstone County.

Pertinent portions of this Application were duly published for two (2) successive weeks in the Billings Gazette, a newspaper of general circulation printed and published in Billings, Montana.

CASE # 18583

Mr. Dennis N. Smith appeared at the hearing and testified on behalf of his Application. Mr. Smith was represented by legal counsel, Mr. Lawrence R. Martin of Billings, Montana.

On November 28, 1983, an objection to the granting of this Application was filed with the Department by Jeffrey O. and Dianna K. Hughes. The objection filed by the Hughes generally alleges that the water table in the Arrow Island Subdivision area is not sufficient for existing uses and that any changes could cause future problems for residents of that area. On December 22, 1983, a letter was written to Jeffrey and Dianna Hughes by Keith Kerbel of the Billings Water Rights Bureau Field Office stating that the objection to the referenced Application did not appear to be valid in that there was no showing on the part of the Objector's that the proposed Application would adversely affect their existing water right. The Hughes were given 10 days to respond to Mr. Kerbel's letter; no response had been received by the Department at the time of this hearing. The Hughes were notified of the hearing but were not present at the hearing.

On November 30, 1983, an objection to the referenced application was filed with the Department by Daniel R. Landon. Mr. Landon generally alleges that the Applicants had not followed the proper procedures in making this Application, specifically the installation had been made prior to the submission of the Application. Mr. Landon was present at the hearing, and represented himself at the hearing.

Mr. Keith Kerbel and Mr. Don Riddle appeared and represented the Department at the hearing.

EXHIBITS

There were no exhibits offered by any of the parties present at the hearing.

PROPOSED FINDINGS OF FACT

1. The Applicants, Dennis N. and Ellen B. Smith, are owners' of Certificate of Water Right No. 18583-g43Q upon which this Application for Change has been made.

2. The purpose of this application is generally to change from an existing flood irrigation system to a sprinkler irrigation system involving the installation of a 1000 gallon holding tank.

3. There was no showing by any party that the proposed change in the existing system of the Applicant would cause an adverse affect to any other existing water right holders within the source of supply.

PROPOSED CONCLUSIONS OF LAW

1. The change proposed by the Applicants, Dennis N. and Ellen B. Smith, will not adversely affect the rights of other persons, therefore the proposed change must be approved by the Department (MCA 85-2-402(2)).

THEREFORE, based on these Findings of Fact and Conclusions of Law, the following Proposed Order is hereby issued:

PROPOSED ORDER

1. Application for Change of Appropriation Water Right No. 18583-g43Q is hereby authorized to Dennis N. and Ellen B. Smith. The Applicants are authorized to change their diversion point from a developed spring to a point in the NE~~1~~NW~~1~~NE~~1~~, Section 12, Township 2 North, Range 27 East, Yellowstone County. The Applicants are also authorized to store water from the developed spring in a 1000-gallon concrete holding tank and to pump water from this tank for sprinkler irrigation purposes and domestic purposes, not to exceed the rates and volumes specified in Certificate of Water Right No. 18583-f43Q, dated June 16, 1981.

DONE this 6th day of March, 1984.



David Pengelly, Hearing Examiner
Department of Natural Resources
and Conservation
P.O. Box 5004, Missoula, MT 59806
(406) 721 - 4284

NOTICE

This Proposal for Decision is offered for the review and comment of all parties of record. Objections and exceptions must be filed with and received by the Department of Natural Resources and Conservation on or before March 26, 1984.

AFFIDAVIT OF SERVICE

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on March 7, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by Dennis N. & Ellen B. Smith, Application No. G18583-43Q, for an Application for Change of Appropriation Water Right, addressed to each of the following persons or agencies:

1. Dennis N. & Ellen B. Smith, 7927 Spear Dr., Shepherd, MT 59079
2. Jeffrey O. & Diana K. Hughes, 7619 Buckskin Dr., Shepherd, MT 59079
3. Daniel R. Landon, 7909 Spear Dr., Shepherd, MT 59079
4. Keith Kerbel, Billings Area Officer Supervisor (inter-departmental mail)
5. David L. Pengelly, Hearing Examiner (inter-departmental mail)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Donna K. Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 7th day of March, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Judy Kohn

Notary Public for the State of Montana
Residing at Montana City, Montana
My Commission expires 3-1-85