

CONCLUSIONS OF LAW

MCA 85-2-311(1981) directs the Department of Natural Resources and Conservation to issue a water use permit if the following conditions or criteria exist:

1. 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. in the amount the Applicant seeks to appropriate; and
 - C. throughout the period during which the Applicant seeks to appropriate, the amount requested is available;
2. The rights of a prior appropriator will not be adversely affected;
3. Proposed means of diversion or construction are adequate;
4. The proposed use of water is a beneficial use;
5. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;
6. An Applicant for an appropriation of 10,000 acre-feet a year or more or 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected.
7. It is concluded that the Applicant does not have a bona fide intention of proceeding with this application. Furthermore, no evidence was presented in support of any of the above-referenced statutory criteria upon which the Department must base its decision to issue a permit.

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

FINAL ORDER

Application for Beneficial Water Use Permit No. 20771-s76N by Bill K. Denkinger is hereby denied.

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 2 day of June, 1982.

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