

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
 21,091-s43D BY JEANNE, ROSS AND)
 SCOTT WAPLES)

The Proposed Findings of Fact, Conclusions of Law and Order as entered by the Hearing Examiner on June 23, 1980, are hereby adopted as the Findings of Fact, Conclusions of Law and Order.

FINAL ORDER

Subject to the conditions and limitations listed below, Provisional Permit No. 21,091-s43D by Jean, Ross, and Scott Waples is hereby granted to appropriate .93 cubic feet per second or 420 gallons per minute of water, not to exceed 343 acre-feet per annum from Rock Creek in Carbon County, Montana. The water is to be diverted from Rock Creek at a point in the SE1/4 SE1/4 SE/14 of Section 8, Township 8 South, Range 20 East, M.P.M., and conveyed by means of Point of Rocks Ditch, diverted from said ditch and used over a water wheel for electrical power generation from May 1 to November 1, inclusive, of each year. This water is not to be consumed and will be discharged back into Rock Creek in the SE1/4 SE1/4 SE1/4 of Section 8, Township 8 South, Range 20 East, M.P.M.

2. Provisional Permit No. 21.091-s43D is granted subject to any existing rights in the source of supply and any final determination of those rights as provided by Montana law.

3. This Provisional Permit is subject to the authority of court appointed water commissioners, if and when appointed, to measure and distribute to the parties using waters in the source of supply, the

1 waters to which they are entitled, including the waters granted in this
2 Provisional Permit. The Permittee shall pay his proportionate share of
3 the fees and compensation expenses, as fixed by the District Court,
4 incurred in the distribution of the waters granted in this Provisional
5 Permit.

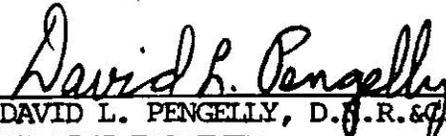
6 4. The Permittee shall install a suitable headgate or diversion
7 structure at the point the water is diverted from the source of supply.

8 5. The Permittee shall install an adequate water flow measuring
9 device, at a suitable place as near as practicable to the point where
10 the water is diverted from the source of supply, in order to record the
11 flow rate and volume of water diverted. The Permittee shall keep a
12 written record of the flow rate and volume of all waters diverted including
13 the period of time and shall submit said records to the Department upon
14 request.

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16 NOTICE

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

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22 DATED this 23rd day of July, 1980.

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25 DAVID L. PENGELLY, D. J. R. & C.
26 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.) PROPOSED ORDER
21,091-s43D BY JEANNE, ROSS AND)
SCOTT WAPLES)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on May 20, 1980, at Red Lodge, Montana, for the purpose of hearing objections to Application for Beneficial Water Use Permit No. 21,091-s43D, David Pengelly, Hearing Examiner, presiding.

The Applicant appeared by Vern Waples at the hearing and presented testimony in support of the Application. Mr. Waples was not represented by legal counsel. Ten (10) exhibits were introduced supporting the Application, to wit:

Applicant's Exhibits:

- A-1 A letter dated May 25, 1979, from Vern Waples to Teresa McLaughlin, Hearings Coordinator for the Department
- A-2 A letter dated July 10, 1978, from Governor Thomas L. Judge to Mr. Vern Waples
- A-3 Photograph taken by Ron Wolf (the neighbor of the Applicants) on May 19, 1980
- A-4 Photograph taken by Ron Wolf on May 19, 1980
- A-5 Excerpts from the minutes of Rock Creek Water Users Association meetings, (minutes of September 13, 1978 and minutes of November 8, 1978)

1 A-6 Calculations necessary to generate one (1) kilowatt
2 and three (3) kilowatts of electricity using a
3 hydrologic turbine prepared for the Applicant by
4 H. K. M. Associates of Billings

5 A-7 Calculations regarding size of pipe necessary for
6 project prepared for the Applicant by the Soil
7 Conservation Service (Odell A. Aldrich)

8 A-8 Elevational diagram of Applicant's proposed project
9 prepared by Soil Conservation Service

10 A-9 Structural diagram of Applicant's proposed project
11 prepared by Soil Conservation Service

12 A-10 A supplement to the Carbon County News dated May 1,
13 1980

14
15 The Applicant's Exhibits were marked accordingly and received into the
16 record without objections.

17 Seven (7) witnesses attended the hearing on behalf of the Objector,
18 Rocky Fork Decreed Water Users Association. Those present were Pat
19 Billingsly, Fred Cole, Ron Engle, John Taimé, Toyvo Lantta, Everett
20 Zumburum, and Carl Hanson. Mr. Hanson is the Water Commissioner on Rock
21 Creek. The Objector was not represented by legal counsel. The Objector
22 introduced no exhibits.

23 Montana Department of Natural Resources and Conservation personnel
24 present at the hearing were Arlin Krogstad, Hearing Representative and
25 Vicki Woodrow, Hearing Recorder.

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27 SUMMARY OF RECORD

28 1. On November 22, 1978, the Department received an Application

1 for Beneficial Water Use Permit No. 21,091-s43D by Jeanne, Ross, and
 2 Scott Waples prepared on behalf of the Applicants by Vern Waples. The
 3 Applicants have requested to appropriate .93 cubic feet per second or
 4 420 gallons per minute of water, not to exceed 343 acre-feet per annum
 5 from Rock Creek in Carbon County, Montana. The water is to be diverted
 6 from Rock Creek at a point in the SEL/4 SEL/4 SEL/4 of Section 8, Township
 7 8 South, Range 20 East, M.P.M., and conveyed by means of the Waples Ditch,
 8 diverted from said ditch and used over a water wheel for electrical
 9 power generation from May 1 to November 1, inclusive, of each year.
 10 This water is not to be consumed and is to be discharged back into Rock
 11 Creek in the SEL/4 SEL/4 SEL/4 of Section 8, Township 8 South, Range 20
 12 East, M.P.M.

13 2. On March 22 and 29 and April 5, 1979, the Department caused to
 14 be duly published in the Carbon County News, Red Lodge, Montana, notice
 15 of Application for Beneficial Water Use Permit No. 21,091-s43D.

16 3. On April 30, 1979, the Department received an objection to the
 17 above Application from the Rocky Fork Decreed Water Users Association.

18 PROPOSED FINDINGS OF FACT

19 Based on the transcript of the hearing and the information contained
 20 in the Department's file on this matter, it is found:

21 1. That the proposed use of water under this Application is a non-
 22 consumptive use.

23 2. That the water is to be conveyed by means of the Point of Rocks
 24 Ditch to the Applicant's turnout.

25 3. That there are unappropriated waters in the source of supply at
 26 times when the water can be put to the use proposed by the Applicant; in
 27 the amount the Applicant seeks to appropriate; and throughout the
 28

1 period during which the Applicant seeks to appropriate, the amount
2 requested is available.

3 4. That the Objector possesses valid existing water rights which
4 must be protected.

5 5. That the granting of this permit will not adversely affect the
6 rights of prior appropriators in the source of supply.

7 6. That the proposed means of diversion or construction are adequate.

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

9 8. That the proposed use will not interfere unreasonably with
10 other planned uses or developemnts for which a permit has been issued or
11 for which water has been reserved.

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13 PROPOSED CONCLUSIONS OF LAW

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

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

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

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

20 c. throughout the period during which the applicant
21 seeks to appropriate, the amount requested is
22 available;

23 2. the rights of a prior appropriator will not be adversely
24 affected;

25 3. the proposed means of diversion or construction are adequate;

26 4. the proposed use of water is a beneficial use;

27 5. the proposed use will not interfere unreasonably with
28 other planned uses or developments for which a permit

has been issued or for which water has been reserved; . . ."

2. It is concluded that there are unappropriated waters in the source of supply at times when the water can be put to the use proposed by the Applicant; in the amount the Applicant seeks to appropriate; and throughout the period during which the Applicant seeks to appropriate, the amount requested is available.

3. It is concluded that the rights of prior appropriators will not be adversely affected.

4. It is concluded that the proposed use is a beneficial use.

5. It is concluded that the proposed means of diversion or construction are adequate.

6. It is concluded that 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.

7. Nothing decided herein has bearing on the status of water rights claimed by the Applicant other than those herein applied for, nor does anything decided herein have bearing on the status of claimed rights of any other party except in relation to those rights herein applied for, to the extent necessary to reach a conclusion herein.

Based on the Proposed Findings of Fact and Proposed Conclusions of Law, the following Proposed Order is hereby made:

PROPOSED ORDER

Subject to the conditions and limitations listed below, Provisional Permit No. 21,091-s43D by Jeanne, Ross, and Scott Waples is hereby granted to appropriate .93 cubic feet per second or 420 gallons per minute of water, not to exceed 343 acre-feet per annum from Rock Creek in Carbon County, Montana. The water is to be diverted from Rock Creek at a point

1 in the SE1/4 SE1/4 SE/14 of Section 8, Township 8 South, Range 20 East,
2 M.P.M., and conveyed by means of Point of Rocks Ditch, diverted from
3 said ditch and used over a water wheel for electrical power generation
4 from May 1 to November 1, inclusive, of each year. This water is not to
5 be consumed and will be discharged back into Rock Creek in the SE1/4
6 SE1/4 SE1/4 of Section 8, Township 8 South, Range 20 East, M.P.M.

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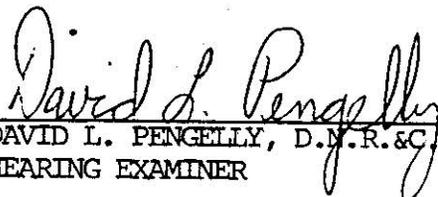
NOTICE

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 23rd day of June, 1980.



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