

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

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) AMENDMENT TO FINAL ORDER
NO. 21626-g411 BY SEWELL MARKS)

The Final Order in this matter issued on July 1, 1981, contains a clerical error. The flow rate of 65 gallons per minute specified therein should reflect the limitation of 56 gallons per minute as set forth in the Proposal for Decision entered in this matter on June 15, 1981, and as prayed for in the Application filed in this matter.

WHEREFORE, the clerical error detailing a flow rate of 65 gallons per minute is hereby corrected to specify a limitation of 56 gallons per minute in the context described by the Final Order in this matter.

DATED this 10 day of July, 1981.

Gary Fritz
Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59601
(406) 449-2872

CASE # 21626

Broadwater County. The total appropriative claim to be reflected by the permit issued in this matter shall be 171 gallons per minute not to exceed 151.8 acre-feet per year. The source of supply shall be groundwater collected in sloughs on Applicant's property. The places of use shall be 21 acres, more or less, in the SW1/4 of Section 1, Township 7 North, Range 2 East; 80.6 acres, more or less, in the SW1/4 of Section 2, Township 7 North, Range 2 East; and 135.8 acres more or less, in Section 2, Township 7 North, Range 2 East, comprising a total of 237.4 acres, more or less. The priority date of this permit shall be January 22, 1979, at 4:30 p.m.

This permit is issued subject to the following conditions, restrictions, and limitations:

- (a) This permit is subject to all prior and existing rights and any final determination of those rights as provided by Montana Law. Particularly, this permit is subject to any valid rights of the Bureau of Reclamation or its successors in interest, and any valid rights of Montana Power Company or its successors in interest.
- (b) In no event is Permittee entitled by virtue of this permit to divert and/or withdraw more water than is reasonably required for the irrigation of the above-described lands. At all other times, Permittee shall not by virtue of this permit retard, divert or otherwise impede the flow of any waters.
- (c) The Permittee, at the discretion of the Department,

shall install adequate metering devices such that the flow rate and volume of water withdrawn or diverted might be recorded. At the discretion of the Department, the Permittee shall further keep a written record of the flow rate and volume of all waters withdrawn and shall submit such records to the Department upon request.

- (d) Nothing herein shall be construed to authorize Permittee to withdraw or use water to the detriment of any senior appropriator.
- (e) Nothing herein shall be construed in any way to affect or reduce the Permittee's liability for damages which may be caused by the exercise of this provisional permit, nor does the Department in issuing this permit in any way acknowledge such liability for damages caused by the exercise of this permit, even if such damage is the necessary and inevitable effect of the use of the water contemplated by this permit.
- (f) Permittee shall diligently adhere to the terms and conditions of this Order. Failure to observe the terms and conditions of this Order may result in the revocation of this permit.

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.

DATED this 1 day of July, 1981.



Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59601
(406) 449-2872

CASE # 21624

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 21626-g41I BY SEWELL MARKS)

* * * * *

On January 22, 1979, at 4:30 p.m., an Application for Beneficial Water Use Permit was duly filed with the Department of Natural Resources and Conservation by Sewell Marks. The Application seeks 56 gallons per minute up to 50.6 acre-feet annually for supplemental irrigation from April 15 to November 1, inclusive, of each year. Said water is to be diverted from the N1/2 NE1/4 SW1/4 of Section 2, Township 7 North, Range 2 East, all in Broadwater County. The Application also seeks 115 gallons per minute up to 101.2 acre-feet for supplemental irrigation from April 15 to November 1, inclusive, of each year, to be diverted from the center of the E1/2 SW1/4 Section 2, Township 7 North, Range 2 East, all in Broadwater County. The total appropriative claim is for 171 gallons per minute not to exceed 151.8 acre-feet per year. The place of use is claimed to be 21 acres, more or less, in the SW1/4 of Section 1, Township 7 North, Range 2 East, 80.6 acres, more or less, in Section 2, Township 7 North, Range 2 East, and 135.8 acres, more or less, in Section 2, Township 7 North, Range 2 East. Total acreage of the place of use is alleged to be 237.7 acres more or less.

This application was noticed publicly in The Townsend Star, a newspaper of general circulation, printed and published in Townsend, Montana, for three successive weeks.

An objection to the granting of this application was timely filed with the Department of Natural Resources and Conservation by the Bureau of Reclamation of the United States of America. Said Objection alleges that unappropriated water is not available throughout the period of appropriation, and that any new irrigational development will adversely affect prior rights of the Bureau of Reclamation's Canyon Ferry and Helena Valley units.

An Objection to the granting of this application was also timely filed by the Montana Power Company. This objection alleges that the proposed appropriation is from groundwater, which is tributary to the Missouri River in Broadwater County, Montana, and is upstream from the Canyon Ferry, Hauser, Holter, Black Eagle, Rainbow, Ryan, Cochrane and Morony dams and reservoir impoundments, and that there is insufficient unappropriated water available for the proposed use without adversely affecting the downstream water rights of the Montana Power Company and other senior appropriators.

A hearing in this matter was scheduled for June 8, 1981, in Helena, Montana. During the course of the hearing, the parties hereto have apparently reached agreement as to the proper disposition of this application. The Objectors, while reserving all rights that they may have in law or equity, consent to the issuance of a provisional permit so long as it is expressly made subject to all prior and existing rights in the source of supply and in particular any rights claimed by the Bureau of Reclamation or its successors in interest, or by the Montana Power Company or its successors in interest. The Applicant has apparently agreed to this disposition of his application. The Department has also interposed no objection so long as the following conditions are observed.

WHEREFORE, the following proposed order is hereby issued:

PROPOSED ORDER

1. Subject to the terms, conditions, and limitations below, Application for Beneficial Water Use Permit No. 21626-g41I by Sewell Marks is hereby granted for 56 gallons per minute not to exceed 50.6 acre-feet per year for supplemental irrigation from April 15 to November 1, inclusive, of each year. Said water shall be diverted from a point in the N1/2 NE1/4 SW1/4 of Section 2, Township 7 North, Range 2 East, all in Broadwater County. The application is in addition granted for 115 gallons per minute not to exceed 101.2 acre-feet per year for supplemental irrigation from April 15 to November 1, inclusive, of each year. This latter quantity is to be diverted at a point in the center of the E1/2 SW1/4 of Section 2, Township 7 North, Range 2 East, all in Broadwater County. The total appropriative claim to be reflected by the permit issued in this matter shall be 171 gallons per minute not to exceed 151.8 acre-feet per year. The source of supply shall be groundwater collected in sloughs on Applicant's property. The places of use shall be 21 acres, more or less, in the SW1/4 of Section 1, Township 7 North, Range 2 East, 80.6 acres, more or less, in the SW1/4 of Section 2, Township 7 North, Range 2 East, and 135.8 acres more or less, in Section 2, Township 7 North, Range 2 East, comprising a total of 237.4 acres, more or less. The priority date of this permit shall be January 22, 1979, at 4:30 p.m.

This permit is issued subject to the following, conditions, restrictions, and limitations:

- (a) This permit is subject to all prior and existing rights and any final determination of those

rights as provided by Montana Law. Particularly, this permit is subject to any valid rights of the Bureau of Reclamation or its successors in interest, and any valid rights of Montana Power Company or its successors in interest.

- (b) In no event is Permittee entitled by virtue of this permit to divert and/or withdraw more water than is reasonably required for the irrigation of the above-described lands. At all other times, Permittee shall not by virtue of this permit retard, divert or otherwise impede the flow of any waters.
- (c) The Permittee, at the discretion of the Department, shall install adequate metering devices such that the flow rate and volume of water withdrawn or diverted might be recorded. At the discretion of the Department, the Permittee shall further keep a written record of the flow rate and volume of all waters withdrawn and shall submit such records to the Department upon request.
- (d) Nothing herein shall be construed to authorize Permittee to withdraw or use water to the detriment of any senior appropriator.
- (e) Nothing herein shall be construed in any way to affect or reduce the Permittee's liability for damages which may be caused by the exercise of this provisional permit, nor does the Department in issuing this permit in any way acknowledge such liability for damages caused by the exercise of this permit, even if such damage is

the necessary and inevitable effect of the use of the water contemplated by this permit.

- (f) Permittee shall diligently adhere to the terms and conditions of this order. Failure to observe the terms and conditions of this order may result in the revocation of this permit.

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 on June 26, 1981. All comments and exceptions must be filed with and received by the Department by June 26, 1981.

The Final Order in this matter will be sent to all parties by Certified Mail.

DATED this 15th day of June, 1981.



Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation