

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

IN THE MATTER OF APPLICATION FOR)
CHANGE OF APPROPRIATION WATER RIGHT) FINAL ORDER
NO. 21,862-c42M BY HAROLD A. GAUB)

The Proposed Findings of Fact, Conclusions of Law and Order as entered by the Hearing Examiner on July 1, 1980, are hereby adopted as the Findings of Fact, Conclusions of Law and Order.

FINAL ORDER

Application for Change of Appropriation Water Right No. 21,862-c42M by Harold A. Gaub is hereby granted to change a portion, being 20 acre-feet per annum, of Permit No. 8,877-s42M for 3,000 gallons per minute of water up to 90 acre-feet per annum. Water has been diverted from Spring Creek by means of a pump at a point in the NW1/4 SE1/4 NW1/4 of Section 10, Township 12 North, Range 54 East, M.P.M., and has been used for irrigation purposes from February 1 to June 1, inclusive, of each year, on 25 acres in the NE1/4 and 5 acres in the NW1/4 of said Section 10.

The water shall be diverted by means of a controlled diversion dike at a point in the SE1/4 NW1/4 NW1/4 of said Section 10, from an unnamed tributary to Spring Creek. These waters will be used in conjunction with Permit No. 8,877-s42M.

The proposed change is for the point of diversion and for no other reason.

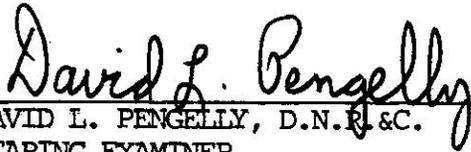
NOTICE

The Hearing Examiner's Final Order may be appealed in accordance

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1 with the Montana Administrative Procedures Act by filing a petition in
2 the appropriate court within thirty (30) days after service of the Final
3 Order.
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5 DATED this 23rd day of July, 1980.
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9 DAVID L. PENGELLY, D.N.R. & C.
10 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)
CHANGE OF APPROPRIATION WATER RIGHT) PROPOSAL FOR DECISION
NO. 21,862-c42M BY HAROLD A. GAUB)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on March 26, 1980, at Terry, Montana, for the purpose of hearing objections to Application for Beneficial Water Use Permit No. 21,862-c42M, David Pengelly, Hearing Examiner, presiding. The hearing in this matter was held concurrently with hearings in the Matter of Application Nos. 21,715-s42M, 21,716-s42M and 22,293-s42M.

The Applicant, Harold A. Gaub, appeared at the hearing and presented testimony in support of the Application. Mr. Gaub was represented by legal counsel, Mr. John Prater of Terry, Montana. One (1) exhibit was introduced supporting the Application, to wit:

Applicant's Exhibit:

A-1 Copy of aerial photo showing Applicant's irrigated lands and proposed irrigation projects

The Applicant's exhibit was marked accordingly and received into the record without objections.

Two (2) Objectors attended the hearing and presented testimony. The Objectors, Messrs. Don and Kurt Ulrich were not represented by legal counsel. Mr. Gottlieb Ulrich testified on behalf of the Objectors. The Objectors introduced five (5) exhibits supporting their objections,

to wit:

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1 Objectors' Exhibits:

- 2 O-1 Copy of Notice of Water Right Appropriation by Rudolph
3 Ulrich
- 4 O-2 Photographs of Spring Creek in the vicinity of the Objector's
5 property in 1977
- 6 O-3 A table of hay tonnages correlated to the years 1977 thru
7 1979 claimed to have been taken from the Objector's fields
- 8 O-4 Photocopies of photographs of Spring Creek in the vicinity
9 of the Objector's property; 1969, 1970-76 and 1978 and 1979
- 10 O-5 Photograph of Objector's diversion dike taken on March 26,
11 1980

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13 Exhibit O-1 was received into the record without objections. Counsel
14 for the Applicant objected for the record to the entry of Exhibits O-2,
15 O-4 and O-5 based on their probative value. Counsel for the Applicant
16 objected to the entry into the record of Exhibit O-3. Due to the informal
17 nature of the hearing, the objection is overruled and Objector's Exhibit
18 O-3 is accepted into the record.

19 Montana Department of Natural Resources and Conservation personnel
20 present on behalf of the Department were Arlin Krogstad, Hearing Representative;
21 Keith Kerbel, Miles City Water Rights Bureau Field Office Manager; and
22 Vicki Woodrow, Hearing Recorder. Also present at the hearing was Rick
23 Burger, Department Pilot. The Department was not represented by legal
24 counsel. No exhibits were introduced by the Department.

25 The Objectors requested that their testimony presented at a prior
26 hearing held on Application Nos. 7,545-s42M and 8,877-s42M by the
27 Applicant be entered into the record. Counsel for the Applicant requested
28 that the Hearing Examiner only use that earlier testimony as it related

1 to the criteria listed in Section 85-2-311, MCA, 1979. The transcript
2 of the above hearing has been entered into the record on this matter.
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4 SUMMARY OF RECORD

5 1. On January 30, 1979, the Department received an Application for
6 Change of Appropriation Water Right No. 21,862-c42M by Harold A. Gaub to
7 change a portion, being 20 acre-feet per annum, of Permit No. 8,877-s42M
8 for 3,000 gallons per minute of water up to 90 acre-feet per annum.
9 Water has been diverted from Spring Creek by means of a pump at a point
10 in the NW1/4 SE1/4 NW1/4 of Section 10, Township 12 North, Range 54
11 East, M.P.M., and has been used for irrigation purposes from February 1
12 to June 1, inclusive, of each year, on 25 acres in the NE1/4 and 5 acres
13 in the NW1/4 of said Section 10.

14 The Applicant proposes to divert the 20 acre-feet of water by means
15 of a controlled diversion dike at a point in the SE1/4 NW1/4 NW1/4 of
16 said Section 10, from an unnamed tributary to Spring Creek. These
17 waters will be used in conjunction with Permit No. 8,877-s42M.

18 The proposed change is for the point of diversion and for no other
19 reason.

20 2. On May 31 and June 7 and 14, 1979, the Department caused to be
21 duly published in the Terry Tribune, Terry, Montana, notice of Application
22 for Change of Appropriation Water Right No. 21,862-c42M.

23 3. On June 14, 1979, the Department received an objection to the
24 above Application from Donald and Judith Ulrich and Kurt and Judy Ulrich.

25 PROPOSED FINDINGS OF FACT

26 For purposes herein, based on testimony presented at the hearing
27 and information available in the Department's file on this matter, it is
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found:

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1 tributary to Spring Creek. These waters will be used in conjunction
2 with Permit No. 8,877-s42M.

3 The proposed change is for the point of diversion and for no other
4 reason.

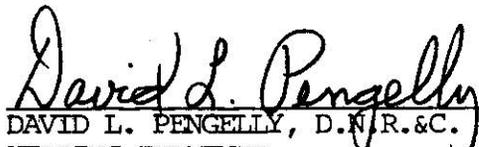
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6 NOTICE

7 This Proposed Order is offered for the review and comment of all
8 parties of record. The review and comment period shall commence with
9 the service of this Proposed Order and shall end ten (10) days thereafter.
10 No extensions of time for comment will be granted.

11 The Final Order in this matter will be sent to all parties by
12 certified mail.

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

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18 DATED this 1st day of July, 1980.

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21 DAVID L. PENGELLY, D.N.R.&C.
22 HEARING EXAMINER

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28 **CASE # 21862**