

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

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IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) FINAL ORDER
21,958-s76M BY RONALD C. AND)
LaDEEN DIONNE)

The Proposed Findings of Fact, Conclusions of Law and Order as entered by the Hearing Examiner on June 6, 1980, are hereby adopted as the Findings of Fact, Conclusions of Law and Order.

FINAL ORDER

1. Subject to the conditions listed below, Provisional Permit No. 21,958-s76M is hereby granted to appropriate 15 gallons per minute not to exceed 8.08 acre-feet per annum from the East Fork of Grant Creek from June 1 to October 1, inclusive, of each year. The water is to be diverted from a point in the NE1/4 NE1/4 NW1/4 of Section 15, Township 14 North, Range 19 West, Missoula County, and used for fish culture in the NE1/4 NE1/4 NW1/4 of Section 15, Township 14 North, Range 19 West, Missoula County. The water is to be diverted by means of a gravity flow pipeline and used for non-consumptive flow through an existing reservoir.

2. This Provisional Permit is granted subject to any final determination of existing water rights, as provided by Montana law.

3. This Provisional Permit is granted subject to all existing water rights in the source of supply.

4. The Permittee shall install two (2) adequate measuring devices; one (1) at the point of diversion from the source of supply, and the other at the point where water is returned to the source of supply. The

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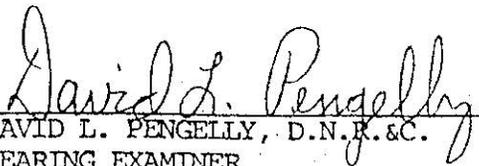
1 Permittee shall keep accurate written records of the flow rate and
2 volume of water diverted from and returned to the source of supply,
3 including the period or time and shall submit said records to the
4 Department upon request.

5 5. The issuance of this Provisional Permit by the Department in no
6 way reduces the Permittee's liability for damages caused by the Permittee's
7 exercise of this Provisional Permit, nor does the Department in issuing
8 this Provisional Permit in any way acknowledge liability for damage
9 caused by the Permittee's exercise of this Provisional Permit.

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11 NOTICE

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

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17 DATED this 23rd day of June, 1980.

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20 DAVID L. PENGELLY, D.N.R.&C.
21 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.) PROPOSAL FOR DECISION
21,958-s76M BY RONALD C. AND)
LADEEN DIONNE)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on April 22, 1980, in the Small Courtroom of the Missoula County Courthouse, Missoula, Montana, for the purpose of hearing objections to Application for Beneficial Water Use Permit No. 21,958-s76M, David Pengelly, Hearing Examiner, presiding.

The Applicants, Ronald C. and LaDeen Dionne, appeared at the hearing and presented testimony in support of the Application. Mr. and Mrs. Dionne were not represented by legal counsel. No exhibits were introduced supporting the Application.

One (1) Objector, Mr. A. Reed Marbut, attended the hearing and presented testimony on his own behalf and on behalf of Objectors Mrs. Barbara Karmel and the Grant Creek Ranch. Mr. Marbut was not represented by legal counsel. Mr. Marbut introduced one (1) exhibit supporting his objection, to wit:

Objector's Exhibit:

- O-1 Copy of map showing the Objector's irrigated lands and irrigation ditches (Page 24 of the Missoula County Water Resources Survey)

The Objector's Exhibit was marked accordingly and received into the record without objections.

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1 Montana Department of Natural Resources and Conservation personnel
2 present at the hearing were Mr. Larry Brown, Hydrologist; Mr. Arlin
3 Krojstad, Hearing Representative; Mr. Jan Mack, Missoula Water Rights
4 Bureau Field Office Manager; and Ms. Vicki Woodrow, Hearing Recorder.
5 The Department was not represented by legal counsel. No exhibits were
6 introduced by the Department.

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8 SUMMARY OF RECORD

9 1. On February 27, 1979, the Department received an Application
10 for Beneficial Water Use Permit No. 21,958-s76M by Ronald C. and LaDeen
11 Dionne to appropriate 24 gallons per minute up to 12.68 acre-feet per
12 annum from the East Fork of Grant Creek, a tributary of Grant Creek,
13 which is a tributary of the Clark Fork River. The water is to be
14 diverted and used in the NE1/4 NE1/4 NW1/4 of Section 15, Township 14
15 North, Range 19 West, Missoula County, for fish culture from June 1 to
16 October 1, inclusive, of each year. The water is to be diverted by
17 means of a gravity flow pipeline and will be a non-consumptive flow
18 through an existing reservoir.

19 2. On April 18 and 25, and May 2, 1979, the Department caused to
20 be duly published in the Missoulian, Missoula, Montana, notice of the
21 above Application for Beneficial Water Use Permit No. 21,958-s76M.

22 3. On June 4, 1979, the Department received objections to the
23 above Application from the Grant Creek Ranch, A. Reed Marbut, and Grant
24 Creek Associates, LTD.

25 4. On June 5, 1979, the Department received an objection to the
26 above Application from Barbara Karmel.

27 5. On June 6, 1979, the Department received an objection to the
28 above Application from Eldon Caster.

6. Pursuant to a memo to the file from Mr. Jan Mack dated August

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1 3, 1979, the amount of water requested was revised downward from 24
2 gallons per minute up to 12.68 acre-feet per annum, to 15 gallons per
3 minute to 8.08 acre-feet per annum.

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5 PROPOSED FINDINGS OF FACT

6 For purposes herein, based upon testimony given at the hearing and
7 information contained in the Department's file on this matter, it is
8 found:

9 1. That the proposed use of water is a non-consumptive use.

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

15 3. That Objectors A. Reed Marbut, Barbara Karmel, the Grant Creek
16 Ranch, and Grant Creek Associates, LTD., all possess valid existing
17 water rights which must be protected.

18 4. That the rights of prior appropriators will not be adversely
19 affected.

20 5. That the proposed means of diversion or construction are adequate.

21 6. That the proposed use is a beneficial use.

22 7. That the proposed use will not interfere unreasonably with
23 other planned uses or developments for which a permit has been issued or
24 for which water has been reserved.

25 PROPOSED CONCLUSIONS OF LAW

26 1. Section 85-2-311, MCA, 1979, states that "The Department shall
27 issue a permit if:
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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. the 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; . . ."

2. Section 85-2-312, MCA, 1979, states in part, that the department "may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators.

3. Section 85-2-102 (2), MCA, 1979, defines beneficial use as "a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses."

4. 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.

5. It is concluded that the rights of prior appropriators will not

1 be adversely affected subject to certain conditions in the Proposed
2 Order.

3 6. It is concluded that the proposed means of diversion or con-
4 struction are adequate.

5 7. It is concluded that the proposed use of water is a beneficial
6 use.

7 8. It is concluded that the proposed use will not interfere
8 unreasonably with other planned uses or developments for which a permit
9 has been issued or for which water has been reserved.

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

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

17 PROPOSED ORDER

18 1. Subject to the conditions listed below, Provisional Permit No.
19 21,958-s76M is hereby granted to appropriate 15 gallons per minute not
20 to exceed 8.08 acre-feet per annum from the East Fork of Grant Creek
21 from June 1 to October 1, inclusive, of each year. The water is to be
22 diverted from a point in the NE1/4 NE1/4 NW1/4 of Section 15, Township
23 14 North, Range 19 West, Missoula County, and used for fish culture in
24 the NE1/4 NE1/4 NW1/4 of Section 15, Township 14 North, Range 19 West,
25 Missoula County. The water is to be diverted by means of a gravity
26 flow pipeline and used for non-consumptive flow through an existing
27 reservoir.
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1 the appropriate court within thirty (30) days after service of the Final
2 Order.

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4 DATED this 6th day of June, 1980.

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7 David L. Pengelly
8 DAVID L. PENGELLY, D.N.R. & C
9 HEARING EXAMINER
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