

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
22,303-g41H BY M. M. NASH)
* * * * *

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

FINAL ORDER

1. Subject to the conditions and limitations listed below, Application for Beneficial Water Use Permit No. 22,303-g41H by M. M. Nash is hereby granted to appropriate 1200 gallons per minute up to 375 acre-feet per annum from a well approximately 150 feet deep to be located in the NW1/4 NW1/4 SW1/4 of Section 34, Township 1 North, Range 4 East, M.P.M., Gallatin County, Montana. The water is to be withdrawn from May 15 to October 15, inclusive, of each year. The water is to be used at a rate of 1200 gallons per minute up to 375 acre-feet per annum from May 15 to October 15 of each year for new sprinkler irrigation. The water is to be used on 65 acres in the NE1/4 of Section 33; 10 acres in the NW1/4 of Section 34; and 80 acres in the SW1/4 of Section 34, all in Township 1 North Range 4 East,

M.P.M., Gallatin County, Montana, for a total of 155 acres.

2. Provisional Permit No. 22,303-g41H is granted subject to existing rights in the source of supply and any final determination of those rights as provided by Montana Law.

3. The Permittee shall install an adequate flow metering device in order to allow the flow rate and volume of water withdrawn to be recorded. The Permittee shall keep a written record of the flow rate and volume of all the waters withdrawn including the period of time and shall submit said records to the Department upon request.

4. The well shall be so constructed that water is not wasted or allowed to contaminate other water supplies or sources.

5. The final completion of the well shall include an access port of at least 0.50 inch diameter, located so that the static water level in the well can be adequately measured.

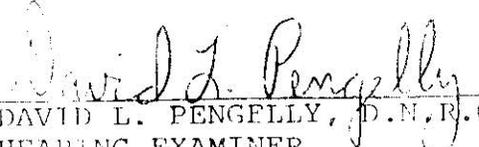
6. The issuance of this Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing

the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of this Provisional Permit.

NOTICE

The Hearing Examiner's Final Order may be appealed 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 th day of January, 1981.


DAVID L. PENGELLY, D.N.R.C.
HEARING EXAMINER

AFFIDAVIT OF SERVICE
(Final Order)

STATE OF MONTANA)
) ss.
County of Lewis and Clark)

Gale Greer, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That, on January 9, 1981, he deposited in the United States mail, a "certified" copy of the Final Order by the Administrator, Water Resources Division, on the application by M. M. Nash, Application No. 22303-g41H, for a permit to appropriate water, addressed to each of the following persons or agencies:

Certified Nos. 1154 to 1156

1. M. M. Nash; Box 1330; Bozeman, MT 59715
2. Margurite C. Kalitowski; 489 Kentucky Avenue; Dillon, MT 59725
3. Fae C. Kauk; Box 194; Brady, MT 59416
4. Delbert E. Barnes; Route 2, Box 314; Belgrade, MT 59714
5. Alvin & Gerald Goldenstein; 7190 Goldenstein Lane; Bozeman, MT 59715
6. John P. Scully; Atty. at Law; P.O. Box 1168; Bozeman, MT 59715
7. Thomas G. Rediske; Hydrologist; D.N.R.&C.; Helena, MT (hand deliver)
8. T.J. Reynolds; Area Supervisor; Helena Field Office; Helena, MT (hand deliver)
9. Dave Pengelly; Hearing Examiner; D.N.R.&C.; Helena, MT (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
by Gale Greer

STATE OF MONTANA)
) ss.
County of Lewis and Clark)

On this 9th day of January, 1981, before me, a Notary Public in and for said State, personally appeared Gale Greer, known to me to be the Hearing Recorder, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Beth Lambson
Notary Public for the State of Montana

Residing at Helena

My commission expires 6 Oct 1982

CASE # 22303

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
22,303-g41H BY M. M. NASH)
* * * * *

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on October 22, 1980, at Bozeman, Montana, for the purpose of hearing objections to Application for Beneficial Water Use Permit No. 22,303-g41H, David Pengelly, Hearing Examiner, presiding.

The Applicant, Mr. M. M. Nash, appeared at the hearing and represented himself. No exhibits were introduced on behalf of the Applicant.

One (1) Objector was present at the hearing, Mr. Gerald Goldenstein, on behalf of himself and his brother Mr. Alvin Goldenstein. The Goldensteins were represented by legal counsel, Mr. John P. Scully, Bozeman, Montana. No exhibits were introduced on behalf of the Objector.

Montana Department of Natural Resources and Conservation personnel present at the hearing were Mr. T. J. Reynolds, Helena Water Rights Bureau Area Office Supervisor; Mr. Tom Rediske, Hydrogeologist; and Miss Gale Greer, Hearings Reporter. The Department was not

represented by legal counsel. One (1) exhibit was introduced on behalf of the Department, to wit:

Department's Exhibit:

D-1 A cross-sectional sketch of of the Applicant's proposed point of diversion showing the approximate elevations of the Applicant's well and the Objectors' well.

SUMMARY OF RECORD

1. On April 9, 1979, the Department received Application for Beneficial Water Use Permit No. 22303-g41H by M. M. Nash to appropriate 1200 gallons per minute up to 375 acre-feet per annum from a well approximately 150 feet deep to be located in the NW1/4 NW1/4 SW1/4 of Section 34, Township 1 North, Range 4 East, M.P.M., Gallatin County, Montana. The water is to be withdrawn from May 15 to October 15, inclusive, of each year. The water is to be used at a rate of 1200 gallons per minute up to 375 acre-feet per annum from May 15 to October 15, for new sprinkler irrigation of 65 acres in the NE1/4 of Section 33; of 10 acres in the NW1/4 of Section 34; and on 80 acres in the SW1/4 of Section 34, for a total of 155 acres, all in Township 1 North, Range 4 East, M.P.M., Gallatin County, Montana.

2. On September 8, 15, and 22, 1979, the Department caused to be duly published in the Bozeman Daily Chronicle Notice of Application for Beneficial Water Use Permit No. 22,303-g41H.

3. On September 24, 1979, the Department received an objection to the above Application from Delbert E. Barnes.

4. On September 24, 1979, the Department received a letter from Mr. John P. Scully stating that Messers Alvin and Gerald Goldenstein objected to the above Application. The proper objection form was not received by the Department until January 25, 1980.

5. On September 26, 1979, the Department received an objection to the above Application from Fae C. Kauk.

6. On October 2, 1979, the Department received an objection to the above Application from Marguerite Cope Kalitowski.

PROPOSED FINDINGS OF FACT

1. That the source of supply in the above matter is an alluvial aquifer of the Gallatin River (page 2 of the technical report by Tom Rediske).

2. That the Objectors, the Goldenstein Brothers, have a 220 foot deep well. The pump in their well is

set at approximately 125 feet below the surface elevation of their property and the pumping level of the water in the well is approximately 92 feet below the surface elevation. Therefore the available drawdown in the Objectors' well is approximately 33 feet (Objectors' testimony and well log of Objectors' well).

3. Based on an expected range of transmissivities for the alluvial aquifer one could expect a range of drawdown in the Objectors' well from 10 to 12.9 feet due to pumping of the Applicant's well continuously for 71 days (technical report by Tom Rediske, pages 2 and 3).

4. That the Applicant intends to sprinkle irrigate approximately 155 acres under this Application. Initially the Applicant intends to irrigate 65 acres with a half circle center pivot system and then once that system is in place the Applicant intends to irrigate another 90 acres using hand lines and wheel lines (Applicant's testimony).

5. That the Objectors, the Goldenstein Brothers, have a prior existing water right which must be protected under Montana Water Law.

6. That there was no testimony presented regarding permitted rights or developments or reserved rights which might be adversely affected by the above Application.

PROPOSED CONCLUSIONS OF LAW

1. Section 85-2-311, M.C.A., 1979, states in part that "The department shall issue a permit if:

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 water 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 by the granting of this permit.

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

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

6. It is concluded that the proposed use will not interfere unreasonably with 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 herein have bearing on the status of claimed rights of any other party except in relation to those 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

1. Subject to the conditions and limitations listed below, Application for Beneficial Water Use Permit No. 22,303-g41H by M. M. Nash is hereby granted to appropriate 1200 gallons per minute up to 375 acre-feet per annum from a well approximately 150 feet deep to be located in the NW1/4 NW1/4 SW1/4 of Section 34, Township 1 North, Range 4 East, M.P.M., Gallatin County, Montana. The water is to be withdrawn from May 15 to October 15, inclusive, of each year. The water is to be used at a rate of 1200 gallons per minute up to 375 acre-feet per annum from May 15 to October 15 of each year for new sprinkler irrigation. The water is to be used on 65 acres in the NE1/4 of Section 33; 10 acres in the NW1/4 of Section 34; and 80 acres in the SW1/4 of Section 34, all in Township 1 North Range 4 East, M.P.M., Gallatin County, Montana, for a total of 155 acres.

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6. The issuance of this Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of this Provisional 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 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 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 23rd day of December, 1980.



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

CASE # 22303