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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 PERMITS NOS. 26747-s40J, 26748-s40J and 26749-s40H BY BERG-MELBY CORPORATION	))))	FINAL ORDER

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There being no exceptions or objections to the Proposal for Decision entered in these matters on August 17, 1981, the same is hereby made final and is expressly incorporated herein.

WHEREFORE, subject to the limitations and conditions delineated below, Applications for Beneficial Water Use Permits Nos. 26747-s40J, 26748-s40J, and 26749-s40H by Berg-Melby Corporation are hereby granted according to the following particulars.

A. Application for Beneficial Water Use Permit No. 26747-s40J is hereby granted to Berg-Melby Corporation to appropriate 105 gallons per minute up to 12 acre-feet per year for new sprinkler irrigation from April 15 to June 15, inclusive, of each year. The place of use shall be confined to 15 acres, more or less, in the NE1/4 of Section 10, Township 32 North, Range 13 East. The point of diversion shall be located in the SW1/4 NE1/4 NE1/4 of Section 10, Township 32 North, Range 13 East, all in Hill County. The source of supply shall be an unnamed coulee, a tributary of Fresno Coulee. The priority date for this permit shall be February 5, 1980, at 3:05 p.m.

B. Application for Beneficial Water Use Permit No. 26748-s40J

Case # 26747

is hereby granted to Berg-Melby Corporation to appropriate 105 gallons per minute up to 26 acre-feet annually for new sprinkler irrigation from April 15 to June 15, inclusive, of each year. The place of use shall be confined to 20 acres, more or less, in the NE1/4 of Section 2, Township 32 North, Range 13 East. The point of diversion shall be located in the SE1/4 SW1/4 NE1/4 of Section 2, Township 32 North, Range 13 East, all in Hill County. The source of supply shall be an unnamed coulee, a tributary of Fresno Coulee. The priority date for this permit shall be February 5, 1980, at 3:05 p.m.

C. Application for Beneficial Water Use Permit No. 26749-s40H is granted to Berg-Melby Corporation to appropriate the use of 105 gallons per minute up to 20 acre-feet per year for new sprinkler irrigation from April 15 to June 15, inclusive, of each year. The place of use shall be confined to 35 acres, more or less, in the NE1/4 of Section 15, Township 32 North, Range 13 East. The point of diversion shall be located in the NW1/4 NE1/4 NE1/4 of Section 15, Township 32 North, Range 13 East, all in Hill County. The source of supply shall be Sprinkle Coulee, a tributary of Sandy Creek. Priority date for this permit shall be February 5, 1980, at 3:07 p.m.

D. The Applicant Berg-Melby Corporation may store the amounts of water reflected herein for subsequent beneficial use, but in no event may the Applicant capture in its storage structures water in excess of the amounts set forth herein, nor may it otherwise divert quantities in excess of those defined herein.

All of the above-referenced permits are granted subject to the following conditions, restrictions and limitations:

1. These permits are subject to all prior existing water rights

CASE # 26747

in the source of supply. Further, these permits are subject to any final determination of existing water rights as provided by Montana Law.

2. The waters appropriated pursuant to these permits shall only be diverted during extreme high spring runoff, or when the Bureau of Reclamation is spilling at Vandalia Diversion Dam. During all other periods, the permittee shall allow the normal flow to pass his diversion to satisfy prior existing water rights.

3. The permittee shall contact the Bureau of Reclamation at Malta (Box R, Malta, Montana, 59538) at the start of each irrigation season to determine current water supply conditions and availability for his use. This contact shall be made by certified mail through the U. S. Postal Service with return receipt requested.

4. The conditions contained herein relating to the Vandalia Diversion Dam under 2 and 3 above may be modified by the Department of Natural Resources and Conservation upon receipt of further evidence or determination by the Department pertaining to the water rights of the U. S. Government in said reservoir.

5. The diversion structures shall have adequate drainage devices, channels, or other necessary means to satisfy prior existing rights. Adequate releases to satisfy prior existing water rights may be provided by pumping water past the existing reservoirs.

6. These permits are subject to the condition that the permittee shall install an adequate flow metering device to allow the flow rate and volume of water diverted to be recorded. The permittee shall keep a written record of the flow rate and volume of all water diverted, including the period of time, and shall submit said records to the Department of Natural Resources and Conservation upon request.

CASE # 26747

7. These permits are granted subject to the right of the Department of Natural Resources and Conservation to revoke the permits in accordance with MCA 85-2-314 (1979), and to enter onto the premises for investigative purposes in accordance with MCA 85-2-115 (1979).

8. Nothing herein shall be construed in any way to affect or reduce permittee's liability for damages which may be caused by the exercise of these permits, nor does the Department of Natural Resources and Conservation in issuing these permits in any way acknowledge liability for any damages that may be caused by the exercise of these permits, even if such damage is the necessary and unavoidable consequences of diversions made pursuant thereto.

9. The permittee shall proceed with reasonable diligence in the completion of the appropriations as delineated herein.

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.

DONE this 27 day of August, 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 # 26747

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

* * * * * * * * * * *

IN THE MATTERS OF APPLICATIONS FOR BENEFICIAL WATER USE PERMITS NOS. 26747-s40J, 26748-s40J and 26749-s40H BY BERG-MELBY CORPORATION	)	PROPOSAL FOR DECISION

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On February 5, 1980, Application for Beneficial Water Use Permit No. 26747-s40J was filed with the Department of Natural Resources and Conservation on behalf of Berg-Melby Corporation. The Application seeks 105 gallons per minute up to 12 acre-feet per year for new irrigation from April 15 to June 15, inclusive, of each year. The place of use is alleged to be 15 acres located in the NE1/4, Section 10, Township 32 North, Range 13 East. The point of diversion is claimed to be in the SW1/4 NE1/4 NE1/4 of Section 10, Township 32 North, Range 13 East, all in Hill county. The source of supply is alleged to be an unnamed coulee, tributary to Fresno Coulee. The Application was duly published for three successive weeks in the Havre Daily News, a newspaper of general circulation printed and published in Havre, Montana. An objection was received to the granting of this application on behalf of Water and Power Resources service (now known as Bureau of Reclamation) of the United States of America on May 9, 1980. This objection alleges generally that any new consumptive use of water in the Milk River Basin above Vandelia Diversion Dam will adversely affect the existing water rights of the Milk River Project.

CASE # 26747

On February 5, 1980, Application for Beneficial Water Use Permit No. 26748-s40J was filed with the Department of Natural Resources and Conservation on behalf of Berg-Melby Corporation. This application seeks 105 gallons per minute up to 26 acre-feet per year for new sprinkler irrigation from April 15 to June 15, inclusive, of each year. The place of use is alleged to be 20 acres, more or less, in the NE1/4 of Section 2, Township 32 North, Range 13 West. The proposed point of diversion is in the SE1/4 SW1/4 NE1/4 of Section 2, Township 32 North, Range 13 East, all in Hill County. The source of supply is claimed to be an unnamed coulee, a tributary of Fresno Coulee. The application was duly published as provided by law for three successive weeks in the Havre Daily News, a newspaper of general circulation, printed and published in Havre, Montana. On May 9, 1980, an objection to the granting of this application was filed by Water and Power Resources Service of the United States of America. This agency alleges generally that any new consumptive use of the water in the Milk River Basin above the Vandelia Diversion Dam will adversely affect the existing water rights of the Milk River Project. An objection was also filed with the Department on behalf of Inman Farms on May 20, 1980. This objection alleges generally that the flow of Fresno Coulee in most years has already been appropriated and put to beneficial use.

Again on February 5, 1980, Application for Beneficial Water Use Permit No. 26749-s40H was filed with the Department of Natural Resources and Conservation on behalf of Berg-Melby Corporation. This application seeks 105 gallons per minute up to

CASE # 26747

20 acre-feet for new sprinkler irrigation form April 15 to June 15, inclusive, of each year. The place of use is claimed to be comprised of 35 acres, more or less, in the NE1/4 of Section 15, Township 32 North, Range 13 East. The proposed point of diversion is alleged to be located in the NW1/4 NE1/4 NE1/4 of Section 15, Township 32 North, Range 13 East, all in Hill County. The source of supply is claimed to be Sprinkle Coulee, a tributary of Sandy Creek. This application was duly published as provided by law for three successive weeks in the Havre Daily News, a newspaper of general circulation printed and published in Havre, Montana. On May 9, 1980, an objection to the granting of this application was filed with the Department by Water and Power Resources Service of the United States of America. This objection alleges generally that any new consumptive use of water in the Milk River Basin above Vandalia Diversion Dam will adversely affect existing water rights of the Milk River Project.

Hearings in these matters were consolidated upon order of this Hearing Examiner and were set for June 25, 1981, at the Hill County Courthouse in Havre, Montana. Prior to the hearing, the parties indicated that they had reached agreement as to the proper disposition of these applications. This agreement is evidenced by the attached Exhibits A, B and C, which attachments are expressly incorporated herein. The Department of Natural Resources and Conservation also interposes no objections to the granting of this application so long as the following conditions are observed.

CASE # 26747

WHEREFORE, subject to the limitations and conditions delineated below, Applications for Beneficial Water Use Permits Nos. 26747-s40J, 26748-s40J, and 26749-s40H by Berg-Melby Corporation are hereby granted according to the following particulars.

A. Application for Beneficial Water Use permit No. 26747-s40J is hereby granted to Berg-Melby corporation to appropriate 105 gallons per minute up to 12 acre-feet per year for new sprinkler irrigation from April 15 to June 15, inclusive, of each yer. The place of use shall be confined to 15 acres, more or less, in the NE1/4 of Section 10, Township 32 North, Range 13 East. The point of diversion shall be located in the SW1/4 NE1/4 NE1/4 of Section 10, Township 32 North, Range 13 East, all in Hill County. The source of supply shall be an unnamed coulee, a tributary of Fresno Coulee. The priority date for this permit shall be February 5, 1980, at 3:05 p.m..

B. Application for Beneficial Water Use Permit No. 26748-s40J is hereby granted to Berg-Melby Corporation to appropriate 105 gallons per minute up to 26 acre-feet annually for new sprinkler irrigation from April 15 to June 15, inclusive, of each year. The place of use shall be confined to 20 acres, more or less, in the NE1/4 of Section 2, Township 32 North, Range 13 East. The point of diversion shall be located in the SE1/4 SW1/4 NE1/4 of Section 2, Township 32 North, Range 13 East, all in Hill County. The source of supply shall be an unnamed coulee, a tributary of Fresno Coulee. The priority date for this permit shall be February 5, 1980, at 3:05 p.m.

CASE #26747

C. Application for Beneficial Water Use Permit No. 26749-s40H is granted to Berg-Melby Corporation to appropriate the use of 105 gallons per minute up to 20 acre-feet per year for new sprinkler irrigation from April 15 to June 15, inclusive, of each year. The place of use shall be confined to 35 acres, more or less, in the NE1/4 of Section 15, Township 32 North, Range 13 East. The point of diversion shall be located in the NW1/4 NE1/4 NE1/4 of Section 15, Township 32 North, Range 13 East, all in Hill County. The source of supply shall be Sprinkle Coulee, a tributary of Sandy Creek. Priority date for this permit shall be February 5, 1980, at 3:07 p.m.

D. The Applicant Berg-Melby Corporation may store the amounts of water reflected herein for subsequent beneficial use, but in no event may the Applicant capture in its storage structures water in excess of the amounts set forth herein, nor may it otherwise divert quantities in excess of those defined herein.

All of the above-referenced permits are granted subject to the following conditions, restrictions and limitations.

1. These permits are subject to all prior existing water rights in the source of supply. Further, these permits are subject to any final determination of existing water rights as provided by Montana Law.

2. The waters appropriated pursuant to these permits shall only be diverted during extreme high spring runoff, or when the Bureau of Reclamation is spilling at Vandalia Diversion Dam. During all other periods, the permittee shall allow the normal

CASE # 26747

flow to pass his diversion to satisfy prior existing water rights.

3. The permittee shall contact the Bureau of Reclamation at Malta (Box R, Malta, Montana, 59538) at the start of each irrigation season to determine current water supply conditions and availability for his use. This contact shall be made by certified mail through the U.S. Postal Service with return receipt requested.

4. The conditions contained herein relating to the Vandalia Diversion Dam under 2 and 3 above may be modified by the Department of Natural Resources and Conservation upon receipt of further evidence or determination by the Department pertaining to the water rights of the U. S. Government in said reservoir.

5. The diversion structures shall have adequate drainage devices, channels, or other necessary means to satisfy prior existing rights. Adequate releases to satisfy prior existing water rights may be provided by pumping water past the existing reservoirs.

6. These permits are subject to the condition that the permittee shall install an adequate flow metering device to allow the flow rate and volume of water diverted to be recorded. The permittee shall keep a written record of the flow rate and volume of all water diverted, including the period of time, and shall submit said records to the Department of Natural Resources and Conservation upon request.

7. These permits are granted subject to the right of the Department of Natural Resources and Conservation to revoke the

CASE # 26747

permits in accordance with MCA 85-2-314 (1979), and to enter onto the premises for investigative purposes in accordance with MCA 85-2-115 (1979).

8. Nothing herein shall be construed in any way to affect or reduce permittee's liability for damages which may be caused by the exercise of these permits, nor does the Department of Natural Resources and Conservation in issuing these permits in any way acknowledge liability for any damages that may be caused by the exercise of these permits, even if such damage is the necessary an unavoidable consequences of diversions made pursuant thereto.

9. The permittee shall proceed with reasonable diligence in the completion of the appropriations as delineated herein.

The foregoing is offered for the inspection of all parties of record hereto. If any of the matters herein do not reflect the intention or agreements of the parties hereto, written objection or exception must be made by filing the same with the Department of Natural Resources and Conservation by August 26, 1981.

DONE this 12th day of August, 1981.

Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 449-3962

CASE # 26747