

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 27844-s40A BY COULEE HILL)
RANCH, INC.) FINAL ORDER

* * * * *

The time period for filing exceptions to the Hearing Examiner's Proposal for Decision in the above-entitled matter has expired. No exceptions or other arguments were filed by any party of record. The Department of Natural Resources and Conservation (hereafter, "Department") accepts and adopts the Findings of Fact and Conclusions of Law of the Hearing Examiner as contained in the the Proposal, and expressly incorporates them herein by reference.

Therefore, on the basis of the record and the proceedings herein, the Department makes the following:

FINAL ORDER

Subject to the conditions and limitations described below, Application For Beneficial Water Use Permit is hereby granted to Coulee Hill Ranch, Inc. to appropriate 300 gpm up to 45 acre feet per year for the irrigation of 45 acres more or less in the NW¹/₄ of Section 9, T5N, R20E, in Golden Valley County. The source of supply shall be Big Coulee Creek, a tributary of the Musselshell

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River, the waters thereof to be diverted at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T5N, R20E, in Golden Valley County. In no event shall the waters provided for herein be diverted prior to April 1 of any given year, nor subsequent to October 1 of any given year, nor at any time in July or August of any year. The priority dates for the rights evidenced herein shall be June 2, 1980, at 9:30 a.m.

Any rights provided for herein are subject to the following conditions and restrictions:

1. Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of such rights as provided by Montana law. Nothing herein shall be construed to authorize diversions to the detriment of any senior appropriator.

2. No diversions shall be made once the user of the rights provided for herein has been informed or is otherwise aware that the flow rate in the Musselshell River at the USGS gaging station near Roundup, Montana has dropped below the following amounts for the months indicated:

April	20.3 cubic feet per second (cfs)
May	87.2 cfs
June	139.4 cfs
(no appropriation allowed in July or August)	
September	90.5 cfs
October	21.7 cfs

3. The permittee shall measure or meter all water withdrawals under this permit and submit the amounts, dates, and times of those withdrawals to the Water Rights Bureau on a weekly basis.

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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 11 day of August, 1985.

Gary Fritz

Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 South Ewing, Helena, MT 59620
(406) 444 - 6601

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AFFIDAVIT OF SERVICE

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

Patti Miller, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on Jan. 21st, 1985, she deposited in the United States mail, certified mail, an order by the Department on the Application by COULEE HILL RANCH, INC., Application No. 27844-S40A, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Coulee Hill Ranch, Rural Rte. 1, Box 14, Ryegate, MT 59074
2. Harry Vander Voort, Ryegate, Montana 59074
3. DNRC, c/o Engineering Bureau, 32 South Ewing, Helena, Montana 59620
4. Sam Rodriguez, Lewistown Field Office, Lewistown, MT 59457 (inter-departmental mail)
5. Gary Fritz, Administrator, Helena, Montana (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Patti Miller

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

On this 21st day of Jan., 1985, before me, a Notary Public in and for said state, personally appeared Patti Miller, known to me to be the Clerk 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.

[Signature]
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires Jan 22 1987

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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. 27844-s40A BY COULEE HILL)
RANCH, INC.)

* * * * *

Pursuant to the Montana Water Use Act and the contested case provisions of the Montana Administrative Procedures Act a hearing in the above-entitled matter was held in Roundup, Montana.

STATEMENT OF THE CASE

The present application seeks 300 gpm up to 45 acre feet per year for the irrigation of 45 acres more or less in Golden Valley County.

Timely objections to this application were filed by the Department of Natural Resources and Conservation and Harry Vander Voort.

The pertinent portions of this application were duly published for three successive weeks in the Times-Clarion, a newspaper of general circulation printed and published in Harlowton, Montana.

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DNRC'S OBJECTION

The DNRC objected to the issuance of the permit at issue based on the water uses attendant to the Delphia-Melstone project. The Applicant herein agreed to certain conditions propounded by DNRC, the most significant of which prohibits diversions by the Applicant when the flows of the Musselshell fall below certain levels as measured by a USGS guage at Roundup. With this agreement, the DNRC withdrew its objection.

These conditions are thus made part of the disposition herein, with the changes provided for in In re Zinne, Proposal for Decision, 8/84.

FINDINGS OF FACT

1. The Department of Natural Resources and Conservation has jurisdiction over the subject matter herein and over the parties hereto.
2. The Applicant has a bona fide intent to appropriate water pursuant to a fixed and definite plan and the Applicant is not attempting to speculate in the water resource.
3. The Applicant intends to irrigate small grains and barley.
4. The use of water would be of material benefit to the Applicant in increased yields of the crops.
5. The use of 300 gpm up to 45 acre feet annually is a reasonable estimate of the quantity of water required for the applicant's purposes.
6. The Applicant's proposed use is a beneficial one.

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7. The Applicant tends to divert the quantity claimed herein by a pump and pipeline, and to apply the waters so diverted to use by means of a sprinkler irrigation system.

8. The Applicant's proposed means of diversion are reasonable, customary, and adequate for his intended purposes, and said means will not result in waste.

9. During July and August, existing irrigation and stockwatering uses require the whole flow of the stream in virtually every year.

10. There are no excess waters available in Big Coulee Creek in July and August.

11. Subject to this Applicant's priority date, there are unappropriated waters available in the quantities claimed herein in all months within the time of use proposed except for July and August.

12. Diversions in July and August would for all practical purposes always take water otherwise required for downstream use.

13. Diversions in July and August would adversely affect prior appropriators.

14. Subject to the Applicant's priority, diversions in all months save July and August within the time of use proposed would not adversely affect prior appropriators.

CONCLUSIONS OF LAW

1. The Department of Natural Resources and Conservation has jurisdiction over the subject matter herein, and over the parties hereto. MCA 85-2-301 et. seq.

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2. The Applicant has a bona fide intent to appropriate water pursuant to a fixed and definite plan, and he is not attempting to speculate in the water resource. See Toohy v. Campbell, 24 Mont. 13, 60 P. 390 (1900), MCA 85-2-312.

3. The use of 300 gpm up to 45 acre feet per year is a reasonable estimate of the quantity of water required for the Applicant's purposes, and said amounts will be used beneficially. See Bailey v. Tintinger, 45 Mont. 154, 122 P. 575 (1912), Worden v. Alexander, 108 Mont. 208, 90 P.2d 160 (1939).

4. The purpose of use herein is a beneficial one. MCA 85-2-102(2).

5. There are no unappropriated waters in July and August. There are unappropriated waters available for the Applicant's use at other times within the irrigation season. See In re Monforton, Dept. Order, 3/82.

6. The Applicant's use would adversely affect prior appropriators in July and August. The Applicant's use will not adversely affect prior appropriators at any other time within the time of use proposed. See In re Monforton, Dept. Order, 3/82.

Based on these findings of fact and conclusions of law, the following proposed order is hereby issued.

Subject to the conditions and limitations described below, Application For Beneficial Water Use Permit is hereby granted to Coulee Hill Ranch, Inc. to appropriate 300 gpm up to 45 acre feet per year for the irrigation of 45 acres more or less in the NW $\frac{1}{4}$ of Section 9, T5N, R20E, in Golden Valley County. The source of supply shall be Big Coulee Creek, a tributary of the Musselshell

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Any rights provided for herein are subject to the following conditions and restrictions:

1. Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of such rights as provided by Montana law. Nothing herein shall be construed to authorize diversions to the detriment of any senior appropriator.

2. No diversions shall be made once the user of the rights provided for herein has been informed or is otherwise aware that the flow rate in the Musselshell River at the USGS gaging station near Roundup, Montana has dropped below the following amounts for the months indicated:

April	20.3 cubic feet per second (cfs)
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July	218.2 cfs
August	188.3 cfs
September	90.5 cfs
October	21.7 cfs

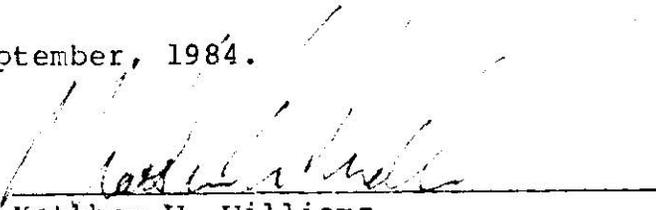
3. The permittee shall measure or meter all water withdrawals under this permit and submit the amounts, dates, and times of those withdrawals to the Water Rights Bureau on a weekly basis.

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NOTICE

Exceptions or objections to this Proposal for Decision must be filed with Gary Fritz, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, no later than 20 days after service hereof.

DATED this 2nd day of September, 1984.



Matthew W. Williams
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59620
406/444-6698

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AFFIDAVIT OF SERVICE

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

Mary Bertagnolli, Legal Secretary of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on September 7, 1984, she deposited in the United States mail, a PROPOSAL FOR DECISION by the Department on the Application by COULEE HILL RANCH, INC., Application No. 27844-s40A, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Coulee Hill Ranch, Rural Rte. 1, Box 14, Ryegate, MT 59074
2. Harry Vander Voort, Ryegate, Montana 59074
3. DNRC, c/o Engineering Bureau, 32 South Ewing, Helena, Montana 59620
4. Lewistown Field Office
5. Matt Williams, Hearings Examiner, Helena, Montana (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Mary Bertagnolli

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

On this 7th day of September, 1984, before me, a Notary Public in and for said state, personally appeared Mary Bertagnolli, known to me to be the Legal Secretary 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.

[Signature]
Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires 12/15/84

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MEMORANDUM

The only issues herein are those embraced by the statutory requirements of "unappropriated water" and "no adverse affect to prior appropriators". The analysis is defined by In re Monforton, Dept. Order, 3/82. Therein, it was noted that the permit process does not supplant the need for regulation of a stream according to the priorities thereon, but rather merely limits those proposed uses for which there is as a practical matter never excess waters through all or a portion of the time of use proposed.

Here the testimony of the Objector describes a pattern of water uses on Big Coulee Creek that take the whole flow of the source of supply in virtually all years in July and August. Present users of Big Coulee are already water starved in virtually every year during such months. The available USGS gauging records lend stark support to this conclusion as they indicate only a negligible volume of water. Indeed, the Applicant's own testimony characterizes water availability only in the spring and fall months. Since there is virtually never a significant period of excess water in July or August, diversions during such times are expressly prohibited.

During the other months during the time of use proposed, the Applicant may divert and use water in accordance with the priority date attendant to this permit. The evidence herein indicates that the water right granted herein is only of marginal value. That is to say, water will actually be available to this

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junior right only sporadically even during the spring and fall months. In some years, no water will be available to this junior right at all. The result herein thus does not implicitly assure the Applicant of a reliable supply of water, nor does it otherwise indicate that the available supply is sufficient to justify the Applicant's investment. These decisions belong to the Applicant alone, subject to the necessary proviso that diversions hereunder must cease when senior demand requires water. See MCA 85-2-313(1).

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