

EXHIBIT "A"

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) AMENDED FINAL ORDER
NO. 29629-g400 BY BARRY AND CARRIE)
HANDY)

* * * * *

The Final Order entered in this matter on February 9 of 1982
is hereby amended to reflect Application and Permit No.
29629-g400.

DONE this 14th day of April, 1982.

Gary Fritz
Gary Fritz, Administrator
Department of Natural
Resources and Conservation
32 S. Ewing, Helena, MT
(406) 449 - 2872

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

CASE # 29629

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2
3 BEFORE THE DEPARTMENT
4 OF NATURAL RESOURCES AND CONSERVATION
5 OF THE STATE OF MONTANA

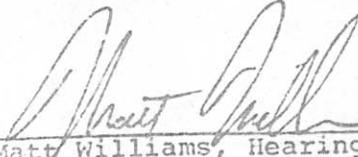
6 IN THE MATTER OF THE APPLICATION)
7 FOR BENEFICIAL WATER USE PERMIT) AMENDMENT TO
8 NO. ~~20720-g40Q~~ BY BARRY AND CARRIE) FINAL ORDER
9 HANDY 29629)

10 The Department of Natural Resources and Conservation
11 on its own motion hereby corrects a clerical error in the
12 Final Order entered in this matter. The flow rate permitted is
13 550 gallons a minute, and not 500 gallons per minute as reflected
14 in said Order.

15
16 WHEREFORE, the Final Order in the above-entitled
17 matter is hereby amended to specify a maximum diversion
18 rate of 550 gallons per minute.

19
20 DONE this 22nd day of February, 1982.

21
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23 
24 Gary Fritz, Administrator
25 Water Resources Division
26 Department of Natural
27 Resources and Conservation
28 32 S. Ewing, Helena, MT 59620
(406) 449 - 2872


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

MW:bj

CASE # 29629

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) FINAL ORDER
NO. 20720-g400 BY BARRY AND CARRIE)
HANDY 29629-g409)

* * * * *

On June 24, 1980, an Application for Beneficial Water Use Permit by Barry and Carrie Handy was filed with the Department of Natural Resources and Conservation. The application sought generally 1700 gallons per minute up to 545.4 acre-feet per year for sprinkler irrigation of 202 acres more or less from April 1 to November 15, inclusive, of each year. The source of supply is claimed to be ground water.

On January 20, 1981, an objection to the aforesaid application was filed with the Department of Natural Resources and Conservation on behalf of Tande Ranch, Inc. This objection alleges and claims generally that there are no unappropriated waters available for Applicant's use without adversely affecting this objector's senior water rights.

On February 2, 1981, an objection to the granting of this application was filed with the Department by the Sioux and Assiniboine tribes of the Fort Peck Indian Reservation. This objection claims and alleges generally that the land the

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and water involved are on the Fort Peck Indian Reservation, and that the State of Montana has no jurisdiction over property within the boundaries of the same.

On February 9, 1981, an objection to the granting of the present application was filed with the Department by the Department of the Interior of the United States of America. This objection claims and alleges matters similar to the stated interest of the Sioux and Assiniboine tribes.

It now appears that the parties hereto are in agreement as to the proper disposition of this application, and the Department in its own behalf interposing no objections, the application shall be granted by agreement according to the following conditions.

WHEREFORE, Application for Beneficial Water Use Permit No. 29629-g40Q is hereby granted to Barry and Carrie Handy to appropriate 500 gallons per minute up to 303.77 acre-feet per year for sprinkler irrigation from April 1 to November 15, inclusive, of each year. The source of supply shall be groundwater, the waters therefrom to be diverted at a point in the SE1/4 NE1/4 NE1/4 of Section 4, Township 36 North, Range 47 East. The place of use shall be confined to 202 acres more or less comprised of 33 acres in the NE1/4 of Section 4, Township 36 North, Range 47 East; 78 acres in the NW1/4 of Section 3, Township 36 North, Range 47 East; 67 acres in the SW1/4 and 24 acres in the SE1/4 of Section 32, Township 37 North, Range 47 East, all in Daniels County. The priority date for this permit

shall be June 24, 1980 at 10:36 a.m. This permit is hereby made expressly subject to the following conditions, limitations, and restrictions.

A. Any rights evidenced by this permit are subject to all prior and existing rights, including those rights of the Sioux and Assiniboine tribes if any. Moreover, any rights evidenced by this permit are subject to any final determination of rights as provided by Montana law.

B. The Permittees shall in no event divert or cause to be diverted more water than is reasonably required for the purposes reflected herein.

C. The Permittees shall proceed with reasonable diligence in the completion of their appropriation by actually applying the waters provided for herein to beneficial use.

D. The Permittees shall cause to be installed and maintained a measuring device such that the rate of flow and total volume of water withdrawn may be measured at any given time.

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 9th day of February, 1982.

Gary Fritz
Gary Fritz, Administrator
Department of Natural
Resources and Conservation
32 S. Ewing, Helena, MT
(406) 449 - 2872

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

CASE # 29629

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR
A BENEFICIAL WATER USE PERMIT NO.
29629-g400,

BARRY AND CARRIE HANDY

Proposal for Decision
(Submitted by Counsel
for Applicant)

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice a hearing was scheduled to be held at Scobey, Montana, on October 20, 1981, for the purpose of hearing the objections of Tande Ranch (Objector) to the above-referenced application made by Barry and Carrie Handy (Applicant). Applicant is represented by Sherry J. Matteucci, CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH of Billings, Montana; Objector is represented by John Scully, SCULLY & LILLY of Bozeman, Montana. Counsel for Applicant and for Objector have agreed that all factual determinations necessary to be made in resolving this matter may be made from the evidence previously presented to the hearing examiner. Further, counsel for Applicant and Objector have agreed that the evidence before the hearing examiner establishes that the well which has been developed by Applicant will not adversely effect any prior rights of Objector. The only issue remaining to be resolved is the amount for which the permit should be granted, which constitutes a legal determination requiring no further evidence. Therefore, no hearing is required.

As required by law, the hearing examiner hereby makes the following proposed findings of fact, conclusions of law and order to the Administrator, Water Resources Division, Department of Natural Resources and Conservation.

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PROPOSED FINDINGS OF FACT

1. On June 24, 1980, Applicant Barry L. and Carrie D. Handy submitted an Application for Beneficial Water Use Permit to the Department of Natural Resources and Conservation requesting an interim permit for testing purposes in order to develop up to four groundwater wells for the purpose of irrigation on approximately 200 acres of land owned by Applicant in Daniels County. Applicant sought the interim permit in order to develop wells capable of producing up to 1,700 gallons per minute (gpm), or 545.4 acre-feet, to be applied to the lands with a sprinkler system between April 1 and November 15.

2. On January 1, 1981, the Department published notice of the application requiring objections to be received by the Department on or before February 19, 1981. On January 20, 1981, an Objection to Application was filed on behalf of Tande Ranch, Inc. On February 9, 1981, an Objection to Application was filed on behalf of the United States of America. On February 2, 1981, an Objection to Application was filed on behalf of the Assiniboine and Sioux Tribes.

3. Wayne Wetzel, geohydrologist for the Water Sciences Bureau, conducted field investigations and filed reports dated May 28, 1981, and September 2, 1981. These reports, along with other records in this matter, constitute the evidence upon which these findings of fact are based.

4. One well has been completed by Applicant with a maximum capacity of 550 gpm. The source of water for this well is groundwater which has no hydrological connection with the waters of the Middle Fork of the Poplar River. Some preliminary testing has been conducted by Applicant without discovery of other available groundwater sources.

From the foregoing proposed findings of fact, the hearing examiner makes the following proposed conclusions of law:

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of §85-2-302, MCA, a permit is required to appropriate water from groundwater sources.
2. There are unappropriated waters available from groundwater sources under lands owned by Applicant in sufficient quantity to produce a flow of at least 550 gpm.
3. Such unappropriated waters are available at times when the water can be put to the use proposed by Applicant throughout the period during which Applicant seeks to appropriate waters.
4. The rights of prior appropriators, including Objector, will not be adversely effected by the appropriation of the 550 gpm to be withdrawn from Applicant's completed well.
5. The proposed means of diversion are adequate.
6. The proposed use of water is a beneficial use.
7. 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.
8. §85-2-312, MCA, provides that the Department may issue a permit subject to terms, conditions, restrictions and limitations. In this case, a permit can be conditioned in order to prevent adversely effecting the rights of other appropriators, including Objector.
9. Any proposed finding of fact which may constitute a conclusion of law is adopted as a conclusion of law; any conclusion of law which may constitute a finding of fact is adopted as a finding of fact.

Based on the above proposed findings of fact and conclusions of law, the following order is proposed.

PROPOSED ORDER

The Application for Beneficial Water Use Permit shall be granted subject to the following:

1. All prior existing water rights.
2. Any final determination of existing water rights as provided by Montana law.
3. All Indian (Sioux and Assiniboine) reserved rights, if any, in the source of supply.

4. The permit shall be issued in the amount of 550 gpm. Applicant may proceed with testing within a reasonable time to determine if there are other unappropriated waters available from groundwater sources under his lands.

5. If it can be shown through testing results that the requirements of 885-2-311, MCA, can be satisfied, Applicant shall have until November 1, 1982, to request a modification of this permit in order to appropriate waters from groundwater sources up to a maximum amount of 1,700 gpm as requested in the application. Written notice of a request for modification shall be given to Objector, Tande Ranch. Evidence to establish that development of additional wells will not adversely effect any prior water rights of Tande Ranch will be made available to Tande Ranch and the Department at the time the modification is requested. Tande Ranch will be given an opportunity, within a time period to be determined by the Department, to object further to the evidence in support of the request for modification. If Tande Ranch has further objections, the Department will schedule a hearing for the purpose of determining whether the proposed additional

groundwater development will adversely effect any prior water rights of Tande Ranch.

NOTICE:

This is a proposed order and will become final when accepted by the Administrator, Water Resources Division, Department of Natural Resources and Conservation. Pursuant to the Montana Administrative Procedure Act and rules adopted thereunder, written exceptions to this proposed order may be filed with the Administrator within ten (10) days of the service of this proposed order upon the parties. Upon receipt of any written exceptions, opportunity will be afforded to file briefs and make oral arguments before the Administrator.

DATED this _____ day of _____, 1981.

MATT WILLIAMS
Hearing Examiner