

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. 34145-76LJ BY GARY & JOYCE)
WILSON AND ROBERT & DIANE HOLST)

* * * * *

In the matter of the Application for Beneficial Water Use Permit No. 34145 by Gary and Joyce Wilson and Robert and Diane Holst. Exception and objection has been submitted to the Proposal for Decision in this matter by the Objector Grier, the Objector Robbin, and the Objector Christensen.

The objection of Mr. Christensen consists of merely a notification that he continues to object to any favorable disposition of the present application. No specific grounds are relied upon, and therefore, the Department cannot respond to the assertion contained therein.

The objection of the Objector Robbin raises and alleges numerous errors in the Proposal for Decision. Firstly, this Objector contends that the evidence shows that the groundwater pit proposed by the Applicant will divert surface water in addition to groundwater. It is undoubtedly true that some surface waters will infiltrate the ground water pit. Indeed, the waters the Applicant proposes to use appear to be tributary to a

surface stream, and therefore, a description of such waters as groundwater is inevitably somewhat pedantic. However, this commingling of surface and groundwater is not of material proportions in the disposition of this matter.

The Objector Robbin also asserts that the infiltration of waters in the groundwater pit will raise the water table in the adjoining area. This result would contravene hydrologic law. Water can be depended on to seek its own level. Blasdel vs. the Montana Power Company, 39 St. Rptr. 219, ___ Mont. ___, ___ P. 2nd ___ (1982), referred to by the Objector Robbin, is not at all in point. Therein, the Montana Power Company was found liable in inverse condemnation for the inundation of farm lands caused by the construction of Kerr Dam. However, by the opinion in that matter, The Montana Power Company had increased the level of Flathead Lake by the construction of the dam. Such increase in level yields additional hydraulic head, which in turn induces greater recharge to the adjoining water table, thereby increasing the level of the same. The Applicants in the present matter, however, do not purport to construct their diversion works in such a way that the waters accumulating therein will be artificially raised. Thus, no increase in adjoining water table levels can be expected.

Nor does the evidence support any conclusion that Applicants' proposed use will result in the waste of the water resource. Waste means "the unreasonable loss of water to the design or

negligent operation of an appropriation or water distribution facility or the application of water to anything but of beneficial use." MCA 85-2-102 (13) (1981). While the Department does not believe that Applicants' proposed pit will infiltrate any confining layer such that any artesian flows will be accelerated, even if such event occurred it is probable that these increased flows will not constitute a waste of the water resource. The evidence in the record indicates that it is the abundance of water in the area that is of concern, and thus little need is reflected for the conservation of the water resource.

The Objector Robbin also asserts that the Findings and Conclusions to the effect that Applicants' proposed use will not adversely affect the rights of prior appropriators are utterly without foundation or support in the record. Again, the record indicates not a shortage of water in this area, but such an abundance of the same that drainage problems are created. It is thus unreasonable to assume that Applicant's proposed use will result in a deprivation of water to any senior appropriator. Moreover, as reflected elsewhere herein, it is unreasonable to assume that Applicants' project executed according to their plans will aggravate any drainage problem for any existing senior water user.

Flooding concerns per se are not within the purview of the Montana Water Use Act. That is, unless drainage problems associated with a particular water use interfere with a person's

right to divert and use water for a beneficial purpose, these difficulties posed by excess waters not an infringement or an adverse effect to the rights of a prior appropriator. See HCA 85-2-311(2) (1981), see also Holmstrom Land Co. v. Mengher County Newlan Creek Water, 36 St. Rep. 1403, ___ Mont. ___, 605 P. 2nd 1060(1979). The Department is not a roving commission with authority to right all wrongs, but instead has only that authority disclosed in the Montana Water Use Act. Thus, although the Objector Grier is indeed downstream along the hydraulic gradient from Applicants' proposed use, there is no evidence in the record demonstrating that this person is a senior appropriator or water user. Consequently, while the Department does not believe the Applicants' proposed use will engender any flood hazard to Grier's properties, in the final analysis this is not material as the Department has no jurisdiction over such questions pursuant to the Montana Water Use Act.

Finally, the Objector Robbin seeks further provisions in the Proposal for Decision specifying penalties and damages for any abridgement of the rights of a prior appropriator. This asserted relief misconceives the nature of the permitting process. The water use permit procedure is in addition to, and not in lieu of, any particular person's historic remedy at law. The Department has no authority to assess damages for future abridgements of senior rights, but instead is limited to the sole remedy of revoking the particular water use permit that is the cause of the

injury. See, MCA 85-2-314 (1981). The Proposal for Decision, therefore, goes as far as is possible on the present record in protecting the rights of senior appropriators.

The Department amends the Proposal for Decision in this matter on its own initiative according to the following particulars. The 500 gpm flow rate and the 803.5 acre-feet specified therein are misleading in that such figures do not bear any necessary correlation with the Applicant's proposed fishery use. Applicants' actual intention as regards this particular use is merely to keep and maintain the groundwater pit at a fully filled level.

The starting point for any reasoned analysis of this use is a recognition that Applicant's proposed groundwater pit is a well in theory and fact. MCA 85-2-102 (18) (1981). (A "well" means "any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn"). The unique feature to this well centers around Applicant's intention to use the waters accumulating in the "bore" as a fishery resource.

To some extent, Applicants may claim protection for these waters merely as an integral component to their contemplated irrigation and stockwatering uses. Appropriators are entitled to a reasonable means of diversion, State ex rel. Crowley v. District Court, 108 Mont. 89, 88 P. 2nd 23 (1939), including a

right to a reasonable pumping lift from wells. MCA 85-2-401(1) (1981). However, these Applicants need not depend on these rights for protection, as their avowed purpose is to keep and maintain a fishery independent of these other uses.

The Applicants are thus entitled to the most water that they can use for this purpose, Sayre v. Johnson, 33 Mont. 15, 81 P. 389 (1905), but any amount in excess thereof is an unreasonable amount and is characteristic of waste. Worden v. Alexander, 108 Mont. 208, 90 P. 2nd 160 (1939). While the situation may exist where persons may require 500 gpm up to 803.5 acre-feet per year for a fishery in a 2.5 acre-foot impoundment, this is not true in these circumstances. Therefore, such a permitted amount will be inevitably misleading in the present circumstances, and such amount cannot be used beneficially for Applicant's purpose. See generally, Allen v. Petrik, 69 Mont. 373, 222 P. 451 (1924).

The intention of the Applicants as reflected in the record is to store water for their particular fishery use. The 500 gpm up to 803.5 acre-feet per year speaks in terms of direct flow measurement, and it is therefore, inapposite to the appropriative intent reflected herein. Compare MCA 85-2-302 (1981) with MCA 85-2-305 (1981). The Applicants' well will also function as a reservoir. Based on the anticipated size of the reservoir and the probable evaporative loss from such a surface acreage, the Department concludes that five acre-feet is the most water that Applicants can use for their announced purpose, and the permit must reflect this volume.

WHEREFORE, based on the Findings of Facts and Conclusions of Law as amended herein, and subject to the terms, restrictions and limitations described below, Application for Beneficial Water Use Permit No. 34145-s76LJ is hereby granted to Gary and Joyce Wilson and Robert and Diane Holst to appropriate 5 acre-feet per year for fishery purposes, which waters may be used from January 1st to December 31st, inclusive, of each year; and 5 gallons per minute up to .5 acre-feet of water per year for stock-watering purposes from January 1st to December 31st, inclusive, of each year; and 300 gallons per minute up to 75 acre-feet per year for new sprinkler irrigation from May 1st through September 30th, inclusive, of each year. The place of use of the irrigation waters provided for herein shall be confined to 48 acres, more or less, comprised of 32 acres in the SE1/4 and 16 acres in the NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County. The place of use provided for herein for fishery purposes and stock-watering purposes shall be in the NE1/4 of the NW1/4 of the SE1/4 and the SE1/4 of the SW1/4 of the NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County. The source of supply shall be groundwater, to be diverted by groundwater pit at a point in the NE1/4 of the NW1/4 of the SE1/4 and the SE1/4 of the SW1/4 of the NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County. The priority date for this permit shall be April 29 of 1981, at 5:10 p.m..

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This permit is issued subject to the following expressed conditions, restrictions and limitations.

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

B. Nothing herein shall be construed to effect or reduce the Permittees' liability for damages which may be caused by the exercise of this permit. Nor does the Department, in issuing this permit, acknowledge any liability for damages that may be so caused, even if such damages in necessary and unavoidable consequence of the exercise of this permit.

C. Permittees shall proceed with reasonable diligence in the construction of their appropriation works and in actually applying the waters provided for herein to beneficial use. By January 1 of 1984, the Permittees shall have stocked the groundwater pit with fish and shall thereafter keep it maintained so as to provide habitat for a self-sustaining fishery.

D. The Permittees shall in no event cause to be diverted, pursuant to this permit more water than is reasonably required for the purposes provided for herein.

E. In construction of the groundwater pit, Permittees shall not build or dike up the area adjacent to the pit area.

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 22nd day of March, 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

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. 34145-76LJ BY GARY & JOYCE WILSON)
AND ROBERT & DIANE HOLST)

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

STATEMENT OF THE CASE

The application in this matter seeks 300 gallons per minute up to 120 acre-feet per year for new sprinkler irrigation of 48 acres more or less from May 1 through September 30 of each year; and 500 gallons per minute up to 803.5 acre-feet per year for fish and wildlife purposes continuously throughout the year; and 5 gallons per minute up to .5 acre-foot per year for stock-watering purposes continuously throughout the year. The place of use of the irrigation water claimed herein is alleged to be located in Section 34, Township 28 North, Range 20 West, all in Flathead County. The source of supply is claimed to be ground water, to be diverted at a point in the NE1/4 NW1/4 SE1/4 and

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the SE1/4 SW1/4 NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County. Pertinent portions of this application were duly published for three successive weeks in the Daily Inter Lake, a newspaper of general circulation printed and published in Kalispell, Montana.

On October 5, 1981, an objection to the granting of this Application was filed with the Department by Dora Grier, who alleges generally that the use of waters as claimed by the Applicant may cause high waters which may damage this Objector's road. This Objector appeared personally at the hearing in this matter.

On October 6, 1981, an objection was filed with the Department by Lawrence and Vivian Chirstenson. This objection claims that Applicant's proposed use will raise the water table upon this Objector's land, and will result in a waste of monies. This Objector appeared personally at the hearing in this matter.

On October 9, 1981, an objection to the granting of this application was filed with the Department by Nita and Rand Robbin. This objection claims that the Applicant's proposed use will interfere with these Objectors' previously appropriated water, and will further interfere with these Objectors' dams and ditches associated therewith. These Objectors appeared personally at the hearing in this matter.

FINDINGS OF FACT

1. The Application in this matter was duly and regularly filed with the Department of Natural Resources and Conservation on April 29, 1981, at 5:10 p.m.

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2. The Applicants have a bona fide intent to appropriate water pursuant to a fixed and definite plan and are not attempting to speculate in the water resource.

3. The use of 5 gallons per minute up to .5 acre-foot per year continuously throughout the year for stock-watering purposes would be of material benefit to the Applicants. Moreover, the volume of water requested is a reasonable quantity in view of the Applicants' intentions to keep and maintain up to 32 head. The Applicants' proposed use of water for stock-watering purposes is therefore a beneficial use.

4. The use of 500 gallons per minute up to 803.5 acre-feet per year for a fishery would also be of benefit to the Applicants. The volume requested is predicated upon depth of water required for a self-sustaining fishery. The use of such volume for such purposes is a beneficial use. In any event, after the initial filling of Applicants' proposed pit, the annual draw on the source for this particular use will be only that amount of water required to compensate for evaporative losses.

5. The Applicants' use of water for new sprinkler irrigation will also be of material benefit to them. The place of use for such irrigation waters will be 32 acres in the SE1/4 and 16 acres in the NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County.

6. The use of 300 gallons per minute up to 120 acre-feet per year for such irrigation purposes is an unreasonable estimate of the quantity of water required for Applicants' purposes. The

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soils that comprise the place of use are characterized by a very high moisture retaining capacity. By virtue of the efficiency to be expected by a sprinkler irrigation system, 300 gallons per minute up to 75 acre-feet per year is the most water that Applicants can reasonably require for their agricultural purpose.

7. The Applicants' intend to construct a pit by excavating the ground area in approximate dimensions of 300 feet by 75 feet by 12 feet deep. The outlet to such pit will have adjustable, screened gates that will control the outlet flow of water. From this pit, waters will be diverted for irrigation purposes by means of pump and pipelines.

8. The source of supply for Applicants' uses will be ground water infiltrating a ground water pit.

9. The place of use of the waters to be used for stock watering and fish purposes will be in the NE1/4 NW1/4 SE1/4 and the SE1/4 SW1/4 NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County.

10. The ground water pit which is the point of diversion will be located in the SE1/4 SW1/4 NE1/4 and the NE1/4 NW1/4 SE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County.

11. The Applicants' proposed means of diversion are reasonable and adequate for their intended purposes.

12. The ground waters Applicants seek to appropriate are tributary to Rose Creek.

13. There are surplus waters available for Applicants' use

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in the amounts they seek and during the periods during which they seek the use of the water.

14. There are no permits or water reservation which the present application can conceivably affect.

15. The waters that will collect in the ground water pit will rise no higher than the water table level in the adjoining area.

16. The Applicants' proposed use will not adversely affect the rights of any prior appropriator.

CONCLUSIONS OF LAW

1. The priority date for the permit issued in this matter shall be April 29, 1981, at 5:10 p.m. This is the date and time at which the application was duly and regularly filed with the Department of Natural Resources and Conservation. Srs MCA 85-2-401(2) (1981).

2. The Department is mandated to issue a new water permit if the following conditions or criteria exist.

(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, construction, and operation of the appropriation works are adequate;

(4) the proposed use of water is a beneficial use;

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unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5).

3. The Applicants are required to establish the conditions or criteria by substantial credible evidence, as they are seeking less than 15 cubic feet per second and less than 10,000 acre-feet per year. MCA 85-2-311(7) (1981).

4. Applicants' proposed use of water for stock watering, fishery production, and irrigation will be of material benefit to themselves and therefore such uses belong to the class of uses that may be described as beneficial. See MCA 85-2-102(2) (1981). ("Beneficial use", unless otherwise provided, means the 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.")

5. The use of five (5) gallons a minute up to .5 acre feet per year is a reasonable estimate the quantity of water required for Applicant's stock watering purposes. See generally, Worden v. Alexander, 108 Mont. 208, 90 P. 2nd 160 (1939).

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6. The use of five hundred (500) gallons a minute up to 803.5 acre feet per year is a reasonable estimate of the quantity of water required for applicant's fishery purposes. This quantity is predicated in the main on the depth of water that is required so as to provide sufficient oxygen and other habitat requirements for a self-sustaining fishery. After the initial fill of the groundwater pit, the amount of water required for applicant's fishery purposes will be only that amount needed to offset evaporative losses from the preceding year.

7. The use of three hundred (300) gallons a minute up to 120 acre feet per year for new sprinkler irrigation of 48 acres is an unreasonable estimate of the quantity of water required for Applicant's purposes. In view of the high moisture retention capacity of the soils that comprise the place of use, 75 acre feet of water per year is the most water that Applicants reasonably require for their purpose. See Sayre v. Johnson, 33 Mont. 15, 81 P. 389 (1905), Worden v. Alexander, 108 Mont. 208, 90 P. 2nd 160 (1939).

8. The place of use of Applicant's irrigation waters will total 48 acres more or less, being comprised of 32 acres in the SE1/4 and 16 acres in the NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County.

9. The place of use of Applicants' stock watering

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NW1/4 of the SE1/4 and the SE1/4 of the SW1/4 of the NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County.

10. The source of supply for Applicant's proposed uses will be groundwater, with the point of diversion located in the NE1/4 of the NW1/4 of the SE1/4 and the SE1/4 of the SW1/4 of the NE1/4, Section 34, Township 28 North, Range 20 West, all in Flathead County.

11. The groundwaters the Applicants propose to divert are tributary to Rose Creek. The Applicants' proposed means of diversion are reasonable and adequate for their intended purposes, and such means will not result in the waste of the water resource. See State ex rel. Crowley v. District Court, 108 Mont. 89, 88 P. 2nd 23 (1939).

12. The Applicants have a bona fide intent to appropriate water pursuant to a fixed and definite plan, and they are not attempting to speculate in the water resource. See Toohy v. Campbell, 24 Mont. 13, 60 P. 396 (1900). The fact that Applicants intend to wait several years before stocking the groundwater pit with fish does not militate against this conclusion. This hiatus is engendered by the need to assure that the groundwater pit itself will remain stable.

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13. There are surplus or unappropriated waters available for Applicant's proposed uses throughout the times that they seek to use the waters. The problem indicated by the record is not a scarcity of water, but instead a glut of water to the extent that it imposes substantial drainage problems. In any event, the waters proposed to be diverted by the Applicants are tributary to Rose Creek, and "downstream" from any of the water uses of the Objectors to this matter.

14. The Applicant's proposed uses will not adversely effect the rights of that in prior appropriated period. The concerns prompted by the record are not deprivations of water to prior uses, nor could they be in light of the direction of water flow indicated by the record. Instead, the concern reflected herein is that Applicant's proposed use will further aggravate drainage problems for the Objector water users. However, the water infiltrating the Applicant's ground pit simply cannot rise any higher than the water table level of the adjoining area, unless Applicants should build up or dike up the adjoining areas around the pit. This is not what the Applicant intends. As a matter of hydrology, a simple "window" or well in the groundwater area will not create a buildup in adjoining water tables, unless this well-type structure is artificially built up such that the waters impounded therein are subject to additional hydraulic head.

The Hearing Examiner notes the evidence tending to show that much of the aquifer in this area appears to be confined or, at least, semi-confined, such that artesian conditions are produced. However, Applicant's proposed impoundment does not appear by the evidence to threaten any penetration of the confining clay area. At any event, if artesian flows are produced by Applicant's pit, they will simply discharge through the outlet gate and runoff toward Rose Creek.

In any event, Applicant forever remains subject to any objector's claims in this matter. A permit merely licenses a prospective appropriator to begin his appropriation. A completed appropriation must await actual application of the water to beneficial use. See generally Bailey v. Tintinger, 45 Mont. 154, 122 F. 575 (1912). Thus, MCA 85-2-315 provides for the issuance of a Certificate of Water Right at such time that Applicants may complete their appropriation.

Nothing in the permit procedures waives any right of any person. Applicants' water use inevitably remains junior to all established water uses. The fundamental rule is "first in time, first in right". MCA 85-2-401 (1981). Nor does this permit authorize the Applicants to disregard the property right or interest of any persons, including the objectors to this matter. The permit procedure merely contemplates a "first look," with an eye to forestalling any attempted appropriations that inevitably must work mischief. It cannot and does not make any final determination of any party's

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rights, but instead merely authorizes the Applicant to proceed with his contemplated plans if he so desires. Therefore, if the actual impacts of Applicants' use is not in accordance with the findings and conclusions rendered herein, the objectors to this matter may nonetheless have their day in court.

WHEREFORE, based on these Findings of Fact and Conclusions of Law, the following proposed order is hereby issued

Subject to the terms, restrictions and limitations below, Application for Beneficial Water Use Permit No. 34145-s76LJ is hereby granted to Gary and Joyce Wilson and Robert and Diane Holst to appropriate 500 gallons per minute up to 803.5 acre-feet per year for fishery purposes from January 1 to December 31, inclusive, of each year; and 5 gallons per minute up to .5 acre-feet of water per year for stock-watering purposes from January 1 to December 31, inclusive, of each year; and 300 gallons per minute up to 75 acre-feet per year for new sprinkler irrigation from May 1 to September 30, inclusive, of each year. The place of use of the irrigation waters provided for herein shall be confined to 48 acres comprised of 32 acres in the SE1/4 and 16 acres in the NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County. The place of use of

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the waters provided for herein for fishery purposes and stock-watering purposes shall be the NE1/4 NW1/4 SE1/4 and the SE1/4 SW1/4 NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County. The source of supply shall be groundwater, to be diverted by a groundwater pit at a point in the NE1/4 NW1/4 SE1/4 and the SE1/4 SW1/4 NE1/4 of Section 34, Township 28 North, Range 20 West, all in Flathead County. The priority date for this permit shall be April 29 of 1980 at 5:10 p.m.

This permit is issued subject to the following express conditions, restrictions and limitations.

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

B. Nothing herein shall be construed to affect or reduce the Permittees' liability for damages which may be caused by the exercise of this permit. Nor does the Department in issuing this permit acknowledge any liability for damages that may be so caused, even if such damage is the necessary and unavoidable consequence of the exercise of this permit.

C. Permittees shall proceed with reasonable diligence with the construction of their appropriation works and in actually applying the waters provided for herein to beneficial use. By January 1, 1984, the Permittees shall

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have stocked the groundwater pit with fish and shall thereafter keep it maintained so as to provide habitat for a self-sustaining fishery. The Permittees shall in no event cause to be diverted pursuant to this permit more water than is reasonably required for the purposes provided for herein.

D. In construction of the groundwater pit, Permittees shall not build or dike up the area adjoining or adjacent to the pit area.

NOTICE

This Proposal for Decision is offered for the review and comment of all parties of record. Objections and exceptions must be filed with and received by the Department of Natural Resources and Conservation on or before March 10, 1982.

DONE this 10th day of March, 1982.


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

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AFFIDAVIT OF SERVICE

PROPOSAL FOR DECISION

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

Cheryl L. Wallace, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That pursuant to the requirements of Section 85-2-309, MCA, on March 1, 1982, he deposited in the United States mail, "certified mail", an Order by the Department on the application by Wilson-Holst, Application No. 34145, for a Permit to appropriate water, addressed to each of the following persons or agencies:

1. Gary & Joyce Wilson, 3220 A Hwy 93 South, Kalispell, MT 59901
2. Robert & Diane Holst, 13 Hathaway Ln., Kalispell, MT 59901
3. Dora Grier, 1398 Riverside Rd., Bigfork, MT 59911
4. Lawrence & Vivian Christensen, 255 Dyer Rd., Kalispell, MT 59901
5. Nita G. Robin, Rand Robbin, Rt. Box 101, Bigfork, MT 59911
6. Chuch Brasen, Kalispell Field Office (regular inter-department mail)
7. Matt Williams Hearing Examiner, DNRC, Helena, MT (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Cheryl L. Wallace

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

On this 1st day of March, 1982, before me, a Notary Public in and for said State, personally appeared Cheryl L. Wallace, known to me to be the Typist, 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, MT
My Commission Expires 1/21/84

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