

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. 40064-g76G BY WENDELL PETERSON        )

\* \* \* \* \*

There have been no exceptions or comments submitted to the Proposal for Decision in the referenced matter as entered by the Hearing Examiner on March 16, 1984. Therefore, the Proposed Findings of Fact, Conclusions of Law, and Order are hereby adopted as Final.

FINAL ORDER

Application for Beneficial Water Use Permit No. 40064-g76G is hereby issued to Wendell M. Peterson to withdraw from May 1 to October 1, 150 gallons per minute up to 22.4 acre-feet per annum for irrigation purposes. The water is to be withdrawn by means of a well at a point in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 17, Township 6 North, Range 9 West, Powell County.

1. The water withdrawn is to be used for supplemental spinkler irrigation of 7 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and 13 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  for a total of 20 acres, all in Section 17, Township 6 North, Range 9 West, Powell County, Montana. The priority date of said appropriation is February 1, 1982, at 8:21 a.m.

2. This permit is issued subject to existing rights in the source of supply and any final determination of those rights as provided by Montana Law.

CASE # 40064

This permit is subject to Section 85-2-505, MCA, requiring that all wells be constructed so that they will not allow water to be wasted, or contaminate other water supplies or sources, and that all flowing wells shall be capped or equipped so that the flow of water may be stopped when not being put to beneficial use. The final completion of the well must include an access port of at least .50 inches so that the static water level in the well may be accurately measured.

4. The issuance of this Provisional Permit by the Department shall not reduce the Permittee's liability for damages caused by the Permittee's exercise of this Permit, nor does the Department, by issuing the Provisional Permit in any way acknowledge any liability for damage caused by the Permittee's exercise of this Provisional Permit.

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 16th day of April, 1984.

Gary Fritz  
Gary Fritz, Administrator  
Department of Natural Resources and Conservation  
S. Ewing, Helena, MT  
06) 444 - 6605

David L. Pengelly  
David L. Pengelly, Hearing Examiner  
Department of Natural Resources and Conservation  
P.O. Box 5004, Missoula, MT 59806  
(406) 721 - 4284

CASE # 10-5701

AFFIDAVIT OF SERVICE

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

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on April 18, she deposited in the United States mail, certified, an order by the Department on the Application by Wendell Peterson, Application No. 40064-g76G, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Wendell M. Peterson, 900 Gem Back Road, Deer Lodge, MT 59722
2. T.J. Reynolds, DNRC Area Office Supervisor, Helena, MT 59620
3. Dave Pengelly, Hearing Examiner, (inter-department mail)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Donna K. Elser

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

On this 18th day of April, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings 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.

Judy Lahn  
Notary Public for the State of Montana  
Residing at Montana City Montana  
My Commission expires 3-7-85

CASE # 40064

me

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. 40064-g76G BY WENDELL M. )  
PETERSON )

\* \* \* \* \*

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 Deer Lodge, Montana, on February 15, 1984.

STATEMENT OF THE CASE

On February 1, 1982, an Application for Beneficial Water Use Permit was filed with the Department of Natural Resources and Conservation (hereafter "DNRC" or "Department") by Wendell M. Peterson. The Application seeks 150 gallons per minute up to 99.41 acre-feet per annum to be diverted by means of a well in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 17, Township 6 North, Range 9 West, Powell County. The water is to be diverted from May 1 to October 1 for sprinkler irrigation purposes on 13 acres in the SE $\frac{1}{4}$  of said Section 17 and 7 acres in the NE $\frac{1}{4}$  of said Section 17, comprising a total of 20 acres.

The pertinent portions of this Application were duly published for 3 successive weeks in the Silver State Post, a newspaper of general circulation printed and published in Deer Lodge, Montana.

**CASE #** 40064

On September 22, 1982, the Department proposed to issue Provisional Permit No. 40064-g76G to Wendell Peterson subject to the condition that the well be constructed so that no water would be wasted or allowed to contaminate other water supplies or sources and that any flowing well be capped or equipped so that the flow of water would be stopped when not being put to beneficial use. Also, the Department proposed that the final completion of the well include an access port of at least .50 inches so that the static level of the well could be accurately measured. Pursuant to the Montana Water Use Act, Mr. Peterson was given 30 days in which to either agree to the Department's proposed conditions, or to request a hearing. On September 28, 1982, Mr. Peterson informed the Department that he requested a hearing rather than accept the proposed conditions.

There were no objections filed with the Department to the Application within the filing deadline of November 18, 1982.

On December 8, 1982, the Department proposed that Provisional Permit No. 40064-g76G be issued to Mr. Peterson with a maximum volume of 53.6 acre-feet per year. This volume was reduced from the 99.41 acre-feet per year for which Mr. Peterson had applied. Pursuant to the Montana Water Use Act, Mr. Peterson was given 30 days in which to either request a hearing or to accept the proposed condition. On December 13, 1982, Mr. Peterson notified the Department that he requested a hearing rather than accept the proposed reduction in volume of water.

At the hearing, the Applicant, Mr. Wendell Peterson, presented testimony on his own behalf.

The DNRC was represented at the hearing by Mr. T.J. Reynolds, Field Office Supervisor of the DNRC's Helena Field Office, and by Mr. Jim Beck, Agricultural Engineer in the DNRC's Helena Field Office.

#### EXHIBITS

No exhibits were introduced by the Applicant.

The Department offered the following exhibits into evidence, to-wit:

D-1. A soils report and irrigation requirement report for Application No. 40064-g76G prepared by Jim Beck, Agricultural Engineer, on February 16, 1983, (17 pages).

D-2. Information from File No. 21934-g76G, including the following: Provisional Permit, Application for Beneficial Water Use Permit, Technical Report, Notice of Completion of Water Development, Check Sheet for Irrigation Volume, and Field Report.

D-3. Material from File No. 21933-76G including the following: Provisional Permit, Application for Beneficial Water Use Permit, Technical Report, and Field Report.

D-4. Copy of aerial photo no. 178-190 with the Applicant's 20 acres of proposed irrigation outlined in red.

D-5. Memorandum dated December 21, 1983, from Jim Beck to T.J. Reynolds regarding the irrigation volumes claimed by well-water users in Township 6 North, Range 9 West and Township 6 North, Range 10 West, Powell County, Montana.

The Department's Exhibits were introduced into the record with no objections.

PROPOSED FINDINGS OF FACT

1. The Applicant, Wendell M. Peterson, currently holds Provisional Permit No. 21934-g76G to appropriate 200 gallons per minute up to 40 acre-feet per annum by means of a well for sprinkler irrigation of 21 acres in the SE $\frac{1}{4}$  of Section 17, Township 6 North, Range 9 West, Powell County.

2. Pending Application No. 40064-g76G by Wendell Peterson seeks to divert additional water for supplemental irrigation of the same ground as referenced in Finding of Fact No. 1.

3. The correct legal description for the ground in question is 7 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and 13 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , all in Section 17, Township 6 North, Range 9 West, Powell County, Montana.

4. The Applicant's land is located in SCS Climatic Area IV.

5. The most water-consumptive crop which the Applicant seeks to irrigate is alfalfa.

6. Alfalfa requires 19.96 inches of water throughout the irrigation season in climatic area no. 4. Thus, the crop requirement for 20 acres of alfalfa in Climatic Area IV is 33.3 acre-feet.

7. The Applicant has stated that he needs 66 acre-feet per annum to efficiently irrigate his 20 acres.

8. The DNRC has recommended that a maximum of 53.6 acre-feet per annum be diverted to irrigate 20 acres, assuming a system efficiency of 70%.

9. The Applicant's irrigation system has an efficiency range from 60 to 75%. For purposes of this order it shall be presumed that the system's overall efficiency is 60%.

10. The amount of water necessary to deliver 33.3 acre-feet of water to 20 acres of alfalfa with a system efficiency of 60% is 55.5 acre-feet per annum.

11. In some years it will be necessary for the Applicant to apply an additional 6.9 acre-feet of water over the 20 acre parcel for a pre-season or post-season irrigation to fill the root zone with water.

12. The maximum water requirement necessary for a single season to irrigate 20 acres of alfalfa in Climatic Area IV with a system efficiency of 60%, is 62.4 acre-feet per annum or 3.12 acre-feet of water per acre of land.

13. Other water users who sprinkle irrigate from wells in this area generally claim rights of 1.76 to 2.78 acre-feet per acre.

14. The peak consumptive requirement of alfalfa during the summer growing season requires a maximum diversion rate of 146 gallons per minute at a system efficiency of 60%.

15. The Applicant's well is capable of producing the amount of water specified in Finding of Fact Nos. 10 and 12.

16. There have been no objections filed against the granting of this Application.

17. There are no pending permits in the Applicant's proposed source of supply.

18. There are no reserved water rights in the Applicant's proposed source of supply.

PROPOSED CONCLUSIONS OF LAW

1. The Department of Natural Resources and Conservation has jurisdiction over the subject matter herein, and over the parties hereto, whether they have appeared or not. MCA 85-2-301 et seq.

2. The Applicant has met the criteria for the issuance of a Provisional Permit. MCA 85-2-311.

3. The DNRC may issue a permit for less than the amount of water requested by an Applicant. MCA 85-2-312(1).

4. Since 62.4 acre-feet per annum is a reasonable amount of water for the Applicant to rely upon to efficiently irrigate 20 acres in Climatic Area IV, and since the Applicant currently possesses a water right for this acreage consisting of 40 acre-feet per annum, the most water the Applicant can reasonably divert pursuant to this Application without wasting water is 22.4 acre-feet per annum.

THEREFORE, based on these Findings of Fact and Conclusions of Law, the following Proposed Order is hereby issued:

PROPOSED ORDER

Application for Beneficial Water Use Permit No. 40064-g76G is hereby issued to Wendell M. Peterson to withdraw from May 1 to October 1, 150 gallons per minute up to 22.4 acre-feet per annum for irrigation purposes. The water is to be withdrawn by means of a well at a point in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 17, Township 6 North, Range 9 West, Powell County.

1. The water withdrawn is to be used for supplemental spinkler irrigation of 7 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and 13 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  for a total of 20 acres, all in Section 17, Township 6 North, Range 9 West, Powell County, Montana. The priority date of said appropriation is February 1, 1982, at 8:21 a.m.

2. This permit is issued subject to existing rights in the source of supply and any final determination of those rights as provided by Montana Law.

3. This permit is subject to Section 85-2-505, MCA, requiring that all wells be constructed so that they will not allow water to be wasted, or contaminate other water supplies or sources, and that all flowing wells shall be capped or equipped so the flow of water may be stopped when not being put to beneficial use. The final completion of the well must include an access port of at least .50 inches so that the static water level of the well may be accurately measured.

4. The issuance of this Provisional Permit by the Department shall not reduce the Permittee's liability for damages caused by the Permittee's exercise of this 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.

DONE this 16th day of March, 1984.

*David L. Pengelly*

David Pengelly, Hearing Examiner  
Department of Natural Resources  
and Conservation  
P.O. Box 5004, Missoula, MT 59806  
(406) 721-4284

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 April 6, 1984.

AFFIDAVIT OF SERVICE

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

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on March 21, she deposited in the United States mail, Certified, an order by the Department on the Application by Wendell Peterson, Application No. 40064-g76G, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

- 1. Wendell M. Peterson, 900 Gem Back Road, Deer Lodge, MT 59722
- 2. T.J. Reynolds, DNRC Area Office Supervisor, Helena, MT 59620
- 3. Dave Pengelly, Hearing Examiner, (inter-department mail)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Donna K. Elser

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

On this 21st day of March, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings 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.

Judy Loh

Notary Public for the State of Montana  
Residing at Montana City, Montana  
My Commission expires 3-1-85

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