BB

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

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IN THE MATTER OF THE APPLICATION FOR EXTENSION OF TIME TO PERFECT CHANGED BENEFICIAL WATER USE PERMIT NO. G52803-41I AND BENEFICIAL WATER USE PERMIT NO. G54549-41I GRANTED TO GARY L. WATT	)	FINAL ORDER

* * * * * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received.

Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the July 25, 1989 Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based on the record herein, the Department makes the following:

ORDER

That the Applications for Extension of Time to Perfect Beneficial Water Use Permit No. 54549-41I and Changed Beneficial Water Use Permit No. 52803-41I are granted. Permittee shall complete the appropriation works and put water to beneficial use as specified in the Permit and the Changed Permit on or before November 30, 1989. Notices of Completion shall be filed on or before November 30, 1989.

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NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

Dated this 15 day of September, 1989.

Gary Fritz, Administrator
Department of Natural
Resources and Conservation
Water Resources Division
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 15th day of September, 1989, as follows:

Gary L. Watt
1515 Missoula Ave.
Helena, MT 59601

T.J. Reynolds
Field Office Manager
1520 E. 6th Avenue
Helena, MT 59620

Irene V. LaBare
Legal Secretary

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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 THE APPLICATIONS FOR EXTENSION OF TIME TO PERFECT CHANGED BENEFICIAL WATER USE PERMIT NO. G52803-41I AND BENEFICIAL WATER USE PERMIT NO. G54549-41I GRANTED TO GARY L. WATT	)	PROPOSAL FOR DECISION

* * * * * * * * *

Pursuant to the Montana Water Use Act and the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on May 10, 1989 in Helena, Montana. Applicant for Extensions, Gary L. Watt, appeared pro se. There were no Objections to the Applications. Applicant offered no exhibits. The record closed at the end of the hearing.

PROPOSED FINDINGS OF FACT

1. Section 85-2-312(3), MCA, states in relevant part:

> The department may, upon a showing of good cause, extend time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use.

2. On July 14, 1983, Permit to Appropriate Water No. 52803-41I was granted to Gary L. Watt. Under the terms of the Permit, Mr. Watt was to have perfected the permitted appropriation on or before October 1, 1984, and have filed a Notice of Completion by December 1, 1984. On July 6, 1984, an Extension of Time to Perfect said Permit was granted. Under the Extension, Mr. Watt was to have perfected the Permit on or before October 1,

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1985, and to have filed a Notice of Completion on or before December 1, 1985.

3. On July 20, 1984, an Authorization to Change Permit No. 52803-41I was granted. Under the terms of the Authorization, Mr. Watt was to have perfected the Changed Permit on or before December 1, 1985.

4. On June 27, 1984, Permit to Appropriate Water No. 54549-41I was granted to Gary L. Watt. Mr. Watt was required under the terms of the Permit to perfect the Permit on or before December 1, 1985.

5. On December 1, 1985, Extensions of Time to perfect both Permit No. 54549-41I and Changed Permit No. 52803-41I were granted. Under the Extensions, Mr. Watt was to have perfected both appropriations on or before October 1, 1987, and have filed Notices of Completion by December 1, 1987.

6. On January 22, 1988, Extensions of Time to perfect both the Permit and the Changed Permit were again granted. Under these Extensions, Mr. Watt was to have perfected both appropriations, and filed Notices of Completion therefor, on or before November 30, 1988.

7. In the summer of 1988, Mr. Watt became seriously ill, was hospitalized, and required six months to recuperate. He therefore could not reach the place of use in person. Further, due to extreme fire danger that summer, access to the place of use was limited by the Governor; therefore, no one else could reach the place of use.

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8. The reasons given by Mr. Watt when he requested previous extensions were different than those given here.

9. Mr. Watt intends to perfect both appropriations this summer (1989), and requests until November 30, 1989 to do so.

PROPOSED CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and over the parties hereto.

2. The Department gave proper notice of the hearing, and all substantive and procedural requirements of law and rule appearing fulfilled, the matter is properly before the Examiner.

3. An Applicant for Extension must show good cause why the time limit set for perfecting a Permit or a Changed Permit should be extended. Sections 85-2-312(3) and 85-2-402(7), MCA. This may be done by demonstrating that the Permittee has exercised due diligence toward perfecting the Permit or Changed Permit (but has nevertheless failed to perfect), or by showing other good cause why Permittee has failed to perfect. In the Matter of Application for Extension of Time to Perfect Beneficial Water Use Permit No. 39787 Transferred to Marvin and Mary Ann Rehbein, Final Order, January 20, 1989.

4. Applicant has failed to demonstrate due diligence. However, Applicant's extended illness and the closure of the area of the place of use because of fire danger excuse Applicant from such requirement, as a person could not reasonably be expected to proceed under such conditions. See e.g. Rehbein, supra.

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5. The conditions which Applicant suffered during 1988 are not part of a continuing pattern of similar excuses, and do constitute good cause to extend the time in which Applicant may perfect both the Permit and the Changed Permit.

6. The time requested (until November 30, 1989) to perfect the Permit and the Changed Permit is reasonable.

WHEREFORE, the Examiner propounds the following:

PROPOSED ORDER

That the Applications for Extension of Time to Perfect Beneficial Water Use Permit No. 54549-41I and Changed Beneficial Water Use Permit No. 52803-41I are granted. Permittee shall complete the appropriation works and put water to beneficial use as specified in the Permit and the Changed Permit on or before November 30, 1989. Notices of Completion shall be filed on or before November 30, 1989.

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the proposed order, including the legal land descriptions. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (1520 East 6th Avenue, Helena, Montana 59620-2301); the exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Section 2-4-623, MCA. Parties may file responses to any exception filed by another party within 20 days after service of the exception.

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Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed.

Any adversely affected party has the right to present briefs and oral arguments pertaining to its exceptions before the Water Resources Division Administrator. A request for oral argument must be made in writing and be filed with the Hearing Examiner within 20 days after service of the proposal upon the party. Section 2-4-621(1), MCA. Written requests for an oral argument must specifically set forth the party's exceptions to the proposed decision.

Oral arguments held pursuant to such a request normally will be scheduled for the locale where the contested case hearing in this matter was held. However, the party asking for oral argument may request a different location at the time the exception is filed.

Parties who attend oral argument are not entitled to introduce new evidence, give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will be limited to discussion of the evidence which already is present in the record. Oral argument will be

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restricted to those issues which the parties have set forth in their written request for oral argument.

Dated this 25 day of July, 1989.

Robert H. Scott, Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6625

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record, at their address or addresses this 25th day of July, 1989, as follows:

Gary L. Watt
1515 Missoula Ave.
Helena, MT 59601

T.J. Reynolds
Field Office Manager
1520 E. 6th Avenue
Helena, MT 59620

Irene V. LaBare
Legal Secretary

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