

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

**FILMED**  
NOV 8 1990

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT )  
NO. 61414-40A, 61415-40A AND ) FINAL ORDER  
68191-40A BY VESCOVI POLLED )  
HEREFORDS )

\* \* \* \* \*

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. A letter reiterating the Town of Melstone's position was received on October 18, 1990. However, there was no exception to any specific part of the Proposal for Decision, 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 October 1, 1990, Proposal for Decision, and incorporates them herein by reference.

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

ORDER

Applications for Beneficial Water Use Permit No. 61414-40A and 61415-40A are hereby denied.

Subject to the following express terms, conditions, restrictions, and limitations set forth below, Application for Beneficial Water Use Permit No. 68191-40A is hereby granted to appropriate 3,200 gpm up to 120 acre-feet of the waters of the Musselshell River at a point in the NE¼NW¼SE¼ of Section 23,

**CASE #** 68191

Township 7 North, Range 24 East, Musselshell County, to be stored in an off-stream reservoir with a capacity of 120 acre-feet located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 23 for irrigation purposes. The place of use shall be 8 acres in the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 24, 8 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$  and 36 acres in the SE $\frac{1}{4}$  of Section 23, all in Township 7 North, Range 24 East, Musselshell County, for a total of 52 acres. The period of appropriation shall be from October 1 through April 1 inclusive of each year. The proposed period of use is April 15 through September 15 inclusive of each year.

A. This Permit is subject to all prior and existing water rights, and to any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize appropriations by the Permittee to the detriment of any senior appropriator.

B. Issuance of this Permit by the Department shall not reduce the Permittee's liability for damages caused by exercise of this Permit, nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by exercise of this Permit, even if such damage is a necessary and unavoidable consequence of the same.

C. The Permittee shall allow the waters to remain in the source of supply at all times when the water is not reasonably required by the Permittee's Permitted uses.

D. The Permittee shall cease exercising the permitted appropriation when:

the flow in the Musselshell River is less than what can be beneficially used by the Delphia Melstone Project and water is released from Deadman's Basin to satisfy the Delphia Melstone demand,

or

Deadman's Basin Water Users are on any water conserving rotation or drought mitigation plan.

E. The Permittee shall install an adequate flow metering device in order to allow the flow rate and volume of water diverted to be recorded. The Permittee shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records to the Department upon demand and no later than November 30 of each year.

F. The Permittee shall contact the Town of Melstone before prior to appropriating from the Musselshell River to determine the availability of water at Melstone's point of diversion.

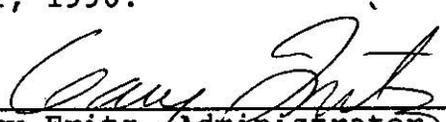
G. It is the Permittee's responsibility to determine what the stream flow conditions of the Musselshell River are before diverting water under this Permit. The Permittee shall call the Lewistown Water Resources Field Office at 538-7459 to confirm that an adequate flow is available for Permittee's diversion. The Permittee shall continue to check with the Field Office as often as conditions demand (determined by the Field Office) during his diversion to ensure adequate flow is available for Permittee's and for existing water rights.

H. This permit is subject to all existing rights including the reserved water rights of the Assiniboine and Sioux Tribes as determined in the Fort Peck-Montana Compact (May 15, 1985).

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 2 day of <sup>NOVEMBER</sup> ~~October~~, 1990.

  
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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 2<sup>nd</sup> day of <sup>NOVEMBER</sup> ~~October~~, 1990 as follows:

Vescovi Polled Herefords  
Box 333  
Roundup, MT 59072

Montana Dept. of Fish  
Wildlife and Parks  
Attn: Liter Spence  
1420 E. 6th Ave.  
Helena, MT 59620

Nicholes T. Raths Estate  
Box 305  
Roundup, MT 59072

John C. Chaffin  
Dept. of Interior  
Office of the Solicitor  
P.O. Box 31394  
Billings, MT 59107-1394

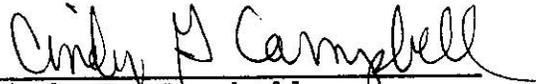
Town of Melstone  
P.O. Box 322  
Melstone, MT 59045

John D. Armstrong and  
Eliasson Ranch Co.  
Box 771  
Roundup, MT 59072

Sam Rodriguez, Field Manager  
Lewistown Water Resources  
Field Office  
P.O. Box 438  
Lewistown, MT 59457

Department of Natural  
Resources & Conservation  
Engineering Bureau  
1520 E. 6th Ave.  
Helena, MT 59620

Vivian Lighthizer,  
Hearing Examiner  
Department of Natural  
Resources & Conservation  
1520 E. 6th Ave.  
Helena, MT 59620-2301

  
Cindy G. Campbell  
Hearings Unit Secretary