

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

FILMED

JAN 4 1991

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT ) FINAL ORDER  
NO. 71015-g76LJ BY MEADOW LAKE )  
COUNTY WATER & SEWER DISTRICT )

\* \* \* \* \*

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 October 26, 1990, Proposal for Decision, and incorporates them herein by reference.

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

ORDER

Subject to the terms, conditions, and limitations specified below, Application for Beneficial Water Use Permit No. 71015-g76LJ is hereby granted to Meadow Lake County Water and Sewer District to appropriate 400 gallons per minute up to 137 acre-feet of water per year from two wells for the purposes of new and supplemental sprinkler irrigation.

The wells shall be an existing one in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and a new one to be drilled in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 West, Flathead County, Montana. Water will be stored in an existing 10 acre-foot reservoir located on Garnier

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Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 6 and a 7.8 acre-foot off-stream reservoir to be constructed in the E $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 6, consisting of two connected pits of 3.3 AF and 4.5 AF. The period of appropriation and use shall be from June 1 through September 30 of each year. The place of use shall be on a total of 137 acres of golf course; more specifically described as 9 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 14 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 10 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 14 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 26 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; 28 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; 13 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; and 23 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 West, Flathead County. Of the 137 total acres in the place of use, 54 acres will be new irrigation and 83 acres will be supplemental irrigation.

A. The depth, upon completion, of the new well to be drilled in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 6 shall be a minimum of 400 feet below the surface of the land. The well casing must remain without perforations to a depth of at least 400 feet below the surface of the land.

B. This Permit is used in conjunction with Permit to Appropriate Water No. 28809-g76LJ. The combined appropriation of the two wells as granted shall not exceed a total of 400 gallons per minute up to 287 acre-feet per annum.

C. This Permit is supplemental to Water Right Statement of Claim No. W131493-s76LJ and Permits to Appropriate Water No. 26716-g76LJ and No. 26723-s76LJ which means they have overlapping places of use.

D. 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 prior appropriator.

E. The Permittee shall maintain adequate flow measuring devices on the diversion system 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 Kalispell Field Office of the Department of Natural Resources and Conservation upon demand and by November 30 of each year.

F. Throughout the permitted period of appropriation of each year that water is to be appropriated under this Permit, Permittee shall take measurements, at least once every two weeks, of the static water level in the well located in the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 West, Flathead County, known as the "Clubhouse Well". Measurements shall be made using a method approved by the Department of Natural Resources and Conservation. Permittee shall keep a written record of the static water level, including the dates measured and person making the measurement, and shall submit said records to the Kalispell Field Office of the Department of Natural Resources and Conservation upon demand and by November 30 of each year.

G. If, at any time after this Permit is issued, a written complaint is received by the Department alleging that diverting from this source is adversely affecting a prior water right, the Department may make a field investigation of the project. If during the field investigation the Department finds sufficient evidence supporting the allegation, it may conduct a hearing in the matter allowing the Permittee to show cause why the Permit should not be modified or revoked. The Department may then modify or revoke the Permit to protect the existing rights or allow the Permit to continue unchanged if the hearing officer determines that no existing water rights are being adversely affected.

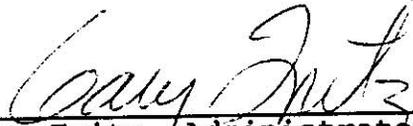
H. This Permit is subject to § 85-2-505, MCA, requiring that all wells be constructed so they will not allow water to be wasted, or contaminate other supplies or sources, and all flowing wells will be capped or equipped so the flow of water may be stopped when not being put to beneficial use. The final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

I. Issuance of this Permit 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.

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 27 day of November, 1990.

  
\_\_\_\_\_  
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 28<sup>th</sup> day of November, 1990 as follows:

Meadow Lake County Water  
and Sewer District  
1415 Tamarack Lane  
Columbia Falls, MT 59912

C.W. Leaphart, Jr.  
One North Last Chance Gulch  
Helena, MT 59601

Mason E. Richwine  
P.O. Box 1811  
Columbia Falls, MT 59912

Randy and Lynn Venteicher  
2715 Witty Lane  
Columbia Falls, MT 59912

John Craft  
1605 Tamarack Lane  
Columbia Falls, MT 59912

Ellis Drewry  
2310 Witty Lane  
Columbia Falls, MT 59912

John and Gerene Matson  
201 Aspen Lane  
Columbia Falls, MT 59912

Jean R. Kriz  
1610 Tamarack Lane  
Columbia Falls, MT 59912

John B. and Theresa L. Conner  
1175 4th Avenue W.N.  
Columbia Falls, MT 59912

Donald and Denise Baker  
P.O. Box 2316  
Columbia Falls, MT 59912

Connie Kenfield  
1215 Tamarack Lane  
Columbia Falls, MT 59912

R. Neil and Sandra Hanson  
185 North Hilltop Road  
Columbia Falls, MT 59912

Larry Seydell  
P.O. Box 998  
Columbia Falls, MT 59912

Lawrence Craft  
125 Poverty Lane  
Columbia Falls, MT 59912

Mr. and Mrs. Adolph Weisert  
P.O. Box 1377  
Columbia Falls, MT 59912

Thomas M. Oliver  
P.O. Box 1162  
Columbia Falls, MT 59912

Don O. and Majorie B. Redding  
P.O. Box 721  
Columbia Falls, MT 59912

Forrest and Vera Prichard  
550 4th Avenue, W.N.  
Columbia Falls, MT 59912

Jay L. Rowe  
1310 Tamarack Lane  
Columbia Falls, MT 59912

E. N. Ehlers  
1290 Tamarack Lane  
Columbia Falls, MT 59912

Ronald and Carol Haag  
185 Rocky Lane  
Columbia Falls, MT 59912

Jan E. & Melanie S. Van Hoven  
P.O. Box 307  
Columbia Falls, MT 59912

Ronald R. Meacham  
P.O. Box 1413  
Columbia Falls, MT 59912

Valerie J. Padjett  
P.O. Box 538  
Columbia Falls, MT 59912

James D. and Elaine Nash  
2300 Witty Lane  
Columbia Falls, MT 59912

Edwin J. and Barbara Gilk  
110 Larch Hill Drive  
P.O. Box 642  
Columbia Falls, MT 59912

Franklin D. Wyman  
P.O. Box 903  
Columbia Falls, MT 59912

Elsie Melton  
P.O. Box 1716  
Columbia Falls, MT 59912

Steve Cooper  
976 2nd Street, W.N.  
Columbia Falls, MT 59912

Frances Borninkhof  
988 Tamarack Lane  
Columbia Falls, MT 59912

Allen E. and Diane M. Lalum  
P.O. Box 1383  
Columbia Falls, MT 59912

Gilbert E. and Lela E. Speer  
145 North Hilltop Road  
Columbia Falls, MT 59912

George and Dana Karlin  
265 Potter Lane  
Columbia Falls, MT 59912

Jerry D. and Ilene M. Howard  
P.O. Box 1172  
Columbia Falls, MT 59912

Donald W. & Brenda K. Turner  
1675 Tamarack Lane  
Columbia Falls, MT 59912

Lyle R. and Donna M. Marsh  
985 Tamarack Lane  
Columbia Falls, MT 59912

Larry and Deena Rossol  
730 Woodland Road  
Columbia Falls, MT 59912

Ted L. Norman  
P.O. Box 688  
Columbia Falls, MT 59912

Floyd H. and Gladys M. Kile  
110 North Hilltop Road  
Columbia Falls, MT 59912

Glen K. Weeks  
1280 4th Avenue, W.N.  
Columbia Falls, MT 59912

Mr. and Mrs. Karl Ost  
280 North Hilltop Road  
Columbia Falls, MT 59912

John E. Stults,  
Hearing Examiner  
Department of Natural  
Resources & Conservation  
1520 East 6th Avenue  
Helena, MT 59620-2301

George A. Briner  
193 Rocky Lane  
Columbia Falls, MT 59912

Vincent Hoerner  
664 12th Avenue, W.N.  
Columbia Falls, MT 59912

Steven M. and Barbara K. Rick  
1513 Tamarack Lane  
Columbia Falls, MT 59912

Lewis W. Luce, Jr.,  
Debbie Craft Luce, and  
Lewis W. Luce, Sr.  
121 Poverty Lane  
Columbia Falls, MT 59912

Ron Robinson  
1003 4th Avenue W.N.  
Columbia Falls, MT 59912

Sam Rowe  
1709 Tamarack Ln.  
Columbia Falls, MT 59912

Chuck Brasen, Manager  
Kalispell Water Resources  
Field Office  
P.O. Box 860  
Kalispell, MT 59903

  
Cindy G. Campbell  
Hearings Unit Secretary

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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. 71015-g76LJ BY MEADOW LAKE )  
COUNTY WATER & SEWER DISTRICT )

\* \* \* \* \*

Pursuant to §§ 85-2-121 and 85-2-309, MCA, a hearing was held in the above matter on May 23 and 24, 1990, in Kalispell, Montana, to determine whether the above Application should be granted to Meadow Lake County Water and Sewer District under the criteria in § 85-2-311(1), MCA.

Applicant was represented by C.W. Leaphart, Jr., attorney. Peter Tracy, President of Meadow Lake County Water and Sewer District and President of Meadow Lake Development Corp., appeared as witness for Applicant. Dennis Carver, Professional Engineer, Carver Engineering, Kalispell, Montana, appeared as witness for Applicant. Pat Dunlavy, project scientist specializing in groundwater hydraulics and movement with Chen-Northern, Inc., Helena, Montana, appeared as witness for Applicant. Bill Osborne, water well drilling contractor, Liberty Drilling, Kalispell, Montana, appeared as witness for Applicant.

Objector Lynn Venteicher appeared at the hearing representing a group of objectors, herself included (see Preliminary Matters, below), and called the following witnesses who appeared in their behalf: Robert Anderson, objector, local resident and well owner; Chuck Brasen, Manager, Kalispell Water Resources

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Division Field Office of the Department of Natural Resources and Conservation (Department).

Objector Mason Richwine appeared at the hearing representing a group of objectors, himself included (see Preliminary Matters, below), and called the following witnesses who appeared in their behalf: Objector Mrs. Ronald R. Meacham, local resident and well owner; Objector Dennis Peterson, local resident and well owner; Sherry Attard, local resident and well owner; and Ron Luce, well driller.

The following Objectors testified in their own behalf: Jan Van Hoven, Jerry D. Howard, Larry Seydell,

Mark Shapley, hydrogeologist for the Department, appeared at the hearing as the Department's staff expert witness.

#### EXHIBITS

Applicant offered five exhibits for acceptance into the record. All five were accepted without objection.

Applicant's Exhibit 1 is a copy of a Deed, dated October 23, 1984, conveying a tract of land from Meadow Lake Golf Course, Inc., to Meadow Lake County Water & Sewer District.

Applicant's Exhibit 2 is a copy of a Warranty Deed (six pages), dated May 1, 1988, conveying three tracts of land from Meadow Lake Golf Course, Inc., to Meadow Lake Development Corporation.

Applicant's Exhibit 3 is a copy of an Agreement, dated April 29, 1990, between Meadow Lake Development Corp. and Meadow Lake County Water & Sewer District.

Applicant's Exhibit 4 is a two-page letter from Charles F. Brasen, Field Manager, Kalispell Field Office, to Meadow Lake County Water & Sewer District, to the attention of Peter Tracy, dated May 7, 1990.

Applicant's Exhibit 5 is a graph entitled Annual Precipitation Kalispell Airport (1960-1989).

Objector Venteicher offered two exhibits for inclusion in the record.

Venteicher's Exhibit 1 is a diagrammatic illustration of the John R., Robert A., and Maureen A. Anderson well, including the total depth, strata configuration, and static water levels as measured on four dates. This exhibit was accepted into the record without objection.

Venteicher's Exhibit 2 is a copy of a nine-page letter dated May 2, 1990, from Tom Patton, Hydrologist with the Montana Bureau of Mines and Geology to Lynn Venteicher. Applicant objected to this exhibit on grounds that they had not been provided with a copy prior to the hearing. Objection was overruled. Objector had complied with the Prehearing Order of April 24, 1990, and the Discovery Order of May 14, 1990, with respect to this exhibit. This exhibit was accepted into the record.

Objector Richwine offered two exhibits for inclusion in the record. Both were accepted without objection.

Richwine's Exhibit 1 is a copy of a Pump Statement from Weber Drilling Co. for deepening the Dennis Peterson well, and a copy of an Acknowledgement of Water Right Transfer for Water Right No. 76LJ-E042456-00, dated April 21, 1982.

Richwine's Exhibit 2 is a copy of a Well Log Report on a well owned by Vetville Water Association, and a copy of a Declaration of Vested Groundwater Rights for a well in the name of Edward M. Boyles stating the use as "Community of 'Vetville for Vets'".

Objector Briner offered three exhibits for inclusion in the record. All three were accepted without objection.

Briner's Exhibit 1 is a copy of one page of tables of precipitation amounts and average temperatures for Kalispell, Montana, purported to be from the National Weather Service at the Kalispell Airport.

Briner's Exhibit 2 is composed of two Notices of Completion of Groundwater Appropriation by Means of Well and one Well Log Report, all for wells owned by George Briner.

Briner's Exhibit 3 is composed of two Well Log Reports, one for a well owned by Larry L. and Becky J. Luce, the other for a well owned by Applicant, and two Notices of Completion of Groundwater Appropriation by Means of Well, both for wells owned by Plum Creek Lumber Co.

Objector Seydell offered one exhibit for inclusion in the record.

Seydell's Exhibit is a copy of a list purportedly of people who have had to deepen wells, replace wells, or whose wells go dry each winter. Applicant objected on grounds that there was a lack of specificity as to location and depth, and as to the exact date and nature of the purported problems. Objection was overruled in that the exhibit has relevance to other materials

already in the record on the same subject. This exhibit was accepted into the record.

Mark Shapley offered one exhibit for inclusion in the record. It was accepted without objection.

Department's Exhibit is a computer-generated graph of Barometric pressures at the Kalispell Airport for the period of April 7, 1987, through April 14, 1987.

All parties were informed by the Hearing Examiner's May 14, 1990, Order that the Hearing Examiner would be taking official notice of specific materials. Those materials are:

(i) A report: Konizeski, R. L., Brietkrietz, A., and McMurtrey, R. G., 1968. Geology and Ground Water Resources of the Kalispell Valley, Northwestern Montana. Montana Bureau of Mines and Geology, Bulletin 68. (Konizeski Report)

(ii) Memorandum dated March 22, 1985, from Gary LeCain, Geohydrologist, to Rich Brasch, Supervisor, Hydrosiences Section. (LeCain Memo)

(iii) Memorandum dated May 15, 1987, from Mark Shapley to Files, Meadow Lake Country Club Application No. 55749, and the background data upon which the memorandum is based. (Shapley Report)

(iv) Memorandum dated June 16, 1987, from Mark Shapley, to Chuck Brasen and Jim Rehbein, Kalispell Water Rights Field Office. (Shapley Memo)

(v) Well and aquifer test data compiled by Mark Shapley on a well operated by Evans Farms under Interim Permit No. A66526-g76LJ. (Evans Farms Data)

(vi) Data compiled by Chuck Brasen on wells of all objectors plus accompanying graphics and map. (Objectors' Wells Data)

(vii) Data on deepened or redrilled wells in the area of Applicant's proposed points of diversion (roughly within a three mile radius) compiled by Chuck Brasen. (Deepened Wells Data)

(viii) The Department's file on the present application. The file includes all prehearing statements filed by parties in response to the Hearing Examiner's February 21, 1990, Order Requiring Prehearing Statements.

The May 14, 1990, Order also informed all parties of the location and availability for review of all materials being officially noticed. All such materials were also made available to all parties immediately prior to and during the hearing. In addition, the Department's file was available for review at the prehearing conference. No objections to the materials being officially noticed, or part thereof, were expressed. Therefore, the materials officially noticed are made part of the record in this matter.

#### PRELIMINARY MATTERS

At the Prehearing Conference held in Kalispell, Montana, on April 19, 1990, the Hearing Examiner encouraged the large number of unrepresented parties to organize themselves into groups and appoint representatives to present unified cases. Objector Lynn Venteicher and Objector Mason Richwine identified themselves as each representing a separate group of objectors, and each submit-

ted a list of the names of those they represented. The lists are a part of the Department's file on this Application.

Three motions were ruled on during a prehearing conference immediately preceding the hearing. On May 5, 1990, Objector Lynn Venteicher, on behalf of a group of objectors, filed a Motion requesting reinstatement to full participation for the seventeen objectors who provided deficient prehearing statements on grounds that their efforts showed an intent to comply. See Prehearing Order, April 24, 1990, pages 4 and 5 (item 2.c). No objection to this Motion was expressed. Motion was granted. On May 5, 1990, Objectors Larry and Deena Rossol requested that their prehearing statement be accepted though filed late thereby allowing them to retain their status as parties to this proceeding. No objection was expressed. Motion was granted. On May 4, 1990, Objectors Robert A., Maureen A., and John Anderson filed a request to be reinstated as full parties to this proceeding on grounds that a January 5, 1989, back injury to Robert Anderson's son prevented them from complying with the February 21, 1990, Order Requiring Prehearing Statements. No objection to this Motion was expressed. Motion was denied on grounds that the Andersons failed to notify or contact the Hearing Examiner either prior to the deadline or subsequently to request an extension to the April 6, 1990, deadline for filing prehearing statements or to make other arrangements.

#### FINDINGS OF FACT

1. Applicant filed the above Application (Forms 600 and 600A) on February 24, 1989, at 8:13 a.m. (Department's file)

2. Applicant proposed in the Application to appropriate water by means of two wells, an existing one in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and one to be drilled in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 West, Flathead County, at 400 gallons per minute (gpm) up to 137 acre-feet (AF) per year for purposes of irrigating 137 acres of golf course, specifically: 9 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 14 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 10 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 14 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 26 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; 28 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; 13 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; and 23 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 West, Flathead County. (Unless otherwise stated, all legal land descriptions herein are within said township, range, and county.) Of the 137 acres, 54 acres will be new irrigation and 83 acres will be supplemental irrigation. Applicant proposes to store water in an existing 10 AF reservoir located on Garnier Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, and a proposed 7.8 AF off-stream reservoir in the E $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6 consisting of two connected pits of 3.3 AF and 4.5 AF. The period of use is to be June 1 through September 30 of each year. (Department's file)

3. Pertinent portions of the Application were published in the Kalispell Daily Inter Lake and the Hungry Horse News, newspapers of general distribution in the area of the source, on May 3, 1989. Additionally, the Department served notice by first-class mail on individuals and public agencies which the Department determined might be interested in or affected by the application. (Department's file)

4. Ninety-three objections were received by the Department. All were filed by well owners in the area of the proposed diversion. Distances from Objectors' wells to Applicant's existing well range from 317 to 12,144 feet, and depths of Objectors' wells range from 39 to 402 feet. Forty-nine of those who filed objections failed to file prehearing statements as required of all parties by Order issued February 21, 1990, and were therefore removed as parties by Order issued April 24, 1990. The remaining 44 Objectors contend that Applicant's proposed appropriation will lower the water table with the result that their rights to appropriate water through their wells will be adversely affected. (Department's file and Objectors' Wells Data)

5. A roll call was conducted by the Hearing Examiner on each of both days of the hearing. The following Objectors failed to appear at the hearing either in person or by representation, and had not given prior notice to the Hearing Examiner: Vincent Hoerner, Jean R. Kriz, Allen E. Lalum, Diane Lalum, James D. Nash, Elaine Nash, Thomas M. Oliver, Forrest Prichard, Vera Prichard, Don O. Redding, Marjorie B. Redding, Ron Robinson, Sam Rowe, Gilbert E. Speer, Lela Speer, Mr. Adolph Weisert, and Mrs. Adolph Weisert.

6. There have been no reservations granted for any source in the service area of the Kalispell Field Office which includes the source proposed for appropriation by Applicant. There is only one planned use or development for which a permit has been issued that has not yet been fully utilized. This is Permit No. 28809-g76LJ held by Meadow Lake Development Corporation for the

existing well in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 East. The permit has a projected completion date of December 1, 1996. The construction of the well and diversion system are complete, but development of the full proposed use is as yet incomplete. Furthermore, the well operated under Permit No. 28809-g76LJ is one of the proposed points of diversion for the appropriation applied for in the present Application (see Finding of Fact 9) and it has been represented by Applicant that the two appropriations would be used in conjunction such that the combined flow rate diverted at any one time would not exceed 400 gpm. (Applicant's Exhibit 4, Department records, and testimony of Peter Tracy)

7. Meadow Lake Development Corporation (MLDC) is a Montana corporation formed in April 1988 which owns Meadow Lake Golf Course, Tracy's Restaurant at Meadow Lake, and certain real estate and subdivision properties surrounding Meadow Lake Golf Course. (Testimony of Peter Tracy and Applicant's Exhibit 2)

8. Meadow Lake County Water and Sewer District, the Applicant, is a non-profit municipal corporation formed in 1985 for the purpose of providing water and sewer services to anyone within its boundaries. A written agreement exists between Applicant and MLDC for Applicant to pursue a water rights application for the purpose of irrigating Meadow Lake Golf Course, and if the water rights application is successful MLDC grants a permanent easement to Applicant to construct and maintain a well on MLDC property. The agreement also establishes that MLDC will

pay fees to Applicant toward operating and capital costs.

(Testimony of Peter Tracy and Applicant's Exhibit 3)

9. Beneficial Water Use Permit No. 28809-g76LJ was issued July 31, 1981, to Meadow Lake Country Club Estates to appropriate 165 gpm of water up to 150 AF per annum by means of a well for domestic purposes. The well was constructed in July 1983 on land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6 using the latest techniques and design. It is 734 feet deep with a pumping capacity of approximately 200 gpm using a 40 horsepower motor. The well is cased to 733 feet without perforations so that all of the water in the well enters at the 733 to 734 foot level. The well also is equipped with a gauge for direct reading of the water level in the well either when idle or during pumping. This well, and diversion and conveyance system were designed to be adequate to serve the domestic needs (including lawn and garden uses) of the subdivision being developed by MLDC.

In October 1984 the parcel of land containing the well was sold by Meadow Lake Golf Course, Inc. to Applicant. There is no mention in the deed of excluding the well from the real estate transfer; neither was a Water Right Transfer Certificate filed with the Department at that time recording the change in water right ownership. In August 1988, however, a Water Right Transfer Certificate was filed to record a transfer of ownership of Permit No. 28809-g76LJ from Meadow Lake Country Club Estates to MLDC, even though the May 1988 deed recording the transfer of ownership of Meadow Lake Golf Course, Inc. property to MLDC specifically excludes the parcel containing the existing well.

The well has been successfully operated for domestic purposes. It was also used, although not permitted, in 1985 through 1989 for irrigating Meadow Lake Golf Course. Some Objectors contended that the present Application should be denied based on this admitted illegal diversion of water. (Department's file, Department's records, Applicant's Exhibits 1 and 2, and testimony of Peter Tracy, Bill Osborne, and Lynn Venteicher)

10. The proposed well is intended to be drilled to a minimum of 400 feet and is expected to be similar in construction to the existing 734-foot well. The proposed well, like the existing well, would not be constructed to divert water at levels above the 400 foot depth. A 30 horsepower motor is planned for the pumping unit in the proposed well. (Testimony of Peter Tracy)

11. Meadow Lake Golf Course is irrigated from Garnier Creek except for July and August when the Creek flows decline to a trickle. Since Garnier Creek does have adequate water, and MLDC has adequate water rights, to meet the irrigation needs of the golf course during all but a period from June 20 through September 10, use of the well will usually be restricted to June 20 through September 10. The sprinkler system that will be used to irrigate the proposed place of use has been installed including all valves, pumps, piping, sprinkler heads, and automatic controls. This is the same system presently being used to irrigate the golf course. (Testimony of Peter Tracy)

12. Meadow Lake Golf Course is a recreational and commercial facility that has a beneficial impact on the economy and tax

base of the Flathead valley. It draws tourists to the area. In 1989, 28,000 rounds of golf were played at Meadow Lake, 60-75% of which were played by tourists. In 1988, 5,000 room nights were booked in the condominiums at the course; in 1989, this rose to 13,000. Meadow Lake has 135 employees and has paid \$550,000 in payroll. (Testimony of Peter Tracy)

13. Whether a Flathead Valley golf course is green is a critical factor in its competitiveness, and therefore its economic viability. In 1988, problems with the pump in the existing well and low flows in Garnier Creek greatly reduced the water available for irrigation of the golf course. As a result, the course turned brown. The course became less competitive with other courses in the Flathead Valley and business at the golf course and restaurant declined. (Testimony of Peter Tracy)

14. Some Objectors expressed a contention that irrigating all of the existing golf course was wasteful and MLDC should adopt certain conservation measures such as reducing the area irrigated or installing xerophytic grasses. (Testimony of Lynn Venteicher)

15. Conservation methods available to reduce the volume of water necessary to irrigate the golf course are too costly to be feasible to Meadow Lake. Reducing the amount of water applied to the whole of the existing turf or not irrigating certain areas of the course would be costly due to lost revenues from lack of play. (See Finding of Fact 12.) Replacing the existing turf with xerophytic grasses would be costly due to the expense involved in removal and replanting. (Testimony of Peter Tracy)

16. Objectors allege that as many as 34 wells in the area have failed, many of them since 1985. Data developed by the Department's local field office identify 15 wells that had been deepened or redrilled, all but one of which were among those listed by Objectors.

The Dan and Dorothy McCaffree well went dry in 1985 when Applicant's existing well was being pumped. The McCaffree well at the time was 142 feet deep and 2069 feet from Applicant's existing well. No other well owners notified Applicant that their wells had gone dry during the 1985 pumping. Applicant was pumping in October 1987 when Objector Melton's well went dry. This well was 128 foot deep at the time, and 4277 feet from Applicant's existing well. The Meadow Lake clubhouse well has been abandoned because the static water level fluctuated in the spring and caused damage to the pump. Many of wells that went dry did so in the winter months. (Seydell's Exhibit, Department's file, Department's records, Deepened Wells Data, Objectors' Wells Data, and testimony of Mason Richwine, Lynn Venter, and Peter Tracy)

17. The lithology in the Columbia Falls area is extremely complex and has little lateral continuity which means that gravel zones are not generally laterally extensive. The underground strata begins with a layer of glacial till down to about 100 feet below the land surface. Beneath that there are numerous distinct zones (25 at Meadow Lake's existing well) making analysis of the groundwater system very complex. The stratification under the Flathead Valley has resulted in a very complex system of gather-

ing, storing, and transmitting groundwater. For example, mineral analysis of water from wells in the Flathead Valley in relative proximity to each other that have been completed at similar depths has shown that the water is of separate sources. This complexity makes long term predictions difficult without a substantial amount of empirical testing.

All information indicates that the principal groundwater system under the Columbia Falls area is a single confined aquifer. Geological evidence of this is the 100 ft. of glacial till between the aquifer and the land surface. The state of confinement is also determined in the field if, when a well is drilled, water rises in the casing above the level at which it was first encountered. This has been the condition encountered in wells in the area. (Konizeski Report, LeCain Memo, Venter's Exhibit 2, and testimony of Bill Osborne, Ron Luce, Pat Dunlavy, and Mark Shapley)

18. Regional water level changes can fluctuate up and down due to precipitation that ties into the recharge rate or other natural factors. An observation well in the Missoula area has fluctuated as much as 15 feet in a year with no pumping effects associated to it. The Konizeski Report shows fluctuations in the Flathead Valley aquifer of up to four feet in one month and over six feet between wetter and drier years. Rainfall increased by seven inches from 1963 to 1964, which was followed by a six-foot rise in groundwater levels between 1964 and 1965. The static water level in the John, Robert, and Maureen Anderson well dropped 69 feet between May and October 1985, and rose from 120

feet below the land surface to 91 feet between 1973 and 1980. The original Vetville Water Association well was drilled in 1948 to a depth of 98 feet with a static water level of 76 feet. In 1958 it had to be deepened to at least 109 feet because the static water level had dropped to 94 feet, where it was noted again to have been in 1963. The Dennis Peterson well has gone dry then recharged itself and fluctuates up and down.

A one or two foot change in the water level in a well that taps the confined aquifer may not be significant because a confined aquifer reacts to stresses much more easily than an unconfined aquifer. For example, water levels in confined aquifers will react strongly to changes in barometric pressures. The Konizeski Report shows water level changes of one-half foot in idle wells in this area due to barometric pressures alone.

Water levels in the aquifer beneath the Columbia Falls area are at their lowest in the winter and spring months, especially in late spring. The highest water levels are in the midsummer and coincide with the proposed period of diversion. (Testimony of Pat Dunlavy, Ron Luce and Dennis Peterson, Konizeski Report, Venteicher's Exhibit 1, Richwine's Exhibit 2, Briner's Exhibit 1, and Department records)

19. The water withdrawn from the confined aquifer comes from the lateral flow of the aquifer and vertical leakage. Groundwater under the proposed points of diversion is not a finite amount of water; it is always being recharged. As groundwater recharges this confined aquifer, it is contained below the confining layer. Mr. Dunlavy calculates six million gallons of

water per day moves through a two mile wide cross section of the water bearing zone perforated by Meadow Lake's existing well.

The Evans Farms Data shows that there is vertical leakage in the aquifer system under the Flathead Valley, and at a fairly efficient rate of transmission. The Evans Farms Data is on a well that penetrates strata having aquifer characteristics similar to that at the existing Meadow Lake well, but is not proximate to the proposed appropriation and therefore must be understood as showing general characteristics of the area's groundwater system, not the precise effects of the proposed appropriation. Pumping the Evans Farms well at more than 3,200 gpm resulted in three feet of drawdown in wells up to a mile away; were all things proportional, this would be a 4.5 inch drawdown effect from the 400 gpm applied for by Applicant. (Evans Farms Data, Shapley Memo, and testimony of Mark Shapley and Pat Dunlavy)

20. Effects on the aquifer from pumping of a well, especially drawdown and cone of depression, do not change in magnitude from year to year, because transmissivity does not change with increasing or decreasing water levels in the aquifer. (Testimony of Pat Dunlavy)

21. Well drillers will construct a well that they expect will supply the needs of the owner at the lowest cost of construction and operation. The wells in the area of the proposed well are almost all unperforated, open bottom wells. This design is proper in thinly stratified lithology as it minimizes contamination from silts and clays that can happen if perforations

are not precisely limited to clear gravel zones. Wells of this design have low efficiency, that is, drawdown during pumping is usually large. Such inefficient wells require greater depths of water in the well above the pumping level, "casing storage," to compensate for pumping drawdown and seasonal fluctuations of the general water level in the aquifer.

Sometimes well drillers construct a well that is inadequate to compensate for inefficiencies and fluctuations. This may be more likely in a complex groundwater system such as exists in the Columbia Falls area. Well tests on several wells in the area illustrate inefficient wells with inadequate casing storage. The tests are all of short duration such that the only effects being measured are the effects of pumping. The Ron and Rachel Meacham well is an unperforated, open-bottom well drilled in 1985 to a depth of 98 feet. Three hours of pumping at 12 gpm resulted in 14 feet of drawdown, from the static water level of 76 feet to 90 feet. This left the water level within three feet of the pump, assuming the pump is the average length of three feet and was set at two feet off the bottom of the well (which Bill Osborne stated would be prudent to avoid pumping up solid material off the bottom). The pump had to be lowered in 1987, but could have been lowered no more than five feet. The well had to be deepened in 1988. The Larry L. and Becky J. Luce well, of similar construction and drilled to 169 feet, showed a drawdown of 45 feet to a water level at 155 feet after three hours of pumping at 10 gpm. This would leave a maximum of nine feet of water above the pump. (Richwine's Exhibits 1 and 2, Briner's Exhibits 2 and 3, Ven-

teicher's Exhibit 2, Department records, and testimony of Bill Osborne, Ron Luce, Pat Dunlavy, and Mrs. Ron Meacham)

22. Shallower wells are more likely to be effected by local annual rainfall and snowmelt. The probable principal reason for the dry wells two years ago in the area of the proposed diversion is that the area was at the end of a cycle of declining precipitation and the wells that went dry did so at the end of the cycle. Data in the record show many of the wells that had to be deepened or replaced were shallow wells. (Applicant's Exhibit 5, Briner's Exhibit 1, Objectors' Wells Data, Deepened Wells Data, and testimony of Pat Dunlavy and Bill Osborne)

23. A water level decline of .55 foot was recorded in the Meadow Lake clubhouse well (528 feet distant) during well testing on Applicant's existing well by the Department in April 1987. This generally parallels the data collected later in the Evans Farms test mentioned in Finding of Fact 19.

The .55 foot decline was projected by Mark Shapley to a possible drawdown effect on wells from 709 to 3389 feet away of 5.0 to 6.5 feet respectively based on pumping 320 gpm for 19 years. The conclusions on potential drawdown effects projected from the April 1987 testing of the existing Meadow Lake well were based on assumptions that lessen the accuracy with which the conclusions predict the effects of the proposed appropriation.

First, the direct predictive analytical model used contained an assumption of continuous pumping for nineteen years. Taking into consideration the use pattern anticipated by Meadow Lake, an extrapolation for only 2 to 3 months of continuous pumping would

have given a more accurate reflection of the probable effects of the proposed appropriation.

The second assumption is that the drawdown recorded in the observation well during the test was the result of pumping from the deep well. A rise in the water level recorded in the observation well during the early stages of the test is not what is normally anticipated and, therefore, raises doubts about the validity of that assumption in that the water level changes could be an indication of barometric pressure influences or influences from the starting and stopping of pumping from other wells in the vicinity. In fact, there were barometric changes recorded at the Kalispell Airport that could have been a factor in the water level changes recorded in the observation well during the test.

The third assumption is that the aquifer is infinite in extent and has no recharge. In actuality, as is shown in long term tests, the lateral extent of the cone of influence (that is, cone of depression) stabilizes at a point where recharge moving through the aquifer is supplying all the water being removed through the well. This being so, extending the cone of influence indefinitely is questionable.

This analytical method also assumes that the leakage between the water-bearing zone of the pumping well and the observation well would continue at a fixed rate. At some point in time, however, the pressures between the two zones would reach equilibrium. These assumptions resulted in projections that are too conservative, that is, a theoretical worst-case scenario, rather than projections that reflect the probable effects of the pro-

posed appropriation. (Department's Exhibit, Shapley Report, and testimony of Pat Dunlavy and Mark Shapley)

24. A long-term aquifer test was conducted by Carver Engineering using the existing Meadow Lake well. The well was pumped at a constant rate of 230 gpm for 49 days, August 30 through October 17, 1988, during which time water levels in nearby domestic wells were periodically measured. The measured wells showed water level declines of 3.25 to 4.92 feet. This may be attributable to the pumping of the Meadow Lake well, but could also be attributable to the natural fluctuations in the aquifer as the test was conducted during the period of natural decline in the water levels in this area. This test had ambiguities that make it of questionable value for analysis of the potential for well interference by the proposed well. (Department's file and testimony of Dennis Carver, Pat Dunlavy, and Mark Shapley)

25. Mr. Osborne stated that unappropriated water is available at the location and depth, and in the amount, anticipated for the proposed appropriation. He also felt that there would be no adverse impact on shallower wells that are more than a hundred linear feet from the proposed well.

Mr. Dunlavy stated, based on the data of the Department's 75-hr. aquifer test in April 1987 and Dennis Carver's 49-day aquifer test in 1988, it is unlikely that the proposed well will have an adverse impact on Objector's wells.

26. Applicant, in their prehearing statement of April 4, 1990, (served on all parties in this matter) proposed an extensive monitoring plan as a provision of their permit, were one

issued for the proposed appropriation. The monitoring plan contemplates keeping records of the schedule and discharge rates of pumping from Applicant's proposed and existing wells, and regular measurements of water levels in privately owned wells. The plan recommends two years of monitoring to determine whether interference was occurring, and in the event of failure of a nearby well, whether that failure could be attributed to the pumping of Applicant's wells. The plan also indicated that were adverse effects shown, Applicant would provide some form of relief to the affected party.

Applicant's monitoring plan, developed by Pat Dunlavy, received favorable responses from Mark Shapley, Peter Tracy, and most Objectors. Lynn Venteicher offered the deep well on her property for an observation well as it is presently not in use. Pat Dunlavy suggested the Meadow Lake clubhouse well could serve as an observation well because it too is not in use.

Several of the parties, particularly the Applicant, requested that the Department, as a neutral entity, manage the monitoring program and conduct the measurements. Chuck Brasen indicated that the Department's ability to participate in a monitoring program is dependant upon funds and manpower being made available through the field office by the Water Management Bureau, or provided directly by the Bureau itself. He indicated that at present and in the recent past his office has been unable to commit funds and manpower to well-monitoring programs from its own resources.

### CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and the parties hereto. Mont. Code Ann. Title 85, Chapter 2 (1989).

2. The Department gave proper notice of the hearing, and all relative substantive and procedural requirements of law or rule have been fulfilled; therefore, the matter is properly before the Hearing Examiner. See Findings of Fact 1, 2, 3, and 4.

3. All parties who failed to appear at the hearing either in person or by representation are in default and their claims and interests in this matter are dismissed. Mont. Admin. R. 36.12.208 (1989); see Finding of Fact 5.

4. The Department must issue a Beneficial Water Use Permit if the applicant proves by substantial credible evidence that the following criteria set forth in § 85-2-311(1), MCA, are met:

(a) there are unappropriated waters in the source of supply at the proposed point of diversion:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) during the period in which the applicant seeks to appropriate, the amount requested is reasonably available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

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

(e) 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; and

(f) the applicant has a possessory interest, or the written consent of the person with the possessory

interest, in the property where the water is to be put to beneficial use.

5. To meet the substantial credible evidence standard in § 85-2-311(1), MCA, the applicant must submit independent hydrologic or other evidence, including water supply data, field reports, and other information developed by the Department, the U.S. Geological Survey, or the U.S. Soil Conservation Service and other specific field studies, demonstrating that the criteria are met. Mont. Code Ann. § 85-2-311(4) (1989).

6. Applicant has proved by substantial credible evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. Findings of Fact 9, 10, and 11.

7. Applicant has the written consent of the person with possessory interest in the property where the water is to be put to beneficial use. See Findings of Fact 7 and 8. A corporation is a person for purposes of determining compliance of an application for a beneficial water use permit with the criteria in § 85-2-311, MCA. See Mont. Code Ann. § 85-2-102(12) (1989).

While not an issue at the hearing or an element of consideration in determining Applicant's satisfaction of the permit criteria, the record in this matter is not immediately clear as to the name of the entity that owns the permit to operate the existing well in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, Permit No. 28809-s76LJ. It does appear from the record as though the well and its water rights were not specifically excluded from transfer of the parcel containing the well to Applicant. Water rights pass with the conveyance of land unless specifically excluded. Mont. Code

Ann. § 85-2-403(1) (1989). Therefore, based on the evidence in the hearing record, it appears the name of the entity that owns Permit to Appropriate Water No. 28809-s76LJ is Meadow Lake County Water and Sewer District. See Finding of Fact 9.

8. The proposed use, irrigation, is a beneficial use of water. The use of water will materially benefit the appropriator, and will have substantial benefits to the economy of the area. Mont. Code Ann. § 85-2-102(a) (1989); see Findings of Fact 8, 12, and 13. The specific purpose, irrigation of a golf course, is a beneficial use of water. See In re Application No. 26723-s76LJ by Meadow Lake Country Club Estates; In re Application No. 55749-g76LJ by Meadow Lake Country Club Estates. In addition, sodding with typical turf grass and irrigating the entire play area are both reasonable elements of the construction and operation of a golf course. See Findings of Fact 13, 14, and 15. The existence of more water efficient alternatives to the proposed use does not necessitate the denial of the permit, as an appropriator may not be forced to adopt the most efficient methods, only reasonable ones. See generally In re Application No. 35527-s41H by Lehrer.

Some Objectors expressed the opinion that the use of water for domestic purposes should be ranked higher than that for irrigation of a golf course. The Montana Legislature has not established a preference system for ranking water rights according to purpose. See In re Applications Nos. 15948-s76LJ and 17743-s76LJ by Harrington & Bibler, Inc. To the contrary, Montana courts have long and consistently held that "first in time,

first in right," in other words, priority of appropriation, confers superiority of right, and without reference to the character of the use. See Mettler v. Ames Realty Co., 61 Mont. 152, 201 P. 702.

9. Applicant has proved by substantial credible evidence the physical availability of unappropriated water in the source of supply at the proposed points of diversion in the amount applied for, and throughout the proposed period of diversion. See Findings of Fact 9, 19, and 25. The test for availability of unappropriated water consists of proving the physical presence of water at the intended points of diversion. See § 85-2-311(1)(a); In re Application No. 70511-s76LJ by Winter Sports, Inc.; In re Application No. 63997-g42M by Crisafulli.

10. After July 1, 1973, a person may not appropriate water except by applying for and receiving a permit from the Department. Mont. Code Ann. §§ 85-2-301(1) and 302 (1989). Applicant diverted water from the proposed source and for the proposed purpose prior to filing an application or receiving a permit to do so. See Finding of Fact 9. Although diverting water without a permit is a misdemeanor and criminal sanctions may apply, the penalties authorized do not include denial of a permit. Mont. Code Ann. §§ 85-2-122 and 46-18-212 (1989). The Department has no statutory authority to deny a permit on such grounds. See In re Application No. 52031-s76H by Frost. Furthermore, whether the diversion works were first operated "illegally" is not relevant to how data from that operation serves to satisfy the criteria

for issuance of a permit. See In re Application No. 61978-s76LJ by Town.

11. Applicant provided substantial credible evidence that the proposed appropriation will not adversely affect the water rights of prior appropriators. See Findings of Fact 19, 20, and 25.

Upon Applicant's discharge of the burden to produce substantial credible evidence on the issue of adverse effect, Objectors must go forward by producing certain information that is particularly, and sometimes exclusively within their power to produce: Objectors must state how they anticipate the proposed use will change the conditions of water occurrence in the source or how it will otherwise affect their rights, and allege why they will not be able to reasonably exercise their water right under the changed conditions. See In re Application No. 60117-g76L by Houston.

Objectors provided many events as implications of past and potential adverse effect, but produced no evidence to substantiate a causal relationship between the events identified by Objectors and Applicant's activities. See Finding of Fact 16. To the contrary, a great deal of evidence in the record, much of it produced by Applicant, clearly and strongly implies these events were unrelated to Applicant's activities. This evidence has established that the probable cause of 1988 well failures was natural decline of water levels in the aquifer as a result of years of declining precipitation acting against a combination of inefficient well design and inadequate casing storage to compen-

sate for that inefficiency. See Findings of Fact 17, 18, 21, 22. Applicant also produced evidence that testing that had been done, if analyzed to try to prove adverse effect, was at best inconclusive, and more reasonably confirmed the conclusion that natural forces were the cause of fluctuating groundwater levels in the area. See Findings of Fact 23 and 24.

Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence such as the lowering of a water table if the prior appropriator can reasonably exercise his water right under the changed conditions. Mont. Code Ann. § 85-2-401(1) (1989). Furthermore, the Department has long and consistently held that drawdown in and of itself is not adverse effect unless it is shown to interfere with a prior appropriator's ability to exercise his water rights. See In re Application No. 71122-g41B by Hildreth; In re Application No. 62593-g76H by Scharbauer; In re Application No. 60117-g76L by Houston; In re Application No. 62231 by City of East Helena; In re Application No. 41255-g41B by Allred; In re Application No. 41432-g76LJ by Crop Hail Management; In re Application No. 33484-g40A by Hunt; In re Application No. 49371-g430 by MacDonald; In re Applications Nos. 33831-g40R and 32722-g40R by Simonson/City of Plentywood; In re Application No. 8022-g76LJ by Bair. It is also well established that appropriators are not entitled to tie up a source of supply simply to avoid having to upgrade their means of diversion. See In re Application No. 31441-g41R by McAllister; In re Application No. 54911-g42M by Sackman.

Testimony of experts established a probability of some amount of drawdown or reduction of artesian pressure up to a mile away from the proposed points of diversion. Beyond that one mile radius, the probable drawdown effect of the proposed appropriation would be negligible and for practical purposes non-existent. See Findings of Fact 19 and 23. Therefore, it is clear from the record that the proposed appropriation will not adversely affect water rights to wells more than one mile from the proposed points of diversion. See In re Application No. 24591-g41H by Kenyon-Noble Ready Mix Cement Co.

None of the Objectors within a one mile radius of the proposed appropriation offered evidence showing with particularity how they could not reasonably exercise their water rights if the probable changed conditions were projected onto their wells. The record shows only the contradicted implications mentioned above.

Applicant has provided substantial independent and credible evidence on the question of adverse effect adequate to overcome the allegations of potential adverse effect raised by Objectors, therefore it is concluded that § 85-2-311(1)(b), MCA, is met.

12. Applicant proved by substantial credible evidence that the proposed appropriation will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved. See Conclusion of Law 11; Finding of Fact 6.

13. The Department has the authority to place conditions on permits. Mont. Codes Ann. § 85-2-312(1) (1989). In this matter, Applicant, on its own initiative, has represented to the Depart-

ment and Objectors that 400 feet below land surface would be the minimum depth to which the well in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6 would be drilled and that the water diverted by the well would be from that depth or deeper. See Finding of Fact 10. This representation was relied upon in analyzing lithological influences relative to the potential for adverse effects. Therefore this design element must be included as a condition of any permit issued as a result of this Application and proceeding.

Similarly, it was represented by Applicant that Permit No. 28809-g76LJ and any permit issued based on the present Application would be exercised in conjunction with each other such that the maximum flow rate diverted at any one time would not exceed 400 gpm. Therefore, this limitation must be included as a condition of any permit issued as a result of this Application and proceeding. See Finding of Fact 6.

The suggestion was made that the proposed monitoring plan be made a condition of such a permit. The Water Use Act allows the Department to issue a permit with terms and conditions necessary to satisfy the criteria in § 85-2-311, MCA. Mont. Code Ann. §85-2-312(1) (1989). Both of the above conditions fall within this authority because they ensure the project will match the proofs produced by the Applicant, that is, that the water appropriated will be what was proved to be available without adverse effect. A condition requiring the permittee to record the amounts of water diverted can be added to a permit to ensure the amount of water proven to be available without adverse effect, and no more than that, is what is being appropriated.

The monitoring plan contains elements that do address the satisfaction of the statutory criteria, but it also has elements that go beyond. See Finding of Fact 26. It is clear from the language of the Water Use Act that the Department cannot impose a condition upon anyone other than the permittee as only the permittee is required to satisfy the criteria. Mont. Code Ann. § 85-2-311(1) (1989). Therefore, the Department does not have the authority to require private well owners other than an applicant to participate in a monitoring program, no matter how valuable the information may be to the Department, the Applicant, or even the well owners. Therefore, the monitoring plan proposed by Applicant, as a whole, cannot be made a condition of a permit. Separate elements of the plan pertaining to the permittee and satisfaction of the statutory criteria can be, however.

It is the opinion of the Hearing Examiner that the plan would provide information helpful to future management of the groundwater resources in the Columbia Falls area. The most repeated statements in the record of this matter are about the complexity of the groundwater system in the area. Both hydrogeologists mentioned that additional data on the behavior of that system would be beneficial to future management of the resource. In addition, substantial interest was expressed by the parties in cooperating toward future management of the area's groundwater resources, and solving and avoiding problems related to it. This seems timely, as development pressures on the area appear to be continuing, and these are likely to include continuing interest in further groundwater development. For these reasons, the

Hearing Examiner encourages the parties to work among themselves, and with the Department, to implement as much of the plan as possible.

PROPOSED ORDER

Subject to the terms, conditions, and limitations specified below, Application for Beneficial Water Use Permit No. 71015-g76LJ is hereby granted to Meadow Lake County Water and Sewer District to appropriate 400 gallons per minute up to 137 acre-feet of water per year from two wells for the purposes of new and supplemental sprinkler irrigation.

The wells shall be an existing one in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and a new one to be drilled in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 West, Flathead County, Montana. Water will be stored in an existing 10 acre-foot reservoir located on Garnier Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 6 and a 7.8 acre-foot off-stream reservoir to be constructed in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 6, consisting of two connected pits of 3.3 AF and 4.5 AF. The period of appropriation and use shall be from June 1 through September 30 of each year. The place of use shall be on a total of 137 acres of golf course; more specifically described as 9 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 14 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 10 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 14 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 26 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; 28 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; 13 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; and 23 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 West, Flathead County. Of the 137 total acres in the place of use, 54 acres will be new irrigation and 83 acres will be supplemental irrigation.

A. The depth, upon completion, of the new well to be drilled in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 6 shall be a minimum of 400 feet below the surface of the land. The well casing must remain without perforations to a depth of at least 400 feet below the surface of the land.

B. This Permit is used in conjunction with Permit to Appropriate Water No. 28809-g76LJ. The combined appropriation of the two wells as granted shall not exceed a total of 400 gallons per minute up to 287 acre-feet per annum.

C. This Permit is supplemental to Water Right Statement of Claim No. W131493-s76LJ and Permits to Appropriate Water No. 26716-g76LJ and No. 26723-s76LJ which means they have overlapping places of use.

D. 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 prior appropriator.

E. The Permittee shall maintain adequate flow measuring devices on the diversion system 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 Kalispell Field Office of the Department of Natural Resources and Conservation upon demand and by November 30 of each year.

F. Throughout the permitted period of appropriation of each year that water is to be appropriated under this Permit, Permittee shall take measurements, at least once every two weeks, of the static water level in the well located in the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, Township 30 North, Range 20 West, Flathead County, known as the "Clubhouse Well". Measurements shall be made using a method approved by the Department of Natural Resources and Conservation. Permittee shall keep a written record of the static water level, including the dates measured and person making the measurement, and shall submit said records to the Kalispell Field Office of the Department of Natural Resources and Conservation upon demand and by November 30 of each year.

G. If, at any time after this Permit is issued, a written complaint is received by the Department alleging that diverting from this source is adversely affecting a prior water right, the Department may make a field investigation of the project. If during the field investigation the Department finds sufficient evidence supporting the allegation, it may conduct a hearing in the matter allowing the Permittee to show cause why the Permit should not be modified or revoked. The Department may then modify or revoke the Permit to protect the existing rights or allow the Permit to continue unchanged if the hearing officer determines that no existing water rights are being adversely affected.

H. This Permit is subject to § 85-2-505, MCA, requiring that all wells be constructed so they will not allow water to be wasted, or contaminate other supplies or sources, and all flowing

wells will 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 inch so that the static water level in the well may be accurately measured.

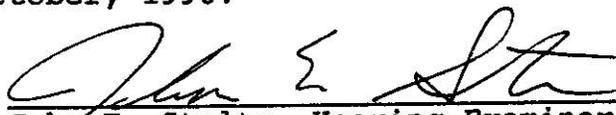
I. Issuance of this Permit shall not reduce the Permittee's liability for damages caused by exercise of this Permit, nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by exercise of this Permit, even if such damage is a necessary and unavoidable consequence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

NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party within 20 days after service of the exception. However, no new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 26<sup>th</sup> day of October, 1990.

  
John E. Stults, Hearing Examiner  
Department of Natural Resources  
and Conservation  
1520 East 6th Avenue  
Helena, Montana 59620-2301  
(406)444-6612

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision as duly served upon all parties of record at their address or addresses this 26<sup>th</sup> day of October, 1990, as follows:

Meadow Lake County Water  
and Sewer District  
1415 Tamarack Lane  
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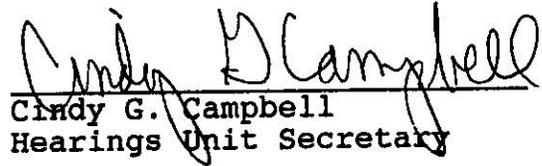
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CASE # 71015