

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
78300-g41I BY TOM D. & SUZANNE M.)
HANSON)

* * * * *

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 March 8, 1993 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, restrictions, and limitations specified below, a Beneficial Water Use Permit is hereby granted for Application 78300-g41I by Tom D. and Suzanne M. Hanson to appropriate 400.00 gallons per minute up to 42.50 acre-feet per year of groundwater by means of a well at a point in Lot 12 of the Clara M. Munger Tracts which is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, Township 10 North, Range 3 West, Lewis and Clark County, Montana, for irrigation of 17.00 acres. The places of use shall be 5.00 acres in Lot 7, 5.00 acres in Lot 8, 5.00 acres in Lot 11 B, and 2.00 acres in Lot 12, all located in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4. The period of use shall be from April 1 through

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September 15, inclusive of each year. The water shall be stored in two existing off-stream reservoirs in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 4. The capacity of one of the reservoirs is 44 acre-feet and the other is 48 acre-feet. The means of diversion shall be an eight to ten horsepower pump.

A. This permit is subject to all prior existing water rights in the source of supply. Further, this permit is subject to any final determination of existing water rights, as provided by Montana law.

B. This permit is subject to Section 85-2-505, MCA, requiring that all wells be constructed so they will not allow water to be wasted, or contaminate other water supplies or sources, and all flowing wells shall be capped or equipped so the flow of the 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 level of the well may be accurately measured.

C. This permit is subject to the permittee maintaining current pump model number, conveyance piping data, and a record of any system changes along with written records of his diversion schedule of power usage so that the flow rate and volume of water diverted can be determined. Said records shall be submitted by November 30 and upon demand to the Helena Water Resources Regional Office, 1520 E. 6th Ave., Helena, MT 59620.

D. This permit is granted subject to the right of the

Department to revoke the permit in accordance with 85-2-314, MCA, and to enter onto the premises for investigative purposes in accordance with 85-2-115, MCA.

E. Pursuant to Section 85-2-505, MCA, to prevent groundwater contamination, an operational backflow preventer must be installed and maintained by the Appropriator if a chemical or fertilizer distribution system is connected to the well.

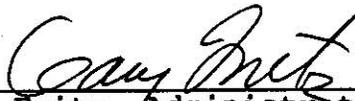
F. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation a Water Right Transfer Certificate, Form 608, pursuant to Section 85-2-424, MCA.

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.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this 5 day of April, 1993.



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 5th day of April, 1993 as follows:

Tom D. & Suzanne M. Hanson
4001 Frontage Dr.
Helena, MT 59601

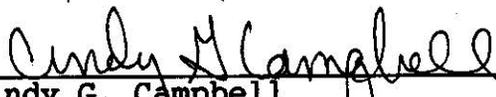
Ted J. Doney
Doney, Crowley & Shontz
P.O. Box 1185
Helena, MT 59624-1185

Harold B. & Sharon Tucker
4508 Prairie Dr.
Helena, MT 59601

William Uthman, Geohydrologist
Department of Natural
Resources and Conservation
Water Management Bureau
1520 E. 6th Ave.
Helena, MT 59620-2301

T.J. Reynolds & Jim Beck
Helena Water Resources
Regional Office
1520 E. 6th Avenue
Helena, MT 59620-2301

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



Cindy G. Campbell
Hearings Unit Legal 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
78300-g41I BY TOM D. & SUZANNE M.)
HANSON)

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on February 17, 1993, in Helena, Montana, to determine whether a Beneficial Water Use Permit should be granted to Tom D. and Suzanne M. Hanson under the criteria set forth in Mont. Code Ann. § 85-2-311 (1) and (4).

APPEARANCES

Applicants Tom D. and Suzanne M. Hanson appeared at the hearing by and through Tom D. Hanson and counsel, Ted Doney.

Objectors Harold B. and Sharon Tucker appeared at the hearing by and through Sharon Tucker and her father-in-law, Mr. Tucker.

Jim Beck, Civil Engineering Specialist, with the Helena Water Resources Regional Office of the Department of Natural Resources and Conservation, appeared at the hearing.

William Uthman, Geohydrologist with the Department, appeared at the hearing.

Montana Power Company had withdrawn its objection by a letter dated February 15, 1993.

Treasure State Acres Water Users Association appeared as an

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observer through an unidentified person. Applicants had spoken with Mark Peterson, Director, the evening before the hearing date and was told that Treasure State Acres Water Users Association had withdrawn its objection.

During a prehearing conference Objectors Tucker and the Applicants reached an agreement under which the objections were withdrawn.

Objectors Helen Dorothy Sundquist; Gary R. and Sandra A. Janes; and Harry L. and Doris Jardine did not appear at the hearing. The record shows a properly constituted Notice of Hearing was served upon all parties on December 22, 1992, by certified mail, return receipt requested. See Mont. Admin. R. 36.12.204(1) (1991). Return receipts were received by the Department, each with a signature indicating receipt. The Hearing Examiner received no communication from any of these persons prior to the hearing or subsequent thereto. Therefore in accordance with Mont. Admin. Rule 36.12.208, they are in default and no longer retain status as parties.

The file was made available for review by all parties. No objections were expressed to any part of the file; therefore, it is accepted into the record in its entirety.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following:

FINDINGS OF FACT

1. Mont. Code Ann. § 85-2-302 (1991) states in relevant

part, "Except as otherwise provided in (1) through (3) of 85-2-306, a person may not appropriate water or commence construction of a diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the Department.

2. Tom D. and Suzanne M. Hanson duly filed the above-entitled Application with the Department on June 28, 1991. (Department file.)

3. Pertinent portions of the Application were published in the *Independent Record*, a newspaper of general circulation in the area of the source, on October 30, 1991. 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.

Six timely objections to the Application were received by the Department. Applicants were notified of the objections by a letter from the Department dated November 25, 1991. (Department file.)

4. Applicants seek to appropriate 400.00 gallons per minute up to 42.50 acre-feet per year of groundwater at a point in Lot 12 of the Clara M. Munger Tracts which is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, Township 10 North, Range 3 West, Lewis and Clark County, Montana,¹ for irrigation of 17.00 acres. The

¹Unless otherwise stated all land descriptions in this Proposal are located in Township 10 North, Range 3 West, Lewis and Clark County, Montana.

proposed places of use are 5.00 acres in Lot 7, 5.00 acres in Lot 8, 5.00 acres in Lot 11 B, and 2.00 acres in Lot 12, all located in the $W\frac{1}{2}SW\frac{1}{4}$ of Section 4. The proposed period of use is from April 1 through September 15, inclusive of each year. The water would be stored in two existing off-stream reservoirs in the $W\frac{1}{2}SW\frac{1}{4}$ of said Section 4. The capacity of one of the reservoirs is 44 acre-feet and the other is 48 acre-feet. The proposed means of conveyance is buried pipeline to sprinkler heads. (Department file.)

5. The proposed means of diversion is an eight to ten horsepower pump and a well 101 feet deep. The well was drilled under the supervision of or by A. F. Welch, a water well driller licensed by the State of Montana. (Department file.)

6. The aquifer in the Helena Valley is extremely productive. The proposed appropriation should create only marginal short-term drawdown interference impacts. Although theoretical drawdowns may range up to many feet, actual drawdown would be rather insignificant. Long-term impacts to groundwater levels would also be insignificant. The only consumptive use would consist of evaporation from the ponds and evapotranspiration from irrigation of the vegetation. The groundwater appropriation simply amounts to the cycling of water from the subsurface by pumping and infiltration from the surface storage ponds back into the alluvium. Significant groundwater declines in the area have not been substantiated and there is no reasonable explanation for a new 400 gallons per minute

appropriation to suddenly cause significant groundwater level declines. (Department file.)

7. There are no other planned uses or developments for which a permit has been issued or for which water has been reserved with which this appropriation would interfere unreasonably. (Department file.)

8. Applicants own the proposed place of use. (Department file.)

Based upon the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

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

2. The Department has jurisdiction over the subject matter herein, and all the parties hereto. See Finding of Fact 1.

3. The Department must issue a Beneficial Water Use Permit if the Applicant proves by substantial credible evidence that the following criteria set forth in Mont. Code Ann. § 85-2-311(1) and (4) (1991), 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.

. . .
(4) To meet the substantial credible evidence standard in this section, the applicant shall 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.

4. The proposed use of water, irrigation, is a beneficial use of water. Mont. Code Ann. § 85-2-102(2). The amount requested is within the Department guidelines for such a use; therefore the use is not excessive and there will be no waste.

5. Applicants have provided substantial credible evidence there are unappropriated waters in the source of supply at the proposed point of diversion at times when the water can be put to the use proposed and that water is reasonably available in the amount requested during the period in which Applicants seek to appropriate. See Finding of Fact 6.

6. Applicants have provided substantial credible evidence the water rights of a prior appropriator will not be adversely

affected. See Finding of Fact 6.

7. Applicants have provided substantial credible evidence 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. See Finding of Fact 7.

8. Applicants have provided substantial credible evidence the proposed means of diversion, construction, and operation of the appropriation works are adequate. See Findings of Fact 4 and 5.

9. Applicants have provided substantial credible evidence they have 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. See Finding of Fact 8.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, restrictions, and limitations specified below, a Beneficial Water Use Permit is hereby granted for Application 78300-g41I by Tom D. and Suzanne M. Hanson to appropriate 400.00 gallons per minute up to 42.50 acre-feet per year of groundwater by means of a well at a point in Lot 12 of the Clara M. Munger Tracts which is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, Township 10 North, Range 3 West, Lewis and Clark County, Montana, for irrigation of 17.00 acres. The places of use shall be 5.00 acres in Lot 7, 5.00 acres in Lot 8, 5.00 acres in Lot 11 B, and 2.00 acres in Lot 12, all located in the W $\frac{1}{2}$ SW $\frac{1}{4}$

of Section 4. The period of use shall be from April 1 through September 15, inclusive of each year. The water shall be stored in two existing off-stream reservoirs in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 4. The capacity of one of the reservoirs is 44 acre-feet and the other is 48 acre-feet. The means of diversion shall be an eight to ten horsepower pump.

A. This permit is subject to all prior existing water rights in the source of supply. Further, this permit is subject to any final determination of existing water rights, as provided by Montana law.

B. This permit is subject to Section 85-2-505, MCA, requiring that all wells be constructed so they will not allow water to be wasted, or contaminate other water supplies or sources, and all flowing wells shall be capped or equipped so the flow of the 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 level of the well may be accurately measured.

C. This permit is subject to the permittee maintaining current pump model number, conveyance piping data, and a record of any system changes along with written records of his diversion schedule of power usage so that the flow rate and volume of water diverted can be determined. Said records shall be submitted by November 30 and upon demand to the Helena Water Resources Regional Office, 1520 E. 6th Ave., Helena, MT 59620.

D. This permit is granted subject to the right of the Department to revoke the permit in accordance with 85-2-314, MCA, and to enter onto the premises for investigative purposes in accordance with 85-2-115, MCA.

E. Pursuant to Section 85-2-505, MCA, to prevent groundwater contamination, an operational backflow preventer must be installed and maintained by the Appropriator if a chemical or fertilizer distribution system is connected to the well.

F. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation a Water Right Transfer Certificate, Form 608, pursuant to Section 85-2-424, MCA.

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. The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. No new evidence will be considered. The defaulted objectors are restricted to excepting to the default ruling. The Department will disregard any exceptions submitted by the defaulted objectors on other substantive issues.

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 8th day of March, 1993.



Vivian A. Lighthizer, 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 8th day of March, 1993 as follows:

Tom D. & Suzanne M. Hanson
4001 Frontage Dr.
Helena, MT 59601

Helen Dorothy Sundquist
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Harry L. & Doris Jardine
4430 Prairie Dr.
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Treasure State Acres Water
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Cindy G. Campbell
Hearings Unit Legal Secretary