

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
79155-g43Q BY DECELLE D. HIRST)

* * * * *

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 May 20, 1992, 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, restrictions, and limitations specified below, Beneficial Water Use Permit 79155-g43Q is hereby granted to DeCelle D. Hirst to appropriate groundwater by means of a pumped well in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 01 North, Range 26 East, Yellowstone County, at 50 gallons per minute up to 16.94 acre-feet per year for lawn and garden purposes on 15 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 01 North, Range 26 East, Yellowstone County. Water may be stored in a 0.707 acre-foot reservoir in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 01 North, Range 26 East, Yellowstone County. The period of appropriation shall be from April 15 through October 15 of each

CASE # 79155

year. The priority date shall be 9:08 a.m. August 27, 1991.

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 prior appropriator.

B. The permittee shall maintain an adequate flow metering device 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 upon request to the Billings Water Resources Regional Office of the Department of Natural Resources and Conservation.

C. This permit is associated to Certificates of Water Right C060303-g43Q and C067213-g43Q which means they are for the same purpose and have overlapping places of use. Whenever associated water rights are combined to supply water for lawn and garden use, each is limited to the flow rate and volume of the individual right, and the combined total flow rate and volume shall not exceed the amount necessary for beneficial use.

D. 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 shall be capped or equipped so the flow of water may be stopped when not being put to beneficial use. The final completion of the well must include an access port of at least .50 inch

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

E. 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.

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.

Dated this 18 day of June, 1992.



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 18th day of June, 1992 as follows:

DeCelle D. Hirst
P.O. Box 20423
Billings, MT 59104

Dale A. & Sherry L. Argento
2332 US Hwy 87 E
Billings, MT 59101

Esther M. Myers
2504 US Hwy 87 E
Billings, MT 59101

Gary Armstrong
P.O. Box 2077
Billings, MT 59103

Mollie Hein
P.O. Box 125
Billings, MT 59103

Keith Kerbel and
Tim Kuehn
Billings Water Resources
Regional Office
1537 Ave. D, Suite 121
Billings, MT 59102
(via electronic mail)

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


Cindy G. Campbell
Hearings Unit Legal Secretary

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

* * * * *

IN THE MATTER OF THE APPLICATION)	PROPOSAL
FOR BENEFICIAL WATER USE PERMIT)	FOR
79155-g43Q BY DECELLE D. HIRST)	DECISION

* * * * *

Pursuant to Mont. Code Ann. §§ 85-2-121 and 85-2-309 (1991) a hearing was held in the above matter on April 14, 1992, in Billings, Montana, to determine whether a Beneficial Water Use Permit based on the above Application should be granted to DeCelle D. Hirst under the criteria in Mont. Code Ann. § 85-2-311(1) and (4) (1991).

APPEARANCES

Applicant appeared at the hearing on her own behalf. Objectors Dale A. and Sherry L. Argento appeared at the hearing by and through Dale Argento. Objector Gary Armstrong appeared at the hearing on his own behalf. Objector Mollie Hein appeared at the hearing on her own behalf. Objector Esther M. Myers appeared at the hearing on her own behalf. Jim Herzog, an electrician who services pumps, appeared as a witness in behalf of Objector Myers. Tim Kuehn, Water Resources Specialist with the Billings Water Resources Regional Office of the Department of Natural Resources and Conservation (Department), appeared as the Department's spokesperson.

CASE # 79155

FILMED
AUG 28 1992

EXHIBITS

The Department offered the following exhibit which was accepted into the record without objection.

Department's Exhibit 1 is a graph entitled "Dry Creek Well Site Inventory." It illustrates the depth below ground surface of water in two wells over the period from July 9, 1991, through April 13, 1992.

Immediately prior to the hearing all parties were given the opportunity to review the Department's file on this Application. No objection was expressed against any part of the file being made a part of the record. The Hearing Examiner entered the file into the record at the hearing in its entirety.

At the hearing the Hearing Examiner took official notice of records maintained by the Department on water rights in the vicinity of the proposed appropriation. No objection was expressed. During the course of reaching a decision in this matter, the Hearing Examiner took official notice of the Department's 602 Processing Procedure Manual, October 22, 1991, page 11, for figures on lawn and garden volume requirements.

Immediately following the hearing the Hearing Examiner conducted a site visit to the proposed point of diversion and place of use. Also present at the site visit were: Applicant; all Objectors; Jim Herzog; Tim Kuehn; Tom _____,¹ Manager of Hillside Village Trailer Court; and Cindy Campbell, Legal

¹ The Hearing Examiner failed to note the last name of the trailer court manager.

Secretary with the Department's Hearings Unit. The purpose of the site visit was to familiarize the Hearing Examiner with the site of the proposed project solely to facilitate his understanding of the evidence on the record. The offering of additional evidence or argument was not allowed and did not occur.

FINDINGS OF FACT

1. Applicant filed Application for Beneficial Water Use Permit 79155-g43Q with the Department on August 27, 1991, at 9:08 a.m. (Department's file)

2. Applicant proposed, on the application form, to appropriate groundwater by means of a pumped well in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 01 North, Range 26 East, Yellowstone County, at 50 gallons per minute (gpm) up to 40.6 acre-feet (AF) for lawn and garden purposes on 30 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said section. The period of appropriation would be April 15 through October 15 of each year. The water would be used for irrigating lawns and gardens within the Hillside Village Trailer Court also known as Sage View Village Trailer Court.² (Department's file)

3. Pertinent portions of the Application were published in the Billings Gazette, a newspaper of general circulation in the area of the proposed source, on October 23, 1991. Additionally,

² Most of the documents in the Department's file refer to Sage View Village Trailer Court; however, most of them predate its purchase by Applicant. A letter from Applicant dated December 1, 1991, refers to "my well at Hillside Village" and is signed, "DeCelle D. Hirst, Hillside Village." This letter is the most recent document identifying a name for the trailer court. Therefore, the name Hillside Village Trailer Court is used in this Proposal for Decision.

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. The Department received four objections filed against this Application, all expressing a principal concern about the potential for adverse effects on nearby groundwater wells. Objectors have groundwater wells in the vicinity of Applicant's proposed appropriation. (Department's file)

5. Although not identified on the application form or in the public notices of this Application, it has always been the intent of Applicant to store the water after diversion and prior to use in an existing reservoir in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 01 North, Range 26 East. The reservoir is a rectangular pit-like pond with sides of approximately 80 feet and 110 feet for a surface area of approximately 8800 square feet or 0.202 acre. The depth is approximately seven feet which provides a total volume in the reservoir of approximately 0.71 AF.³ The pond is lined with a thick impermeable plastic liner. (Department's file and testimony of DeCelle Hirst and Tim Kuehn)

6. The volume amount identified on the Application and in the public notices is 40.6 AF. This is the maximum amount that could be produced by a constant pumping rate of 50 gpm for 24 hours per day over each and every one of the 184 days of the

³ 0.202 acre x 7 feet x 0.5 = 0.707 acre-feet.

proposed period of use, April 15 through October 15. Applicant stated that the system would certainly not be operated constantly throughout the period of use. Applicant roughly estimated the system is more likely to pump water from the well an average of eight hours per day, but showed a lack of confidence in the accuracy of this estimate. Ten hours per day gives a margin of error for Applicant's estimation of average daily operation. At ten hours per day the volume diverted over the proposed period of use at the proposed pumping rate would be 16.94 AF.⁴ (Department's file and testimony of DeCelle Hirst)

7. The proposed point of diversion, place of storage, and place of use are in the Hillside Village Trailer Court which is owned by Applicant who purchased it in July 1991. (Department's file and testimony of DeCelle Hirst)

8. The proposed place of use is not thirty acres of irrigated area. The proposed place of use is throughout the existing developed area of Hillside Village Trailer Court which is thirty acres. However, Applicant also owns adjacent undeveloped land. The amount of acreage within the developed court which is actual lawn and garden, or even usable as lawn and garden, is substantially less than thirty acres due to the roads, parking areas, and mobile homes in the court. On the thirty acres of developed area in the trailer court are the roads, parking areas, and trailer spaces for 150 trailers. The exact amount of acres of

⁴ 50 gpm times 600 minutes per day times 184 days, divided by 325851 gallons per AF, equals 16.94026 AF.

lawn and garden cannot be determined from the record. From the aerial photograph submitted with the Application it can be estimated that the area within Hillside Village Trailer Court susceptible of lawn and garden use is approximately 15 acres. (Department's file)

9. The Department has determined that a reasonable volume of water for lawn and garden use is 2.5 AF per acre per year. This figure related to the estimated area of lawn and garden in Hillside Village Trailer Court, 15 acres, indicates a total reasonable amount of water for the proposed use would be 37.5 AF per year. The estimated actual appropriation of the proposed project, 16.94 AF per year, does not exceed the Department's reasonable use figure. (Department's file and Department's processing manual)

10. The proposed appropriation would use an existing conveyance, storage, and distribution system which has been used by Applicant and her predecessor for lawn and garden purposes on the place of use for many years. The system functions satisfactorily and adequately for that purpose. It is connected to two existing wells which were its past source of supply. The two existing wells have been operated under Certificates of Water Right C060303-g43Q and C067213-g43Q.⁵ The two wells pump water

⁵ Ownership of these two Certificates of Water Right has not yet been transferred to Applicant, the new owner, as required under Mont. Code Ann. § 85-2-424 (1991). The Hearing Examiner advises Applicant to contact the Billings Water Resources Regional Office at her earliest convenience to file a transfer of ownership, Form 608.

into a single plastic pipe that conveys the water to the reservoir. The two wells share a single electric power line which has its own power meter. (Testimony of DeCelle Hirst)

11. The two existing wells are 78 feet and 80 feet deep. They have been unreliable in recent years. During the summer pumping season there is only about ten feet of water in the casing above the pumps in these wells. The wells can only be pumped three or four hours per day which has not been sufficient for the needs of the trailer court. (Department's Exhibit 1, Department's file, and testimony of DeCelle Hirst and Tim Kuehn)

12. Applicant had a well drilled at the proposed point of diversion to a depth of 192 feet. The well has a steel casing from eighteen inches above the land surface to sixty-five feet below the land surface down, and has a plastic liner from the surface of the land to the bottom at 192 feet. The lining is perforated from 152 feet to the bottom. It was completed with a pump installed on August 20, 1991, and tested at 50 gpm. It has its own electric power line and electric power meter. The water from the well enters a 1.5 inch interior diameter plastic pipe which conveys it to the reservoir. A second, smaller plastic pipe on the system allows water to be conveyed to a newly planted shelter belt of many young trees. (Department's file and testimony of DeCelle Hirst and Jim Herzog)

13. The static water level in Applicant's new well is 81 feet below the surface of the land. When the well was tested it was pumped at 50 gpm for three hours and the water level in the

well returned to the pre-test static level in minutes after the test pumping was stopped. (Department's file)

14. The new well was used for one day about two weeks prior to the hearing to fill the pond and irrigate the newly planted trees. The use was primarily to test its operation. It functioned adequately. (Testimony of DeCelle Hirst)

15. Objectors Argento own Certificate of Water Right C072850-g43Q to appropriate 20 gpm up to 1.5 AF of groundwater year round for domestic purposes from a well in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 36, Township 1 North, Range 26 East. The depth of the well is 200 feet and it was drilled to replace an 80 foot well that collapsed two years ago. The static water level in the well is 62 feet below the land surface. The pump is set at 185 feet below the land surface, which is 123 feet below the static water level. When tested the well was pumped at 20 gpm for six hours. The water in the well was drawn down 62 feet, which is 61 feet above the pump. The water level in the well recovered to within three feet of the static level in fifteen minutes after pumping stopped. The well is approximately 100 yards in horizontal distance from Applicant's new well. No shortage of water in this deep well has been experienced by Objectors Argento. (Department's file, Department's records, and testimony of Dale Argento)

16. Objector Armstrong owns Certificate of Water Right C062381-g43Q to appropriate 20 gpm up to 1.5 AF of groundwater year round for domestic purposes from a well in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 36, Township 1 North, Range 26 East. The depth of the

well is 80 feet. This well is about 30 yards from the trailer court's two shallow wells. It did not have very good production during the summer of 1991. Objector Armstrong's 80 foot well is a replacement for a 54 foot well that went dry. (Department's file, Department's records, and testimony of Gary Armstrong)

17. Objector Myers has diverted groundwater for year round domestic purposes by means of a well in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, Township 1 North, Range 27 East. The well was completed on March 9, 1971, and produced 25 gpm when completed. It is 66 feet deep. Since 1987, when the second shallow well was drilled in the trailer court, the pump in the Myers well has had to be lowered to 62 feet and the well has only been producing 8 to 10 gpm during the summer months. After September, which is when Applicant's predecessor stopped pumping from their two shallow wells, Objector Myers' well produced 20 to 25 gpm. (Department's records and testimony of Esther Myers and Jim Herzog)

18. Objector Hein has diverted groundwater for year round domestic use by means of a well in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, Township 1 North, Range 27 East. The well produces 5 gpm and is approximately sixty to eighty feet deep. The productivity of the well has been declining. It can only be used up to one-half hour at a time without needing to be allowed to recharge itself. (Department's records and testimony of Mollie Hein)

19. Applicant's shallow wells have a direct relationship to other shallow wells in the vicinity. Monitoring of water levels in the Myers well and one of the trailer court shallow wells

showed almost identical changes in the static water levels over a nine month period. (Department's Exhibit 1 and testimony of Tim Kuehn)

20. Applicant's new well would be used as the primary source of all water for lawn and garden purposes in the trailer court. The two shallow wells will continue to be connected to the system, will have pumps in them and power to the pumps, and will be used for lawn and garden purposes in the trailer court. This means they would be supplemental to the proposed appropriation. The two shallow wells will only be used, however, for backup in case of failure of the new well, for priming the system if needed, or for additional water in the event of unusually high peak demands. The future use of the two shallow wells will be significantly less than the past use which will lessen any impact they may have had on other wells of similar depth in the vicinity. (Department's records and testimony of DeCelle Hirst and Gary Armstrong)

21. An analysis of well logs in the area of the proposed appropriation was conducted by Bill Uthman, Hydrogeologist with the Department. He found 56 feet of impermeable shale between the shallow water-bearing layer (in which Applicant's two older wells and the wells of Objectors Hein, Myers, and Armstrong are finished) and the deeper water-bearing layer (in which Applicant's new well and the well of Objectors Argento are finished). His opinion is that pumping 50 gpm through Applicant's new well would not draw water vertically through the shale barrier and

therefore no drawdown of the shallower wells would result from operation of Applicant's new well. (Department's file and Testimony of Tim Kuehn)

22. Objectors Argento expressed concern about whether the proposed appropriation could cause a deterioration of water quality in their well. There is no evidence in the record of water quality problems or declining water quality. There is no evidence in the record of potential for contamination from operation of Applicant's new well.

23. There are no other planned uses for or planned developments of water in the proposed source for which a permit has been issued or for which water has been reserved. (Department's records and Department's file)

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and the parties hereto. Mont. Code Ann. Title 85, Chapter 2 (1991).

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. 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) (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 Mont. Code Ann. § 85-2-311(1) (1991) 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) (1991).

5. Applicant proved by substantial credible evidence that Applicant has possessory interest in the property where the water is to be put to beneficial use. See Finding of Fact 7. Therefore, the criterion in Mont. Code Ann. § 85-2-311(1)(f) (1991) has been met.

6. The proposed use of the water, for the purpose of irrigating lawns and gardens, is a beneficial use. Mont Code Ann. § 85-2-102(2)(a) (1991). The proposed use of water will benefit Applicant. See Finding of Fact 11. The amount of water to be appropriated is reasonable for the purpose. See Findings of Fact 2, 6, 8, and 9. Therefore, the criterion in Mont. Code Ann. § 85-2-311(1)(d) (1991) has been met.

7. An Application for Beneficial Water Use Permit may be amended after public notice of the application if the amendments would not prejudice anyone, party or non-party, that is, those persons who received notice of the application as originally proposed but did not object would not alter their position due to the amendments. See In re Applications W19282-s41E and W19284-s41E by Ed Murphy Ranches, Inc. To cause prejudice, an amendment must suggest an increase in the burden on the source beyond that identified in the notification of the application as originally proposed. Such a suggestion of increased burden would be inherent in an amendment to expand the period of diversion, reduce return flows, increase the rate of diversion, increase the volume of water diverted, add an instream impoundment, or other such controlling parameters of the diversion. Conversely, there are many amendments that would not suggest an increase in the burden, such as a reduction in the place of use. See In re Application 50272-g42M by Joseph F. Crisafulli. Furthermore, the Department may modify an application if it prepares a statement of its

opinion and the reasons therefore. Mont. Code Ann. § 85-2-310(2) (1991).

Adding a small, lined storage reservoir for the water after it is diverted and prior to use does not imply an increase in the burden on the source beyond what was identified in the notices of this application because the impact on the source is confined to the initial diversion of water away from the natural aquifer. Therefore, the proposed project may be amended to add the existing 0.707 AF pond in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 1 North, Range 26 East, as a storage facility to correct the oversight in the processing and notices of this application to reflect the true intent of Applicant. See Finding of Fact 5. Likewise, the permit must state that the water being diverted pursuant to this appropriation may be stored in said reservoir.

8. Applicant proved by substantial credible evidence that the proposed means of diversion, construction, and operation of the diversion works are adequate. See Findings of Fact 10, 12, and 14. Therefore, the criterion in Mont. Code Ann. § 85-2-311(1)(c) (1991) has been met.

9. Applicant proved by substantial credible evidence that unappropriated waters are reasonably available in the source of supply at the proposed point of diversion in the amount and during the period Applicant seeks to appropriate. See Findings of Fact 12, 13, 14, and 15. Therefore, the criterion in Mont. Code Ann. § 85-2-311(1)(a) (1991) has been met.

10. Applicant proved by substantial credible evidence that the water rights of prior appropriators will not be adversely affected. See Findings of Fact 11, 14, 15, 16, 17, 18, 19, 20, 21, and 22. Therefore, the criterion in Mont. Code Ann. § 85-2-311(1)(b) (1991) has been met.

It appears concentration of wells in the shared, shallow, water-bearing layer has caused well interference or depletion of water in the layer in excess of its recharge or both. It is quite likely if Applicant follows her stated intent to use the two shallow trailer court wells only on rare occasions, there will be a noticeable lessening of the problems shallow well owners have been experiencing.

During the site visit the idea was raised of bringing groundwater users in the area into a joint water system and association. This appears to be another possible means of reducing the problems shallow well owners have had.

11. Applicant proved by substantial credible evidence that the proposed use will not interfere unreasonably with other planned uses for which a permit has been issued or for which water has been reserved. See Conclusion of Law 10; Findings of Fact 23. Therefore, the criterion in Mont. Code Ann. § 85-2-311(1)(e) (1991) has been met.

12. The Department may not issue a permit for more water than the project will beneficially use. Mont. Code Ann. § 85-2-312(1) (1991). This project will not use the full amount identified in the Application and public notices. See Findings of Fact

2, 6, and 8. The Department may issue a permit subject to limitations and restrictions necessary for the permit to be in conformance with the statutory criteria. Mont. Code Ann. § 85-2-312(1) (1991). Because the area of the trailer court is capable of expansion, it is important to precisely state the acres of lawn and garden to be irrigated to minimize the possibility of improper expansion of the water use beyond the permitted volume. Therefore, the permit must state that only 15 acres of lawn and garden within the place of use will be irrigated by water diverted pursuant to this appropriation, and that 16.94 AF per year is the maximum volume to be diverted pursuant to this appropriation. Furthermore, the volume diverted by the new well must be measured and recorded.

Because this appropriation will be supplemental to two other water rights, a condition must be placed on the permit restricting the supplemental use of these associated water rights to the limits of each water rights and, when combined, do not exceed the amount of water necessary for beneficial use. See Finding of Fact 20.

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Beneficial Water Use Permit 79155-g43Q is hereby granted to DeCelle D. Hirst to appropriate groundwater by means of a pumped well in the SW¼NE¼NE¼ of Section 36, Township 01 North, Range 26 East, Yellowstone County, at 50 gallons per minute up to 16.94 acre-feet per year for lawn and garden

purposes on 15 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 01 North, Range 26 East, Yellowstone County. Water may be stored in a 0.707 acre-foot reservoir in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 01 North, Range 26 East, Yellowstone County. The period of appropriation shall be from April 15 through October 15 of each year. The priority date shall be 9:08 a.m. August 27, 1991.

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 prior appropriator.

B. The permittee shall maintain an adequate flow metering device 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 upon request to the Billings Water Resources Regional Office of the Department of Natural Resources and Conservation.

C. This permit is associated to Certificates of Water Right C060303-g43Q and C067213-g43Q which means they are for the same purpose and have overlapping places of use. Whenever associated water rights are combined to supply water for lawn and garden use, each is limited to the flow rate and volume of the individual right, and the combined total flow rate and volume shall not exceed the amount necessary for beneficial use.

D. 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 shall be capped or equipped so the flow of water may be stopped when not being put to beneficial use. The final completion of the well must include an access port of at least .50 inch so that the static water level in the well may be accurately measured.

E. 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.

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 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 20th day of May, 1992.



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 was duly served upon all parties of record at their address or addresses this 20th day of May, 1992, as follows:

DeCelle D. Hirst
P.O. Box 20423
Billings, MT 59104

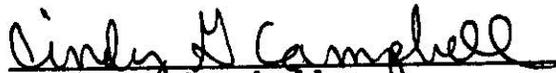
Gary Armstrong
P.O. Box 2077
Billings, MT 59103

Dale A. & Sherry L. Argento
2332 US Hwy 87 E
Billings, MT 59101

Mollie Hein
P.O. Box 125
Billings, MT 59103

Esther M. Myers
2504 US Hwy 87 E
Billings, MT 59101

Keith Kerbel and
Tim Kuehn
Billings Water Resources
Regional Office
1537 Ave. D, Suite 121
Billings, MT 59102
(via electronic mail)



Cindy G. Campbell
Hearings Unit Legal Secretary