

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
90476-g76M BY MISSOULA COUNTY)
RSID #8458)

* * * * *

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 3, 1995, 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 listed below Beneficial Water Use Permit 90476-g76M is granted to Missoula County RSID #8458 to appropriate 50 gallons per minute up to 71.72 acre-feet per year of ground water by means of a well and 15 horsepower pump located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 14 North, Range 20 West, Missoula County, for the purpose of providing a municipal water supply to the Sunset West Subdivision located generally in the E $\frac{1}{2}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. The means of conveyance shall be a four-inch PVC pipe to an 80,000 gallon reservoir which will gravity feed the distribution system via a six-inch diameter pipeline. Individual homes shall be connected to the distribution system by 1.25-inch lines. The

CASE # 90476

FILMED

system shall provide for individual curb stops and allow for metering to control individual water use.

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 right is subject to Section 85-2-505, MCA, requiring 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.

C. The final completion of the well(s) must include an access port of at least .50 inch so the static level of the well may be accurately measured.

D. This right is subject to the condition that the appropriator shall install an adequate flow metering device to allow the flow rate and volume of water diverted to be recorded. The appropriator 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 by November 30th of each year and/or upon request to the Missoula Water Resources Regional Office at 1610 South 3rd Street West, Suite 103, P.O. Box 5004, Missoula, MT 59806-5004.

E. If, at any time after this right is issued, a written complaint is received by the Department alleging that diverting water 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 appropriator to show cause why the right should not be modified or revoked. The Department may then modify or revoke this right to protect existing rights or leave this right unchanged if the hearing officer determines no existing water rights are being adversely affected.

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 23 day of June, 1995.



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, first class mail, at their address or addresses this 28th day of June, 1995 as follows:

Missoula County RSID #8458
200 W Broadway
Missoula, MT 59802

Richard and Judith Gollofon
10280 Jars Gang Rd
Missoula, MT 59802

Nancy R. Eyler
10300 El Toro Ln
Missoula, MT 59802

William J. Nooney
PO Box 7578
Missoula, MT 59807

Daniel M. Lee
9900 Waldo Wms Rd
Missoula, MT 59802

Dale Mahlum
10955 Hwy 93 North
Missoula, MT 59802

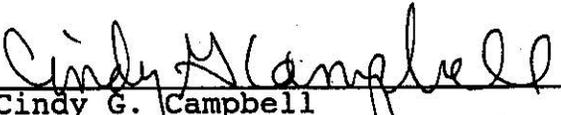
Thomas M. Domingo
11000 Tookie Trek Rd
Missoula, MT 59802

Robert L. Deschamps III
Missoula County Attorney
Michael Sehestedt
Deputy County Attorney
200 W Broadway
Missoula, MT 59802-4292

Tom Boone and Robert Sullivan
Boone, Karlberg, & Haddon
PO Box 9199
Missoula, MT 59807

Curt Martin, Manager
Wes McAlpin, Water Resource
Specialist
Missoula Water Resources
Regional Office
PO Box 5004
Missoula, MT 59802-5004
(via electronic mail)

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

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
90476-g76M BY MISSOULA COUNTY)	DECISION
RSID #8458)	

* * * * *

Pursuant to the Montana Water Use Act and the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on April 11, 1995, in Missoula, Montana, to determine whether a Beneficial Water Use Permit should be granted to Missoula County RSID #8458 for Application for Beneficial Water Use Permit 090476-g76M under the criteria set forth in Mont. Code Ann. § 85-2-311(1) and (5) (1993).

APPEARANCES

Missoula County RSID #8458 (Applicant) appeared by and through counsel, Michael W. Sehestedt.

Ross Miller, Hydrogeologist and Engineer, with Land and Water Consulting, Inc. (Land and Water) appeared at the hearing as a witness for Applicant.

John DeVore, Administrative Officer with Missoula County, appeared at the hearing as a witness for Applicant.

Nancy Robert, President of Sunset Homeowners Association (Homeowners), appeared at the hearing as witness for Applicant.

Objector Nancy R. Eyler appeared at the hearing by and through her husband, Rod Henry.

CASE # 90476

FILMED

Objector William J. Nooney appeared at the hearing in person and by and through counsel Robert Sullivan.

Objector Daniel M. Lee appeared at the hearing *pro se*.

Objector Thomas M. Domingo appeared at the hearing *pro se*.

Objectors Richard and Judith Gollofon appeared at the hearing by and through Richard Gollofon.

Objector Dale Mahlum withdrew his objection by letter on October 2, 1994.

Wes McAlpin, Water Resources Specialist, and Barbara Powell, Program Assistant, both with the Missoula Water Resources Regional Office of the Department of Natural Resources and Conservation, appeared at the hearing but did not testify.

EXHIBITS

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

Applicant's Exhibit 1 is a USGS topographic map entitled Primrose Quadrangle which has been enhanced to show objectors' well sites, test well sites, the location of the new water tank, and the route of the conveyance lines. A legend is affixed to the map identifying the owners of the well sites. Immediately before the hearing, Mr. Miller changed the location of the Eyler well, designated by an orange sticker numbered 1, to a number 1 made by a pencil and circled the number. During the hearing, the location of Gollofon well was changed as indicated on the map.

Applicant's Exhibit 2 is a copy of a plat map showing the objectors' well sites and the test well sites. A legend has been affixed to this map identifying the owners of the well sites.

Applicant's Exhibit 4 consists of six pages. The first page is static water level data for Sunset West well over a period of three years, from April 17, 1991, to November 30, 1994. The second page shows the static water level in the Lee well during the testing of the production well from April 28, 1994, to May 1, 1994. The third page shows the static water level in the Hanson well during the testing of the production well from April 28, 1994, to May 1, 1994. The fourth page shows the static water level in the Nooney well during the testing of the production well from April 28, 1994, to May 1, 1994. The fifth page shows the static water level in the Mahlum well during the testing of the production well from April 28, 1994, to May 1, 1994. The sixth page shows the static water level of the Brown well during the testing of the production well from April 28, 1994, to May 1, 1994.

Applicant's Exhibit 5 consists of two documents. The first document of eight pages is a copy of Resolution 94-034, a resolution of intent to create Rural Special Improvement District No. 8458, the certification of minutes relating to the resolution, a copy of the plat map, the estimates of costs, and the public notice of intent to create a rural special improvement district. The second document is a two-page summary of a public

meeting held on April 13, 1994, concerning the creation of the rural special improvement district.

Applicant's Exhibit 6 consists of six pages of which five are well logs of certain wells in the area of the rural special improvement district and one is a copy of a notice of completion of groundwater development filed with the Department on February 21, 1992.

The objectors offered no exhibits for the record.

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

PRELIMINARY MATTERS

At the beginning of the hearing, Objector William J. Nooney, property owner where the well is located, withdrew his objection to the proposed project. Applicant and Mr. Nooney have reached an agreement setting forth certain conditions under which Applicant must proceed to develop and operate the proposed water system. As part of the stipulation, Mr. Nooney and Applicant have agreed to modify the easement agreement which will not be a part of the stipulation concerning the water use agreement. Mr. Nooney agreed to the issuance of a permit under the conditions that the flow rate from the well would be 50 gallons per minute up to a maximum of 71 acre-feet of water per year; that the water would be used and limited to domestic use in those homes with the quarter-acre lawns and gardens; that the well would be metered along with the individual homes; and that the meters would be

monitored on a monthly basis with the readings of the meters being submitted to the Department and to Objector Nooney.

FINDINGS OF FACT

1. An application in the name of Missoula County RSID #8458 was received by the Department on June 24, 1994, at 3:00 p.m. (Department file.)

2. Pertinent portions of the application were published in the *Missoulian*, a newspaper of general circulation in the area of the source, on August 3, 1994. 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 proposed appropriation. Six timely objections were received by the Department and Applicant was notified of the objections by a letter from the Department dated September 9, 1994.

The most often repeated objection appearing in the filed objections was the shortage of water in the area at the present time and fear the proposed project will exacerbate the shortage. Some of the objectors indicated more tests were in order. (Department file.)

3. Applicant seeks to appropriate 50 gallons per minute up to 71.72 acre-feet per year of ground water by means of a well located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 14 North, Range 20 West, Missoula County¹, for the purpose of providing a

¹Unless otherwise stated all land descriptions in this Proposal are located in Township 14 North, Range 20 West, Missoula County, Montana.

municipal water supply to the Sunset West Subdivision located generally in the E $\frac{1}{2}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. The means of conveyance would be a four-inch PVC pipe to an 80,000 gallon reservoir which would gravity feed the distribution system via a six-inch diameter pipeline. Individual homes would be connected to the distribution system by 1.25-inch lines. The system would provide for individual curb stops and would allow for metering to control individual water use.

The production well was drilled in April of 1991, to a depth of 100 feet by a licensed driller/contractor. It has an eight-inch casing and a 15 horsepower pump. (Testimony of John DeVore and Ross Miller, Department file, and Applicant's Exhibits 1, 2, and 5.)

4. Applicant engaged Land and Water to conduct an investigation of the ground water system to determine the availability of water and whether the proposed well would impact other wells in the area. In April of 1994, Land and Water performed an aquifer test by pumping the Sunset West production well. The well was pumped at a rate of 71 gallons per minute, approximately 1.5 times the proposed pumping rate, for 25 hours. Water level measurements were taken in the Sunset West production well and five other domestic wells in the area. The five domestic wells are owned by Daniel Lee, William Nooney, Ronald Hanson, Mark Brown, and Dale Mahlum. The static water level in the Sunset West production well at the beginning of the test was 55.56 feet. Maximum drawdown in the Sunset West production well

during the test was 2.92 feet. The majority of this drawdown occurred immediately after the pump was turned on. The static water level recovered immediately after turning off the pump, indicating porous material through which water can flow more rapidly and suggesting that well inefficiency accounts for the majority of the drawdown in the production well. Maximum drawdown in the Hanson well, located 100.1 feet from the Sunset well, was 0.21 feet. No drawdown was observed in any of the other wells monitored.

These results are consistent with the pump test conducted on the production well by Saurer's Pump Service in 1991. In that test, the well was pumped at 75 gallons per minute for six hours. The static water level before the test was 56 feet 10 inches. After the test the static water level was 57 feet 5 inches. (Testimony of Ross Miller and Applicant's Exhibit 4.)

5. Applicant's well is located in O'Keefe Creek aquifer which is recharged by the O'Keefe Creek drainage. The water levels as monitored in Applicant's well show that water, while subject to seasonal fluctuations, is available in adequate quantity for the proposed use. (Testimony of Ross Miller and Applicant's Exhibits 1 and 4.)

6. The amount of water sought to be appropriated is based upon the amount required for domestic use in 44 homes (one acre-foot per home per year) plus the amount required to water 44 quarter-acre lawns (.63 acre-foot per lawn per year). (Testimony of John DeVore.)

7. Applicant is a rural special improvement district created by Missoula County for the purpose of acquiring and upgrading an existing community water system which provides water for 44 existing lots, 37 of which are currently improved with residences. The existing system is inadequate to the extent that many residents are now without water for extended periods. Applicant proposes to develop a new source of supply (the proposed well) and to make other improvements in the system eliminating leaks and controlling individual use of water. (Testimony of John DeVore and Nancy Robert.)

8. Missoula County has the authority to create a rural special improvement district and construct a water supply system. Applicant and Homeowners have an agreement by which the Homeowners will acquire and operate the water system through payments made by the individual lot owners over a 15 year period. (Applicant's Exhibit 5 and Department file.)

9. The hillsides surrounding O'Keefe Creek are composed of rather fine-grained tertiary-aged silts mixed with sand and gravel and some clay. Those hillsides typically produce very little water. On the valley floor, where the O'Keefe Creek is located, there are younger sediments of alluvial sands and gravels that were deposited by river systems. Applicant's well is located in the younger more porous sediments. All objectors' wells are located in the older tertiary materials except Objector Lee's well which appears to be located on the margin of both materials, but completed in the tertiary material. In the spring

and summer, Objector Lee's well is recharged by O'Keefe Creek, an ephemeral stream. Later in the year, when the water level in the creek drops, that well is no longer charged by O'Keefe Creek and Mr. Lee experiences water shortages. The wells completed in the older tertiary materials would not be affected by Applicant's well. (Testimony of Ross Miller and Applicant's Exhibits 1, 4, and 6.)

10. Objector Lee's well is located upgradient in a west northwesterly direction approximately 600 feet from the production well. Objector Lee's well was originally completed at a depth of 50 feet on October 16, 1979. It was tested at a flow rate of 30 gallons per minute and had a static water level of 18 inches below land surface. The casing was perforated with half-inch holes from 45 feet to 50 feet. In February of 1984, Mr. Lee's well went dry as did all the other wells in the area that were drilled to a depth of 50 feet. On February 28, 1984, Mr. Lee's well was deepened to a depth of 74 feet. It was tested at a flow rate of 20 gallons per minute and had a static water level of 50 feet below land surface. The casing was perforated from 50 feet to 74 feet. A few years later in February, Mr. Lee's well again went dry and it was deepened another 40 feet but found no additional water. The deepening did provide extra storage for water and allowed lowering of the pump. All of these events occurred before the use of the production well. During the aquifer test, Mr. Lee's well showed no effect caused by pumping the production well.

Thomas Domingo is concerned that operation of the proposed well will steepen the gradient causing the water to flow through the system faster. While Mr. Domingo's concern is theoretically possible, it is not likely to occur. During the aquifer test, a well located 100 feet away from the production well showed a drawdown of .2 of a foot. None of the other wells monitored showed any drawdown. This data indicates the gradient of the water table is not going to change measurably and the theoretical steepening is not going to occur. (Applicant's Exhibits 1, 2, and 4 and testimony of Daniel Lee, Thomas Domingo, and Ross Miller.)

11. There are no unperfected permits in the proposed source and no reservations have been granted by the Board of Natural Resources and Conservation for the proposed source. (Department records.)

12. No objections relative to water quality were filed against this application. (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 substantive procedural requirements of law or rule have been fulfilled; therefore, the matter was properly before the Hearing Examiner. See Findings of Fact 1 and 2.

2. The proposed use of water, municipal, is a beneficial use of water. See Findings of Fact 3, 6, and 7.

3. Applicant has proven by a preponderance of evidence the proposed means of diversion, construction, and operation of the appropriation works are adequate. See Finding of Fact 3.

4. Applicant has proven by a preponderance of 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 during the period Applicant seeks to appropriate, water is reasonably available in the amount Applicant seeks to appropriate. See Findings of Fact 3, 4, 5, and 9.

5. Applicant has a possessory interest, or the written consent of the person who has the possessory interest, in the property where the water is to be put to beneficial use. See Finding of Fact 8.

6. 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 11.

7. Applicant has proven by a preponderance of evidence the water rights of a prior appropriator will not be adversely affected by the proposed appropriation. See Findings of Fact 9 and 10.

8. Applicant is not required to prove no adverse effect to water quality or the ability of a discharge permit holder to satisfy effluent limitations. See Finding of Fact 12.

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

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations listed below Beneficial Water Use Permit 90476-g76M is granted to Missoula County RSID #8458 to appropriate 50 gallons per minute up to 71.72 acre-feet per year of ground water by means of a well and 15 horsepower pump located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 14 North, Range 20 West, Missoula County, for the purpose of providing a municipal water supply to the Sunset West Subdivision located generally in the E $\frac{1}{2}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. The means of conveyance shall be a four-inch PVC pipe to an 80,000 gallon reservoir which will gravity feed the distribution system via a six-inch diameter pipeline. Individual homes shall be connected to the distribution system by 1.25-inch lines. The system shall provide for individual curb stops and allow for metering to control individual water use.

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 right is subject to Section 85-2-505, MCA, requiring 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.

C. The final completion of the well(s) must include an access port of at least .50 inch so the static level of the well may be accurately measured.

D. This right is subject to the condition that the appropriator shall install an adequate flow metering device to allow the flow rate and volume of water diverted to be recorded. The appropriator 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 by November 30th of each year and/or upon request to the Missoula Water Resources Regional Office at 1610 South 3rd Street West, Suite 103, P.O. Box 5004, Missoula, MT 59806-5004.

E. If, at any time after this right is issued, a written complaint is received by the Department alleging that diverting water 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 appropriator to show cause why the right should not be modified or revoked. The Department may then modify or revoke this right to protect existing rights or leave this right unchanged if the hearing officer determines no existing water rights are being adversely affected.

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.

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 3rd day of May, 1995.


Vivian A. Lighthizer,
Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6615

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 3rd day of May, 1995, as follows:

Missoula County RSID #8458
200 W Broadway
Missoula, MT 59802

Richard and Judith Gollofon
10280 Jars Gang Rd
Missoula, MT 59802

Nancy R. Eyler
10300 El Toro Ln
Missoula, MT 59802

William J. Nooney
PO Box 7578
Missoula, MT 59807

Daniel M. Lee
9900 Waldo Wms Rd
Missoula, MT 59802

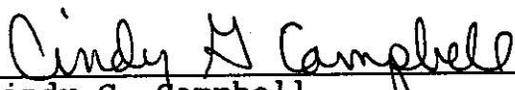
Dale Mahlum
10955 Hwy 93 North
Missoula, MT 59802

Thomas M. Domingo
11000 Tookie Trek Rd
Missoula, MT 59802

Robert L. Deschamps III
Missoula County Attorney
Michael Sehestedt
Deputy County Attorney
200 W Broadway
Missoula, MT 59802-4292

Tom Boone and Robert Sullivan
Boone, Karlberg, & Haddon
PO Box 9199
Missoula, MT 59807

Curt Martin, Manager
Wes McAlpin, Water Resource
Specialist
Missoula Water Resources
Regional Office
PO Box 5004
Missoula, MT 59802-5004
(via electronic mail)


Cindy G. Campbell
Hearings Unit Legal Secretary