

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
93433-76H BY HOMER D. AND) ORDER
LORETTA L. MARTIN)

* * * * *

The Proposal for Decision (Proposal) in this matter was entered on March 17, 1997. The only exception was filed by Applicants. Oral argument was not requested.

The Proposal recommended granting Beneficial Water Use Permit 93433-76H to Homer D. and Loretta L. Martin to appropriate 250.00 gallons per minute up to 27.50 acre-feet of ground water per year to be used as follows: 250 gallons per minute up to 20.00 acre-feet of water per year for commercial use from January 1 to December 31, inclusive of each year; 37.00 gallons per minute up to 20.00 acre-feet of water per year for irrigation of 8.00 acres from April 1 through October 31, inclusive of each year; 37.00 gallons per minute up to 3.00 acre-feet per year for multiple domestic use from January 1 through December 31, inclusive of each year. The point of diversion shall be Lot 25, Block 2, Corvallis Tract, generally described as the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of

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Section 8, Township 6 North, Range 20 West, Ravalli County, Montana. The place of use for all uses shall be Lot 25, Block 2, Corvallis Tract, generally described as the SE~~NW~~SE of said Section 8. The means of diversion will be a well and pump. The period of appropriation shall be from January 1 through December 31, inclusive of each year. The Proposal recommended several conditions be placed on this permit.

Applicants excepted to Finding of Fact 6. Prior to a final order the Department is required to consider exceptions from parties adversely affected by a proposal for decision. Mont. Code Ann. § 2-4-621 (1995). Applicants here are not adversely affected by the Proposal Order because their permit will be issued. Moreover, Applicants have not objected to the essential finding within Finding of Fact 6 that "the water rights of a prior appropriator would not be adversely affected." Applicants' exception is therefore moot.

The exception does express a concern the Department feels compelled to address. The exception expresses that Applicants do not believe it proper for the Department to make water use determinations. The Department must evaluate water use

information as part of the adverse effect and water availability determinations that must be made before a water use permit can be granted. Mont. Code Ann. § 85-2-311 (1995). In this case, the water use information was taken from the application and other evidence submitted by Applicants.

Having given the exception full consideration, the Department of Natural Resources and Conservation adopts the Findings of Fact and Conclusions of Law as contained in the Proposal for Decision for this Final Order. Based upon the Findings of Fact and Conclusions of Law, the Department of Natural Resources and Conservation makes the following:

FINAL ORDER

Subject to the terms, conditions, restrictions, and limitations listed below, Beneficial Water Use Permit 93433-76H is granted to Homer D. and Loretta. L. Martin to appropriate 250.00 gallons per minute up to 27.50 acre-feet of ground water per year to be used as follows: 250 gallons per minute up to 20.00 acre-feet of water per year for commercial use from January 1 to December 31, inclusive of each year; 37.00 gallons per minute up to 20.00 acre-feet of water per year for irrigation of

8.00 acres from April 1 through October 31, inclusive of each year; 37.00 gallons per minute up to 3.00 acre-feet per year for multiple domestic use from January 1 through December 31, inclusive of each year. The point of diversion shall be Lot 25, Block 2, Corvallis Tract, generally described as the SE~~1~~/~~4~~NW~~1~~/~~4~~SE~~1~~/~~4~~ of Section 8, Township 6 North, Range 20 West, Ravalli County, Montana. The place of use for all uses shall be Lot 25, Block 2, Corvallis Tract, generally described as the SE~~1~~/~~4~~NW~~1~~/~~4~~SE~~1~~/~~4~~ of said Section 8. The means of diversion will be a well and pump. The period of appropriation shall be from January 1 through December 31, inclusive of each year.

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 associated with Statement of Claim No. 76H-W-0150080. They share a common diversion and some of the places of use are supplemental.

C. 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 Mont. Code Ann. § 85-2-424 (1995).

D. If at any time after this permit is issued, a written complaint is received by the Department alleging that there are reasonable grounds to believe that volumes allowed by this permit have been or that use under this permit is adversely affecting a prior 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 why the permit should not be modified or revoked. The Department may then amend, modify, or revoke the permit to protect existing water rights or allow the permit to continue unchanged if the hearing officer determines that no existing water rights are being adversely affected or that the permitted volumes are not being exceeded.

E. The permittees shall maintain records of volume of water sold under the commercial portion of the permit. Upon a field investigation under paragraph D, above, the Department may have

access to and review such records to determine whether the appropriator has exceeded the volume of water allowed for commercial purposes.

F. The appropriators shall install an in-line flow meter approved by the regional manager at a point in the delivery line approved by the regional office to record the flow rate and volume of water diverted. Water must not be diverted until the required measuring device is in place and operating. The appropriators shall take static water level measurements monthly or if the source is a flowing well, the appropriators shall install a pressure monitoring device approved by the regional manager to measure hydrostatic pressure of the aquifer. Static water level measurements shall be recorded on at a time when the water level is static. On a form provided by the Department, the appropriator shall keep a written record of the measurements and shall submit the records by November 30 of each year. The regional manager may also request measurement records at other times during the year. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be sent to the Water Resources regional office at the address listed below.

Missoula Water Resources
Regional Office
1610 South 3rd St. West, Suite 103
P.O. Box 5004
Missoula, MT 59806-5004

The appropriators shall maintain the measuring device so it always operates properly and measures flow rate accurately.

G. The issuance of this permit by the Department shall to reduce the Permittees' liability for damages caused by the exercise of this permit, nor does the Department in issuing the permit in any way acknowledge liability for damage caused by the Permittees' exercise of this permit.

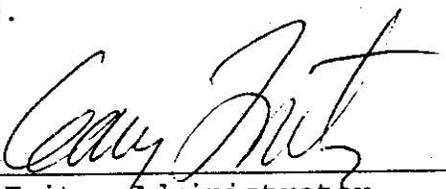
NOTICE

The Department's Final Order may be appeared 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 argument proceedings to the district court.

Dated this 6 day of ^{June} ~~May~~, 1997.



Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(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 13th day of ~~May~~ ^{JUNE 8}, 1997, as follows:

Homer D. & Loretta L. Martin
645 Martin's Big Sky Dr.
Corvallis, MT 59828

David T. Markette
P.O. Box 939
Hamilton, MT 59840

Howard Keyes
585 Christofferson Ln.
Corvallis, MT 59828

Jerry & Bonnie Dye
757 Eastside Hwy
Corvallis, MT 59828

Archie L. Thomas
126 Martin Dr.
Corvallis, MT 59828

Beverly Garrard
113 Martin Dr.
Corvallis, MT 59828

Curt Martin, Manager
Wes McAlpin, WRS
Missoula Water Resources
Regional Office
1610 South 3rd St. West,
Suite 103
P.O. Box 5004
Missoula, MT 59806


Cindy G. Campbell
Hearings Unit Legal Assistant

CASE # 93433

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
93433-76H BY HOMER D. AND)	DECISION
LORETTA L. MARTIN)	

* * * * *

Applicants and Objectors have agreed to the issuance of a permit, subject to certain conditions, in the above-entitled matter. However, Applicants are not relieved of the duty to present evidence to satisfy their substantive burden of proof when objections have been withdrawn.

The Hearing Examiner, having been fully advised in the premises, does hereby make the following:

FINDINGS OF FACT

1. Application for Beneficial Water Right Permit 93433-76H in the name of and signed by Homer D. and Loretta L. Martin was filed with the Department of Natural Resources and Conservation (Department) on April 11, 1995 at 3:00 p.m. (Department file.)

2. Pertinent portions of the application were published in the *Ravalli Republic* on June 29, 1995. 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. Four objections to the proposed project were received by the Department. Applicants were notified of the objections by a letter from the Department dated August 31, 1995. (Department file.)

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3. Applicants seek to appropriate 250.00 gallons per minute up to 27.50 acre-feet of groundwater per year as follows: 250.00 gallons up to 4.50 acre-feet of water per year for commercial use from January 1 through December 31, inclusive of each year; 37.00 gallons per minute up to 20.00 acre-feet of water for irrigation of eight acres from April 1 through October 31, inclusive of each year; 37.00 gallons per minute up to 3.00 acre-feet of water per year for multiple domestic use from January 1 through December 31, inclusive of each year. The proposed point of diversion is Lot 25, Block 2, Corvallis Tract, generally described as the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, Township 6 North, Range 20 West, Ravalli County, Montana. The proposed place of use for all uses is Lot 25, Block 2, Corvallis Tract, generally described as the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8. The proposed means of diversion is a well and pump. The proposed period of appropriation is from January 1 through December 31, inclusive of each year.

(Department file.)

4. Applicants have proven by a preponderance of evidence the proposed means of diversion, construction, and operation of the appropriation works are adequate. The well was completed on June 3, 1973 and has been used since that time for irrigation at a rate of 500 gallons per minute. The well was drilled by a licensed driller. The system for bottled water was approved by the Montana Department of Health and Environmental Sciences. The water is to be pumped from the well, which is 127 feet deep, by a 10 horsepower pump into a six-inch buried mainline to the

bottling plant. Another pump, two horsepower, supplies water to the residences, a tree farm, and a park area. When the water reaches the bottling plant it is filtered to ten microns and passes through ozonization and ultraviolet processes to complete the purification. Aeration takes place in two large stainless steel tanks where it is held for bottling. The state of the art bottling system will accommodate up to 10,000 gallons per day (Department file.)

5. The proposed uses of water, commercial, irrigation, and multiple domestic, are beneficial uses. The commercial use will benefit Applicants monetarily. The multiple domestic use will benefit Applicants by providing potable water to three dwellings. The irrigation will benefit Applicants through increased income and property value by providing water for a tree farm and park area. (Department file.)

6. Applicants have proven by a preponderance of evidence the water rights of a prior appropriator would not be adversely affected. The well was pumped for irrigation purposes for years at 500 gallons per minute with no reported water table effects. A Statement of Claim for the irrigation was filed with the Water Court. That claim has been modified changing the flow rate from 500 gallons per minute to 200 gallons per minute. The proposed flow rate of 250 gallons per minute would create a new burden on the source of only 50 gallons per minute during the irrigation season. The bottling plant has been in operation for several years, apparently without causing an adverse effect. Applicants

have provided affidavits from persons whose wells are located 400 feet, 300 feet, and 200 feet from Applicants' well which state there have been no adverse conditions or problems associated with the continued operation of said well. (Department file.)

7. Applicants have 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, in the amount Applicants seek to appropriate and that the amount requested is reasonably available during the period in which Applicants seek to appropriate. The well was originally drilled in 1973 for irrigation purposes with a pumping rate of 500 gallons per minute. From that time until the present time, the well has never caused a shortage of water to any neighboring wells nor has the well owner experienced a water shortage. Due to the close proximity of the Bitterroot River, the aquifer is constantly replenished. (Department file.)

8. Applicants have proven by a preponderance of evidence the proposed use would not interfere unreasonably with other planned uses for which a permit has been issued or for which water has been reserved. There are no pending projects on this source for which permits have been issued or for which water has been reserved under state law. (Department file.)

9. No objections relative to water quality were filed against this application nor were there any objections relative to the ability of a discharge permit holder to satisfy effluent limitations of his permit. (Department file.)

10. Applicants have proven by a preponderance of 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. Applicants own the property where the water would be put to beneficial use. (Department file.)

Based upon the foregoing Findings of Fact and 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. Mont. Code Ann. §§ 85-2-307 and 309 (1995).

2. Applicants have met all the criteria for issuance of a beneficial water use permit. See Findings of Fact 3 through 10. Mont. Code Ann. § 85-2-311 (1995).

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 93433-76H is granted to Homer D. and Loretta L. Martin to appropriate 250.00 gallons per minute up to 27.50 acre-feet of groundwater per year to be used as follows: 250.00 gallons up to 4.50 acre-feet of water per year for commercial use from January 1 through December

31, inclusive of each year; 37.00 gallons per minute up to 20.00 acre-feet of water for irrigation of eight acres from April 1 through October 31, inclusive of each year; 37.00 gallons per minute up to 3.00 acre-feet of water per year for multiple domestic use from January 1 through December 31, inclusive of each year. The point of diversion shall be Lot 25, Block 2, Corvallis Tract, generally described as the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, Township 6 North, Range 20 West, Ravalli County, Montana. The place of use for all uses shall be Lot 25, Block 2, Corvallis Tract, generally described as the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8. The means of diversion will be a well and pump. The period of appropriation will be from January 1 through December 31, inclusive of each year. (Department file.)

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 associated with Statement of Claim No. 76H-W-0150080. They share a common point of diversion and some of the places of use are supplemental.

C. 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 Mont. Code Ann. § 85-2-424.

D. If at any time after this permit is issued, a written complaint is received by the Department alleging that there are

reasonable grounds to believe that volumes allowed by this permit have been exceeded or that use under this permit 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 why the permit should not be modified or revoked. The Department may then amend, modify, or revoke the permit to protect existing water rights or allow the permit to continue unchanged if the hearing officer determines that no existing water rights are being adversely affected or that the permitted volumes are not being exceeded.

E. The permittee shall maintain records of volume of water sold under the commercial portion of the permit. Upon a field investigation under paragraph D, above, the Department may have access to and review such records to determine whether the appropriator has exceeded the volume of water allowed for commercial purposes.

F. The permittee shall install an in-line flow meter approved by the regional office to record the volume of water appropriated from this well. The measuring device shall be installed before any water is appropriated. The permittee shall keep a written record of measurements on a form provided by the Department which shall be submitted to Missoula Water Resources Regional Office, 1610 South 3rd St. West, Suite 103, P.O. Box

5004, Missoula, MT 59806 by November 30 of each year and upon request at any time during the year.

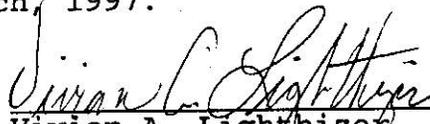
G. The issuance of this permit by the Department shall not reduce the Permittee's liability for damages caused by the exercise of this permit, nor does the Department in issuing the permit in any way acknowledge liability for damage caused by the Permittee's exercise of this permit.

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 17th day of March, 1997.



Vivian A. Lighthizer,
Hearing Examiner
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, Montana 59620-1601

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, first class mail, at their address or addresses this 17th day of March, 1997, as follows:

Homer D. & Loretta L. Martin
645 Martin's Big Sky Dr.
Corvallis, MT 59828

Howard Keyes
585 Christofferson Ln.
Corvallis, MT 59828

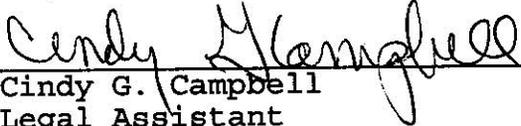
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