

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

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION ) NOTICE  
FOR BENEFICIAL WATER USE PERMIT ) OF  
93752-41F BY JAMES M. GUYETTE ) ERRATUM

\* \* \* \* \*

There is an error in the land description on the Proposal for Decision, pages 2, 3, and 6, and the Final Order on page 1. The correct township designation should be South instead of North as stated in both of these documents.

Dated this 8<sup>th</sup> day of April, 1997.

  
Vivian A. Lighthizer,  
Hearing Examiner  
Department of Natural Resources  
and Conservation  
P.O. Box 201601  
Helena, Montana 59620-1601  
(406) 444-6615

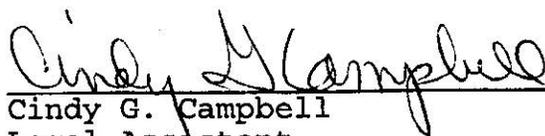
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of erratum was duly served upon all parties of record, first class mail, at their address or addresses this 8<sup>th</sup> day of April, 1997, as follows:

James M. Guyette  
Birch Creek Ranch  
P.O. Box 220  
McAllister, MT 59740

Larry A. Hughes  
Box 94  
McAllister, MT 59740

Scott Compton, Manager  
Bozeman Water Resources  
Regional Office  
151 Evergreen Dr., Suite C  
Bozeman, MT 59715

  
Cindy G. Campbell  
Legal Assistant

**CASE #** 93752

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  
93752-41F BY JAMES M. GUYETTE )

\* \* \* \* \*

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 January 7, 1997, 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 093752-41F is granted to James M. Guyette to appropriate 1.25 cubic feet per second (561 gallons per minute) up to 66.5 acre-feet per year of ground water, from April 1 through October 31, inclusive of each year for flood irrigation and 3.4 acre-feet per year of ground water, from January 1 to December 31, inclusive of each year for stock. The point of diversion shall be a ground water pit located in the  $W\frac{1}{2}W\frac{1}{2}NE\frac{1}{4}$  of Section 1, Township 5 North, Range 2 West, Madison County, Montana. The place of use for irrigation will be 24.00 acres in the  $NE\frac{1}{4}$  of Section 1. The place of use for stock

**CASE # 93752**

will be in the NE¼ of said Section 1. The means of diversion will be a developed spring (pit) and ditch.

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. 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.

C. The permittee shall install a measuring device that will allow the flow rate and volume of water diverted to be measured. The type of device and place of installation shall be determined by the Regional Manager of the Bozeman Water Resources Regional Office. Upon receipt of this permit Applicant shall contact the Regional Manager, Scott Compton, at Bozeman Water Resources Regional Office, 151 Evergreen Dr., Suite C, Bozeman, MT 59715.

D. 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.

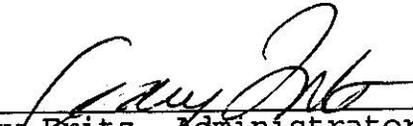
NOTICE

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 10 day of ~~February~~ <sup>March</sup>, 1997.

  
\_\_\_\_\_  
Gary Fritz, Administrator  
Department of Natural Resources  
and Conservation  
Water Resources Division  
P.O. Box 201601  
Helena, Montana 59620-1601  
(406) 444-6605

CERTIFICATE OF SERVICE

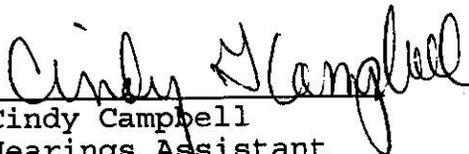
This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record, first class mail, at their address or addresses this 10<sup>th</sup> day of ~~February~~ <sup>March</sup>, 1997 as follows:

James M. Guyette  
Birch Creek Ranch  
P.O. Box 220  
McAllister, MT 59740

Larry A. Hughes  
P.O. Box 94  
McAllister, MT 59740

Scott Compton, Manager  
Bozeman Water Resources  
Regional Office  
151 Evergreen Dr., Suite C  
Bozeman, MT 59715  
(via electronic mail)

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

  
Cindy Campbell  
Hearings Assistant

**CASE #** 93752

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
93752-41F BY JAMES M. GUYETTE )	DECISION

\* \* \* \* \*

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was scheduled to be held on November 19, 1996, at the Ennis Town Hall, in Ennis, Montana, to determine whether a Beneficial Water Use Permit should be granted to Applicant for the above-entitled application under the criteria set forth in Mont. Code Ann. § 85-2-311(1) and (5) (1995). However, due to circumstances beyond the Hearing Examiner's control, the hearing was canceled. When the Hearings Unit Legal Assistant called Mr. Larry A. Hughes, to inform him of the cancellation, he told her he had not intended to attend the hearing. On November 13, 1996, a letter was received by the Hearing Examiner from Mr. Hughes, in which he stated he would not be presenting any documents, exhibits, witnesses, or testimony at the hearing. The Hearing Examiner concludes, from this information, that Mr. Hughes has no further objection to this application. However, Mr. Hughes is still a party to this proceeding and has the right to file exceptions to this Proposal for Decision if he does not agree with the content.

**CASE # 93752**

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. An application for beneficial water use permit in the name of James M. Guyette and signed by his attorney, Cindy Younkin, was received by the Department May 10, 1995. Mr. Guyette's signature was obtained later. (Department file.)

2. Pertinent portions of the application were published in the *Madisonian* on February 22, 1996. 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. Two timely objections were received by the Department. Applicant was notified of the objections by a letter from the Department dated April 8, 1996. One objection was later withdrawn leaving one objector, Larry A. Hughes. (Department file.)

3. Applicant proposes to appropriate 1.25 cubic feet per second (561 gallons per minute) up to 66.5 acre-feet per year of ground water, from April 1 through October 31, inclusive of each year for flood irrigation and 3.4 acre-feet per year of ground water, from January 1 to December 31, inclusive of each year for stock. The proposed point of diversion is a ground water pit located in the ~~W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$~~  of Section 1, Township 5 North, Range 2

West, Madison County, Montana.<sup>1</sup> The proposed place of use for irrigation is 24.00 acres in the NE¼ of Section 1. The proposed place of use for stock is in the NE¼ of said Section 1. The proposed means of diversion is a developed spring (pit) and ditch. (Department file.)

4. Applicant has proven by a preponderance of evidence the proposed means of diversion, construction and operation of the appropriation works are adequate. There was a spring which produced a moderate, "but respectable" flow. Applicant removed approximately seven to ten feet of clay down to a gravel layer in that area to provide a better source of stock water. The water flows from the developed spring into a ditch which carries it to the Hughes Ranch. A new ditch would be constructed carrying water northeast onto a bench where it would be used for additional stock water and irrigation. Applicant proposes to install a dividing box in the ditch to measure and direct the flow into the Hughes Ranch ditch providing the claimed amount of 60 miner's inches of water when it is needed, directing the excess flow into Applicant's ditch. Applicant proposes to flood irrigate by a contour ditch system, an accepted method of irrigation in Montana. (Department file.)

5. The proposed use of water, irrigation, is a beneficial use of water. The soil is sandy loam which would, with proper

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<sup>1</sup>Unless otherwise stated, all land descriptions in this Proposal are located in Township 5 North, Range 2 West, Madison County, Montana.

irrigation, produce improved grasses such as timothy or brome benefitting Applicant in his endeavor to operate a viable cattle ranch. (Department file.)

6. Applicant has proven by a preponderance of evidence the water rights of a prior appropriator would not be adversely affected. Applicant would provide a method to direct the spring water to the Hughes Ranch to provide the claimed right of 60 miner's inches when requested. The remaining water is developed water which was not available to other appropriators.

(Department file and Finding of Fact 4, *supra*.)

7. 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, in the amount Applicant seeks to appropriate and that the amount requested is reasonably available during the period in which Applicant seeks to appropriate. After the first excavation of clay from the spring, the flow was measured at 150 gallons per minute. Applicant calculates the excavation of an area six times larger than the original excavation would produce a flow rate of approximately two cubic feet per second.

(Department file.)

8. Applicant has 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.

10. Applicant has proven by a preponderance of evidence he 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. Applicant owns 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. Applicant has 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 093752-41F is granted to James M. Guyette to appropriate 1.25 cubic feet per second (561 gallons per minute) up to 66.5 acre-feet per year of ground water, from April 1 through October 31, inclusive of each year for flood irrigation and 3.4 acre-feet per year of ground water, from January 1 to December 31, inclusive of each year for stock. The point of diversion shall be a ground water pit located in the ~~W $\frac{1}{2}$ W $\frac{1}{2}$~~ NE $\frac{1}{4}$  of Section 1, Township 5 North, Range 2 West, Madison County, Montana. The place of use for irrigation will be 24.00 acres in the NE $\frac{1}{4}$  of Section 1. The place of use for stock will be in the NE $\frac{1}{4}$  of said Section 1. The means of diversion will be a developed spring (pit) and ditch.

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. 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.

C. The permittee shall install a measuring device that will allow the flow rate and volume of water diverted to be measured. The type of device and place of installation shall be determined

by the Regional Manager of the Bozeman Water Resources Regional Office. Upon receipt of this permit Applicant shall contact the Regional Manager, Scott Compton, at Bozeman Water Resources Regional Office, 151 Evergreen Dr., Suite C, Bozeman, MT 59715.

D. 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.

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 17<sup>th</sup> day of January, 1997.

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

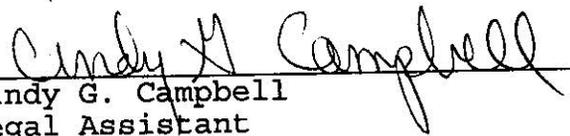
CERTIFICATE OF SERVICE

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 7<sup>th</sup> day of January, 1997, as follows:

James M. Guyette  
Birch Creek Ranch  
P.O. Box 220  
McAllister, MT 59740

Larry A. Hughes  
Box 94  
McAllister, MT 59740

Scott Compton, Manager  
Bozeman Water Resources  
Regional Office  
151 Evergreen Dr., Suite C  
Bozeman, MT 59715  
(via electronic mail)

  
Cindy G. Campbell  
Legal Assistant