

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
095584-41I BY GARY HOOVESTAL)

* * * * *

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 November 12, 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 095584-41I is granted to Gary Hoovestal to appropriate 125 gallons per minute up to 56.00 acre-feet of ground water at a point in the NW¼NE¼SE¼ of Section 24, Township 11 North, Range 4 West, Lewis and Clark County, by two wells in a manifold system. The permitted uses are 125 gallons per minute up to 22.00 acre-feet of water for lawn and garden on 8.50 acres in the N½NW¼SE¼ of Section 24 and up to 34.00 acre-feet of water for multiple domestic to serve 34 homes which will be located in the N½NW¼SE¼ of Section 24. The

CASE # 95584

permitted period of use is from January 1 to December 31, inclusive of each year for the multiple domestic use and from April 15 to October 15, inclusive of each year, for lawn and garden

A. The appropriator shall install a Department approved in-line flow meter at a point in the delivery system approved by the Department 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. On a form provided by the Department, the appropriator shall keep a written monthly record of the flow rate and volume of all water diverted including the period of time, and shall submit the records by November 30 of each year and upon request at other times during the year. Failure to submit the reports may be cause for revocation or modification of a permit or change. The records must be sent to the water resources regional office listed below. Contact the regional office for current address.

Helena: Phone: 406-449-0944 Fax: 406-442-9315

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

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. The final completion of the well(s) must include an access port of at

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

C. The issuance of this right by the Department shall not reduce the appropriators' liability for damages caused by the appropriator's exercise of this right. Nor does the Department in issuing the right in any way acknowledge liability for damage caused by the exercise of this right.

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.

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Dated this 19th day of December, 1997.


Jack Stults, 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 24th day of December, 1997, as follows:

Gary Hoovestall
608 Lincoln Rd. W
Helena, MT 59601

Howard Schmith
350 Woodson Rd.
Helena, MT 59601

Mary L. Christian
340 Bonner Rd.
Helena, MT 59601

William R. Duthie
7350 Green Meadow Dr.
Helena, MT 59601

Russell T. & Lisa R. Gowen
395 Griffin Rd.
Helena, MT 59601

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

Nancy Andersen, Chief
Water Rights Bureau
Department of Natural
Resources & Conservation
P.O. Box 201601
Helena, MT 59620-1601

Terri McLaughlin, Manager
Helena Water Resources
Regional Office
21 North Last Chance Gulch
P.O. Box 201601
Helena, MT 59620-1601
(via electronic mail)


Diane McDuffie
Hearings Assistant

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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
095584-41I BY GARY HOOVESTAL) DECISION

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedures Act, a hearing was held in the above-entitled matter on September 30, 1997, to determine whether a beneficial water use permit should be granted to Gary Hoovestal for Application for Beneficial Water Use Permit 095584-41I under the criteria set forth in Mont. Code Ann. § 85-2-311 (1995).

APPEARANCES

Applicant, Gary Hoovestal, appeared at the hearing in person.

Objector Mary L. Christian appeared at the hearing in person.

EXHIBITS

Neither the Applicant nor the Objector offered exhibits for the record.

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

FINDINGS OF FACT

1. Application for Beneficial Water Use Permit 095584-41I in the name of and signed by Gary Hoovestal was received in the Helena Water Resources Regional Office on June 30, 1995 at 2:05 p.m. (Department file.)

2. Pertinent portions of the application were published in the *Independent Record* on July 3, 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 project. Four objections to the application were received by the Department. Applicant was notified of the objections by a letter from the Department dated September 6, 1996. (Department file.)

3. Applicant seeks to appropriate 125 gallons per minute up to 56.00 acre-feet of ground water at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 11 North, Range 4 West, Lewis and Clark County,¹ by two wells in a manifold system. The proposed uses are 125 gallons per minute up to 22.00 acre-feet of water for lawn and garden on 8.50 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24 and up to 34.00 acre-feet of water for multiple domestic to serve 34 homes which would be located in the N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24. The proposed period of use is from January 1 to December 31, inclusive of each year, for the multiple domestic use and from April 15 to October 15, inclusive of each year, for lawn and

¹Unless otherwise noted, all land descriptions in this Proposal are located in Township 11 North, Range 4 West, Lewis and Clark County.

garden use. (Department file and testimony of Applicant.)

4. Applicant has proven by a preponderance of evidence he has 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 and testimony of Applicant.)

5. Applicant has proven by a preponderance of evidence the proposed uses, multiple domestic and lawn and garden, are beneficial uses. Mont. Code Ann. § 85-2-102(2)(a) (1995). Without water, Applicant would be unable to complete the proposed subdivision and sell the homes, thus the proposed uses benefit the Applicant. (Department file and testimony of Applicant.)

6. 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. Applicant performed a pump test on May 30 and 31, 1996. On May 30, 1996, the south well was pumped at a rate of 185 gallons per minute and the drawdown in the north well was monitored. The static water level in the north well was 67.5% inches. The water level at 10:15 a.m. was 68.5 feet. Still pumping the south well at a rate of 185 gallons per minute the water level at 6:30 p.m. was 68.2 feet. The pump was shut off at that time and at 6:56 p.m. the

water level had recovered to 67.5 feet.

On May 31, 1996, the north well was pumped at a rate of 185 gallons per minute. The south well was monitored. The static water level in the south well was 66.7 feet. At 9:45 a.m. the water level was 68.45 feet. Still pumping the north well at a rate of 185 gallons per minute, the water level at 4:30 p.m. was 67.45 feet. There was immediate recovery to 66.72 feet when the pump was shut off.

While pumping the north well at 185 gallons per minute, the drawdown in that well was: from a static water level of 67 feet 5 $\frac{1}{4}$ inches at 9:37 a.m. to a level of 73 feet 10 inches at 9:44 a.m., 73 feet 7 $\frac{1}{2}$ inches at 9:55 a.m. remaining at or near that level until 10:25 a.m. when the water level was 73 feet 6 $\frac{1}{2}$ inches. The water level continued to be between 73 feet 6 $\frac{1}{2}$ and 73 feet 6 inches until the pump was shut off at 5:45 p.m. The well recovered to a water level of 67 feet 6 inches at 5:53 p.m.

The south well had a static water level of 66.7 feet. While pumping that well at a rate of 185 gallons per minute, the drawdown was: at 10:20 a.m., the water level in the south well was 82 feet 9 inches; at 10:38, pumping at a rate of 205 gallons per minute, the water level was 82 feet 8.5 inches; at 10:42 a.m., pumping at a rate of 225 gallons per minute, the water level was 83 feet; decreasing the flow rate to 185 gallons per minute, the water level was 81 feet 4.5 inches at 10:59 a.m.; the water level continued to rise while being pumped at a rate of 185 gallons per minute until at 6:30 p.m. it was 80 feet 9.5 inches.

The pump was shut off and the water level at 6:31 p.m. was 67 feet .5 inch; at 6:40 p.m., the water level was 67 feet.

The proposed flow rate is 125 gallons per minute, significantly less than the rate the wells were pumped during the test. The wells would be operated alternately, never at the same time. The north well and south well are approximately 100 feet apart. (Department file.)

7. Applicant has proven by a preponderance of evidence the water rights of a prior appropriator would not be adversely affected. In addition to the information set forth in Finding of Fact 6 above, Applicant monitored three other wells during the pump test conducted on May 31, 1996. The north well was pumped at a rate of 185 gallons per minute for approximately eight hours with the exception of the period between 10:38 and 10:56 a.m. when the well was pumped at a rate of 225 gallons per minute. On that day, the well located at 385 Woodson Road had a water level of 62 feet 11.5 inches at 8:46 a.m. and at 4:30 p.m. the water level in this well was 62 feet 5 inches; the well located at 365 Woodson Road had a water level of 66 feet $7\frac{3}{8}$ inches at 8:52 a.m. and at 4:38 p.m. the water level was 66 $\frac{1}{4}$ inches; and the well located at 355 Hope Road had a water level of 68 feet $7\frac{1}{4}$ inches at 9:15 a.m. and at 4:50 p.m. the water level was 67 feet $11\frac{1}{4}$ inches. Applicant attributes the unexpected rise in the water level of these wells to taking the first measurements in the morning when water usage is greatest, people using showers and toilets. During the day, the water table recovers. (Department

file and testimony of Applicant.)

8. Applicant has proven by a preponderance of evidence the proposed means of diversion, construction, and operation of the appropriation works are adequate. The proposed means of diversion is two wells. The north well is 161 feet deep and the south well is 140 feet deep. These wells were drilled by a licensed well driller to industry standards using steel casings with mill knife perforations. The water would be pumped by a 10-horse-power pump to the means of conveyance which would be three-inch water main with $\frac{3}{4}$ -inch service lines to the homes. The wells, diversion works, and operation of the water system would meet all Public Water Supply regulations and specification required by the state of Montana. (Department file.)

9. 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.)

10. 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.)

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 095584-41I is hereby granted to Gary Hoovestal to appropriate 125 gallons per minute up to 56.00 acre-feet of ground water at a point in the NW~~1~~NE~~1~~SE~~1~~ of Section 24, Township 11 North, Range 4 West, Lewis and Clark County, by two wells in a manifold system. The permitted uses are 125 gallons per minute up to 22.00 acre-feet of water for lawn and garden on 8.50 acres in the N~~1~~NW~~1~~SE~~1~~ of Section 24 and up to 34.00 acre-feet of water for multiple domestic to serve 34 homes which will be located in the N~~1~~NW~~1~~SE~~1~~ of Section 24. The permitted period of use is from January 1 to December 31, inclusive of each year for the multiple domestic use and from April 15 to October 15, inclusive of each year, for lawn and garden use.

A. The appropriator shall install a Department approved in-line flow meter at a point in the delivery system approved by the Department 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. On a form provided by the Department, the appropriator shall keep a written monthly record of the flow rate and volume of all water diverted including the period of time, and shall submit the records by November 30 of each year and upon request at other times during the year. Failure to submit the reports may be cause for revocation or modification of a permit or change. The records must be sent to the water resources regional office listed below. Contact for proper mailing address.

Helena Water Resources Regional Office
Phone: 406-449-0994
Fax: 406-442-9315

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

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

C. The issuance of this right by the Department shall not

reduce the appropriator's liability for damages caused by the appropriator's exercise of this right. Nor does the Department in issuing the right in any way acknowledge liability for damage caused by the exercise of this right.

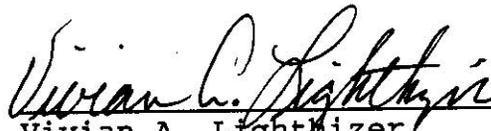
NOTICE

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. Exceptions must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities upon which the party relies, and specific citations to the record. Vague assertions as to what the record shows or does not show without citation to the precise portion of the record will be accorded little attention. Any exception containing obscene, lewd, profane, or abusive language shall be returned to the sender. 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.

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CASE # 95584

Dated this 12th day of November, 1997.


Vivian A. Lighthizer
Hearing Examiner
Water Resources Division
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, MT 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 12th day of November, 1997, as follows:

Gary Hoovestal
608 Lincoln Rd W
Helena, MT 59601

Russell T. & Lisa R. Gowen
395 Griffin Rd
Helena, MT 59601

Howard Schmith
350 Woodson Rd
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Terri McLaughlin, Manager
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7350 Green Meadow Dr
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Diane McDuffie
Administrative Assistant