

To: Uivan

5-29-98
10-9-96

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

* * * * *

IN THE MATTER OF THE)
APPLICATION FOR BENEFICIAL) FINAL
WATER USE PERMIT 76LJ-099791) ORDER
BY THE CITY OF POLSON)

* * * * *

The Proposal for Decision (Proposal) in this matter was entered on July 16, 1998, and subsequent Notice of Errata was entered on July 21, 1998 . Applicant and Objectors Bosshardt, Pedersen, Miller, Burrowes, and Martha K. Hegel Trust filed timely exceptions to the Proposal but did not request an oral argument hearing.

The Proposal recommended granting Beneficial Water Use Permit 76LJ-099791 with certain conditions to the City of Polson. Applicant excepted to Condition B which requires it to take and keep records of monthly static water level measurements of the wells owned by Objectors for a period of one year from the date of the permit issuance. The condition explains that the reason for the requirement is to determine whether there is drawdown that maybe an adverse effect.

Applicant's exception is based on Finding of Fact 5 which finds Applicant has established that the water rights of a prior appropriator will not be adversely affected. Applicant also excepted to the requirement of measuring the static water level in all Objectors' wells on a monthly basis citing the dismissal of the Cavalars objection for default and the finding that the shallow wells owned by Burrowes, Bosshardt, Miller, and Pedersen are not in good communication with the deeper zone.

The information submitted by Applicant did show pumping the well at 600 gallons per minute during the test period did not cause significant drawdown in the objectors' wells. However, the test did not include the effects of pumping at 1,000 gallons per minute at a time when all the wells in the area would be pumping, nor did it show any impact due to seasonal changes. Monitoring Objectors' wells, excluding the Cavalar well, for one year would provide this additional information as well as provide Applicant with information and records which could serve as evidence against any allegation of adverse effect as a result of pumping the well.

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Applicant argues there exists no provision in the law to include this additional requirement. The Department may condition any permit or authorization as long as the condition or limitation serves to meet the criteria for issuance. In this instance, the static water measurement goes to the issue of adverse effect. Mont. Code Ann. §§ 85-3-312(1) and 85-2-402(8) (1997).

The Department finds that Findings of Fact 4 and 5 as stated in the Proposal for Decision are not clearly reflective of the record. Finding of Fact 5 implies conclusive evidence was provided to show pumping the wells at a rate of 1,000 gallons per minute would not cause adverse effect to prior water right owners. This implication is not correct. Conclusive evidence was provided to show no adverse effect when pumped at a rate of 600 gallons per minute, and by extrapolation the conclusion has been made that there would be no adverse effect. However, monitoring Objectors' wells for one year could provide conclusive evidence of no adverse effect.

Findings of Fact 4 and 5 are amended as follows:

4. Applicant has proven by a preponderance of evidence there is water physically available at the proposed point of diversion in the amount Applicant seeks to appropriate and water can be reasonably be considered legally available, in the amount requested, during the period Applicant seeks to appropriate when pumped at a rate of 600 gallons per minute. The volume can be attained when pumped at 600 gallons per minute.

An aquifer test was performed on the test well located at the proposed production well site. The test well is eight inches in diameter and approximately 505 feet deep. The casing was perforated from 236 feet to 269 feet, from 279 feet to 300 feet and from 315 feet to 320 feet below ground surface. A four-rate step-test at 200, 400, 600, and 735 gallons per minute was conducted on April 20, 1998. A two-day constant rate test at 600 gallons per minute was performed beginning at 10:11 a.m. on April 23 through 10:11 a.m. on April 25, 1998. The eight-inch casing limited the pumping capacity to 600 gallons per minute. The test demonstrated adequate water is available at the proposed well site(s) at 600 gallons per minute without inducing significant drawdown of water levels in neighboring wells and is likely to be available at a rate of 1,000 gallons per minute. (Department file and testimony of Dr. Grimestad and Roger Noble.)

5. Applicant has proven by a preponderance of evidence the water rights of a prior appropriator under an

existing water right, a certificate, a permit, or a state reservation will not be adversely affected when the water is pumped at a rate of 600 gallons per minute.

Although pumping the test well at 600 gallons per minute did cause some drawdown, it is not necessarily an adverse effect. As long as an appropriator can reasonably exercise his water right, the effect is not adverse. An earlier priority date does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of stream flow or the lowering of a water table, artesian pressure, or water level. Mont. Code Ann. § 85-2-401(1) (1997). Here Dr. Grimestad testified to some drawdown and Roger Noble testified to somewhat more drawdown as a result of pumping the test well. However, neither indicated a drawdown that would be sufficient for an adverse effect based on the information available. It does appear the golf course well, the test well, and several objectors' wells are interconnected. However, even with the golf course well interference during the test, there was no adverse effect. The deep well owned by Cavalari showed a drawdown of 22 feet with the interference of the golf course well, 2 feet without the interference. Clearview's well had 2 feet of drawdown and Soward's had 2.8 feet of drawdown. There is no information on the Hegel well. The test indicates the shallow wells owned by Burrowes, Bosshardt, Miller, and Pedersen, are not in good vertical communication with the deeper zone tapped by the test well and consequently the drawdown was very little. The drawdown in the Burrowes well was 0.35 foot or 4.2 inches. In the Bosshardt well there was a drawdown of 0.22 foot or 2.64 inches. The drawdown in the Miller well was 0.45 foot or 5.4 inches. The Pedersen well showed a drawdown of 0.25 foot or 3 inches. (Department file and testimony of Dr. Grimestad and Roger Noble.)

Objectors Burrowes, Bosshardt, Miller, Pedersen, and Martha K. Hegel Trust filed exceptions also based on Condition B, specifically, the first sentence which reads, "The appropriator shall take monthly static water level measurements of the wells owned by Objectors for a period of one year from the date of the permit issuance." Objectors propose the following language for that sentence. "The appropriator shall take monthly static water level measurements of the wells owned by Objectors for a period of one year from the date the City commences full production from the well at or near the flow rate of 1000 gpm." These Objectors also except to the second sentence suggesting the following

language, "The appropriator shall keep written records of the water level, method of measurement, date and time of measurement and description of the measuring point on the casing which shall be available to the public for inspection and copying at City Hall."

The Department agrees the first sentence in Condition B should be amended as follows, "The appropriator shall take monthly static water level measurements of the wells owned by Objectors for a period of one year from the date the City commences full production from the well at or near the flow rate of 1000 gpm." This language clarifies the intent of monitoring for a full year after the production well is installed and pumping at or near the permitted 1,000 gallons per minute.

The Department does not agree with the second suggestion that the City of Polson must make the static water level measurement available for inspection and copying at City Hall. As previously stated, the Department can require conditions and limitations which serve to meet the criteria for issuance of a permit or authorization. To require the City to make the measurements available for inspection and copying at City Hall does not serve to meet the criteria for issuance. Nevertheless these records will be public records and as such are available through the public agencies possessing them, *i.e.*, the City and the Department.

For this review, the Department must accept the Proposal's Findings if the findings are based upon competent substantial evidence. The Department may modify the conclusions of law if it disagrees with the Proposal for Decision. Mont. Code Ann. § 2-4-621(3) (1995) and Mont. Admin. R. 36.12.229 (1995). The Department has considered the exceptions and reviewed the record under these standards and the Department finds that the Proposal for Decision is supported by the record and properly applied the law to the facts.

Therefore, the Department of Natural Resources and Conservation adopts the Findings of Fact with the exception of Findings of Fact 4 and 5 which are amended above and Conclusions of Law as contained in the Proposal for Decision for this Final Order. Condition B as contained in the Proposed Order is amended as stated above. 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 76LJ-099791 is granted to the City of Polson to Subject to the terms, conditions,

restrictions, and limitations listed below, Beneficial Water Use Permit 76LJ-099791 is granted to the City of Polson to appropriate 1,000 gallons per minute up to 712 acre-feet of ground water per year by means of a well or wells at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, Township 22 North, Range 20 West, Lake County, Montana. The permitted well site(s) are located on Tract A of Certificate of Survey No. 4548. The permitted use is municipal. The permitted places of use are: the W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, all of Section 5, the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 6, the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 7 and the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 8, all in Township 22 North, Range 19 West and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 1, all of Section 2, 3, and 4, the SE $\frac{1}{2}$ of Section 5, the NE $\frac{1}{2}$ NE $\frac{1}{2}$ of Section 8, all of Section 9 and 10, the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 11, and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 35, all in Township 23 North, Range 20 West, Lake County, Montana. The permitted places of use are within the boundaries of the Polson municipal water service area. The permitted period of use is from January 1 through December 31, inclusive of each year.

A. WATER MEASUREMENT RECORDS REQUIRED:**

The appropriator shall install a Department approved in-line flow meter at a point in the delivery line 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 monthly written records of the flow rate and volume measurements and shall submit the records by November 30 of each year and upon request at other times during the year. Failure to submit records may be cause for revocation or modification of a permit or change. The records must be submitted to the Water Resources Regional Office. Contact the regional office listed below to obtain their current address.
KALISPELL PH: 406-752-2288 FAX: 406-752-2843

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

B. STATIC WATER LEVEL MEASUREMENTS REQUIRED:**

The appropriator shall take monthly static water level measurements of the wells owned by Objectors for a period of one year from the date the City commences full production from the well at or near the flow rate of 1000 gpm. The appropriator shall keep written records of the water level, method of measurement, date and time of measurement and description of the measuring point on the casing. Static water level measurements shall be recorded only at a time when the water level is static. These records will be evaluated to determine whether the drawdown, if any, is an adverse effect. If it is determined there is an adverse effect, Applicant may need to show why the permit should not be modified or revoked.

The appropriator shall submit the records by November 30 of each year and upon request at other times during the year. Failure to submit records may be cause for revocation or modification of a permit or change. The records must be submitted to the Water Resources Regional Office. Contact the regional office listed below to obtain their current address.
KALISPELL PH: 406-752-2288 FAX: 406-752-2843

C. LIABILITY WAIVER:**

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 appropriator's exercise of this right.

D. GROUNDWATER WASTE AND CONTAMINATION -- ACCESS PORT:**

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 level of the well may be accurately measured.

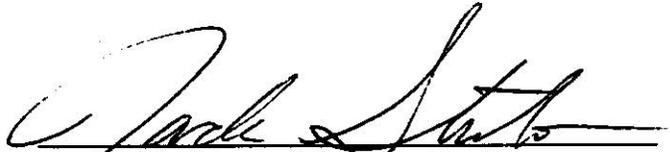
E. CONFEDERATED SALISH AND KOOTENAI TRIBES - RESERVED RIGHTS:**

This right is subject to all prior Indian reserved water rights of the Confederated Salish and Kootenai Tribes in the source of supply. It is the Tribes' position that economic investments made in reliance upon this right, do not create in the appropriator any equity or vested right against the Tribes. The appropriator is notified that any financial outlay or work invested in a project pursuant to this right is at the appropriator's risk. The issuance of this right does not reduce the appropriator's liability for damage caused by the exercise of the right. It does not make the department liable for damage caused by the exercise of the right. Nor is the department liable for any loss to the appropriator caused by the exercise of senior reserved water rights. The State of Montana's jurisdiction to issue water rights within the exterior boundaries of the Flathead Reservation has been challenged by the Confederated Salish and Kootenai Tribes in Cause no. CV 92-54-M-CCL (United States District Court, District of Montana, Missoula Division - filed May 15, 1992), which case is currently pending. Any water right issued by the state in the absence of jurisdiction to issue the water rights is void.

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, the Department will transmit a copy of the tape(s) of the oral proceedings to the district court. If a party to the proceeding elects to have a written transcription prepared, that party may purchase the tapes and have a transcript prepared.
Dated this 9th day of December, 1998.



Jack Stults, 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 certifies that a true and correct copy of the Proposal for Decision was served upon all parties listed below this 10th day of December, 1998.

City of Polson
PO Box 238
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Mary Louise Bosshardt
360 Orchard LN
Polson MT 59860

James Raymond
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Polson MT 59860

Conf Salish & Kootenai Tribes
Clayton Matt Water Admin
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Pablo MT 59866

J. Wendell Burrowes
Marilyn J Burrowes
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Roland H Pedersen
Katherine E Pedersen
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448 Bayshore Drive
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Mandi Shulund
Hearings Assistant

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

* * * * *

IN THE MATTER OF THE) PROPOSAL
APPLICATION FOR BENEFICIAL) FOR
WATER USE PERMIT 76LJ-099791) DECISION
BY THE CITY OF POLSON)

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held on May 29, 1998, in Polson, Montana, to determine whether a beneficial water use permit should be issued to the City of Polson (Applicant) for the above application under the criteria set forth in Mont. Code Ann. § 85-2-311 (1) and (5) (1997).

APPEARANCES

Applicant, City of Polson, appeared at the hearing by and through counsel, James Raymond. Marc Spratt, Certified Ground Water Professional with RLK Hydro, Inc.; Dr. Garry Grimestad, Hydrologist with Hydralogic; John Campbell, Water Department Superintendent for the City of Polson; and Bob Fulton, contract employee with the City of Polson, appeared at the hearing as witnesses for Applicant.

Objectors Roland H. And Katherine E. Pedersen appeared at the hearing by and through counsel, Donald K. Peterson. Objector Confederated Salish and Kootenai Tribes appeared at the hearing by and through Clayton Matt, Water Administration Program

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Manager. Objector Martha K. Hegel Trust appeared at the hearing by and through Martha K. Hegel. Clearview Home Owners Assoc. appeared at the hearing by and through its secretary, Dick Molenda. Objectors J. Wendell and Marilyn Burrowes, Kenneth and Aida Soward, Mary Louise Bosshardt, and Harry Miller appeared at the hearing in person.

Objectors Richard and Margery Cavalari did not appear at the hearing. Therefore, they are in default and their objections are dismissed.

Roger Noble, Hydrogeologist with the Kalispell Water Resources Regional Office of the Department of Natural Resources and Conservation (Department); Judy Jeniker, Water Resource Specialist with the Department's Kalispell Regional Office; and Charles F. Brasen, Manager of the Kalispell Regional Office, appeared at the hearing and were called to testify by the Hearing Examiner.

EXHIBITS

Applicant submitted two exhibits for the record. Both were accepted without objections.

Applicant's Exhibit 1 consists of three pages which are the Well Site Easement from Wal-Mart Stores for the proposed city well.

Applicant's Exhibit 2 consists of six pages. The first five are the results of a chemical analysis of a water sample taken from Applicant's test well. The last page is the Report of Bacteriological Examination of Water Sample.

Objectors offered no exhibits for the record.

PRELIMINARY MATTERS

The Confederated Salish and Kootenai Tribes filed an objection to this application based on a legal jurisdictional issue. Because the Tribes' objection is a legal objection, the Tribes waived any factual hearing and requested their objection be made a part of the record. The Tribes objection is a part of 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. An application for beneficial water use permit in the name of City of Polson and signed by Bob Fulton was received by the Department on October 9, 1996, at 1:30 p.m. (Department file.)

2. Pertinent portions of the application were published in the *Lake County Leader*, a newspaper of general circulation in the area of the source, on May 15, 1997. Additionally, the Department served notice on individuals and public agencies which the Department determined might be interested in or affected by the proposed appropriation. Nine timely objections were received by the Department. Applicant was notified of the objections by a letter from the Department dated June 25, 1997. (Department file.)

3. Applicant proposes to appropriate 1,000 gallons per

minute up to 712 acre-feet of ground water per year by means of a well or wells at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, Township 22 North, Range 20 West, Lake County, Montana. The well site(s) would be located on Tract A of Certificate of Survey No. 4548. The propose used is municipal. The proposed places of use are: the W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, all of Section 5, the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 6, the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 7 and the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 8, all in Township 22 North, Range 19 West and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 1, all of Sections 2, 3, and 4, the SE $\frac{1}{4}$ of Section 5, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, all of Sections 9 and 10, the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 11 and 12, all in Township 22 North, Range 20 West, and S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 35, Township 23 North, Range 20 West, Lake County, Montana. The proposed places of use are within the boundaries of the Polson municipal water service area. The proposed period of use is from January 1 through December 31, inclusive of each year.

(Department file and testimony of John Campbell.)

4. Applicant has proven by a preponderance of evidence there is water physically available at the proposed point of diversion in the amount Applicant seeks to appropriate and water can be reasonably be considered legally available, in the amount requested, during the period Applicant seeks to appropriate.

An aquifer test was performed on the test well located at the proposed production well site. The test well is eight inches in diameter and approximately 505 feet deep. The casing was perforated from 236 feet to 269 feet, from 279 feet to 300 feet and from 315 feet to 320 feet below ground surface. A four-rate

step-test at 200, 400, 600, and 735 gallons per minute was conducted on April 20, 1998. A two-day constant rate test at 600 gallons per minute was performed beginning at 10:11 a.m. on April 23 through 10:11 a.m. on April 25, 1998. The eight-inch casing limited the pumping capacity to 600 gallons per minute. The test demonstrated adequate water is available at the proposed well site(s) at 1,000 gallons per minute without inducing significant drawdown of water levels in neighboring wells. (Department file and testimony of Dr. Grimestad and Roger Noble.)

5. Applicant has proven by a preponderance of evidence the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state reservation will not be adversely affected.

Although pumping the test well did cause some drawdown, it is not necessarily an adverse effect. As long as an appropriator can reasonably exercise his water right, the effect is not adverse. An earlier priority date does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of stream flow or the lowering of a water table, artesian pressure, or water level. Mont. Code Ann. § 85-2-401(1) (1997). Here Dr. Grimestad testified to some drawdown and Roger Noble testified to somewhat more drawdown as a result of pumping the test well. However, neither indicated a drawdown that would be sufficient for an adverse effect based on the information available. It does appear the golf course well, the test well, and several

objectors' wells are interconnected. However, even with the golf course well interference during the test, there was no adverse effect. The deep well owned by Cavalari showed a drawdown of 22 feet with the interference of the golf course well, 2 feet without the interference. Clearview's well had 2 feet of drawdown and Soward's had 2.8 feet of drawdown. There is no information on the Hegel well. The test indicates the shallow wells owned by Burrowes, Bosshardt, Miller, and Pedersen, are not in good vertical communication with the deeper zone tapped by the test well and consequently the drawdown was very little. The drawdown in the Burrowes well was 0.35 foot or 4.2 inches. In the Bosshardt well there was a drawdown of 0.22 foot or 2.64 inches. The drawdown in the Miller well was 0.45 foot or 5.4 inches. The Pedersen well showed a drawdown of 0.25 foot or 3 inches. (Department file and testimony of Dr. Grimestad and Roger Noble.)

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

The well(s) would be installed by a licensed well driller. A consulting engineer would plan, design, and supervise the construction of a well pump facility which would meet the requirements set forth for municipal water systems by the Department of Environmental Quality, Water Quality Bureau. (Department file.)

7. Applicant has proven by a preponderance of evidence the

proposed use, municipal, is a beneficial use. Mont. Code Ann. § 85-2-102(2)(a) (1997). The flow rate of 1,000 gallons per minute up to 712 acre-feet is a reasonable amount for the projected population of the City of Polson. (Department file and testimony of John Campbell.)

8. Applicant has proven by a preponderance of evidence it 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.

Although the City of Polson does not own the proposed place of use, it has the authority as an incorporated municipality to secure, construct, and operate a water supply system for use by the city and its inhabitants.

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.

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 (1997).

2. Applicant has met all the criteria for issuance of a

beneficial water use permit. See Findings of Fact 3 through 9. Mont. Code Ann. § 85-2-311 (1997).

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 76LJ-099791 is granted to the City of Polson to appropriate 1,000 gallons per minute up to 712 acre-feet of ground water per year by means of a well or wells at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, Township 22 North, Range 20 West, Lake County, Montana. The permitted well site(s) are located on Tract A of Certificate of Survey No. 4548. The permitted use is municipal. The permitted places of use are: the W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, all of Section 5, the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 6, the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 7 and the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 8, all in Township 22 North, Range 19 West and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 1, all of Sections 2, 3, and 4, the SE $\frac{1}{2}$ of Section 5, the NE $\frac{1}{2}$ NE $\frac{1}{2}$ of Section 8, all of Sections 9 and 10, the N $\frac{1}{2}$ N $\frac{1}{2}$ of Sections 11 and 12, Township 22 North, Range 20 West, and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 35, Township 23 North, Range 20 West, Lake County, Montana. The permitted places of use are within the boundaries of the Polson municipal water service area. The permitted period of use is from January 1 through December 31, inclusive of each year.

A. WATER MEASUREMENT RECORDS REQUIRED:**

The appropriator shall install a Department approved in-line flow meter at a point in the delivery line 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 monthly written records of the flow rate and volume measurements and shall submit the records by November 30 of each year and upon request at other times during the year. Failure to submit records may be cause for revocation or modification of a permit or change. The records must be submitted to the Water Resources Regional Office. Contact the regional office listed below to obtain their current address.

KALISPELL PH: 406-752-2288 FAX: 406-752-2843

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

B.** STATIC WATER LEVEL MEASUREMENTS REQUIRED:

The appropriator shall take monthly static water level measurements of the wells owned by Objectors for a period of one year from the date of the permit issuance. The appropriator shall keep written records of the water level, method of measurement, date and time of measurement and description of the measuring point on the casing. Static water level measurements shall be recorded only at a time when the water level is static. These records will be evaluated to determine whether the drawdown, if any, is an adverse effect. If it is determined there is an adverse effect, Applicant may need to show why the permit should not be modified or revoked.

The appropriator shall submit the records by November 30 of

each year and upon request at other times during the year. Failure to submit records may be cause for revocation or modification of a permit or change. The records must be submitted to the Water Resources Regional Office. Contact the regional office listed below to obtain their current address.
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C.** LIABILITY WAIVER:

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 appropriator's exercise of this right.

D.** GROUNDWATER WASTE AND CONTAMINATION -- ACCESS PORT:

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 level of the well may be accurately measured.

E.** CONFEDERATED SALISH AND KOOTENAI TRIBES - RESERVED RIGHTS:

This right is subject to all prior Indian reserved water rights of the Confederated Salish and Kootenai Tribes in the source of supply. It is the Tribes' position that economic investments

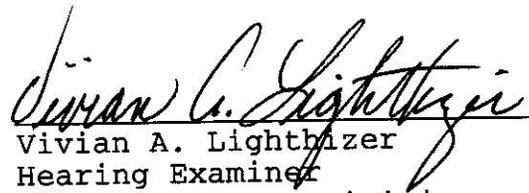
made in reliance upon this right, do not create in the appropriator any equity or vested right against the Tribes. The appropriator is notified that any financial outlay or work invested in a project pursuant to this right is at the appropriator's risk. The issuance of this right does not reduce the appropriator's liability for damage caused by the exercise of the right. It does not make the department liable for damage caused by the exercise of the right. Nor is the department liable for any loss to the appropriator caused by the exercise of senior reserved water rights. The State of Montana's jurisdiction to issue water rights within the exterior boundaries of the Flathead Reservation has been challenged by the Confederated Salish and Kootenai Tribes in Cause no. CV 92-54-M-CCL (United States District Court, District of Montana, Missoula Division - filed May 15, 1992), which case is currently pending. Any water right issued by the state in the absence of jurisdiction to issue the water rights is void.

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.

Dated this ____ day of July, 1998.


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 certifies that a true and correct copy of the Proposal for Decision was served upon all parties listed below this _____ day of July, 1998.

City of Polson
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Mandi Shulund
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