

Chuck

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

* * * * *

IN THE MATTER OF THE APPLICATION FOR)
BENEFICIAL WATER USE PERMIT 41B-111806) **FINAL**
BY K. PHIL & ADELE R. TAYLOR) **ORDER**

* * * * *

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, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the December 19, 2001, 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 41B-111806 by K. Phil & Adele R. Taylor is **ISSUED** to appropriate 200 gpm up to 110 acre-feet per year from multiple developed groundwater springs and a groundwater pit located in the NW¹/₄NE¹/₄NW¹/₄, NE¹/₄SE¹/₄NW¹/₄, N¹/₂SW¹/₄NE¹/₄, and NE¹/₄NW¹/₄, all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The means of diversion are developed springs and a groundwater pit. Water flows from the developed springs to the excavated storage pit. The period of appropriation is April 1 to November 1, inclusive, of each year. The purpose is irrigation of a 9-hole golf course. The place of use is 40 acres within the 82 acre golf course located in the SW¹/₄NE¹/₄, SE¹/₄NW¹/₄, NE¹/₄NW¹/₄, all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The place of storage is a 4.35 acre-foot groundwater pit located in the NW¹/₄NE¹/₄NW¹/₄ of Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. This water and that from the companion groundwater well application, 41B-111807, are to be combined in the groundwater

CASE # 111806

storage pit and pumped from the groundwater storage pit at 600 gpm up to ten (10) hours per day to irrigate the place of use. The combined appropriations are not to exceed 144 acre-feet per year.

A. Pumping from the groundwater storage pit is limited to ten (10) hours during any twenty-four (24) hour period.

B. 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 maximum flow rate and cumulative volume of water pumped from the groundwater storage pit. 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 from the groundwater storage pit including the period of time. Records shall be submitted by November 30th of each year and upon request at other times during the year. Failure to submit reports may be cause for revocation of a permit or change. The records must be sent to the Helena Water Resources Regional Office. The appropriator shall maintain the measuring device so it always operates properly and measures flow rate and volume accurately.

C. The appropriator shall submit a progress report of the work completed under this right by November 30th of each year until completion of the project. The reports must be sent to the Helena Water Resources Regional Office.

D. The combined volume for 41B-111807 and 41B-111806 shall not exceed 144 acre-feet per year.

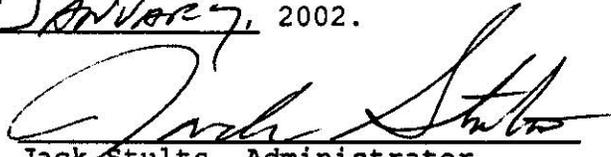
NOTICE

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 this 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 ordering and payment of the written transcript. If no request is made, the

Department will transmit a copy of the tape of the proceedings to the district court.

Dated this 31ST day of JANUARY, 2002.



Jack Stults, Administrator
Water Resources Division
Department of Natural
Resources and Conservation
PO Box 201601
Helena, MT 59620-1601

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the Final Order was served upon all parties listed below on this 19th day of February, 2002.

K PHIL & ADELE TAYLOR
1725 HWY 41
DILLON MT 59725-9532

W.G. GILBERT III
PO BOX 345
DILLON, MT 59725

RICHARD M SIMONS, JR.
355 TRENT DR
DILLON MT 59725

TERRI MCLAUGHLIN, MANAGER
HELENA REGIONAL OFFICE
21 N LAST CHANCE GULCH
PO BOX 201601
HELENA, MT 59620-1601

ROBERT K & SUSANNE M DES JARDINS
PO BOX 294
DILLON MT 59725

CURT MARTIN, CHIEF
WATER RIGHTS BUREAU
PO BOX 201601
48 N LAST CHANCE GULCH
HELENA MT 59620-1601

JAMES R & SYLVIA LOIS HODGE
2200 CARTER CREEK RD
DILLON MT 59725

GEORGE EAVES
1310 CARTER CREEK RD
DILLON MT 59725

RON & SHELLIE DOERING
450 TRENT DR
DILLON MT 59725

REBISH & HELLE, A PARTNERSHIP
1100 STONE CREEK ROAD
DILLON, MT 59725


Jennifer L. Hensley
Hearings Unit
406-444-6615

Chuck

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
41B-111806 BY K. PHIL & ADELE R.) PROPOSAL FOR DECISION
TAYLOR)

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, and after notice required by Mont. Code Ann. §85-2-307, a hearing was held on November 7, 2001, in Dillon, Montana, to determine whether a beneficial water use permit should be issued to the Applicant for the above application under the criteria set forth in Mont. Code Ann. §85-2-311.

APPEARANCES

Applicant appeared at the hearing in person through K. Phil Taylor. Willis D. Weight, Ph.D., P.E. appeared as a witness for the Applicant. Peter G. Rebish was called to testify by the Applicant.

Objector Richard M. Simons appeared at the hearing in person. Objectors Robert & Susanne Des Jardins; James R. and Sylvia Hodge; George Eaves; Ron and Shellie Doering; and Rebish & Helle, a Partnership, (hereafter this represented objector group is known as OR) appeared at the hearing by and through counsel W. G. Gilbert III. Joe Helle, Ron Doering, James R. Hodge, Robert Des Jardins appeared as a witnesses for Objectors OR.

Terry Scow, Water Resources Specialist with the Helena Water Resources Regional Office of the Department of Natural Resources and Conservation (Department) was called to testify by the Hearing Examiner.

CASE # 111806

EXHIBITS

Both Applicant and Objectors offered exhibits for the record.

Applicant offered twelve exhibits for the record. The Hearing Examiner accepted Applicant's Exhibits 1-12.

Applicant's Exhibit 1 is a copy Figure 10 of *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

Applicant's Exhibit 2 is a copy Figure 11 of *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

Applicant's Exhibit 3 is a copy Figure 20 of *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

Applicant's Exhibit 4 is a copy page 355, Groundwater Hydrograph, *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

Applicant's Exhibit 5 is a copy page 231, Well Lithology, *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

Applicant's Exhibit 6 is Pond Area Schematic.

Applicant's Exhibit 7 is an Analysis of Drawdown.

Applicant's Exhibit 8 is a hand drawn area cross-section.

Applicant's Exhibit 9 is a five page copy of an Agreement between Rebish & Helle, and Peterson Livestock.

Applicant's Exhibit 10 is a copy of area monthly precipitation, '91-'96.

Applicant's Exhibit 11 is a Letter from Walter S. Gunn & Bonnie M. Gunn to Mr. & Mrs. Taylor; dated October 21, 2001.

Applicant's Exhibit 12 is a copy of Figure 9.6, Cone of depression in flat surface area vs. sloping, *Manual of Applied Field Hydrogeology*, Weight and Sonderegger.

Objectors OR offered 15 exhibits for the record. The Hearing Examiner accepted Objector OR's Exhibits 1-15.

Objector's Exhibit 1 is a copy of the Peterson Well Log signed 01/16/80.

Objector's Exhibit 2 is a copy of the Peterson Well Log date stamped by DNRC on 4/21/80.

Objector's Exhibit 3 is joined portions of USGS Quadrangles Glen SE & Dillon East.

Objector's Exhibit 4 is a copy of page 47 of *Water Right Listing By Owner Name*.

Objector's Exhibit 5 is a GWIC Wells Report of Rebish wells in Beaverhead County.

Objector's Exhibit 6 is a Bureau of Mines and Geology (MBMG) Site Report for Rebish.

Objector's Exhibit 7 is entitled Basis of Water Right.

Objector's Exhibit 8 is a copy of a Dr. Grimestad Report, about 1979 or 1980.

Objector's Exhibit 9 is a copy of the Ron & Shellie Doering Well Log Report dated 05/12/95.

Objector's Exhibit 10 is a GWIC Well Report for Section 12, Township 7 South, Range 8 West.

Objector's Exhibit 11 is a GWIC Site Report for the Hodge well.

Objector's Exhibit 12 is a two page copy of Des Jardins' Certificate of Water Right # 41B-094025.

Objector's Exhibit 13 is a copy of Des Jardins' Well Log Report signed 10/20/94.

Objector's Exhibit 14 is a copy of Des Jardins' Water Right Abstract for 41B-094025 dated 6/27/01.

Objector's Exhibit 15 is a GWIC Well Report for Section 12, Township 7 South, Range 8 West.

PRELIMINARY MATTERS

This hearing was held concurrently with Applicant's Application 41B-111807 from a different source for the same purpose. The exhibits are the same for both hearings; individual testimony for the groundwater pit application (41B-111806) preceded testimony for the groundwater well application (41B-111807). The parties stipulated that the possessory interest criterion was not at issue.

Objector's Counsel objected to the portion of Applicant's closing statement about the prehearing settlement discussions between Applicant and some of the Objectors because it violates Montana Rule of Evidence 801. Applicant's statement is hearsay which is allowed in this hearing. The objection is **OVERRULED** and the testimony in question will be judged on its weight.

Objector's Counsel lodged a constitutional objection stating the Department's prehearing use of a *Notice and Statement of Opinion* form violates the due process rights of the Objectors. The form states in part that "Additional conditions may be required...", and "To expedite your application, if the conditions are acceptable, sign here and return...", and "If the proposed conditions are unacceptable and you want a hearing, you must sign and return this form within 30 days of the date of this notice...". The letter covering the *Notice* states in bolded text "Additional conditions may be necessary because of objections filed opposing your application." The Hearing Examiner sees the intent of the cover letter and *Notice* as preliminary notification as used here and not binding in any way upon the Hearing Examiner or upon any objector, and clearly contemplates changes if objections are received. There is no interest of the objectors affected by the use of this *Notice* since they have opportunity to participate in the hearing and recommend their own conditions. The objection is **OVERRULED**.

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. Application for Beneficial Water Use Permit 41B-111806 in the name of K. Phil and Adele R. Taylor and signed by Phil Taylor was filed with the Department on June 16, 2000. (Department file)
2. The Environmental Assessment (EA) prepared by the Department for this application was reviewed and is included in the record of this proceeding.
3. Applicant seeks to appropriate 200 gpm up to 110 acre-feet per year from multiple developed groundwater springs and a groundwater pit located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$, all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The proposed means of diversion are developed springs and a groundwater pit. Water flows from the developed springs to the excavated storage pit. The proposed period of appropriation is April 1 to November 1, inclusive, of each year. The proposed purpose is irrigation of a 9-hole golf course. The proposed place of use is 40 acres within the 82 acre golf course located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The place of storage is a 4.35 acre-foot groundwater pit located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. This water and that from the companion groundwater well application, 41B-111807, are to be combined in the groundwater storage pit and pumped from the groundwater storage pit at 600 gpm up to ten (10) hours per day to irrigate the place of use. The combined appropriations are not to exceed 144 acre-feet per year. (Department file, Applicant testimony)
4. Applicant has proven water is physically available when the flow and volume from the companion groundwater well application, and the flow and volume from the water diverted from the groundwater storage

CASE # 111806

pit is measured. Applicant's consultant performed a pumping and recovery test on the impoundment. Dr. Weight estimated flows from the seepage in the southeast corner of the groundwater storage pit to be about 40 gpm and measured the flow from the upslope developed springs at 120 gpm into the groundwater storage pit. The groundwater storage pit was pumped and a mass balance was made to account for all inflows and outflows. This showed the flow developed within the groundwater storage pit to be 40 gpm. The total water developed is a total of 200 gpm. The test was made during November because that is indicated as a low flow period in earlier area groundwater investigations and should show the minimum water available. There is little in the record regarding the long-term volume available from the shallow groundwater source. Therefore, measurement of the flow contributed to the groundwater storage pit by the companion well, if any, and the flow diverted from the groundwater storage pit must be measured so the maximum flow and cumulative volume contribution from the shallow groundwater system can be confirmed by subtracting the two measurements. Applicant previously agreed to measure water diverted. (Department file, testimony of Willis Weight, Ph.D., P.E.)

5. Applicant has proven water is legally available. There are no surface water rights downstream of the proposed project. There is a spring on Objector Rebish & Helle land about 1.5 miles downstream in the same drainage developed by the Applicant. Objector testimony indicates a possible connection to the proposed deeper wells but not this source. The flows developed by Applicant which are not used in this project return underground while on the Applicant's property. The record does not show the requested flows are destined for a prior appropriator. (Department file, testimony of Willis Weight, Ph.D., P.E., Joe Helle)

6. Applicant has proven there would be no adverse effect to the water rights of prior appropriators under an existing water right, certificate, permit, or state water reservation. The 113 minute pumping test from the groundwater storage pit had complete recovery within ten minutes suggesting a cone of depression of less than one foot around the groundwater storage pit. During the irrigation pumping of the neighboring Peterson well in the early 1980's a spring 1.5 miles downgradient ceased to flow. Spring flows returned after well use stopped. The record contains no explanation of this loss of spring flow. The small local cone of depression around the groundwater storage pit indicates pumping from the groundwater storage pit will not affect the spring flows. The means of diversion from the groundwater storage pit is a pump which can be shut off in the event a senior appropriator makes a legitimate call on the source. (Department file, testimony of Phil Taylor, Willis Weight, Ph.D., P.E., Peter Rebish)

7. Applicant has proven the proposed means of diversion, construction, and operation of the appropriation works are adequate. Pits have been dug to develop the groundwater at 200 gpm. Water will be diverted from the groundwater storage pit using a *TrashBlaster* reservoir or wet well intake system coupled with a 60 horsepower pump. (Department file, testimony of Phil Taylor)

8. Applicant has proven the proposed use of water for irrigation is beneficial. The project is for irrigation of a golf course. Irrigation, whether alfalfa, pasture, lawn or garden, or turf, typically is considered a beneficial use as long as the volume is not excessive or wasteful. Six hundred gpm for a ten hour period is required to supply the peak water requirements. The volume requested is not excessive according to the Department. (Department file)

9. Applicant has proven he has possessory interest in the property where the water is to be put to beneficial use. Applicant owns the property. (Department file, testimony of Phil Taylor)

10. The proposal is in the Upper Missouri basin closure area. No new consumptive water use permits may be issued in the closure area. Exceptions to the closure include permits from groundwater sources. (Department file, testimony of Terry Scow)

11. The Department requires projects which take longer than three (3) years to complete to submit an annual progress report to assure Applicant's intent is bona fide and ensure the work on the appropriation is completed in a timely manner. Applicant agreed to supply such progress reports. (Department file, testimony of Terry Scow)

12. 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 on the foregoing Findings of Fact and the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department has jurisdiction to issue a provisional permit for the beneficial use of water if the applicant proves the criteria in Mont. Code Ann. §85-2-311.

2. The Department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria for issuance of a beneficial water use permit; and, to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to

the beneficial use specified in the permit. Mont. Code Ann. § 85-2-312.

3. Applicant has met, or there are conditions which can satisfy, the criteria for issuance of a beneficial water use permit and ensure the water is actually applied in a timely manner to the beneficial use specified. See Findings of Fact 4 through 11. Mont. Code Ann. §§ 85-2-311, 312.

WHEREFORE, 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 41B-111806 by K. Phil & Adele R. Taylor is **ISSUED** to appropriate 200 gpm up to 110 acre-feet per year from multiple developed groundwater springs and a groundwater pit located in the NW¹/₄NE¹/₄NW¹/₄, NE¹/₄SE¹/₄NW¹/₄, N¹/₂SW¹/₄NE¹/₄, and NE¹/₄NW¹/₄, all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The means of diversion are developed springs and a groundwater pit. Water flows from the developed springs to the excavated storage pit. The period of appropriation is April 1 to November 1, inclusive, of each year. The purpose is irrigation of a 9-hole golf course. The place of use is 40 acres within the 82 acre golf course located in the SW¹/₄NE¹/₄, SE¹/₄NW¹/₄, NE¹/₄NW¹/₄, all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The place of storage is a 4.35 acre-foot groundwater pit located in the NW¹/₄NE¹/₄NW¹/₄ of Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. This water and that from the companion groundwater well application, 41B-111807, are to be combined in the groundwater storage pit and pumped from the groundwater storage pit at 600 gpm up

to ten (10) hours per day to irrigate the place of use. The combined appropriations are not to exceed 144 acre-feet per year.

A. Pumping from the groundwater storage pit is limited to ten (10) hours during any twenty-four (24) hour period.

B. 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 maximum flow rate and cumulative volume of water pumped from the groundwater storage pit to be recorded. 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 from the groundwater storage pit including the period of time. Records shall be submitted by November 30th of each year and upon request at other times during the year. Failure to submit reports may be cause for revocation of a permit or change. The records must be sent to the Helena Water Resources Regional Office. The appropriator shall maintain the measuring device so it always operates properly and measures flow rate and volume accurately.

C. The appropriator shall submit a progress report of the work completed under this right by November 30th of each year until completion of the project. The reports must be sent to the Helena Water Resources Regional Office.

D. The combined volume for 41B-111807, if issued, and 41B-111806 shall not exceed 144 acre-feet per year.

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 18th day of December, 2001.



Charles F Brasen
Hearings Officer
Water Resources Division
Department of Natural Resources
and Conservation
PO Box 201601
Helena, Montana 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 on this 19th day of December, 2001.

K PHIL & ADELE TAYLOR
1725 HWY 41
DILLON MT 59725-9532

W.G. GILBERT III
PO BOX 345
DILLON, MT 59725

RICHARD M SIMONS, JR.
355 TRENT DR
DILLON MT 59725

TERRI MCLAUGHLIN, MANAGER
HELENA REGIONAL OFFICE
21 N LAST CHANCE GULCH
PO BOX 201601
HELENA, MT 59620-1601

ROBERT K & SUSANNE M DES JARDINS
PO BOX 294
DILLON MT 59725

CURT MARTIN, CHIEF
WATER RIGHTS BUREAU
PO BOX 201601
48 N LAST CHANCE GULCH
HELENA MT 59620-1601

JAMES R & SYLVIA LOIS HODGE
2200 CARTER CREEK RD
DILLON MT 59725

GEORGE EAVES
1310 CARTER CREEK RD
DILLON MT 59725

RON & SHELLIE DOERING
450 TRENT DR
DILLON MT 59725

REBISH & HELLE, A PARTNERSHIP
1100 STONE CREEK ROAD
DILLON, MT 59725



Jennifer L. Hensley
Hearings Unit
406-444-6615