EXHIBIT "A" Application 98-c41H

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

FILMED
APR 5 1980

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 1-s41H AND APPLICATION FOR CHANGE OF APPROPRIATION WATER RIGHT NO. 98-c41-I BY MARVIN M. AND HELEN R. MORGAN	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Pursuant to the provisions of the Montana Water Use Act, Section 89-865, et seq., R.C.M. 1947, a hearing was held on June 3, 1974, in Bozeman, Montana, for the purpose of hearing objections to the above-named applications. The hearings on both applications were consolidated, since the objectors to the application for change also objected to the application for beneficial water use permit.

A Proposed Order on the above hearing was issued by the Hearing Examiner, Allen B. Chronister, on August 5, 1974. Exceptions to the Proposed Order were filed by the objectors, Theodore R. and Margurite Cope, through their attorney, Mr. H. A. Bolinger, within the time period specified in the Proposed Order. The Copes, through their legal counsel, filed a brief on the exceptions. The applicants, Marvin M. and Helen R. Morgan, filed a reply brief through their legal counsel, Mr. Gregory O. Morgan. A hearing was held on April 16, 1975, at 1 p.m., before the Administrator of the Water Resources Division in Helena, Montana, for the purpose of hearing oral arguments in support of their written briefs. Mrs. Margurite Cope was present and represented by Mr. H. A. Bolinger. Mr. Marvin M. Morgan was present and represented by Mr. Gregory O. Morgan.

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The Proposed Findings of Fact, Conclusions of Law, and Order in this matter entered on August 5, 1974, by the Hearing Examiner are hereby modified and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

1. Subject to all prior existing water rights in the source of supply.

2. The application for change (98-c41-I) is granted, provided, however, that the applicant have or obtain sufficient ownership or other interest in the Stone-Weaver ditch, and provided the applicants' use of the ditch not interfere with or adversely affect the other rights and interest in the ditch.

3. The application for beneficial water use permit (1-s41H) is granted as to May and June floodwaters, when the same is flowing and available for use.

Done this twentieth day of May, 1975.

Orrin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

NOTICE: Section 89-8-100, R.C.M. 1947, provides that a person who is aggrieved by a final decision of the Department is entitled to a hearing before the Board of Natural Resources and Conservation. A person desiring a hearing before the Board pursuant to this section must notify the Department in writing within ten (10) days of the final decision.

Address: Department of Natural Resources and Conservation
Natural Resources Building
32 South Ewing
Helena, MT 59601

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BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 1-5414, AND APPLICATION FOR CHANGE OF APPROPRIATION WATER RIGHT NO. 98-c414, MARVIN M. AND HELEN R. MORGAN	PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to the requirements of the Montana Water Use Act, Section 89-865, et seq., R.C.M. 1947, a hearing was held on June 3, 1974, in Bozeman, Montana, for the purpose of hearing objections to the above-named applications. The hearings on both applications were consolidated since the objectors to the application for change also objected to the application for beneficial water use permit. The following proposed findings of fact and conclusions of law are made upon the testimony and evidence introduced by the applicant and the objector at hearing.

PROPOSED FINDINGS OF FACT

1. On July 3, 1973, the applicants submitted an application for beneficial water use permit to the Department seeking to appropriate 1.15 cubic feet of water per second for irrigation and stock watering from the West Gallatin River in Gallatin County, Montana. Applicants apparently sought to have the water diverted through either the existing Durham or Stone-Weaver ditches.

2. The applicants also submitted an application for a change of existing water right of 1.975 cubic feet per second (255 acre-feet per year) from the Durham ditch to the Stone-Weaver ditch. The rights involved are decreed rights of 50 miner's inches (May 15, 1888) and 29 miner's inches (July 20, 1891) from the West Gallatin River. The water is proposed to be used for sprinkler irrigation of 102 acres from May 1 to September 30 of each year.

3. The Durham and the Stone-Weaver ditches tap the West Gallatin River on its east bank in Section 22, Township 1 South, Range 4 East. The Stone-Weaver ditch is upstream from the Durham ditch.

4. Both the applicants and the objectors Cope appear to have an ownership interest in the Stone-Weaver ditch, and both appear to be presently using the ditch to convey water.

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5. The West Gallatin River was last decreed in the case of Taylor v. Elkhorn Ranch, No. 15919, in 1963. At page 31 of that decree the court found the maximum capacity of the Stone-Weaver ditch to be 1,330 miner's inches, and the average capacity to be 1,212 miner's inches. As a result of that and prior decrees, the Cope's have been awarded a total of 1,330 miner's inches to be conveyed through the Stone-Weaver ditch. The applicants are currently conveying 75 miner's inches of water through the Stone-Weaver ditch.

6. If water is run through the Stone-Weaver ditch during freezing weather, there is a danger that it will jam with ice and flood adjoining lands. The applicant disclaimed at hearing any intention to run water through the ditch during freezing weather.

7. In the Taylor v. Elkhorn Ranch adjudication the court found that the May-June floodwaters of the West Gallatin River were unadjudicated and exceeded the rights to 2,563.27 cubic feet per second awarded in previous decrees. Using streamflow records, the court found that during May and June the riverflow varied from a maximum of 6,400 cubic feet per second to a minimum of 3,400 cubic feet per second. The court then proceeded to award May and June floodwater rights "when the same are flowing and available for use." These flood rights did not exhaust the floodwaters of the West Gallatin which could be expected in an average year.

PROPOSED CONCLUSIONS OF LAW

1. There are excess, unappropriated floodwaters flowing in the West Gallatin River during May and June of each year.

2. While the maximum capacity of the Stone-Weaver ditch is limited to 1,330 miner's inches, the parties with an interest in the ditch have in the past apparently been able to accommodate their rights through the ditch when needed.

3. There is expressly no finding or conclusion made as to the ownership interests in the Stone-Weaver ditch. That question is more properly determined by agreement among the parties, or if that should fail, by judgment of a court of competent jurisdiction.

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PROPOSED ORDER

1. The application for beneficial water use permit should be granted as to May and June floodwaters.

2. The application for change should be granted, provided, however, that the applicant have, or obtain, sufficient ownership or other interest in the Stone-Weaver ditch, and provided that applicant's use of the ditch not interfere with or adversely affect the other rights and interest in the ditch.

3. No water should be run through the Stone-Weaver ditch during freezing weather.

NOTICE: This is a proposed order and will become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59601. Written exceptions to the proposed order shall be filed with the Administrator within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and to make oral arguments before the Administrator.

Allen B. Chronister, Hearing Examiner

Date August 5, 1974

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