

EXHIBIT "A"  
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. 701-s41K,  
WAYNE M. AND HELEN H. CHRISTENSEN

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on August 6, 1975, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

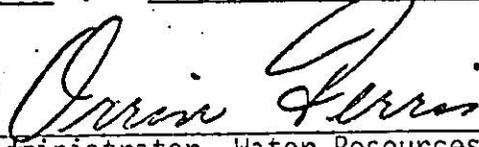
1. The Applicants' permit is granted, allowing the appropriation of 3 cubic feet per second and not to exceed 181 acre-feet of water per annum for irrigation purposes from May 15 to October 15, inclusive, of each year, and for stock-water purposes from January 1 to December 31, inclusive, of each year. The water is to be impounded in a 0.1-acre-foot reservoir on Huber Coulee Creek, at a point in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, Township 21 North, Range 1 West, M.P.M., and used for irrigation purposes on 45 acres in the S $\frac{1}{2}$  NE $\frac{1}{4}$  and on 15 acres in the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 26, Township 21 North, Range 1 West.

2. To protect the apparent prior existing water right of the Sun River Valley Ditch Company Water Users downstream from the confluence of Huber Coulee Creek with the Sun River Valley ditch, the permit is conditioned to prohibit diversions of water from Huber Coulee Creek during any periods when the Sun River Valley ditch cannot obtain water from the Sun River.

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3. The permit is subject to all prior existing water rights.

Done this 15<sup>th</sup> day of October, 1975.

  
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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

**CASE # 701**

BEFORE THE DEPARTMENT  
OF  
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION  
FOR BENEFICIAL WATER USE PERMIT  
NO. 701-S41K, WAYNE M. AND  
HELEN H. CHRISTENSEN.

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedure Act, a hearing on objections to the above-named application was held on April 3, 1975 at Great Falls, Montana. The Applicant, Mr. Wayne M. Christensen, appeared at the hearing and presented testimony. On April 3, 1975, three hearings were scheduled in Great Falls, Montana to run consecutively. At the first of these hearings, the hearing in the matter of the Newman Ranch Company, Mr. Fred Rushton, representing the Sun River Valley Ditch Company, requested that all three hearings be combined into one hearing so that the parties affected by both hearings who were present at the hearing could be excused early to attend a livestock sale then proceeding in Great Falls. The Hearing Examiner accepted the testimony by combined hearing and hereby rules that one hearing is valid for all three applications. Timely objections to the application were received by the Department from the Newman Ranch Company and Mr. Harold Poulsen. Mr. Ted Newman of the Newman Ranch Company appeared at the hearing and presented testimony. Mr. Harold Poulsen did not appear nor did he send a representative. At the hearing the Sun River Valley Ditch Company and the Church of Jesus Christ of Latter-Day Saints, Sun River Valley Ward, requested permission to present testimony as objectors. The applicant did not object to receiving their testimony. The Hearing Examiner received the testimony of these two parties into

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evidence but hereby rules that their objection is not valid because it was not received by the deadline stated in the Public Notice, however, their testimony was used in reaching a decision. As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact, Conclusions of Law and Order to the Administrator, Water Resources Division, Department of Natural Resources and Conservation.

PROPOSED FINDINGS OF FACT

1. On October 15, 1973, the Applicant submitted an application with the Department of Natural Resources and Conservation for Beneficial Water Use Permit seeking to appropriate 3 cubic feet per second of water and not to exceed 181 acre-feet per annum in Cascade County, Montana. The water is to be impounded in a 0.1 acre-foot reservoir on Huber Coulee Creek, a tributary of the Sun River Valley Canal at a point in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T. 21 N., R. 1 W., M.P.M. and used for stockwatering purposes from January 1 to December 31 inclusive of each year, and for irrigation purposes on 45 acres in the S $\frac{1}{2}$  NE $\frac{1}{4}$ , and 15 acres in the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 26, T. 21 N., R. 1 W., and containing a total of 60 acres, more or less, from May 15 to October 15, inclusive, of each year.

2. The Newman Ranch Company, by its President, Ted Newman, submitted a timely objection to the application on the grounds that there are no unappropriated waters in said creek and that said creek and that said application will adversely affect the prior existing water rights of the objector. Mr. Harold Poulsen submitted a timely objection to the application on the grounds that there are no unappropriated waters in said creek and that said application will adversely affect the prior existing water rights of the objector.

3. The Newman Ranch Company points of diversion are upstream from the Applicants

4. Testimony at the hearing indicated that the Sun River Valley Ditch Company is the only prior appropriator downstream from the Reed Christensen proposed point of diversion. The Sun River Valley Ditch Company right to the waters of Huber Coulee Creek was commenced on approximately the date of the construction of the Sun River Valley Ditch by virtue of the fact that Huber Coulee Creek flows into and is tributary to the Sun River Valley Ditch. In some periods of the irrigation season, the Sun River Valley Ditch cannot obtain water from the source of the Sun River because the water level in the Sun River has receded below the bottom level of the headgate of the Sun River Valley Ditch Company. In these periods of the irrigation season, the Sun River Valley Ditch Company water users have need of all of the waters of Huber Coulee Creek.

Based on the above Proposed Findings of Fact, the following Proposed Conclusions of Law are hereby made.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a Permit is required to appropriate water from the source of Huber Coulee Creek.
2. The Newman Ranch Company's prior existing water rights cannot be adversely affected by the Applicant's proposed appropriation.
3. There are at times unappropriated waters in the source of supply, Huber Coulee Creek.
4. If the periods of diversion are properly scheduled, all prior existing water rights will not be adversely affected by the proposed diversion.
5. The proposed means of diversion are adequate.
6. The proposed use of the water is a beneficial use.
7. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water

has been reserved since no prior permits or reservations of water have been approved in the source pursuant to the Montana Water Use Act.

8. The criteria for issuance of the permit set forth in Section 89-885, R.C.M. 1947, have been met.

9. The Application for Beneficial Water Use Permit may be granted in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana. Based on the above Proposed Findings of Fact and Conclusions of Law, the following Order is proposed.

PROPOSED ORDER

1. The Applicants' permit is granted allowing the appropriation of 3 cubic feet per second and not to exceed 181 acre-feet per annum of water for irrigation purposes from May 15 to October 15, inclusive, of each year, and for stockwater purposes from January 1 to December 31 inclusive. The water is to be impounded in a 0.1 acre-foot reservoir on Huber Coulee Creek at a point in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T. 21 N., R. 1 W., M.P.M. and used for irrigation purposes on 45 acres in the S $\frac{1}{2}$  NE $\frac{1}{4}$ , and on 15 acres in the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 26, T. 21 N., R. 1 W.

2. To protect the apparent prior existing water right of the Sun River Valley Ditch Company Water Users downstream from the confluence of Huber Coulee Creek with the Sun River Valley Ditch, the permit is conditioned to prohibit diversions of water from Huber Coulee Creek during any periods when the Sun River Valley Ditch cannot obtain water from the Sun River.

3. The permit is subject to all prior existing water rights.

NOTICE

This is a Proposed Order and will become final when accepted by the Administrator, Water Resources Division, Department of Natural Resources and Conservation. Written exceptions to this Proposed Order shall be filed with the Department within 10 days of receipt of same. Upon receipt of any written exceptions by the Department, opportunity will be provided to file briefs and to make oral argument before the Administrator of the Water Resources Division.

DATED this 6<sup>th</sup> day of August, 1975.

James A. Lewis  
HEARING EXAMINER