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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION

APR 5 1980

OF THE STATE OF MONTANA

IN THE MATTER OF
APPLICATION FOR
BENEFICIAL WATER
USE PERMIT NO. 812-s41J
Meagher County Newlan
Creek Water District

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

Pursuant to the requirements of the Montana Use Act, Section 89-865, et seq. R.C.M. 1947, the above-entitled matter came on regularly for hearing before Donald D. MacIntyre, hearing examiner, in the Judge's Chambers adjacent to the Courtroom of the Meagher County Courthouse at White Sulphur Springs, Montana, at 7:00 o'clock P.M. on September 16, 1974, at which time the applicant, Meagher County Newlan Creek Water District, appeared by counsel, John V. Potter, Jr., and there was present as objectors Ramon R. Johnson, Ned Fuller, Florence Wisdom, Lester Walter and Lena Mae Walter, none of said objectors being represented by counsel.

The application was explained and all objectors were sworn, testified and were allowed the opportunity to present evidence relating to their objections and were made available for cross-examination. Witnesses for the applicant, Frank Farentchak, Clive Walker and Kenneth Kaul were then sworn and presented testimony and documentary evidence and objectors were granted the right of cross-examination of such witnesses.

From the testimony taken and the evidence introduced at said hearing and all evidence properly before the Department, there is hereby made the following:

PROPOSED FINDINGS OF FACT

(1) MEAGHER COUNTY NEWLAN CREEK WATER DISTRICT, White Sulphur Springs, Montana, filed with the Department of Natural Resources and Conservation Application No. 812-s41J to appropriate 14,030 acre-feet per year of water in Meagher County, Montana. The water to be impounded in a 14,030-acre-foot reservoir on Newlan Creek, a tributary to the Smith River, at a point in the S $\frac{1}{2}$ of Sec. 11, T. 10 N., R. 6 E., M.P.M., and supplemented by waters of Sheep Creek, and used for the following purposes: 11,350 acre-feet for irrigation from April 15 to October 31, inclusive, of each year, and 720 acre-feet per year for fish and wildlife, 550 acre-feet per year for recreation, 440 acre-feet per year for permanent sediment storage, and 970 acre-feet per year for temporary flood storage from January 1 to December 31, inclusive, of each year. The diverting works proposed consists of an earthen-fill dam approximately 115 feet in height, which dam will create a reservoir from which water will be diverted

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either into a distribution canal or into the Newlan Creek channel for transportation to the places of beneficial use.

(2) Pursuant to the notice requirements of the Montana Water Use Act notice of this application was duly published, and due and proper notice was given of the hearing held on said application to both the applicant and objectors.

(3) The applicant, Meagher County Newlan Creek Water District, is a county water district incorporated under the County Water District Act of the State of Montana, and as such is a political subdivision of the State of Montana, with the authority to appropriate, store and distribute water and to own water rights.

(4) There are unappropriated waters in Newlan Creek by reason of the fact that at various times, particularly in the spring of the year, the flow of said stream exceeds the amount of water decreed to various appropriators by Decree in Ellis v. Johnston-Penwell Livestock Co., et al., entered by the District Court of Meagher County under date of May 18, 1905.

(5) On May 9, 1974, an interim permit to appropriate water was issued to the applicant subject to the approval, denial, or modification of a provisional permit and, further, subject to any determination of existing water rights.

(6) The uses proposed of the waters sought to be appropriated are beneficial uses and consist of use for irrigation and agricultural (including stockwater) uses, use for fish and wildlife, and recreational use.

(7) The proposed means of construction of said dam and the diverting works appear to be adequate and sufficient and there has been progress toward completion of such works and the accomplishment of the purposes of the applicant with reasonable diligence in accordance with the Watershed Work Plan for Newlan Creek dated November 1969, as supplemented and amended, and considering the cost and magnitude of the project and the engineering and physical features encountered, a reasonable time should be allowed the applicant to complete the construction of the reservoir and diverting works proposed.

(8) The evidence produced at the hearing indicates that the rights of prior appropriators and persons claiming the right to use waters of Newlan Creek will not be adversely affected by the project proposed by applicant.

(9) There has not been issued by the Department any permit or reservation for the waters of Newlan Creek which is prior in time or superior in right to the uses proposed by applicant. It further appears that the use will not interfere unreasonably with other planned or possible uses or developments.

After this hearing I will prepare a proposed order including findings of fact and conclusions of law, which shall be served on all parties. An opportunity to file exceptions, present briefs and make oral arguments to the Administrator of the Water Resources Division shall be granted to any and all parties adversely affected. A final order will then be issued; if any party still feels aggrieved, a hearing may be held before the Board of Natural Resources and Conservation. After exhausting your administrative remedies you have a right to judicial review.

§ 89-885, R.C.M. states: the Department shall issue a permit if:

- (1) there are unappropriated waters in the source of supply;
- (2) the rights of a prior appropriator will not be adversely affected;
- (3) the proposed means of diversion or construction are adequate;
- (4) the proposed use of water is a beneficial use;
- (5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or which water has been reserved.

Therefore all testimony should be made relative to the above quoted criteria.

Are there any questions as to the procedure or conduct of this hearing.

The Department is not here to present testimony but rather here to take testimony upon which it may base its decision.