

EXHIBIT "A"
STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE)
PERMIT NO. 912-s41K BY)
SKYLINER CORPORATION)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter entered on September 6, 1974, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

1. The Applicant is granted a provisional permit allowing the appropriation of fifty (50) acre-feet per annum of water in Lewis and Clark County, the water to be impounded in a 50-acre-foot reservoir, fed by springs, at a point in Tracts 15, 16, 17, and 18, of Elk Tracts, located in Section 11, Township 18 North, Range 8 West, M.P.M., and to be used for recreational purposes from January 1 to December 31, inclusive, of each year.
2. The provisional permit is granted subject to existing rights.
3. The permit is granted upon the following conditions: That for safety purposes, the dam structure is made secure by the addition of riprap (the amount and placement of riprap to be determined by consulting with the Department); that the addition of the riprap be completed and approved within 12 months from the date of issuance of a provisional permit; and, that the Department of Natural Resources and Conservation examine and approve the riprapping and determine that the structure is safe.

Done this 10th day of December, 1974.

Arvin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 912

1 BEFORE THE MONTANA DEPARTMENT
2 OF
3 NATURAL RESOURCES AND CONSERVATION

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5 IN THE MATTER OF THE APPLICATION } FINDINGS OF FACT AND
6 NO. 912-s41K, SKYLINER CORPORATION } CONCLUSIONS OF LAW

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8 The above entitled matter came on for hearing before
9 Donald D. MacIntyre, Hearings Officer, for the Montana Department
10 of Natural Resources and Conservation on August 7, 1974, at
11 7:00 o'clock p.m., at Augusta, Montana.

12 The objectors who appeared at the hearing were Tee Bar
13 Ranch Co., by Jerry Mosher, President, Gilman H. and Susanne A.
14 Mirehouse and the Northwestern National Bank and Wm. A. Reid,
15 co-trustees under the Last Will and Testament of Edward R.
16 Ellis, deceased. The protestants were represented by attorney,
17 Wm. A. Reid.

18 The applicant, Skyliner Corporation, appeared by its
19 President, John C. Hoyt.

20 Evidence was introduced by the objectors to the above
21 entitled application which was supported by evidence presented on
22 behalf of the applicant.

23 The objectors contended that the granting of the application
24 would diminish the water to which they were entitled to appropriate
25 from Elk Creek down stream from the dam constructed by Skyliner
26 Corporation and that the strength of the dam was not sufficient
27 to hold the water empounded behind it.

28 The applicant denied both of the foregoing contentions of
29 the objectors.

30 The law and the evidence having been fully considered, the
31 following Findings of Fact and Conclusions of Law are hereby made
32 and entered by the Hearings Officer.

NOT
SIGNED

1 FINDINGS OF FACT

2 I.

3 That commencing in about November, 1973, following
4 verbal authorization to commence construction by authorized
5 personnel of the Montana Department of Natural Resources and
6 Conservation the Skyliner Corporation commenced construction
7 of a dam and dike which has been completed and as a result
8 thereof there is impounded behind the dam and dike approximately
9 forty-five to fifty acre feet of water.

10 II.

11 That the source of the water for the small lake created
12 by the dam and dike, which lake is called by Skyliner Corporation
13 "Angel's Lake," is springs developed by excavation during the
14 course of the construction of the dam and dike.

15 III.

16 That the source of materials used for the dam and dike
17 was excavated material in the area which is now inundated by
18 the water impounded behind the dam and dike constructed by Skyliner
19 Corporation.

20 IV.

21 That the springs that were developed by Skyliner Corporation
22 were not flowing springs at the time of the construction of the
23 dam and dike but now flow a substantial volume of water which is
24 discharged at the lower end of Angel's Lake into Elk Creek by
25 means of two eighteen inch glory holes or trickle tubes which are
26 more than adequate to handle the water which continuously flows in
27 and out of Angel's Lake.

28 V.

29 That in addition to the outlets described in the preceding
30 paragraph, there are two thirty inch steel culverts placed higher
31 than the top of the trickle tubes to be used in the event that there
32 should ever be an abnormal flow of water into Angel's Lake.

1 VI.

2 That in addition to the trickle tubes and emergency
3 culverts described in the preceding two paragraphs there is
4 installed a thirty-six inch steel culvert at the bottom of
5 Angel's Lake with a gate so that the level of the water can
6 be controlled and the lake can be nearly drained by this means.

7 VII.

8 That there is no abnormal water loss or seepage out of
9 Angel's Lake through or under the dam and dike constructed by
10 Skyliner Corporation of earth and rock.

11 VIII.

12 That Elk Creek runs adjacent to said dam and dike but
13 only at the upper end does the direction of Elk Creek run toward
14 the dike and at that point the stream bed has been widened so
15 that the force of the water is spread and the dike at that point
16 has been reinforced substantially and the water behind the dike
17 at that point is only approximately two to two and one half feet
18 deep.

19 IX.

20 That the terrain surrounding Angel's Lake is such that
21 there is no possibility of run off in the event of cloud bursts
22 or heavy snow melt adding extra water to the lake and the total
23 area that can drain into the lake is approximately five acres.

24 X.

25 That the sole evidence produced at the time of the hearing
26 was that the dam and dike was constructed for Skyliner Corporation
27 for the most part by Falls Construction Company, a licensed
28 construction firm in the State of Montana and it was constructed
29 in a normal and approved method by such corporation.

30 XI.

31 That Skyliner Corporation has expressed its complete
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1 willingness to cooperate in any regard with the Montana Department
2 of Natural Resources and Conservation and in the event that rip-
3 rapping should become adviseable from a safety point of view,
4 Skyliner Corporation will cause this to be done.

5 XII.

6 That the springs which were developed during the course
7 of construction by Skyliner Corporation flow at a relatively
8 constant rate and there are no internal pressures other than
9 wave action caused by wind which could endanger the structural
10 integrity of the dam and dike and because of the direction of
11 the flow of Elk Creek in relation to the dam and dike there appears
12 to be no possibility of erosion affecting the intergrity of the
13 dam from Elk Creek even in flood time, but in the event of
14 a leak in the dam or dike because most of the water is impounded
15 in an area which has been excavated there would be very little
16 water added to Elk Creek from Angel's Lake.

17 XIII.

18 That Skyliner Corporation is not now and does not
19 contemplate any irrigation from the waters of Angel's Lake.

20 XIV.

21 That none of the objectors could observe any dinimution
22 in the water supply in Elk Creek below Angel's Lake since its
23 creation or during the construction thereof.

24 XV.

25 That Angel's Lake was filled in the Spring and will
26 impound no more water than was appropriated by impoundment at
27 that time.

28 CONCLUSIONS OF LAW

29 I.

30 That the dam and dike constructed by Skyliner Corporation
31 was constructed by conventional and approved means and is a
32 safe structure.

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II.

That there is no danger to property down Elk Creek from Angel's Lake because of the construction of said lake.

III.

That the officers of Skyliner Corporation will cause any remedial work to said dam or dike to be done if and when it ever becomes necessary to do so.

IV.

That the construction of the dam and dike and creation of Angel's Lake by Skyliner Corporation has not diminished the flow of water into Elk Creek but on the contrary may have increased the flow of water to Elk Creek and in no way has diminished the water available for use by landowners with lands located down stream on or near Elk Creek below Angel's Lake.

V.

That the application of Skyliner Corporation should be approved.

DATED this 8th day of August, 1974.

HEARINGS OFFICER

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

FILMED

APR 5 1990

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT,)
NO. 912-s41K, SKYLINER CORPORATION)

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 August 7, 1974, at 7:00 p.m. at Augusta, Montana, for the purpose of hearing objections to the above-named application.

Objectors appearing at the hearing were Tee Bar Ranch Company, by Jerry Mosher, Northwestern National Bank and Wm. A. Reid, co-trustees under the Last Will and Testament of Edward R. Ellis, deceased, and Carol E. Higgins, by Wm. A. Reid, and Gilman H. and Susanne A. Mirehouse, by Gilman Mirehouse.

The applicant, Skyliner Corporation, appeared by its President, John C. Hoyt.

Evidence was introduced by the objectors contending: that an appropriation of water was not a matter of appropriating spring water but was in fact a matter of appropriating the flow of Elk Creek; that the proposed appropriation would diminish the water to which the objectors were entitled to appropriate from Elk Creek down stream from the applicants point of diversion; and, that the means of construction of the reservoir is not adequate.

The applicant denied the foregoing contentions and introduced evidence in support of his position.

The law and the evidence having been fully considered, the Department of Natural Resources and Conservation having made an inspection of the area, the following proposed Findings of Fact and Conclusions of Law are hereby made and entered.

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PROPOSED FINDINGS OF FACT

1. On November 5, 1973 the applicant submitted an application for beneficial water use permit to the Department seeking to appropriate sixty (60) acre-feet per annum of water in Lewis and Clark County. The applicant sought a permit to impound water in a 60 acre-foot reservoir, fed by springs, at a point in Tracts 15, 16, 17 and 18 of Elk Tracts, located in Section 11, Township 18 North, Range 8 West, M.P.M. and to be used for recreational purposes from January 1 to December 31, inclusive, of each year.

2. In November, 1973, verbal authorization to commence construction of a dam and dike was given to the applicant. On December 14, 1973, the applicant was given written authorization to begin construction on the proposed reservoir. Skyliner Corporation commenced a dam and dike which has been completed and as a result thereof there is impounded behind the dam and dike approximately fifty acre-feet of water.

3. That Elk Creek flows adjacent to the development; that the source of water for the small lake created by the dam and dike is springs developed by excavation during the course of the construction of the dam and dike; that said developed springs prior to construction had a flow that contributed to Elk Creek; that subsequent to construction the flow of the spring was significantly increased, a substantial volume of which is discharged at the lower end of the lake into Elk Creek by means of two eighteen inch glory holes or trickle tubes which are adequate to handle the flow through the lake; and, that there is practically no surface drainage into the reservoir, the main source of supply being the developed springs.

4. The material used in construction of the dam and dike consisted of sand and gravel, alluvial valley fill, soil, and weathered Cretaceous shale from the north side of the valley, all of which was moved into place with a dragline and cat. Construction of the dam was accomplished without the benefit of a registered engineer.

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designs and specifications, however, construction was completed by a licensed construction firm in the State of Montana in a normal and approved method.

5. In addition to the two eighteen inch glory hole outlets which spill when the water is about five feet from the top of the dam, there is an emergency spillway consisting of two twenty-four inch diameter, C.M.P. culverts. The emergency spillway is approximately two feet above the crest elevation of the glory tubes. Additionally, there are two thirty-six inch C.M.P. culverts with a slide gate installed upstream in the dam at the lowest point, so that the reservoir may be drained and the level of the lake controlled.

6. Elk Creek runs adjacent to said dam and dike but only at the upper end does the direction of Elk Creek run toward the dike and at that point the stream bed has been widened so as to diminish the force of the water at that point of the dike.

7. The design and the method of construction of the dam render it highly susceptible to erosion by wave action and spring runoff.

8. The terrain surrounding the lake is such that there is little possibility of runoff in the event of cloud bursts or heavy snow melt adding extra water to the lake and the total area that can drain into the lake is approximately five acres.

9. That all of the objectors have prior existing rights to the flow of Elk Creek and that in low water years said appropriators have on occasion run short of water as per their appropriation.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water for a beneficial use is required.

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2. Applicants proposed use is a beneficial use for which water may be appropriated.

3. The major source of supply herein involved are developed springs which have contributed to Elk Creek; that since development the flow of Elk Creek immediately below the dam site has been increased; that the appropriation of said water has not adversely affected the rights of prior appropriators; and, that there is, with the possible exception of some low water years, unappropriated waters.

4. 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.

5. The construction of the dam was accomplished by conventional and approved means but nevertheless the system is susceptible to erosion and therefore subject to failure.

6. The application for beneficial water use permit may be granted in a modified form in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana.

PROPOSED ORDER

1. The applicant is granted a provisional permit allowing the appropriation of fifty (50) acre-feet per annum of water in Lewis and Clark County, the water to be impounded in a 50 acre-foot reservoir, fed by springs, at a point in Tracts 15, 16, 17 and 18 of Elk Tracts located in Section 11, Township 18 North, Range 8 West, M.P.M., and to be used for recreational purposes from January 1 to December 31, inclusive, of each year.

2. The provisional permit is granted subject to existing rights.

3. The permit is granted upon the following conditions: That for safety purposes, the dam structure is made secure by the addition of riprap (the amount and placement of riprap to be determined by consulting with the Department); that the addition of the riprap be completed and approved within 12 months from the date of issuance of a provisional permit; and, that the Department of Natural Resources and

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Conservation examine and approve the riprapping and determine that the structure is safe.

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. Written exceptions to the proposed order shall be filed with the Department 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 of the Water Resources Division.

September 6, 1974
Date

Ronald D. MacIntyre
Donald D. MacIntyre
Hearing Examiner

CASE # 912