

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 1136-s40-I, BY)
NICK B. FABER)

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, entered on December 17, 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. The applicant's permit is granted, allowing for the diversion of 271 acre-feet of water per annum from Schultz Creek, at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 29 North, Range 20 East, of Blaine County, which would be diverted by means of a ditch into a 650-acre-foot reservoir located on Willow Creek in the N $\frac{1}{2}$ NE $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 20, Township 29 North, Range 20 East, Blaine County. The application to construct the dam and reservoir is granted along with the right to divert water from Willow Creek up to and including 379 acre-feet per annum.

2. The permit is granted subject to the prior existing water rights of the objector, Ray Belcher, on Schultz Creek. The applicant will be able to divert water from Schultz Creek whenever there is any water that flows by the present existing dams on the objector's ranch.

3. The permit is granted subject to existing water rights.

4. The applicant will have until December 31, 1976, to complete the project unless a request for an extension is received before that date. The applicant will notify the Department upon completion.

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5. The dam will be constructed so that all the water may be released and so that it can flow through.

Done this fifth day of March , 1975.

Orren Harris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR
BENEFICIAL WATER USE PERMIT NO.
1136-s40-I by NICK B. FABER

}
} PROPOSAL FOR DECISION
}

Pursuant to the provisions of the Montana Water Use Act, Section 89-865 et seq., R.C.M. 1947, after due notice, a public hearing was held August 28, 1974 in the Courtroom of the Blaine County Courthouse, Chinook, Montana, to hear objections to the above application. The applicant was present and testified in behalf of his application. The objector, Ray Belcher, was present and was represented by Oscar Hendrickson of the firm Sias and Hendrickson of Chinook, Montana. The objector's attorney presented evidence and the testimony of the objector.

PROPOSED FINDINGS OF FACT

1. On December 10, 1973, Nick B. Faber filed with the Department of Natural Resources and Conservation, Water Resources Division, an application for beneficial water use permit to appropriate water from Schultz Creek, a tributary of Nicholson Creek, and Willow Creek, a tributary of Peoples Creek. Water will be diverted at a point on Schultz Creek in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 29 N, Range 20 E. of Blaine County and will be discharged by means of a ditch into a reservoir which would be constructed on Willow Creek at a point in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, Township 29 N, Range 20 E., of Blaine County.

2. The total quantity of water to be appropriated at the diversion point on Schultz Creek is 271 acre-feet per annum. The total quantity of water which can be stored and impounded in the reservoir on Willow Creek is 650 acre-feet of water per annum. The water is to be used for irrigation purposes from April 15

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to October 15, inclusive and for stockwatering purposes from January 1 to December 31, inclusive.

3. An objection was filed by Ray Belcher of Chinook, Montana.

4. The applicant's diversion works on Schultz Creek would not include any storing of water. The water would be transported by way of a ditch to the reservoir on Willow Creek. There it would be stored with the water from Willow Creek and when sufficient quantities were accumulated it would be used for irrigation on approximately eighty eight acres of land located in Sections 20 and 21 of Township 29 N., Range 20 E., of Blaine County owned by Nick Faber.

5. The height of the proposed storage dam is forty five (45) feet and will be earthen filled.

6. Schultz Creek is a tributary of Nicholson Creek. The proposed point of diversion is above an already existing irrigation reservoir located on the land of the objector, Ray Belcher. Nicholson Creek is a constantly flowing stream while Schultz Creek flows only during periods of precipitation. In the Spring of the year, there generally is excess water in Nicholson Creek depending on the moisture that falls and the spring run-off.

7. The objector, Ray Belcher, has an apparent prior water right to the waters of Nicholson Creek and Schultz Creek. His water right would include that which he is able to beneficially use from the dams located on his place and the water during the irrigation season that he can divert from Nicholson Creek. His water right would not include that water which would flow past his present existing reservoirs. The objector's water right would date from a notice of appropriation which was filed with the Clerk and Recorder of Blaine County, Montana on July 10, 1885 and a copy of which was received into evidence.

8. When there is overflow water from the dams located on the objector's ranch, it will usually continue down Nicholson Creek and flow under the road at

Cleveland, Montana.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water from Schultz and Willow Creek for a beneficial use is required.
2. The criteria for issuance of a permit set forth at Section 89-865, R.C.M. 1947, have been met.
3. 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 applicant's permit is granted allowing for the diversion of 271 acre-feet per annum of water from Schultz Creek at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28, Township 29 N., Range 20 E., of Blaine County which would be diverted by means of a ditch in a 650 acre-foot reservoir located on Willow Creek in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, Township 29 N., Range 20 E., Blaine County. The application to construct the dam and reservoir is granted along with the right to divert water from Willow Creek up to and including 379 acre-feet per annum.
2. The permit is granted subject to the prior existing rights of the objector, Ray Belcher, on Schultz Creek. The applicant will be able to divert water from Schultz Creek whenever there is any water that flows by the present existing dams on the objector's ranch.
3. The permit is granted subject to existing rights.
4. The applicant will have until December 31, 1977 to complete the project unless a request for an extension is received before that date. The applicant will notify the Department upon completion.

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5. The dam will be constructed so that all of the water may be released, so that it can flow through.

NOTICE: This is a proposed Order and will become final when accepted by the Administrator, Division of Water Resources, Department of Natural Resources and Conservation. Pursuant to Section 82-4212, R.C.M. 1947 and Rule MAC 1-1.6(2)-P6190, written exceptions to this Proposed Order shall be filed with the Administrator within ten (10) days of service of this Proposed Order upon the parties herein. Upon receipt of any written exceptions, opportunity will be afforded to file briefs and make oral arguments before the Administrator.

19 Dec. 1974
Date

Gary L. Spaeth
Gary L. Spaeth
Hearing Examiner