

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

**FILMED**  
APR 5 1990

IN THE MATTER OF APPLICATION FOR  
BENEFICIAL WATER USE PERMIT  
NO. 1443-s40J BY BERT ADAMS

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

Pursuant to the Montana Water Use Act and the Administrative Procedure Act, after due notice a hearing was held on January 7, 1975, at Havre, Montana, for the purpose of hearing objections to the above-named application.

The Applicant, Bert Adams, appeared at the hearing and presented testimony. He was not represented by counsel.

The Alfalfa Valley Irrigation District filed timely objection to the application. Gerald Brummer, president of the Alfalfa Valley Irrigation District, appeared at the hearing and presented testimony. Alfalfa Valley Irrigation District was represented by counsel, Stuart MacKenzie, Esq., of Chinook, Montana.

Mr. MacKenzie asked that the Malta Irrigation District, Glasgow Irrigation District, Fort Belknap Irrigation District, Harlem Irrigation District, Zurich Irrigation District, and Paradise Valley Irrigation District be instated as Objectors to the application. All are members of Milk River Irrigation District. Ted Erraux represented Malta Irrigation District. Sver Enkerund represented Glasgow Irrigation District. Laurence Miller represented Fort Belknap Irrigation District. George Green represented Harlem Irrigation District. Herman Friede and John G. Overcast represented Paradise Valley Irrigation District. Stuart MacKenzie, as counsel, represented the Zurich Irrigation District. These districts were allowed to present testimony but are not joined as Objectors.

Mr. MacKenzie said that these parties did not file formal objections because they did not receive notice. The Notice to Water Users was published in the Havre Daily News on June 5, 12, and 19, 1974.

Robert Green, manager of the Milk River Project, U.S. Bureau of Reclamation, Malta, Montana, appeared and presented testimony in support of the Objector.

Mr. MacKenzie offered into evidence a letter to Orrin Ferris, administrator of the Water Resources Division, from the regional director of the U.S. Bureau of Reclamation, Upper Missouri Region. This letter was received into evidence as Objector's Exhibit "B" without objection.

Mr. MacKenzie offered into evidence, requesting right of substitution, a copy of the 1961 Water Supply Report of the Milk River Project, dated January 1961. Mr. Adams said he could not examine the report on such short notice. The report was received into evidence as Objector's Exhibit "C," on condition

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that Mr. Adams be served with a copy. A copy was received by the Department on January 27, 1975, and is now part of the file.

The Hearing Examiner agreed to take judicial notice of the Report to the International Joint Committee on the Division of the Waters of St. Mary and Milk Rivers.

A Proposed Order (Proposal for Decision) on the above hearing was issued by the Hearing Examiner, James A. Lewis, on May 23, 1975. Also attached to the Proposed Order was the Hearing Examiner's Ruling on Mr. MacKenzie's request that the Malta, Glasgow, Fort Belknap, Harlem, Zurich, and Paradise Valley Irrigation Districts be joined as Objectors. The Proposed Order Notice specified that the Proposed Order would become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation, that written exceptions to the Proposed Order must be filed with the Department within ten (10) days of receipt of same, and that upon receipt of any written exceptions by the Department, opportunity would be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

On June 10, 1975, the Department received a letter dated June 9, 1975, from Stuart C. MacKenzie requesting on behalf of seven irrigation districts an additional eight days in which to file a written exception to the Proposed Order. By letter of June 12, 1975, the Department informed Mr. MacKenzie that he was granted one extension, to June 24, 1975, in which to file any exceptions to the Proposed Order in the matter of Application No. 1443-s40J. A copy of said letter was also sent to Bert Adams.

On June 24, 1975, the Department received an Exception dated June 23, 1975, as filed by Mr. MacKenzie on behalf of his clients, Alfalfa, Malta, Glasgow, Fort Belknap, Zurich, Harlem, and Paradise Valley Irrigation Districts, in opposition to the Hearing Examiner's Proposed Order of May 23, 1975, in the matter of Application No. 1443-s40J by Bert Adams.

Mr. MacKenzie was informed by the Department's letter of June 30, 1975, of his opportunity to file a brief supporting his exceptions and objections within fifteen (15) days upon receipt of the Department notice. It was also pointed out that the Applicant would be given an equal opportunity to prepare and file a Reply Brief, and if so requested, a hearing in Helena before the Water Resources Division Administrator could be held for the purpose of presenting oral argument in support of the briefs filed.

Gary W. Gilbert, attorney for the Applicant, was informed by the Department's letter of June 30, 1975, that Mr. MacKenzie had filed an Exception

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on behalf of the seven irrigation districts and that Mr. MacKenzie was given an opportunity to file a brief supporting their exceptions and objections within fifteen days upon receipt of the Department's notice. Mr. Gilbert was further advised that should Mr. MacKenzie file a brief, he would be given an opportunity to prepare and file a Reply Brief, and if requested and warranted, a hearing in Helena before the Water Resources Division Administrator could be held at a later date for the purpose of presenting oral argument in support of the briefs. A copy of the Exception filed by Mr. MacKenzie was enclosed with the Department's letter of June 30, 1975, to Mr. Gilbert. Copies of said letter were also sent to Bert Adams.

By letter of July 15, 1975, Mr. MacKenzie requested that he be allowed until July 22, 1975, in which to file his Brief in support of his Exception. The Department by its letter of July 16, 1975, to Mr. MacKenzie stated that the requested extension of seven days or until July 22, 1975, in which to file his brief was granted.

On July 24, 1975, the Department received Mr. MacKenzie's Brief dated July 22, 1975, and filed on behalf of his clients, the Alfalfa, Malta, Glasgow, Fort Belknap, Zurich, Harlem, and Paradise Valley Irrigation Districts.

Gary W. Gilbert, attorney for the Applicant, was informed by the Department's letter of July 25, 1975, that he had an opportunity to file a Reply Brief within fifteen (15) days after receipt of the Department's letter, since Mr. MacKenzie had filed his Brief, dated July 22, 1975, supporting his client's Exception. A copy of Mr. MacKenzie's Brief was enclosed with the Department's letter to Mr. Gilbert. Copies of said letter were also sent to Mr. Adams and Mr. MacKenzie.

On August 11, 1975, the Department received Mr. Gilbert's Reply Brief dated August 7, 1975, and filed on behalf of the Applicant.

The Department by its letter of August 14, 1975, to Mr. Gilbert acknowledged receipt of his Reply Brief filed on behalf of his client, Bert Adams, in support of his Application No. 1443-s40J, to appropriate certain waters from the Milk River and the Proposed Order as issued on May 23, 1975, by the Hearing Examiner. Mr. Gilbert was advised that the Water Resources Division Administrator would select a date for the oral argument hearing on the briefs filed to be held in Helena, and that he would be notified of said hearing by certified mailed notice. Copies of said Department letter were also sent to Mr. MacKenzie and Mr. Adams.

On August 18, 1975, the Department received Mr. Gilbert's letter of August 15, 1975, in which he requested that any oral argument hearing be held at

a time after September 15, 1975. By letter of August 19, 1975, the Department responded to Mr. Gilbert by stating that his letter would be forwarded to the Water Resources Division Administrator and was assured that the administrator would recognize his request and set a hearing after September 15, 1975. A copy of said letter was sent to Mr. MacKenzie.

By letter of December 3, 1975, the Department sent a letter to Mr. Gilbert in reference to Application No. 1443-s40J and Application for Change No. 4634-c40J submitted by his client, Bert Adams, and requested Mr. Gilbert to confer with his client and inform the Department within five (5) days after receipt of the Department's letter indicating how he wished to handle Application No. 1443-s40J. A copy of said letter was also sent to Mr. Adams.

On December 8, 1975, the Department received a letter from Mr. Gilbert, dated December 5, 1975, in reply to the Department's letter of December 3, 1975, stating that he had contacted Mr. Adams and that he wished to continue with Application No. 1443-s40J and requested that a hearing be set up for oral argument on the briefs submitted.

The Department by its letter of December 11, 1975, to Mr. Gilbert, informed him that since oral argument on the exceptions and briefs had been requested, the application would be submitted to the Water Resources Division Administrator for review and scheduling of an oral argument hearing, and all parties to this matter would be notified of the hearing date, time, and place to be held in Helena, sometime in late January or early February. Copies of said letter were also sent to Mr. MacKenzie and Mr. Adams.

On January 6, 1976, the Department received a letter from Mr. MacKenzie dated January 5, 1976, requesting that the oral argument hearing be held in Havre, because of the distance involved in traveling to Helena. By letter of February 3, 1976, the Department responded to Mr. MacKenzie's letter by stating that the Administrator had determined that he would follow the normal operating policy and hold the oral argument hearing in Helena. The normal operating policy of the Department is to hold the initial objection-to-application hearing before the Hearing Examiner as close to the Applicant and objectors as practicable, and the second hearing for oral argument, when necessary, in Helena, before the Water Resources Division Administrator. Copies of said letter were sent to Gary W. Gilbert, Bert Adams, Gerald Brummer, and Faye Seel.

The Administrator of the Water Resources Division issued on March 2, 1976, a Notice of Hearing on Exceptions in the matter of Application for Beneficial Water Use Permit No. 1443-s40J by Bert Adams, stating that on Wednesday, March 17,

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1976, at 1:30 p.m., a hearing would be held before the Administrator of the Water Resources Division, in Room 211, or the Conference Room as the situation may require, of the Department of Natural Resources and Conservation Building, 32 South Ewing, Helena, Montana. The purpose of the hearing was to hear oral arguments in support of the written briefs, and each party would be given twenty minutes to argue in support of his brief. Also, if certain parties did not wish to make oral argument, they were requested to so advise in writing before the hearing of their wish to waive this right; in such case, the briefs would stand as filed. This Notice of Hearing on Exceptions was mailed by certified mail to all parties in this matter.

The Administrator on March 9, 1976, issued a Notice of Time Change on Hearing on Exceptions notifying all parties by certified mail that the hearing originally scheduled for Wednesday, March 17, 1976, at 1:30 p.m., was rescheduled for 3:30 p.m. on Wednesday, March 17, 1976.

On March 17, 1976, the Department received a letter dated March 16, 1976, from Robert L. McPhail, regional director of the Bureau of Reclamation, Billings, Montana, requesting the Department to consider certain information contained in Mr. McPhail's letter in reaching a decision on the above-referenced application by Mr. Adams.

The requested oral argument hearing was held in Helena, Montana, on March 17, 1976, in Room 211, before the Water Resources Division Administrator for the purpose of hearing oral arguments in support of written objections, exceptions, and briefs.

Gary W. Gilbert, attorney for the Applicant, appeared on behalf of his client and presented testimony in support of the Application, Proposed Order, and Reply Brief as filed. Bert Adams, the applicant, did not appear.

Stuart C. MacKenzie, attorney for the Objectors and Exceptors, appeared on their behalf and presented testimony in support of their objections, exception, and brief. Several of the irrigation district representatives also attended said hearing and presented testimony.

The hearing was also attended by several Department personnel, other than the Water Resources Division Administrator.

Due to a technical malfunction of the tape recorder used at the oral argument hearing on March 17, 1976, Mr. MacKenzie's oral argument testimony was not recorded, and therefore the Administrator ruled that since Mr. MacKenzie was reading almost entirely from a previously prepared transcript, he could retype and present his oral presentation in the form of a typed transcript.

On April 5, 1976, the Department received Mr. MacKenzie's typed transcript of the oral presentation he made on behalf of the objectors to this application on March 17, 1976. Mr. MacKenzie also sent a copy of said transcript to Mr. Gilbert, and since no objections were received to its being accepted, the Administrator accepted said transcript and it was entered as part of the application file, as was the tape recording of the remainder of the oral argument hearing.

The Administrator of the Water Resources Division hereby makes the following Final Order, based on the Hearing Examiner's Proposed Order and attached Ruling, dated May 23, 1975, the application, objections, exceptions, briefs, the testimony of the oral argument hearing held on March 17, 1976, and all pertinent information and documents filed by parties to this matter, and made a permanent record of the application file.

The Proposed Findings of Fact, Conclusions of Law, and Order, and the attached Ruling in this matter, as entered on May 23, 1975, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and Order, except that the Proposed Order is hereby modified as follows:

FINAL ORDER

1. The Applicant's Provisional Permit is hereby conditionally granted for Application No. 1443-s40J to appropriate the natural flow during periods of high, spring runoff when available and not needed to satisfy prior water rights downstream in the Milk River, 1.31 cubic feet of water per second, not to exceed 39 acre-feet per annum from the Milk River, in Hill County, Montana, to be diverted from the Milk River at a point in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 1, Township 32 North, Range 15 East, M.P.M., and used for irrigation on 35 acres in Lots 3 and 4, located in the N $\frac{1}{2}$  NW $\frac{1}{2}$  of Section 6, Township 32 North, Range 16 East, M.P.M., from April 15 to June 15, inclusive, of each year.
2. The Permittee will cooperate with other water users in scheduling his withdrawals so that his periods of diversion will not adversely affect prior or existing rights.
3. The Permittee shall install and maintain adequate measuring devices so that he keeps a record of all quantities of water diverted and the periods of diversion, and shall supply said records to the Department upon request.
4. The Provisional Permit is granted subject to all prior existing water rights in the source of supply, and any final determination of prior existing water rights as provided by Montana law.
5. Anything contained in this Order to the contrary, notwithstanding, until formal adjudication of the rights to the waters of the Milk River under the

Montana Water Use Act or any successor thereto, as regards the waters granted herein for the period of April 15 to June 15, inclusive, of each year, Permittee shall cease appropriating water from the Milk River within five (5) days after the giving of notice in writing by the Manager, Bureau of Reclamation, Milk River Project, that said Project has begun to drawdown its storage reservoir at Fresno Reservoir to meet the appropriations of its own appropriators and those of appropriators who claim rights prior to those claimed by the Milk River Project. Said Project shall also be required to give timely written notice to the Permittee when the Project has ceased drawing down said dam and reservoir, and thereupon, Permittee may reassert his right to the waters herein above granted to him. Any notices provided for herein shall be deemed to have been given when mailed by certified or registered mail to the Permittee and addressed to the Permittee: Mr. Bert Adams, P.O. Box 91, Havre, MT 59501. Permittee may hereafter designate in writing a different address or addresses or persons to whom such notice shall be given, provided that such designation must also be filed with the Administrator, Water Resources Division, Department of Natural Resources and Conservation, or his successor. Service of such notice by mail shall be deemed complete when the same is enclosed in an envelope, duly sealed, and deposited in the United States mail at Malta, Montana, properly addressed with postage fully prepaid thereon.

6. Nothing in this Order contained shall be deemed in any way to deprive the Permittee of the right to the waters applied for by Permittee during the periods described in their application in the event that through the adjudication process authorized under the Montana Water Use Act it is determined that unappropriated waters were available to fill the request set forth in said application when the same was filed.

7. The issuing of this Provisional Permit by the Department in no way reduces the Permittee's liability for damage caused by the Permittee's exercise of his Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of his Provisional Permit.

Recommendation

The Department recommends that all parties in this matter properly install and maintain adequate measuring devices to fit their particular individual situation, and keep a log of records of water used for their own proof of their water rights.

Done this 12<sup>th</sup> day of August, 1976

*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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AFFIDAVIT OF SERVICE  
(Final Order)

STATE OF MONTANA )  
 ) ss. Final Order  
County of Lewis and Clark )

RONALD J. GUSE, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That, on August 13, 1976, he deposited in the United States mail, a "certified" copy of the Final Order by the Administrator, Water Resources Division, on the application by Bert Adams, Application No. 1443-s40J, for a permit to appropriate water, addressed to each of the following persons or agencies:

1. Mr. Bert Adams, P.O. Box 91, Havre, MT 59501
2. Mr. Gary W. Gilbert, Attorney at Law, Masonic Temple Building, Havre, MT 59501
3. Mr. Gerald Brummer, President, Alfalfa Valley Irrigation District, Chinook, MT 59523
4. Mr. Stuart C. MacKenzie, Attorney at Law, 411 Ohio St., Chinook, MT 59523
5. Mr. Raymond Knudson, Malta Irrigation District, Malta, MT 59538
6. Mr. Sever Enkerund, Glasgow Irrigation District, Malta, MT 59538
7. Ms. Kay Blatter, Fort Belknap Irrigation District, Malta, MT 59523
8. Mr. George Green, Harlem Irrigation District, Harlem, MT 59526
9. Messrs. Herman Freide and John G. Overcast, Paradise Valley Irrigation District, Chinook, MT 59523
10. Mr. Robert Green, U. S. Bureau of Reclamation, Malta, MT 59538
11. Mr. Chauncey, Flynn, Zurich Irrigation District, Chinook, MT 59523
12. Messrs. R. L. McPhail and Bryan Edwards, U. S. Bureau of Reclamation, P.O. Box 2553, Billings, MT 59103

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Ronald J. Guse

STATE OF MONTANA )  
 ) ss.  
County of Lewis & Clark )

On this 13th day of August, 1976, before me, a Notary Public in and for said State, personally appeared RONALD J. GUSE, known to me to be the Asst. Chief, Water Rights Bureau, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

T. J. Reynolds  
Notary Public for the State of Montana

NOTARY PUBLIC for the State of Montana  
Residing at Residing at Helena, Montana  
My Commission Expires July 23, 1977

My commission expires \_\_\_\_\_

CASE # 1443

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

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IN THE MATTER OF APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT NO. )  
1443-s40J, BY BERT ADAMS )

PROPOSAL FOR DECISION

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Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice a hearing was held on January 7, 1975 at Havre, Montana for the purpose of hearing objections to the above-named application.

The Applicant, Mr. Bert Adams, appeared at the hearing and presented testimony. He was not represented by counsel.

The Alfalfa Valley Irrigation District filed timely objection to the application. Mr. Gerald Brummer, president of the Alfalfa Valley Irrigation District, appeared at the hearing and presented testimony. Alfalfa Valley Irrigation District was represented by counsel, Mr. Stuart MacKenzie Esq., of Chinook, Montana.

Mr. MacKenzie asked that the Malta Irrigation District, Glasgow Irrigation District, Fort Belknap Irrigation District, Harlem Irrigation District, Zurich Irrigation District, and Paradise Valley Irrigation District be instated as Objectors to the application. All are members of Milk River Irrigation Project. Mr. Ted Erraux represented Malta Irrigation District. Mr. Sver Enkerund represented Glasgow Irrigation District. Mr. Laurence Miller represented Fort Belknap Irrigation District. Mr. George Green represented Harlem Irrigation District. Mr. Herman Friede and Mr. John G. Overcast represented Paradise Valley Irrigation District. Mr. Stuart MacKenzie represented, as counsel, the Zurich Irrigation District. These districts were allowed to present testimony but are not joined as Objectors (See attached ruling).

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Mr. MacKenzie said that these parties did not file formal objections because they did not receive notice. The Notice to Water Users was published in the Havre Daily News, on June 5, 12 & 19, 1974.

Mr. Robert Green, Manager of the Milk River Project, U. S. Bureau of Reclamation, Malta, Montana, appeared and presented testimony in support of the Objector.

Mr. MacKenzie offered into evidence a letter to Mr. Orrin Ferris, Administrator of the Water Resources Division, from the Regional Director of the U. S. Bureau of Reclamation, Upper Missouri Region. This letter was received into evidence as Objector's Exhibit "B" without objection.

Mr. MacKenzie offered into evidence, requesting right of substitution, a copy of the 1961 Water Supply Report of the Milk River Project dated January, 1961. Mr. Adams said he could not examine the report on such short notice. The report was received into evidence as Objector's Exhibit "C" on condition that Mr. Adams be served with a copy. A copy was received by the Department on January 27, 1975 and is now part of the file.

The Hearing Examiner agreed to take judicial notice of the Report to the International Joint Committee on the Division of the Waters of St. Mary and Milk Rivers.

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 January 31, 1974, Mr. Bert Adams made an Application for Beneficial Water Use Permit No. 1443-s40J seeking to appropriate 1.87 cubic feet per second of water and not to exceed 161 acre-feet per annum from the Milk River. The water is to be diverted at a point in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 1, T. 32N.,

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R. 15E., M.P.M. in Hill County, Montana. The water is to be used for irrigation on a total of 51 acres, more or less, in lots 3,4, and 17 located in the N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 6, T. 32N., R. 15E. M.P.M. from April 15 to September 15 inclusive of each year, and used for stock-watering purposes from January 1 to December 31 inclusive of each year.

2. On June 24, 1974, the Alfalfa Valley Irrigation District, by its President, Mr. Gerald Brummer, submitted a timely objection on the grounds that there is no unappropriated water in the Milk River.

3. The Applicant, Mr. Bert Adams, testified that he does not wish to irrigate 51 acres. He said it would actually be only about 35 acres because it would be 240 feet less than 51 acres. He testified that he has already purchased a "power roll" irrigation system and installed 2 miles of three phase electric power line. Mr. Adams said this 35 acres had been irrigated before. He said that a flood destroyed the diversion dam and had changed the contour of the river bank so that it was no longer feasible to divert from this dam. His testimony did not indicate that he wanted any stockwater. Mr. Adams said that most project irrigators used more water than they were entitled to by their project contract.

4. A witness for the Objector, Mr. Robert Green, Manager of the Milk River Project, testified that:

- A. The natural flow of the Milk River is insufficient to satisfy the irrigation needs of the Milk River Valley; consequently, the Bureau of Reclamation constructed St. Mary's diversion facilities and Fresno and Nelson Reservoirs.
- B. The Bureau of Reclamation Milk River Project is not letting out anymore contracts for water beyond the 104,000 to 120,000 acres currently under contract.
- C. There are many parties pumping water from the Milk River who have not filed an appropriation and who do not have a contract to appropriate water from the Milk River Project. Mr. Green termed these "illegal pumpers". They irrigate about 6,000 acres.

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- D. There may be some unappropriated water in extreme high spring runoff, but there is usually no natural flow in the Milk River from May to September.
- E. Canada has a right to 25% of the Milk River natural flow as measured at the Eastern crossing of the international boundary, but for several years Canada has not taken her share.
- F. Sometimes the water stored by the Bureau is not adequate to supply the contract needs.
- G. The Milk River Project appropriated water as early as 1906 and 1908.
- H. The conclusions of the 1961 U. S. Bureau of Reclamation Water Supply Report are:
  - 1. The Milk River Valley has reached the maximum practical development allowed by the future dependable water supply.
  - 2. Expanding the present diversion or storage facilities would not increase the project water supply during critical years.
  - 3. Successful irrigation in Milk River Valley is dependent upon a supplemental supply from the St. Mary River.
  - 4. There is no Milk River natural flow available for private pumping systems.
  - 5. The continued expansion of unauthorized private pumping will jeopardize the water supply needed by legitimate water users.

5. Mr. Stuart MacKenzie, Esq., counsel for the Objector said that the Malta, Glasgow, Fort Belknap, Harlem, Zurich, and Paradise Valley Irrigation Districts had not filed objections to the application because notice had only been published in Hill County and these other Districts did not have proper notice.

6. This Hearing Examiner does not accept the conclusions of the 1961 U. S. Bureau of Reclamation Water Supply Report as conclusive. Some deficiencies in the report are:

- 1. The study is out of date. Methods of appropriation

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are much improved since 1961.

2. Diversions, return flows, and losses were not measured accurately.
3. The method used to determine consumptive use and effective precipitation is not adequate.

From the foregoing 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, an Application for Beneficial Water Use Permit is required to appropriate water from the Milk River.

2. There are at times (extreme high spring runoff) unappropriated waters in the source of supply.

3. The proposed diversion in the periods of extreme high spring runoff will not adversely affect prior existing water rights.

4. The proposed use of water is a beneficial use.

5. The proposed means of diversion are adequate.

6. 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.

7. Notice was published in a newspaper of general circulation in the area of the source.

8. The criteria for issuance of a permit set forth at Section 89-885, R.C.M. 1947, have been met and the application may be granted.

Based on the above Proposed Findings of Fact and Conclusions of Law, the following Order is proposed.

PROPOSED ORDER

1. The Applicant's Provisional Permit is granted allowing the appropria-

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tion of 1.87 cubic feet per second of water and not to exceed 161 acre-feet per annum from the Milk River from April 15 to June 15 inclusive of each year. The water is to be diverted from the Milk River at a point in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 1, T. 32N., R. 15E. M.P.M., and used on 35 acres in lots 3 and 4 located in the N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 6, T. 32N., R. 15E., M.P.M.

2. The provisional permit is granted subject to installation of a measuring device adequate to measure the quantity of water used annually and during any periods of diversion, and also subject to keeping a record of the amount of water diverted and the periods of diversion.

3. The provisional permit is granted subject to all prior existing water rights in the source of supply.

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.

DATED this 23 day of May, 1975.

James A. Lewis  
HEARING EXAMINER

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AFFIDAVIT OF SERVICE  
(Proposed Order)

STATE OF MONTANA )  
 ) ss.  
County of Lewis and Clark )

RONALD J. GUSE, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That, on May 27, 1975, he deposited in the United States mail, "certified mail, return receipt requested," a copy of the Proposed Order by the Department Hearing Examiner on the application by Bert Adams, Application No. 1443-s40J, for a permit to appropriate water, addressed to each of the following persons or agencies:

1. Mr. Bert Adams, P.O. Box 91, Havre, MT 59501
2. Mr. Gerald Brummer, President, Alfalfa Valley Irrigation District, Chinook, MT 59523
3. Mr. Stuart C. MacKenzie, Attorney at Law, 411 Ohio Street, Chinook, MT 59523
4. Mr. Ted Ereaux, Malta Irrigation District, Malta, MT 59538
5. Mr. Sver Enkerund, Glasgow Irrigation District, Malta, MT 59538
6. Mr. Laurence Miller, Fort Belknap Irrigation District, Chinook, MT 59523
7. Mr. George Green, Harlem Irrigation District, Harlem, MT 59526
8. Messrs. Herman Friede and John G. Overcast, Paradise Valley Irrigation District, Chinook, MT 59523
9. Mr. Robert Green, U.S. Bureau of Reclamation, Malta, MT 59538
10. Zurich Irrigation District, Chinook, MT 59523

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
by Ronald J. Guse

STATE OF MONTANA )  
 ) ss.  
County of Lewis and Clark )

On this twenty-seventh day of May, 1975, before me, a Notary Public in and for said State, personally appeared Ronald J. Guse, known to me to be the Assistant Chief, Water Rights Bureau, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Robert V. Hansen  
Notary Public for the State of Montana

Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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