STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATIONS FOR BENEFICIAL WATER USE PERMIT NO. 1598-s41S, 1599-s41S, AND 1600-s41S, BY HELEN J. SHIPMAN	))))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter entered November 12, 1974, is hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

The three applications are granted subject to:

1. Installation of a drainage device of at least 12-inch diameter in the bottom center of each reservoir.

2. Subject to prior existing water rights.

Done this 3rd day of January, 1975.

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 1598

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

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IN THE MATTER OF APPLICATIONS FOR BENEFICIAL WATER USE PERMIT NO. 1598-s41S, 1599-s41S, 1600-s41S, ALL OF HELEN J. SHIPMAN	))))	PROPOSAL FOR DECISION

Pursuant to the Montana Water Use Act, Section 89-865, et seq., R.C.M. 1947, and after due notice, a consolidated hearing was held on the above three Applications on October 17, 1974, in Lewistown, Montana. The applicant was present and represented by counsel, Mr. Peter Rapkoch, Esq., of Lewistown, Montana. Mr. and Mrs. Fred Colver appeared as objectors to all three of the above-named applications. Mr. Alan Folda appeared as an objector to Applications number 1598 and 1600. Mr. and Mrs. Colver were represented by their counsel, Mr. Bob Foster, Esq., of Lewistown, and Mr. Folda was represented by Mr. William Spoja, Esq., of Lewistown. The Applicant offered into evidence two exhibits, a map and an abstract of a water right. The Objector Fred Colver offered into evidence a letter written to him by a Mr. Richard D. Feltis, Hydrologist with the U.S. Geological Survey. Both the Applicant and the Objector Mr. Allen Folda objected to admission of the letter as hearsay evidence. This Hearing Examiner has overruled that objection. (See attached Ruling on Objections.)

PROPOSED FINDINGS OF FACT

1. On February 15, 1974 at 11:50 a.m., Helen J. Shipman filed these applications for beneficial water use permit to appropriate 80 A.F. of water from an unnamed tributary to Warm Springs Creek; to appropriate 19 A.F. of water from Mills Creek; and to appropriate 57 A.F. of water from Sawmill Creek and Spring Coulee. The point of diversion for the reservoir on the unnamed tributary

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to Warm Springs Creek is located in the NE¼ SW¼ SW¼ Section 32, T. 17 N, R. 19 E., Fergus County, Montana. The point of diversion for the reservoir on Mills Creek is in the SW¼ SE¼ SE¼ Section 31, T. 17 N., R 19 E., Fergus County, Montana. The point of diversion for the reservoir on Sawmill Creek and Spring Coulee is located in the SW¼ SE¼ Section 31, T. 17 N., R. 19 E., Fergus County, Montana.

2. On August 9, 1974 Fred and Beryl Colver of Brooks, Montana, filed a timely objection to the above-named Applications. On September 10, 1974 Alan Folda of Lewistown, Montana filed a timely objection to Applications 1598 and 1600. All of these objections are on the ground of adverse effect upon prior existing water rights.

3. Testimony produced at the hearing indicated that all the objections were concerned primarily with future adverse effects on the entire water basin, and that there was no objection so long as the permits were granted subject to existing water rights. Mr. Folda expressed particular concern that his water right be protected because it is not large in relation to the other water rights, but is very important to his operation.

PROPOSED CONCLUSIONS OF LAW

1. Testimony at the hearing did not conclusively establish that the proposed diversions would interfere with existing water rights.

2. There are unappropriated runoff waters available to supply the proposed diversions except in very dry years.

PROPOSED ORDER

The three applications should be granted subject to:

1. Installation of a drainage device of at least 12" diameter in the bottom center of each reservoir.

2. Existing water rights.

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NOTICE: This is a proposed order, and will become final when accepted by the Administrator, Water Resources Division, Montana Department of Natural Resources and Conservation, Helena, Montana. Any party adversely affected by this proposed order may file exceptions with the Administrator within ten (10) days of receipt of the order. Thereafter, opportunity will be provided to file briefs and make oral arguments before the Administrator.

DATED: _____

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James Lewis
Hearing Examiner

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