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STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

APR 5 1990

IN THE MATTER OF APPLICATION )  
FOR BENEFICIAL WATER USE )  
PERMIT NO. 1623-s41-I *B/M* )

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter entered on October 22, 1974, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

1. The Applicant must cease and desist from any further impoundment or appropriation of any of the waters subject of the application herein.
2. The issuance of a provisional permit has been made moot by the passage of time and therefore a provisional permit will not be granted.

Done this 11<sup>th</sup> day of December, 1974.

*Corrin Ferris*  
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Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

CASE # 1623

BEFORE THE DEPARTMENT  
OF  
NATURAL RESOURCES AND CONSERVATION

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IN THE MATTER OF APPLICATION ) PROPOSED FINDINGS OF FACT,  
NO. 1623-s41I, FOR BENEFICIAL ) CONCLUSIONS OF LAW, AND ORDER  
WATER USE PERMIT BY THE )  
BUREAU OF LAND MANAGEMENT )  
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The above-entitled matter came on regularly for hearing before Donald D. MacIntyre, hearing examiner, in the Auditorium of the Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, at 7:00 p.m. on September 9, 1974, at which time the Bureau of Land Management, appeared by a representative, Dave Pickett, and there were present objectors represented by Harold Harrison, Esq. Mr. Harrison represented Charles D. McDonald, E.S. Grady, B.F. Wohlfrom, H.E. Eskildsen and other unnamed members of the Little Prickly Pear Water Users Association.

The application was explained and all objectors witnesses were sworn, testified and were allowed the opportunity to present evidence relating to their objections and were made available for cross-examination. The Applicants also presented sworn testimony.

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. On February 22, 1974, an application was filed with the Department of Natural Resources and Conservation Application No. 1623-s41-I to appropriate 10 acre-feet of water in Lewis and Clark County, Montana. The water to be impounded is a 15 acre-foot reservoir on Empire Creek, a tributary of Lost Horse Creek, at a point in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Sec. 32, T. 12 N., R. 6 W., M.P.M., and diverted from the reservoir by means of a pump and delivered to the well site at a rate of 0.135 cubic feet per second. The water to be used for drilling of a geothermal research well by Battelle Northwest of Richland, Washington, from May 15 to October 1, 1974.

2. On March 27, 1974, the Department issued an interim permit authorizing the said appropriation. The interim permit was granted subject to all prior water rights.

3. On sixteen different occasions water was appropriated from the said impoundment, such action commencing on June 11, 1974 and terminating on August 24, 1974.

4. All objectors introduced evidence showing prior rights on Little Prickly Pear.

5. By the terms of the application and the interim permit the appropriation of water necessarily terminated on October 1, 1974.

PROPOSED CONCLUSION OF LAW

1. A provisional permit may not be issued pursuant to the provision of Section 89-880, R.C.M. 1947.

2. No use right has been or may be created in the applicant as the result of any appropriation made on the Little Prickly Pear Creek.

PROPOSED ORDER

1. The applicant must cease and desist from any further impoundment or appropriation of any of the waters subject of the application herein.

2. The issuance of a provisional permit has been made moot by the passage of time and therefore a provisional permit may not be granted.

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.

October 22, 1974  
Date

Donald D. Macintyre  
Donald D. Macintyre  
Hearing Examiner