

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

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 1825-s40A, BY
MERRILL L. ARMSTRONG

F I L M E D FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER
APR 0 1990

The Proposed Findings of Fact and Conclusions of Law in this matter, entered on January 9, 1975, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

The Applicant's permit is granted subject to prior existing water rights.

Done this fifth day of March , 1975

Orvin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 1825

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) PROPOSAL FOR DECISION
1825-s40A, MERRILL L. ARMSTRONG)

A hearing was held pursuant to the Montana Administrative Procedure and Water Use Acts on November 12, 1974, in Roundup, Montana for the purpose of hearing objections to the application named above. The applicant appeared and presented testimony. The objectors, Mr. and Mrs. Jack Burgess, Mr. and Mrs. Milton E. Fuller and Mr. Paul Thayer, appeared and presented testimony. Mr. Paul Thayer was represented by counsel, Mr. John Pratt, Esq., of Roundup. Also filing objections but not appearing at the hearing were Lucille Kindelman, Benjamin Brychta, Anne Welch, Andrew Wills, and Mrs. Jean Rom.

PROPOSED FINDINGS OF FACT

1. On March 20, 1974, at 12:05 p.m., Merrill L. Armstrong made application with the Department of Natural Resources and Conservation for Beneficial Water Use Permit Application No. 1825-s40A. The application is for 20 acre-feet of water for irrigation purposes and 1 acre-foot of water for stockwater purposes. The water is to be withdrawn by means of a pump approximately 7 horsepower and applied by means of a 3-inch sprinkler system. Approximately 15 acres of land will be irrigated for growing hay. The pump will be located beside Halfbreed Creek in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 35, Township 8 N., Range 25 E. of Musselshell County.

2. Eight timely objections were duly filed against the application. The Objectors have all been named above. Only three objectors appeared at the hearing. One of those, Mr. Paul Thayer, was represented by counsel.

CASE # 1825

3. The objector Jack Burgess does have an apparent existing water right to a house well. Mr. Burgess at one time irrigated from the creek but does not do so now. The objectors Mr. and Mrs. Milton E. Fuller have no apparent prior existing water right. The objector Mr. Paul Thayer has an apparent existing water right by virtue of a filed notice of appropriation of water right for 40 miner's inches, priority date July 16, 1930.

4. Because the creek goes underground, below the applicant's place but above the objector, Mr. Thayer's place, it was not conclusively established that any amount of withdrawal at the proposed point of diversion would adversely affect Mr. Thayer's water right. The applicant indicated that he would respect all prior existing water rights if it could be shown that his withdrawals did, in fact, cause the adverse affect.

PROPOSED CONCLUSIONS OF LAW

1. Several downstream landowners on Halfbreed Creek have acquired apparent prior existing rights for use of water from Halfbreed Creek for domestic and irrigation purposes.

2. The applicant's proposed diversion will not conclusively adversely affect the aforementioned existing rights.

3. There are often unappropriated waters in the source of supply.

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

5. 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, since no prior permits or reservations have been approved on this source pursuant to the Montana Water Use Act.

PROPOSED ORDER

The application for Beneficial Water Use Permit is granted subject to prior existing rights.

CASE # 1825

NOTICE: This is a Proposed Order only and will not become final until accepted by the Administrator, Water Resources Division, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59601. Pursuant to section 82-4212, R.C.M. 1947, and Rule MAC 1-1.6(2)-P6190, written exceptions to these proposed findings of fact, conclusions of law and order may be filed with the said administrator within ten (10) days after receipt of this proposed order. Upon receipt of any written exceptions, opportunity will be afforded to file written briefs and make oral arguments before the said administrator.

01/04/75
Date

James A. Lewis
James Lewis
Hearing Examiner