

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 1879-s40P, BY
JOSEPH O. KLASNA

FILMED
APR 10 1975

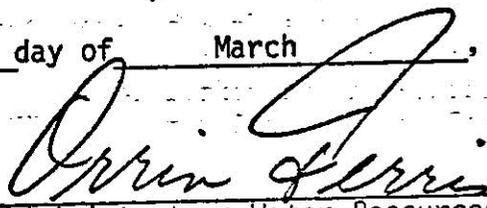
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter, entered on December 30, 1974, 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, and the installation of a drainage device in the dam of at least 12 inches in diameter to protect these rights.

Done this fifth day of March , 1975


Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 1879

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	PROPOSAL FOR DECISION
NO. 1879-s40P, JOSEPH O. KLASNA)	

Pursuant to the Montana Administrative Procedure and Water Use Acts, after due notice, a hearing on objections to the above-named Application was held on November 21, 1974 at the Richland County Courthouse. The Applicant, Joseph O. Klasna, appeared and presented testimony. He was represented by Counsel, Mr. Otto T. Habedank, Esq., of Sidney, Montana. The Applicant offered into evidence two exhibits, #1 a aerial photo map of the area in question and #2, the S.C.S. construction plans of the proposed stockwater dam. These two exhibits were received into evidence without objection. The Objectors of record to the Application are Alvin E. Raisl and Rhines Farming Corporation, a Montana corporation. Mr. Raisl was represented by the tenant and operator of his property, Mr. Allen Verschoot. Rhines Farming Corporation was represented at the Hearing by its president, Harold Rhines. Mr. Verschoot said that the landowner, Alvin Raisl had reached the conclusion that the proposed dam would not interfere with the Raisl rights.

PROPOSED FINDINGS OF FACT

1. On March 26, 1974, at 1:34 p.m., Joseph O. Klasna, made application with the Department of Natural Resources and Conservation for a Beneficial Water Use Permit, Application No. 1879-s40P. The Application is for 9 acre-feet of water for stockwater purposes to be used from January 1 to December 31, inclusive of each year. The water is to be impounded by means of a dam to be constructed on an unnamed coulee tributary to North Fork East Redwater Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{2}$ of Section 11, Township 24 N., Range 53 E., Richland County.

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2. On September 10, 1974, Alvin E. Raisl filed a timely objection to the Application. On September 26, 1974, Rhines Farming Corporation by its president Harold Rhines, filed a timely objection to the Application. Mr. Raisl objected on the grounds that it would adversely affect his prior existing water right. Mr. Rhines objected on the grounds that the proposed dam would adversely affect the Corporation's prior existing right to sub-irrigation of croplands and haylands and that the dam and reservoir would cause "saline seep" which would destroy the Corporation's cropland immediately below the proposed dam.

3. Mr. Verschoot, tenant on the Raisl land, testified that the Raisl diversion had as source of its water a drainage area of over 300 acres and that water often flowed past the Raisl diversion unused.

4. Testimony by Mr. Rhines indicated that he farms the bottom land below the proposed dam and that he believes this land immediately below the proposed dam is "sub-irrigated" by groundwaters apparently from the same source as the proposed dam.

5. Mr. Rhines testified that he fears that the proposed reservoir will cause "saline seep" which will render unproductive the land immediately below the proposed dam. He said he has seen this occur on other land in the vicinity similarly situated on the bottom in relation to reservoirs constructed on the bench.

PROPOSED CONCLUSIONS OF LAW

1. The proposed dam will probably not adversely affect the Raisl apparent prior existing water right.

2. The evidence did not conclusively establish a prior existing water right in the Rhines Corporation which would be protected under the Montana Water Use Act.

