

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

 IN THE MATTER OF APPLICATION
 FOR BENEFICIAL WATER USE
 PERMIT NO. 2014-s40R,
 FRANK NELSON

FILED } FINDINGS OF FACT, CONCLUSIONS
 OF LAW, AND ORDER
 APR 0 1980

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on July 15, 1975, by the Hearing Examiner, are hereby amended and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

1. The Applicant's permit is granted allowing the appropriation of 44 acre-feet of water per annum, to be used for irrigation purposes from April 15 to October 15, inclusive, of each year. The water is to be diverted from Sheep Creek at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 29 North, Range 56 East, and used for irrigation on a total of 44 acres in said Section 16.

2. The permit is granted subject to the objector's apparent prior water rights, and if it be determined that the proposed use does interfere with those rights, then the Department will receive evidence upon written request from an objector and conduct field checks enabling modification of the permit so as to prevent said interference.

3. The permit is granted subject to all other prior existing water rights.

CASE # 2014

Done this 10th day of October, 1975.

Orin 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

CASE # 2014

BEFORE THE MONTANA DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 2014-s40R, FRANK NELSON)

Pursuant to the Montana Water Use and Administrative Procedure Acts, a hearing on objections to the above-named Application was held in Culbertson, Montana, on March 13, 1975.

Mr. Glen Larsen appeared at the hearing and presented testimony on behalf of the Applicant. Mr. Larsen is the son-in-law of the Applicant and current operator of the property. They were not represented by counsel.

Mr. Lief Sunwall, Mr. Ernest Rued, Mr. Oscar Hippe, Mr. Clifford T. Gangstad, and Ms. Benora Hunt all submitted timely objections to the Application. Mr. Sunwall, Mr. Rued, and Mr. Hippe appeared at the hearing and presented testimony. Mr. Hippe presented testimony on behalf of his sister, Ms. Benora Hunt. Mr. Gangstad did not appear at the hearing nor did he send a representative.

Mr. Eugene Larsen and Mr. Duane Christofferson appeared at the hearing and presented testimony as users of water from the source of Sheep Creek.

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 April 11, 1974, Glen Larsen submitted an Application for

Beneficial Water Use Permit No. 2014-s40R seeking to appropriate 80 acre-feet per annum from Sheep Creek, a tributary of Homestead Lake, in Roosevelt County, Montana. On July 11, 1974, the name on the Application was changed from Glen Larsen to Frank Nelson, because Frank Nelson is the owner of the property site of the proposed appropriation.

The water is to be diverted from Sheep Creek at a point in the SE 1/4 SW 1/4 SE 1/4 of Section 16, T. 29 N., R. 56 E., and used for irrigation on a total of 80 acres, more or less, in said Section 16, from April 15 to October 15, inclusive, of each year.

2. The Applicant seeks to divert water from Sheep Creek through a wood and concrete gate 16 feet long by 1 inch deep into an 18-inch pipe and onto a 44-acre field to flood irrigate the field for six days, and then to release the water back into Sheep Creek through gates at the downstream end of the field. His gate will divert only in periods of high spring runoff. Sheep Creek runs only once in the spring, and perhaps once again in the summer if there is a large amount of rainfall in a short period of time. Sheep Creek has run high every spring that the parties to the hearing could remember. When Sheep Creek is flowing in the spring runoff, the biggest percentage of the water flows downstream past the points of diversion of any of the appropriators.

3. Objector Mr. Hippe has a dam which was constructed in 1937. He uses the water stored behind the dam for irrigation, stockwater, wildlife and recreation. He depends on two floods, the spring flood and the summer flood. He irrigates trees, lawn, garden and four or five acres of wheat. The Hippie dam is approximately 2 miles downstream from the proposed project. The reservoir behind the Hippie

dam is approximately 1/2 miles long, 70 to 80 feet wide, and about 10 feet deep at the deepest point. Mr. Hippie used to run 60 to 70 head of cattle in the past, but for approximately the last 10 years, he has not run any cattle. There are two creeks below the proposed project which serve Mr. Hippie's reservoir.

4. Objector Mr. Rued waters his livestock from the source of Sheep Creek.

5. Objector Mr. Lief Sunwall is the last water user at the downstream end of Sheep Creek before the water goes into the wild-life refuge. The waters of Sheep Creek are his only source of water for livestock and he has a dam which he uses for flood irrigation of pasture land.

6. During the spring runoff, the snow thaws and runs off the higher elevations first and the lower elevations last, and therefore, the upstream appropriators are not able to divert water from Sheep Creek for as long a period of time as are the downstream appropriators. And so, if the permit were conditioned to prohibit the withdrawal of water by the upstream appropriators until the downstream appropriators have filled the downstream reservoirs, then the upstream appropriators would not be able to divert water, for the reason that the water would no longer be flowing in the upstream portions of Sheep Creek.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a Permit is required to appropriate water from Sheep Creek.

2. There are, at times, unappropriated waters in the source of supply (Sheep Creek).

3. The proposed use of water is a beneficial use.
4. The proposed means of diversion are adequate.
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 of water have been approved on this source pursuant to the Montana Water Use Act.
6. Conditioning the permit subject to prior water rights will protect those prior water rights.
7. The criteria for issuance of a permit set forth at Section 89-885, R.C.M. 1947, have been met.
8. The Application for Beneficial Water Use Permit may be granted in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana.

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

PROPOSED ORDER

1. The Applicants' permit is granted allowing the appropriation of 44 acre-feet per annum to be used for irrigation purposes from April 15 to October 15, inclusive, of each year.

The water is to be diverted from Sheep Creek at a point in the SE 1/4 SW 1/4 SE 1/4 of Section 16, T. 29 N., R. 56 E., and used for irrigation on a total of 44 acres in said Section 16.

2. The permit is granted subject to the Objectors' apparent prior water rights, and if it be determined that the proposed use does interfere with those rights then the Department will receive evidence upon written request from an objector and conduct field

checks enabling modification of the permit so as to prevent said interference.

NOTICE: This is a Proposed Order and will become final when accepted by the Administrator, Division of Water Resources, Department of Natural Resources and Conservation. Pursuant to Section 82-4212, R.C.M. 1947, and Rule MAC 1-1.6(2)-P6190, written exceptions to this Proposed Order may be filed with the Administrator within ten (10) days of the service of this Proposed Order upon the parties herein. Upon receipt of any written exceptions, opportunity will be afforded to file briefs and make oral arguments before the Administrator.

DATED this 15th day of July, 1975.



HEARING EXAMINER