

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

IN THE MATTER OF APPLICATION  
FOR BENEFICIAL WATER USE  
PERMIT NO. 2417-s41QJ, BY  
ALEXANDER J. FERGUSON

**FILMED**

APR 6 1990

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, entered on January 10, 1975, by the Hearing Examiner, are hereby modified and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

The Applicant's permit is granted subject to:

1. The Objector's apparent prior existing water right and all other possible prior existing water rights.
2. The right to appropriate the floodwaters of Castener Coulee Creek, when and only when such waters exceed a depth of four inches, measured at the deepest point on a line perpendicular to center bottom on the upstream side of that certain 12-foot culvert presently located and constructed where the Cascade County road, known as the River Road to Cascade, crosses Castener Coulee Creek in Section 29, Township 19 North, Range 2 East.
3. The Applicant and Objector shall, within one year, measure and agree to the quantity of water that will flow in the 12-foot culvert at the four-inch depth, as noted in Item 2 above. This measurement is necessary to insure said agreement and the protection of prior existing water rights in the event the 12-foot culvert should become unusable as a measuring reference.

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A copy of said measurement shall be sent to the Department for inclusion into the Applicant's file.

Done this fourteenth day of April 1975.

*Orvin Ferris*

Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

**CASE # 2417**

BEFORE THE DEPARTMENT  
OF  
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION  
FOR BENEFICIAL WATER USE PERMIT,  
NO. 2417-s41QJ, ALEXANDER J.  
FERGUSON, APPLICANT

PROPOSAL FOR DECISION

Pursuant to the requirements of the Montana Water Use Act, Section 89-865 et seq., R.C.M. 1947, a hearing was held on December 9, 1974 at 7:00 p.m. at the Courthouse at Great Falls, Montana for the purpose of hearing objections to the above-named application. Objectors appearing at the hearing were Henry M. Standley, Patrick Boyd Standley, and Michael L. Standley, doing business as the Standley Brothers, a partnership. They were represented by their counsel, Mr. Richard Gallagher of Great Falls, Montana. Testimony was introduced by both parties. The law and evidence having been fully considered, the following proposal for decision is hereby made and entered.

PROPOSED FINDING OF FACT

1. On May 21, 1974, at 4:20 p.m., the Applicant submitted an Application For Beneficial Water Use Permit to the Department seeking to appropriate 500 gallons per minute of water and not to exceed 390 acre-feet per annum in Cascade County, Montana. The water is to be diverted from Castener Coulee Creek, tributary of the Missouri River at three points, one in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, another point SW $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, and the third point in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, all in Township 18 N., Range 2 E., in Cascade County, Montana. The water is to be diverted by means of a portable pump and is to be used for the purpose of irrigating land adjacent to Castener Coulee Creek.

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2. On October 18, 1974, Standley Brothers partnership of Cascade, Montana filed a timely objection to the above-named application. The objection is based upon the grounds of (1) unreasonable affect on prior existing water rights; (2) no unappropriated waters in the source of supply.

3. At the Hearing, objector introduced testimony indicating that he has use rights established on the waters of Castener Coulee Creek for sub-irrigation and also for stockwater.

4. During a recess called for the purpose of negotiation, the objectors and the applicant agreed that the objector's apparent prior existing right would be protected if the applicant were limited to the right to appropriate the floodwaters of Castener Coulee Creek when and only when such waters exceed a depth of 4 inches measured at the deepest point on a line perpendicular to center bottom on the upstream side of that certain 12' culvert presently located and constructed where the Cascade County road known as the River Road to Cascade crosses Castener Coulee Creek in Section 29, Township 19 N., Range 2 E., M.P.M.

PROPOSED CONCLUSIONS OF LAW

1. The objector does have an apparent prior existing use right to the waters of Castener Coulee Creek which must be protected under Montana Water Law.

2. By agreement of the parties to the hearing, the objector's prior existing use right will be protected if the applicant does not pump water from the flow of Castener Coulee Creek at any time when the waters of Castener Creek are below the bench mark as above described in Section 29.

PROPOSED ORDER

The application should be granted subject to:

1. The objector's apparent prior existing water right and all other possible prior existing water rights.

2. The right to appropriate the floodwaters of Castener Coulee Creek when and only when such waters exceed a depth of 4 inches measured at the deepest

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point on a line perpendicular to center bottom on the upstream side of that certain 12' culvert presently located and constructed where the Cascade County road known as the River Road to Cascade crosses Castener Coulee Creek in Section 29, Township 19 N., Range 2 E., M.P.M.

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

January 10, 1975  
Date

James A. Lewis  
James Lewis  
Hearing Examiner

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