

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

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 2490-s41K,
NEUMAN RANCH COMPANY

FILMED FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER
APR 6 1990

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on August 6, 1975, by the Hearing Examiner, are hereby 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 2.8 cubic feet per second of water and not to exceed 308 acre-feet per annum, to be used for irrigation purposes from May 1 to October 15, inclusive, of each year. The water is to be diverted from Huber Coulee Creek, at a point in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, and will be used to irrigate 115 acres in said Section 26 and 5 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, Township 21 North, Range 1 West, M.P.M., Cascade County, Montana. The water is to be diverted by means of a sprinkler-irrigation system.

2. To protect the rights of the prior appropriators diverting from the same existing 1963 reservoir on Huber Coulee Creek, the Applicant will schedule his periods of diversion so as to not adversely affect those prior existing rights.

3. To protect the prior existing water rights of the Sun River Valley Ditch Company, the Applicant's permit is conditioned so as to prohibit him from diverting water from the source of Huber Coulee Creek during those periods in the summer when the water level in the Sun River has receded below

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*Fo missing
signed on
10/15/75*

the lower level of the diversion gate of the Sun River Valley Ditch Company.

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

Done this 15th 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

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BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 2490-s41K, NEWMAN RANCH
COMPANY.)

) PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedures Acts, a hearing on objections to the above-named application was held April 3, 1975 in Great Falls, Montana. Mr. Ted Newman, President of the Newman Ranch Company appeared at the hearing and presented testimony on behalf of the Applicant. The Applicant was not represented by counsel. Mr. Harold Poulsen, Mr. Reed C. Christensen, Mr. Wayne M. Christensen, Mr. & Mrs. Clinton Berg Jensen, the Sun River Valley Ditch Company, Greenfields Irrigation District and the Church of Jesus Christ of Latter-Day Saints, Sun River Valley Ward, all filed timely objections to the application. Mr. Reed C. Christensen appeared at the hearing and presented testimony. Mr. Wayne M. Christensen appeared at the hearing and presented testimony. Mr. Clinton Berg Jensen appeared at the hearing and presented testimony. Mr. Fred Rushton presented testimony on behalf of the Sun River Valley Ditch Company, and Mr. Ned Rushton presented testimony on behalf of the Church of Jesus Christ of Latter-Day Saints, Sun River Valley Ward. Harold Poulsen was not present at the hearing, nor did he send a representative. The Greenfields Irrigation Company did not send a representative to the hearing. The Church of Jesus Christ of Latter-Day Saints offered into evidence a copy of a ditch easement which was marked as Objector, Church of Jesus Christ of Latter-Day Saints, exhibit No. 1 and received into evidence without objection. After the hearing on Application No. 2490-s41K, by Newman Ranch Company,

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had continued for approximately an hour, Mr. Fred Rushton requested that the hearings on the applications by Mr. Reed C. Christensen and Mr. Wayne M. Christensen requesting a permit to appropriate water from the same source, Huber Coulee, be combined with the hearing on the Newman Ranch Company to save time so that he could make it to the livestock sale proceeding that afternoon. Because the parties affected by all three of these applications are substantially the same and because most of these parties were present at the hearing, and because there were no objections to combining the proceedings, the Hearings Officer ordered that three hearings be combined at 2 p.m. on April 3, 1975. As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact and Conclusions of Law and Order to the Administrator, Water Resources Division, Department of Natural Resources and Conservation.

PROPOSED FINDINGS OF FACT

1. On June 4, 1974, the Applicant submitted an application with the Department of Natural Resources and Conservation seeking to appropriate 3.5 cubic feet per second or 1,572 gallons per minute of water and not to exceed 360 acre-feet per annum from Huber Coulee, a tributary of the Sun River Valley Ditch in Cascade County, Montana. The water is to be diverted from Huber Coulee at two points: the first being the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the second being the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T. 21 N., R. 1 W., M.P.M. and used for irrigation on 115 acres in Section 26, and 5 acres in Section 25, T. 21 N., R. 1 W., M.P.M. and containing a total of 120 acres, more or less, from April 1 to October 15, inclusive, of each year.

2. On January 17, 1975, Mr. Harold Poulsen submitted a timely objection with the Department on the grounds that there are no unappropriated waters in the source of supply. On February 24, 1975, the Sun River Valley Ditch Company

submitted a timely objection with the Department on the grounds that the proposed appropriation will adversely affect their prior existing water right. On February 24, 1975, Mr. Reed C. Christensen submitted a timely objection with the Department on the grounds that there are no unappropriated waters in the source of supply. On February 24, 1975, Mr. Wayne M. Christensen submitted a timely objection with the Department to the application on the grounds that there are no unappropriated waters in the source of supply. On February 18, 1975, Mr. Clinton Berg Jensen submitted a timely objection to the application on the grounds that there are no unappropriated waters in the source of supply. On February 18, 1975, the Church of Jesus Christ of Latter-Day Saints, Sun River Valley Ward, submitted a timely objection with the Department to the application on the grounds that there are no unappropriated waters in the source of supply and that the proposed appropriation will adversely affect their prior existing water right. On February 11, 1975, Greenfields Irrigation District submitted a timely objection with the Department to the application on the grounds that there are no unappropriated waters in the source of supply and that the proposed appropriation will adversely affect their prior existing water right.

3. The Applicant intends to sprinkle irrigate approximately 120 acres. (The Applicant testified that he wished to sprinkle irrigate 110 acres. However, a check of the acreage computed by the Department's Soil Scientist indicates that the figure is actually 120 acres.) On the original application the Applicant had requested a permit to sprinkle irrigate 72 acres, and to flood irrigate 88 acres. Because the soil is heavy and takes water slowly, at the hearing, the applicant requested permission to sprinkle irrigate approximately 110 acres. (As above mentioned, the figure is actually 120 acres.) The Applicant intends to pump from one site on the existing reservoir (hereinafter called 1963 reservoir) on Huber Coulee Creek, and also from another site downstream from the

reservoir about half way to the fence line. When the Newman Ranch Company purchased the subject property from Harold Poulsen, the Newman Ranch had conveyed to them the water right appurtenant to that property. This water right consists of a use right to use the above mentioned existing 1963 reservoir, and a Notice of Appropriation of Water Right filed in book 43, page 119, of the Cascade County Water Rights book in the name of Christensen Ranch Company with a date of 1967 (hereinafter called Christensen Notice of 1967). This Christensen Notice of 1967 claims the use of 5 cubic feet per second of the waters of Huber Coulee Creek, to be diverted through a ditch 4 feet wide and 2 feet deep, and used on 80 acres in Section 23, and 280 acres in Section 26. Testimony at the hearing indicated that the dam had been constructed in 1963. Testimony at the hearing indicated that the ditch to convey the water right claimed in the 1967 Notice had never been constructed, and that the land claimed to be irrigated in the 1967 Notice had never been irrigated.

4. The irrigation water requirement as calculated by the Department's Soil Scientist, Ken Chrest, and as included in the file and as referred to by the applicant at the hearing, indicates that the total acre-feet required for maximum beneficial use by means of sprinkler irrigation for the acreage applied for in the application is 308 acre-feet per annum and not 360 acre-feet per annum as applied for in the application.

5. The Sun River Valley Ditch Company claims all of the waters of Huber Coulee Creek. Testimony at the hearing indicated that the Sun River Valley Ditch Company does not need the waters of Huber Coulee Creek except for about 3 or 4 days in each irrigation season when the water level in the Sun River is below the bottom level of the diversion gate into the Sun River Valley Ditch. For these 3 or 4 days of each irrigation season, the waters of Huber Coulee Creek are crucial to augment the supply of the Sun River Valley Ditch.

6. The Church of Latter-Day Saints claims a water right of approximate priority date, 1963, served by a ditch leading west from the existing 1963 reservoir.

7. Mr. Clinton Berg Jensen also claims a water right served by that ditch leading west out of the existing 1963 reservoir.

8. Testimony at the hearing indicated that by taking turns in scheduling the appropriation of water from Huber Coulee Creek that all the Objectors and the Applicant could use water without adversely affecting one another.

From the foregoing Proposed Findings of Fact, the following Proposed Conclusions of Law are hereby made:

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a Beneficial Water Use Permit is required to appropriate water from the source of Huber Coulee Creek.

2. There are at times unappropriated waters in Huber Coulee Creek.

3. Proper scheduling of appropriation of water from Huber Coulee Creek by the applicant will insure that the prior existing water rights of the Objectors will not be adversely affected.

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

5. The proposed means of construction or diversion are adequate.

6. The proposed use will not interfere unreasonably with other land uses or developments for which a Permit has been issued or for what 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.

7. The Applicant's Permit be subject to the prior existing right of the Run River Valley Ditch Company, the prior existing water right of Clinton Berg Jensen, and the prior existing water right of the Church of Latter-Day Saints, Sun River Valley Ward.

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8. The criteria for issuance of a Permit as set forth in Section 89-885, R.C.M. 1947, have been met.

9. 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 Applicant's Permit is granted allowing the appropriation of 2.8 cubic feet per second of water and not to exceed 308 acre-feet per annum to be used for irrigation purposes from May 1 to October 15 inclusive of each year. The water is to be diverted from Huber Coulee Creek at a point in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26 and will be used to irrigate 115 acres in said Section 26, and 5 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T. 21 N., R. 1 W., M.P.M., Cascade County, Montana. The water is to be diverted by means of a sprinkler irrigation system.

2. To protect the rights of the prior appropriators diverting from the same existing 1963 reservoir on Huber Coulee Creek, the applicant will schedule his periods of diversion so as to not adversely affect those prior existing rights.

3. To protect the rights the prior existing water rights of the Sun River Valley Ditch Company, the Applicant's Permit is conditioned so as to prohibit him from diverting water from the source of Huber Coulee Creek during those periods in the summer when the water level in the Sun River has receded below the lower level of the diversion gate of the Sun River Valley Ditch Company.

4. The Permit is granted subject to all other prior existing rights.

NOTICE

This is a Proposed Order and will become final when accepted by the Administrator, Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the Proposed Order may be filed with the Department and with all Opposing Parties within 10 days of receipt of the same. Upon receipt of any written exceptions by the Department, opportunity will be afforded to file briefs and to make oral arguments before the Administrator, Water Resources Division.

DATED this 6th day of August 1975.

James A. Lewis
HEARING EXAMINER