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

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 2517-s40G BY PAUL JOHNSON

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, as entered on November 14, 1975, by the Hearing Examiner, are hereby modified and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

1. The Applicant's Application No. 2517-s40G is granted allowing the appropriation of 2 acre-feet of water from a closed basin, to be used for wildlife and recreation purposes from January 1 to December 31, inclusive, of each year, to be impounded in a reservoir constructed at a point in the NE¼ NW¼ NW¼ of Section 27, Township 35 North, Range 7 East, Liberty County, Montana.

2. The Applicant's permit is subject to all prior existing water rights in the source of supply.

Done this twenty-second day of January, 1976.

Orrin Ferris
Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 2490

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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 # 2490

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATIONS FOR)
BENEFICIAL WATER USE PERMIT NOS.) PROPOSAL FOR DECISION
2517-s40G and 2518-s40G, PAUL)
JOHNSON)

ISSUES

(1) Water rights: The Department personnel have determined that the proposed source of water of an application is not tributary to the objector's property. Shall the Department issue a permit for reason that the proposed appropriation will not adversely affect the objector's apparent prior existing water rights?

MEMORANDUM

Pursuant to the Montana Water Use and Administrative Procedure Acts, a hearing on objections to the above-named application was combined with hearings on objections to several other applications from the same source of water on April 15, 1975, in Chester, Montana. The Applicant, Mr. Paul Johnson, appeared at the hearing and presented testimony. He was not represented by counsel. Mr. Arthur Rambo, Mr. Mike Burkhartsmeyer, Mr. Virgil Jurenka and Mr. Terry Stevenson all submitted timely objections to the application. Mr. Rambo, Mr. Burkhartsmeyer, and Mr. Jurenka appeared at the hearing and presented testimony in support of their objections. All of the objectors were represented by counsel, Mr. John Warner, Esq. of Havre, Montana.

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Mr. Warner presented testimony on behalf of Mr. Terry Stevenson. The Objectors through their counsel, Mr. Warner, offered into evidence six exhibits, a map of the Sage Creek area and five lists of water rights appurtenant to the property belonging to the Objectors. As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact, Conclusions of Law and Order to the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation of the State of Montana.

PROPOSED FINDINGS OF FACT

(1) On June 6, 1974 the Applicant submitted Application No. 2517-S40G to the Department seeking to appropriate 2 acre-feet of water per annum from an unnamed tributary of Little Sage Creek to be impounded in a reservoir for wildlife and recreation purposes from January 1 to December 31, inclusive, of each year. Said dam and reservoir is to be constructed at a point in the NE 1/4 NW 1/4 NW 1/4 of Sec. 27, T. 35N., R. 7E, in Liberty County, Montana. Also on June 6, 1974, the Applicant submitted Application No. 2518-s40G to the Department seeking to appropriate 2 acre-feet per annum of water from an unnamed tributary of Little Sage Creek for stock-water purposes from January 1 to December 31, inclusive, of each year. The water is to be impounded in a dam to be constructed at a point in the NW 1/4 NE 1/4 NE 1/4 of Sec. 28, T. 35N., R. 7E., Liberty County, Montana.

(2) By performing field investigations of the two proposed points of diversion, Department personnel determined that both of these reservoirs are to be constructed in closed basins

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which are not tributary to Sage Creek or any other larger source of water.

From the foregoing Proposed Findings of Fact, the Hearing Examiner hereby makes the following Proposed Conclusions of Law.

PROPOSED CONCLUSIONS OF LAW

(1) Because the water proposed to be impounded by the Applicant is not tributary to Sage Creek, the source of the Objectors' water supply, the application for the proposed appropriation could not adversely affect the Objectors' prior water rights.

From the foregoing Proposed Findings of Fact and Conclusions of Law, the Hearing Examiner hereby makes the following Proposed Order.

PROPOSED ORDER

(1) That the Applicant's Application No. 2517-s40G be granted allowing appropriation of 2 acre-feet per annum of water from a closed basin to be used for wildlife and recreation purposes from January 1 to December 31, inclusive, of each year, to be impounded in a reservoir constructed at a point in the NE 1/4 NW 1/4 Section 27, T. 35N., R. 7E., Liberty County, Montana.

(2) That the Applicant's Application No. 2518-s40G be granted allowing appropriation of 2 acre-feet per annum of water from a closed basin to be used for wildlife and recreation purposes, from January 1 to December 31, inclusive, of each year,

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to be impounded in a reservoir constructed at a point in the NW 1/4 NE 1/4 NE 1/4 of Section 28, T. 35N., R. 7E., in Liberty County, Montana.

(3) That the Applicant's permits be subject to all prior existing water rights and that a suitable drainage device be installed in the proposed appropriation to protect those prior existing water rights.

NOTICE: This is a Proposed Order and will become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to this Proposed Order shall be filed with the Department and with opposing parties within ten (10) days of receipt of same. Upon receipt of any written exceptions the Department will provide an opportunity to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 14th day of November 1975.

James A. Lewis
HEARING EXAMINER By: ARC

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