

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

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 2789-g76M BY
HOERNER WALDORF CORPORATION

FILMED
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FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

Pursuant to the Montana Water Use Act, Section 89-865, et seq., R.C.M. 1947, after due notice a hearing on the objections to the above-named Application for Beneficial Water Use Permit was held March 6, 1975, in the courtroom of the Missoula County Courthouse, Missoula, Montana. The Applicants were represented by Messrs. Roy Countryman and Larry Weeks, who both presented testimony and evidence on behalf of the Applicant. The following submitted formal objections to the application: Mr. Dennis and Ms. Karen Monger, Mr. C. M. McDonald, Mr. and Mrs. Chet L. Prafke, Mr. Armand J. Lucier, Mr. Charles D. Blue, Mr. Forrest R. and Ms. Patricia A. Landon, Mr. Gene Starlin, Mr. John Hemphill, and Mr. Floyd Hemenway. Mr. and Ms. Landon, Mr. Starlin, and Mr. Hemphill, who also appeared on behalf of Mr. Hemenway, were present and presented evidence and testimony in support of their objections to the application.

On November 6, 1974, the Montana Department of Health and Environmental Sciences released their Final Environmental Impact Statement for the proposed expansion of the Applicant's pulp and paper mill at Missoula, Montana. The Department of Health and Environmental Sciences was designated as the lead agency for the mill-expansion proposal.

On December 10, 1974, the Department of Natural Resources and Conservation, hereinafter referred to as the "Department," submitted an Environmental Impact Assessment to the Environmental Quality Council in

CASE # 2789

compliance with the Montana Environmental Policy Act. The following commented on the Environmental Impact Assessment: Ms. Fern Hart, president of the League of Women Voters; Mr. Harold C. Lynd, acting state director, U.S. Department of the Interior, Bureau of Land Management; Dr. Robert R. Curry, director, Sierra Club Research Office; Mr. James A. Posewitz, administrator, Environmental and Information Division, Department of Fish and Game; Mr. A. B. Linford, state conservationist, Soil Conservation Service; Mr. Robert M. Knight; Dr. Ronald E. Erickson, Department of Chemistry, University of Montana; and Mr. George M. Pike, district chief, Water Resources Division, U.S. Geological Survey. In addition to written comments, Ms. Hart, Ms. Jean Warren on behalf of the Sierra Club, Mr. Liter Spence and Mr. Ken Knudsen on behalf of the Department of Fish and Game, and Dr. Erickson appeared at the hearing and presented testimony.

Mr. Peter Norbeck, hydrologist with the Department, and Dr. R. L. Konizeski, professor at the University of Montana, presented testimony in support of the Environmental Impact Assessment.

A Proposed Order (Proposal for Decision), based on the evidence and testimony received at the hearing and evidence received subsequent to the hearing, was issued by the hearing examiner, Mr. Gary Spaeth, on July 2, 1975. The Proposed Order specified that the proposal would become final when accepted by the administrator, Water Resources Division, Department of Natural Resources and Conservation. Written exceptions to the Proposed Order shall be filed with the Department within ten (10) days of receipt of same. Upon receipt of any written exceptions by the Department, opportunity will be provided to file briefs and to make oral arguments before the administrator of the Water Resources Division.

The Montana Department of Fish and Game by its letter of July 17, 1975, requested an extension of time to reply to the Proposed Order. The Department by its letter of July 21, 1975, granted the Montana Department of Fish and Game an extension of time until July 28, 1975, to reply to the Proposed Order. By the Department's letter of July 31, 1975, the Montana Department of Fish and Game was informed that they had the opportunity to file a brief supporting their objection and exception within fifteen (15) days after receipt of our notice. The Applicant, by the Department's letter of July 31, 1975, was informed of the exception and the objector's right to file a written brief.

A written exception to the Proposed Order in the matter of Application No. 2789-g76M was filed by the objector, Montana Department of Fish and Game, as dated on July 25, 1975, and received by the Department on July 29, 1975.

The Montana Department of Fish and Game by letter dated August 11, 1975, informed the Department that they would not file a brief supporting their exception to the Proposed Order. The Applicant was advised by the Department's letter of August 19, 1975, that the Department of Fish and Game declined to file a brief supporting their exception. Therefore, the Applicant was further informed by the Department's letter of August 19, 1975, that they had the opportunity to file a brief in reply to the exception within ten (10) days after receipt of our notice.

The Applicant by letter of August 29, 1975, requested an extension of time until September 10, 1975, in which to file their brief. The Department by letter of September 3, 1975, granted the requested extension.

The Applicant by letter of September 8, 1975, informed the Department that they did not wish to file a reply brief in this matter and would stand

behind the Proposed Order as issued. The Department of Fish and Game was informed by the Department's letter of September 15, 1975, that the Applicant did not wish to file a reply brief. The Department of Fish and Game was also advised in said letter that they had the right to request an oral argument hearing on their exception before the administrator of the Water Resources Division. They were requested to reply at their earliest convenience indicating if they wished to pursue a hearing before the administrator. The Department by letter of October 6, 1975, sent a reminder letter to the Department of Fish and Game concerning their right to an oral argument hearing, and by letter of October 10, 1975, they replied stating that they did not wish to pursue such a hearing before the administrator.

The Applicant was advised by the Department's letter of February 5, 1976, that they had the opportunity to request an oral argument hearing before the administrator, if they so wished. The Applicant in their letter of February 19, 1976, stated that they did not wish to request an oral argument hearing before the administrator of the Water Resources Division, since they had no new information to present at this time.

The Department by its letter of February 23, 1976, informed both the Applicant and the Department of Fish and Game that since neither party wishes to pursue this matter to an oral argument hearing, it will be forwarded to the Water Resources Division administrator for preparation and issuance of a Final Order, based on the record now in the application file.

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on July 2, 1975, by the hearing examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and Order, except that the Proposed Order is hereby modified as follows:

FINAL ORDER

1. The Applicant's Provisional Permit is hereby conditionally granted for Application No. 2789-g76M to appropriate 6,000 gallons per minute of water and not to exceed 9,672 acre-feet per annum, to be used for industrial purposes in kraft pulp and board manufacturing in the NW $\frac{1}{4}$ of Section 24, Township 14 North, Range 21 West, M.P.M., Missoula County, Montana. The water is to be diverted by means of three manifolded wells, each to a depth of approximately 160 to 170 feet, at a pumping rate of 2,000 gallons per minute from each well, to be located in the SW $\frac{1}{4}$ of Section 25, Township 14 North, Range 21 West, and used for said industrial purposes from January 1 to December 31, inclusive, of each year.

2. The Provisional Permit is subject to any final determination of prior existing water rights as provided by Montana law.

3. The Provisional Permit is subject to all prior existing water rights in the source of supply. In the event that any of the objectors have factual proof within a three-year period after the effective date of this order showing that they are being adversely affected and cannot reasonably exercise their prior water rights under any changed conditions, they must inform the Department and the Permittee in writing by certified mail immediately of such alleged adverse effect, and upon receipt of said notice the Department will conduct a full field investigation of the alleged factual adverse effect, prepare a written report of the findings, and the administrator of the Water Resources Division, after consideration of all facts presented, will issue an appropriate Order to all concerned parties, including any modification of the Permit, if necessary. The Order, as issued, shall be final in answering the alleged adverse effect and may further condition, modify, or, in an extreme case, revoke Provisional Permit No. 2789-g76M.

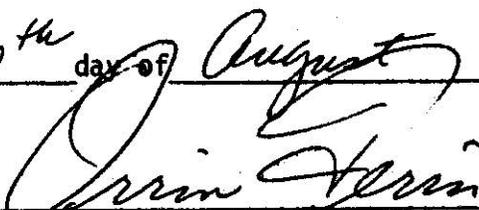
4. All evidence received in the application file addressing itself to the possible problems created by the discharge of effluent from the Permittee's mills will be sent to the Montana Department of Health and Environmental Sciences for further consideration and action as they may deem necessary.

5. The Provisional Permit will accordingly be modified if it is found by the appropriate state and federal water-quality agencies that the Permittee has failed to maintain and meet all applicable state and national water-quality standards.

Recommendation

The Department recommends that all parties in this matter properly install and maintain adequate measuring devices, or at regular periodic intervals measure their static water levels to fit their particular situation, and keep records of water levels and water used for their own proof and protection of their water rights. It is further recommended that the Permittee in conjunction with the appropriate state and federal water-quality agencies make provisions for monitoring surface- and ground-water quality in the area to insure that all applicable state and national water-quality standards are being met and maintained by the Permittee.

Done this 20th day of August, 1976.


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 # 2789

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 2789-g76M, HOERNER WALDORF
CORPORATION

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}
PROPOSAL FOR DECISION

Pursuant to the Montana Water Use Act, Section 89-865, et seq., R.C.M. 1947, after due notice, a hearing on objections to the above-named Application for Beneficial Water Use Permit was held March 6, 1975, in the courtroom of the Missoula County Courthouse, Missoula, Montana. The Applicants were represented by Mr. Roy Countryman and Mr. Larry Weeks, who both presented testimony and evidence on behalf of the Applicant. The following submitted formal objections to the application: Dennis and Karen Monger; Mr. C.M. McDonald; Mr. and Mrs. Chet L. Prafke; Mr. Armand J. Lucier; Mr. Charles D. Blue; Forrest R. and Patricia A. Landon; Mr. Gene Starlin; Mr. John Hemphill; and Mr. Floyd Hemenway. Forrest R. and Patricia A. Landon, Mr. Gene Starlin, and Mr. John Hemphill, who also appeared on behalf of Mr. Floyd Hemenway, were present and presented evidence and testimony in support of their objections to the application.

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On December 10, 1974, the Department of Natural Resources and Conservation, hereinafter referred to as the "Department," submitted an Environmental Impact Assessment to the Environmental Quality Council in compliance with the Montana

CASE # 2789

Environmental Policy Act. The following commented on the Environmental Impact Assessment: Ms. Fern Hart, President, League of Women Voters; Mr. Harold C. Lynd, Acting State Director, U.S. Department of the Interior, Bureau of Land Management; Dr. Robert R. Curry, Director, Sierra Club Research Office; Mr. James A. Posewitz, Administrator, Environment and Information Division, Department of Fish and Game; Mr. A. B. Linford, State Conservationist, Soil Conservation Service; Mr. Robert M. Knight; Dr. Ronald E. Erickson, Department of Chemistry, University of Montana; and George M. Pike, District Chief, Water Resources Division, United States Geological Survey. In addition to written comments, Ms. Fern Hart; Ms. Jean Warren, on behalf of the Sierra Club; Mr. Liter Spence and Mr. Ken Knudson, on behalf of the Department of Fish and Game; and Mr. Ronald E. Erickson appeared at the hearing and presented testimony.

Mr. Pete Norbeck, a hydrologist with the Department, and Dr. R. L. Konizeski, a Professor at the University of Montana, presented testimony in support of the Environmental Impact Assessment.

Based on the evidence and testimony received at the hearing, and evidence received subsequent to the hearing, the Hearing Examiner as required by law, hereby makes the following Proposal for Decision.

PROPOSED FINDINGS OF FACT

1. On July 2, 1974, at 10:45 a.m., the Hoerner Waldorf Corporation, hereinafter called Applicants, made application with the Department for a Beneficial Water Use Permit, Application 2789-g76M. The application is for 9,672 acre-feet per annum of water for industrial purposes to be used in kraft pulp and board manufacturing in the NW $\frac{1}{4}$ of Section 24, Township 14N., Range 21 W., Missoula County. Such appropriation would be accomplished by the drilling of three (3) manifolded wells in the SW $\frac{1}{4}$ of Section 25 to a depth of 160 to 170 feet.

Each well will be capable of producing two-thousand (2,000) gallons per minute through the use of a 100 horsepower pump on each well. The wells would be located in the vicinity of five wells, which currently supply most of the plant's water needs. The exact locations of the new wells in the SW $\frac{1}{4}$ of Section 25 have not been determined at this time.

2. The water not consumed in the industrial processes will be retained in the settling ponds. Approximately two-thirds of the effluent will be discharged into the subsoil; the remaining volume will be discharged into the Clark Fork River. It is expected that the discharge to the river will be made during the spring runoff period. This is covered in the permit granted by the Montana Department of Health and Environmental Sciences.

3. Following the hearing the following evidence was submitted for inclusion into the hearing record: Letter dated March 11, 1975 from Larry Weeks of Hoerner Waldorf Corporation; letter dated February 4, 1975 from George M. Pike; letter dated January 29, 1975 from Steve Yurich; letter received by the Department on February 4, 1975 from Fern Hart; letter dated February 11, 1975 from James A. Posewitz; letter dated December 23, 1974 from A. B. Linford; letter dated December 17, 1974 from Robert M. Knight; letter dated January 14, 1975 from Ronald E. Erickson; letter dated February 28, 1975 from Don Potts; and water level measurements made by U.S. Geological Survey of observation wells near Hoerner Waldorf's existing well field. All of the parties were then given an opportunity to reply or object to the above evidence. On April 4, 1975, a letter was received from the Montana Department of Fish and Game which was in reply to Larry Weeks' letter of March 11, 1975. This letter was then circulated to all the parties for their objections or comments. On April 23, 1975 a letter was received from Mr. Robert R. Curry and another letter from Larry Weeks on April 25, 1975. These two letters were then circulated to all of the parties and a letter was received from Larry Weeks on May 2, 1975. All of the above letters were received into evidence with the exception of Mr. Weeks' letter of

May 2, 1975. The reason for denying the admission of that is that it was repetitive in nature and the information contained therein had already been introduced into the record.

4. Water level measurements of existing production wells and observation wells in the area indicate hydrologic connection with the river. The radius of influence of the well field will reach the river within one day, at which time water levels will begin to stabilize due to recharge from the river. The calculated drawdown at Hoerner-Waldorf's property line is less than two feet. Thus, the probable effect of the new well field on nearby wells is expected to be less than two feet.

5. Plans accompanying the use of the water under this application includes the converting of the present settling pond system to a series of rapid infiltration basins. Since an approximate 37% increase in effluent flow will accompany the expansion and up to 94% of the effluent will percolate into the ground-water system, there will be a resultant overall increase in the potential for ground-water contamination. The general extent and long-range implications of vertical interaquifer movement are not known.

6. The groundwater system consists of an upper and lower aquifer. The upper aquifer consists of 40 to 50 feet of silty sand or sand and gravel with some clay. This material is a poor aquifer which will usually yield small but adequate amounts of water to domestic wells. The lower aquifer consists of 40 to 50 feet of sand, gravel and cobbles. This material is a very good aquifer and yields of up to 4000 gallons per minute are possible from properly completed wells (large diameter, installation of a well screen, developed by surging, etc.). The water in the lower aquifer is confined under artesian pressure. These aquifers are separated by about 50 feet of fine, silty sand interbedded with clay layers. The clay layers are apparently not continuous enough to completely isolate the upper and lower aquifers from each other;

however, water levels measured by the USGS indicate that the two aquifers are at least partially separated. Measurements in the wells they have designated HW-3 and HW-4 indicate about a ten foot difference in water levels between the shallow and deep aquifers when nearby Hoerner Waldorf production wells are pumping but only about 1 foot of difference when these wells are not pumping.

7. The objectors, Mr. Gene Starlin, Forrest R. and Patricia A. Landon, and Mr. John Hemphill who also appeared on behalf of the objector Floyd Hemenway all have apparent prior ground water rights in the area that could be affected by this application.

8. This issue raised by the commentators who appeared at the hearing dealt primarily with what was going to happen to the nutrients which will be incorporated into the suspended solids. An increase in the nutrients in water which might return to the Clark Fork below the Applicant's mill would create an oxygen deficiency which would in turn decrease salmonoid production if it became extreme. The testimony and evidence concerning whether the nutrient waste would reach the Clark Fork River was conflicting. There is insufficient data at this time to make a determination as to what will happen to the nutrient wastes caused by the Applicant's expansion.

9. The Department of Health and Environmental Sciences in the Final Environmental Impact Statement addressed the question of water quality in the body and the plant certification.

From the foregoing proposed findings of fact, the following proposed conclusions of law are hereby made:

PROPOSED CONCLUSIONS OF LAW

1. There are unappropriated waters in the source of supply (the aquifer) at the Applicant's proposed point of diversion.

2. There appears to be existing ground water rights in the aquifer in question.

3. The criteria for issuance of a permit set forth at Section 89-885

R.C.M. 1947, have been met.

CASE # 2789

4. Since comments were received to the Environmental Impact Assessment by the Department and since many of such comments were in opposition to the Draft Environmental Impact Assessment and if such comments were submitted before the deadline for the submission of objections to the application, such commentors are accorded the legal status of objectors as set forth under Chapter 8 of Title 89, R.C.M. 1947.

Based on the above findings of fact and conclusions of law, the following order is proposed.

PROPOSED ORDER

1. The Applicant's permit is granted allowing for the appropriation of 6,000 gallons per minute of water and not to exceed 9,672 acre-feet per annum to be used in the kraft pulp and board manufacturing in the NW $\frac{1}{4}$ of Section 24, Township 14 N, Range 21 W, Missoula County. The applicant is permitted to drill three (3) wells to a depth of approximately 160 to 170 feet in the SW $\frac{1}{4}$ of Section 25 and to pump at a rate of 2,000 gallons per minute from each well from January 1 to December 31, inclusive, of each year.

2. All evidence received addressing itself to the possible problems created by the discharge of effluent from the Applicant's mills is to be sent to the Department of Health and Environmental Sciences for consideration.

3. This permit will be modified accordingly if the appropriation interferes with any prior water right user.

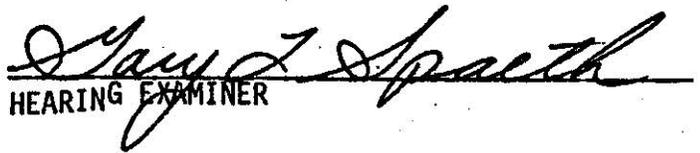
4. This permit will accordingly be modified if it is found that the applicant has failed to maintain all applicable state and national standards.

5. Subject to all prior water rights in the source of supply, and any final determination of water rights as provided by Montana law.

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 within ten (10) days of receipt of same. Upon receipt of any written exceptions by the Department, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

Dated this 2 day of July, 1975.


HEARING EXAMINER