Permit No. 2911-s76H

EXHIBIT "A"

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATIONS FOR BENEFICIAL WATER USE PERMITS NO. 2911-s76H AND NO. 2912-s76H BY LLOYD R. AND M. MARGARET OWEN

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FILMED APR 9 1990

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on August 28, 1975, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

1. That Application No. 2911-s76H be granted, allowing the Applicant to appropriate 0.222 cubic foot per second or 100 gallons per minute of water and not to exceed 1.5 acre-feet per year from Hayes Creek, a tributary of the Bitterroot River, Missoula County, to be diverted from said creek at a point in the SW¼ SW¼ NE¼ Section 10, Township 12 North, Range 20 West, and used for irrigation on 1 acre in the SW¼ NE¼ of said Section 10, from May 15 to October 15, inclusive, of each year. That Application No. 2912-s76H be granted, allowing the applicant to divert 0.066 cubic foot per second or 30 gallons per minute of water and not to exceed 1.5 acre-feet per annum from the Buckhouse-Gibson Ditch, at a point in the NW¼ SW¼ NE¼ Section 10, Township 12 North, Range 20 West, M.P.M., and used for irrigation on a total of 1 acre, more or less, in the NE¼ NE¼ of said Section 10 from May 15 to October 15, inclusive, of each year.

2. Subject to all prior existing water rights in the source of supply.

Done this 15th day of October, 1975.

Orrin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATIONS FOR BENEFICIAL WATER USE PERMITS NO. 2911-s76H, and 2912-s76H, BY LLOYD R. AND M. MARGARET OWEN.	))))	PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedure Acts, a combined hearing on objections to both of the above-named applications was held in Missoula, Montana on May 13, 1975. The Applicant, Lloyd R. Owen appeared at the hearing and presented testimony. His son, Gail L. Owen, also appeared at the hearing and presented testimony on behalf of the Applicant. Robert and Dianne Bellander, Keith R. and Marie E. Swinger, and Henry A. and Beth Blastic Jr. filed timely objections to application No. 2911-s76H. John H Breur, Keith R. and Marie E. Swinger, and Henry A. and Beth Blastic Jr., filed timely objections to Application No. 2912-s76H. Mr. Bellander, Mr. Blastic, Mr. Breur, and Mr. and Mrs. Swinger appeared at the hearing and presented testimony in support of their objections to the application. The Objectors marked the approximate locations of their points of diversion on a plat map provided by the Department for that purpose. 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.

PROPOSED FINDINGS OF FACT

1. On July 11, 1974, the Applicant submitted Application No. 2911-s76H with the Department seeking to appropriate 0.222 cubic feet per second or 100 gallons per minute of water and not to exceed 1.5 acre-feet per year from

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Hayes Creek (Buckhouse Creek), a tributary of the Bitterroot River in Missoula County to be diverted from said creek in a point in the SW 1/4 SW 1/4 NE 1/4, Section 10, T. 12 N., R. 20 W., and used for irrigation on one acre from May 15 to October 15, inclusive each year. On July 11, 1974, the Applicant submitted Application No. 2912-s76H with the Department seeking to appropriate 0.066 cubic feet per annum from Hayes Creek (Buckhouse Creek), a tributary of the Bitterroot River in Missoula County, Montana. The water is to be diverted from Hayes Creek at a point in the NW 1/4 SW 1/4 NE 1/4, Section 10, T. 12 N., R. 20 W., M.P.M. and used for irrigation on a total of I acre, more or less, in said Section 10 from May 15 to October 15, inclusive of each year.

2. Testimony at the hearing indicated that the water sought to be diverted by means of Application No. 2911 is to be used on land lying to the south of Hayes Creek. Water to be diverted by means of Application No. 2912 is actually to be diverted from the Buckhouse-Gibson Ditch and used on a piece of land situated north of Hayes Creek.

3. Testimony at the hearing indicated that the Applicant's proposed point of diversion by Application No. 2911 is the last downstream point of diversion from the source of Hayes Creek. Testimony at the hearing indicated that the proposed point of diversion is to serve Application No. 2912 is the last point of diversion from the source of the Buckhouse-Gibson Ditch.

4. Testimony at the hearing indicated that in past years the Applicant and all of the Objectors have been able to satisfy their water rights to the full extent of their beneficial use.

5. The Objectors present at the hearing all have points of diversion situated upstream from the Applicant's proposed points of diversion. From the Proposed Findings of Fact, the Hearing Examiner hereby makes the following

Proposed Conclusions of Law:

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PROPOSED CONCLUSIONS OF LAW

1. Under the provision of Section 89-880, R.C.M. 1947, a permit is required to appropriate water from the source of Hayes Creek.

2. There are unappropriated waters in the proposed source of supply.

3. Because the Objectors all have points of diversion upstream from Applicant's proposed point of diversion, the claimed right of the apparent prior existing appropriators cannot be adversely affected by this proposed application.

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

5. The proposed use of the water is a beneficial use.

6. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued for the reason that there have been no permits issued on the proposed source.

7. Criteria for the issuance of a water permit have been met.

8. The permit may be granted in accordance with the provisions of Chapter 8 Title 89 if the Revised Codes of Montana. From the foregoing Proposed Conclusions of Law, the Hearing Examiner hereby makes the following Proposed Order:

PROPOSED ORDER

1. That Application No. 2911-s76H be granted allowing the Applicant to appropriate 0.222 cubic feet per second or 100 gallons per minute of water and not to exceed 1.5 acre-feet per year from Hayes Creek, a tributary of the Bitterroot River, Missoula County, to be diverted from said creek at a point in the SW 1/4 SW 1/4 NE 1/4, Section 10, T. 12 N., R. 20W. and used for irrigation on one acre in the SW 1/4 NE 1/4 of said Section 10, from May 15 to October 15, inclusive of each year. That Application No. 2912-s76H be granted allowing the applicant to divert 0.066 cubic feet per second or 30 gallons per minute of water and not

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to exceed 1.5 acre-feet per annum from the Buckhouse-Gibson Ditch at a point in the NW 1/4 SW 1/4 NE 1/4, Section 10, T. 12 N., R. 20 W., M.P.M. and used for irrigation on a total of one acre, more or less, in theNE 1/4 NE 1/4 of said Section 10 from May 15 to October 15, inclusive of each year.

2. Subject to all prior existing water rights in the source of supply.

NOTICE

This is a proposed order and will become final when accepted by the Administrator, Water Resources Division, Department of Natural Resources and Conservation. Written exceptions to this Proposed Order shall be filed with the Department and with Opposing Parties within 10 days of receipt of 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 25th day of August, 1975.

Francis A. Lenz

HEARING EXAMINER

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