

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT NO. 3197-s40J, BY STATE OF MONTANA,
DEPARTMENT OF STATE LANDS

FILMED
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER
APR 7 1990

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 adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

Application for Beneficial Water Use Permit No. 3197-s40J is hereby terminated.

Done this 12th day of December, 1975

Orvin 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

CASE # 3197

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 3197-s40J, STATE OF MONTANA,)
DEPARTMENT OF STATE LANDS)

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice, a hearing on objections to the above-named Application was held on May 22, 1975 at Havre, Montana. Mr. Randall Biehl appeared at the hearing and presented testimony on behalf of the Applicant. Mr. Robert McIntosh, lessee of the Applicant, appeared at the hearing and presented testimony on behalf of the Applicant. On May 20, 1975, North Chinook Irrigation Association, and Wallin Ranch Co., withdrew their objections by telephone. Mr. Ronald Beatty, and Frank and Julia Pleskac filed timely objections to the application. Mr. Beatty and Mr. Frank Pleskac appeared at the hearing and presented testimony in support of their objections. Mr. Frank Pleskac was represented at the hearing by counsel, Mr. John Warner, Esq., of Havre, Montana. Mr. Pleskac, through his counsel, Mr. Warner, offered into evidence two certified copies of Notices of Appropriation of Water Right which were marked at Objector Pleskac's Exhibit No.s 1 and 2 and received into evidence without objection. Because of a discrepancy in the statistics describing the capacity of the proposed reservoir, Mr. Warner

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requested that the Applicant provide the Hearing Examiner and the Objector Pleskac with accurate figures describing the capacity of the proposed reservoir. These figures were provided on May 30, 1975 to both the Applicant and the Hearing Examiner by Mr. Randall Biehl. Mr. Gerald Holman appeared at the hearing on behalf of North Chinook Irrigation Association.

As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact and Conclusions of Law and Order.

PROPOSED FINDINGS OF FACT

1. On August 2, 1974, the Applicant submitted to the Department an Application for Beneficial Water Use Permit seeking to appropriate 175 acre-feet of water per annum from an unnamed tributary of Lodge Creek in Hill County, Montana. The water is to be impounded in an enlarged existing reservoir with a new capacity of 175 acre-feet on said unnamed tributary at a point in the NE 1/4 NW 1/4 SW 1/4 of Sec. 16, T. 37N., R. 16E., M.P.M. and used for wild life and stock-watering purposes from January 1 to December 31, inclusive, of each year.

2. On March 13, 1975 Frank and Julia Pleskac submitted a timely objection to the Application on the grounds that there are no unappropriated waters in the source of supply and that the rights of these prior appropriators will be adversely affected. On April 24, 1975 Mr. Ronald Beatty submitted a timely objection to the Application on the grounds that the Applicant has failed to procedurally comply with the Montana

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Water Use Act and that there are no unappropriated waters in the proposed source of supply and that the proposed diversion would adversely affect his prior existing water right.

3. Mr. Robert McIntosh, lessee of the Applicant, appeared at the hearing and testified that he had not intended to enlarge the reservoir, merely to rebuild it, and that not wishing to adversely affect prior appropriators, he would have the spillway of the reservoir cut down to a level so that the rebuilt reservoir would not hold any more water than it had previously. Mr. McIntosh testified that the reservoir would be constructed in a safe manner even with the lowered spillway.

4. The statistics submitted by Mr. Biehl in his letter of May 30, 1974 indicated that the original volume of the reservoir was 63.66 acre-feet and that the new volume of the reservoir is 96.18 acre-feet.

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

PROPOSED CONCLUSIONS OF LAW

1. The Applicant has withdrawn the Application. Based on the foregoing Proposed Findings of Fact and Conclusions of Law, the Hearing Examiner hereby makes the following Proposed Order.

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PROPOSED ORDER

1. That the Application for Beneficial Water Use Permit be terminated.

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: ABC

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