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

* * * * * * * * * * *

IN THE MATTER OF BENEFICIAL WATER)
USE PERMITS NOS. P2049-g40R,)
P2050-g40R, P2051-g40R, P3480-g40R) FINAL ORDER
THROUGH P3490-g40R, AND P3529-g40R)
ISSUED TO JOYCE L. HAUGEN)

FILMED
APR 5 1990

* * * * * * * * * * *

The time period for filing exceptions to the Hearing Examiner's Proposal for Decision in this matter has expired. No timely exceptions were received from any party of record. Therefore, the Department accepts and adopts the Findings of Fact and Conclusions of Law as contained in the April 28, 1986 Proposal for Decision, and incorporates them therein by reference. Based upon these Findings of Fact and Conclusions of Law, and on all files and records herein, the Department makes the following:

ORDER

Provisional Permits Nos. 2049-g40R, 2050-g40R, 2051-g40R, 3480-g40R, 3481-g40R, 3482-g40R, 3483-g40R, 3484-g40R, 3485-g40R, 3486-g40R, 3487-g40R, 3488-g40R, 3489-g40R, 3490-g40R, and 3529-g40R, granted to Joyce L. Haugen, are hereby revoked.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 18th day of June, 1987.

Gary Fritz

Gary Fritz, Administrator
Department of Natural
Resources and Conservation
1520 E. 6th Avenue
Helena, Montana 59620-2301
(406) 444 - 6605

Peggy A. Elting

Peggy A. Elting, Hearing Examiner
Department of Natural Resources
and Conservation
1520 E. 6th Avenue
Helena, Montana 59620-2301
(406) 444 - 6612

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AFFIDAVIT OF SERVICE
MAILING

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on June 18, 1987, she deposited in the United States mail, first class postage prepaid, a Final Order by the Department of Natural Resources & Conservation in the Matter of Beneficial Water Use Permits Nos. P2049-g40R through P-2051g40R, P-3480-g40R through P-3490-g40R, and P-3529-g40R issued to Joyce L. Haugen, addressed to each of the following persons or agencies:

Joyce L. Haugen
PO Box 8308
6339 E. Exeter Blvd.
Scottsdale, AZ 85252

Olaf, Gregory, Larmon
& Arne Haugen
% Haugen Properties
7013 N. 19th Ave.
Phoenix, AZ 85201

Faye B. McKnight
Legal Counsel
1520 E. 6th Ave.
Helena, MT 59620-2301
(hand-issue)

Sterling Sundheim
Water Rights Bureau
Field Office
PO Box 894
Glasgow, MT 59230
(inter-departmental mail)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
by Donna Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 18th day of JUNE, 1987, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Legal Secretary of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Donald D McIntyre
Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires 12/15/87

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BB

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

* * * * * * * * * * *

IN THE MATTER OF BENEFICIAL WATER USE PERMITS NOS. P2049-g40R, P2050-g40R, P2051-g40R, P3480-g40R THROUGH P3490-g40R, AND P3529-g40R ISSUED TO JOYCE L. HAUGEN	)	PROPOSAL FOR DECISION

* * * * * * * * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a show-cause hearing in the above-entitled matter was held on April 9, 1987 in Helena, Montana.

Joyce L. Haugen, holder of the above-specified Provisional Permits, did not appear at the hearing in person or by representation.

The Department of Natural Resources and Conservation (hereafter, the "Department") was represented by legal counsel Faye B. McKnight.

Vivian Lighthizer, Administrative Officer with the Glasgow Water Rights Bureau Field Office, appeared as a witness for the Department.

STATEMENT OF THE CASE

On April 23, 1974, Joyce Haugen filed fourteen Applications for Beneficial Water Use Permits. Applications Nos. 2049-g40R, 2051-g40R, 3480-g40R, 3481-g40R, 3483-g40R, 3485-g40R, 3486-g40R, 3487-g40R, 3488-g40R, 3489-g40R, and 3490-g40R each requested 800

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gpm up to 480 acre-feet ("ac/ft.") per year of groundwater, for the irrigation of 160 acres of land per Application (1760 total acres). Application No. 2050-g40R requested 800 gpm up to 240 ac/ft. per year for the irrigation of 80 acres of land, and Application No. 3482-g40R requested 800 gpm up to 300 ac/ft. of groundwater per year for the irrigation of 100 acres of land. Water was to be diverted between April 1 and October 15, inclusive, of each year for Applications Nos. 3484-g40R and 3485-g40R, and between April 15 and October 15, inclusive, of each year for all of the twelve other irrigation Applications.

The places of use specified for the fourteen Applications total 2,100 acres of land, located in Township 34 North, Range 51 West and Township 33 North, Range 52 West, in Sheridan County and Daniels County, Montana. The Applicant's anticipated completion date on each Application was September 15, 1976.

The pertinent portions of the Applications were published in the Plentywood Herald, a newspaper of general circulation in the area of the source, on March 26 and April 2 and 9, 1975. Timely objections to the Applications were filed with the Department. A contested case hearing was held on the Applications on January 23, 1975.

The Proposals for Decision were issued on April 22, 1975, and a Final Order on May 23, 1975, granting the Permits. On June 19, 1975, fourteen Provisional Permits were issued to Joyce Haugen, granting her the uses, flow rates, volumes, points of diversion, places of use, and periods of appropriation for which she had applied, each with a priority date of April 23, 1974. The

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Provisional Permits (on all Applications other than Nos. 2050-g40R, 2051-g40R, and 3488-g40R) stated in relevant part:

> The diversion and distribution works for this appropriation shall be completed, and water shall be applied to beneficial use as specified above, on or before September 15, 1976, or within any authorized extension of time. The Notice of Completion of Ground Water Development . . . shall be filed on or before November 15, 1976.

Permit No. 2050-g40R contained the same language, but specified that the date of completion was September 1, 1976, and that the Notice of Completion was to be filed on or before November 1, 1976. Permit No. 2051-g40R specified that the date of completion was August 1, 1976, and that the Notice of Completion was to be filed on or before October 1, 1976. Permit No. 3488-g40R specified that the completion date was August 1, 1976, and that the Notice of Completion was to be filed on or before October 1, 1976.

On August 26, 1974, Joyce Haugen also applied for Beneficial Water Use Permit No. 3529-g40R, asking to divert up to 2,500 gpm by means of four wells to drain a high water table. The water was to be allowed to flow into Wolf Creek. The proposed period of diversion (drainage) for which application was made was January 1 through December 31, inclusive, of each year. The Applicant listed the anticipated completion date as September 15, 1976.

No contested case hearing was held on this Application. Provisional Permit No. 3529-g40R was issued to Joyce Haugen on August 16, 1976, granting the uses, flow rates, points of

diversion, places of use (for drainage into Wolf Creek), and periods of appropriation for which she had applied, with a priority date of August 26, 1974. The permit stated that the date of completion was September 1, 1978, and that the Notice of Completion was to be filed on or before November 1, 1978.

On December 8, 1976, the Department's Helena office sent three letters to the Permittee, stating that the Department had not received the necessary Notices of Completion on Provisional Permits Nos. 2049-g40R, 2050-g40R, and 2051-g40R, and informing the Permittee that she could request additional time to complete the project or submit Notices of Completion. On December 14, 1976, Mr. Reynolds sent separate letters to the Permittee in regard to each of the remaining Permits (except for Permit No. 3529-g40R)[1], stating that the Department had not received

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[1]There is no evidence in the record that a similar letter was sent to the Permittee in December, 1978 in regard to Permit No. 3529-g40R. Whether coincidentally or not, the Permittee did not file an Application for Extension of Time on this one Permit.

Since the Department has no duty to mail reminders of filing deadlines to beneficial water use permit holders, but usually does so, it is not clear if, or to what extent, the Permittee was entitled to rely on the Department to uniformly give notice on all Permits. The Permittee did not argue that lack of a reminder on this Permit is sufficient "cause" for the Permit not to be revoked, nor does it appear that this argument would provide a sufficient basis to prevent revocation, in light of the Permittee's own duties to timely file and the fact that the project has not even been initiated.

However, the Permittee is not adversely affected in any case, since Departmental administrative policy allows her to accomplish the purpose for which Permit No. 3529-g40R was applied and was issued - i.e., the drainage of water from her lands - without obtaining a permit. See Department of Natural Resources and Conservation Water Rights Bureau, New Appropriations Program, Administrative Policy Number 7 (proposed October 21, 1981).

the necessary Notice of Completion for the specified Permit, and informing the Permittee that she could request time to complete the project or submit a Notice of Completion.

The Permittee, through counsel, filed Applications for Extension of Time (dated December 21, 1976; received by the Department on December 23, 1976) on Permits Nos. 2049-g40R, 2050-g40R, 2051-g40R, 3480-g40R, 3481-g40R, 3482-g40R, 3483-g40R, 3484-g40R, 3485-g40R, 3486-g40R, 3487-g40R, 3488-g40R, 3489-g40R, and 3490-g40R. The Applications asked for a two-year extension of time, on the basis that the Permittee had been unable to develop the projects for which the Permits had been granted, due to "excessive rains during summer of 1976" and "a car accident resulting in injury to the Permittee."

On January 1, 1977, the Assistant Administrator of the Water Resources Division issued a Notice of Action on Application for Extension of Time on each Permit for which an extension had been applied, approving Extensions of Time for all fourteen of these Permits. Each Notice of Action stated that "the appropriation shall be perfected on or before January 10, 1978, and a Form 617, Notice of Completion of Water Development, shall be filed on or before March 11, 1978."

In February, 1978, counsel for the Permittee filed Applications for Extension of Time on the fourteen Permits specified above, stating "Permittee is requesting an additional 24 months to allow sufficient time to complete the entire project, as she is unable to complete the engineering and drilling of the proper wells within the allotted time." (Applications for Extension of Time, dated February 24, 1978.)

On March 14, 1978, the Assistant Administrator of the Water Resources Division issued a Notice of Action on Application for Extension of Time on each Permit for which an extension had been applied, approving extensions of time. The Notice of Action on each permit stated that the appropriation was to be perfected on or before March 9, 1980, and a Notice of Completion was to be filed on or before May 10, 1980. The Notices further stated, "No further extension of time will be granted to complete this project as the time allowed has been sufficient to complete the project." Each Notice further informed the Permittee that any additional extension would be looked upon by the Department as a reservation of water.

The Permittee did not file any further Applications for Extension of Time, nor did she file Notices of Completion for the Permits.

In the absence of any evidence that the Permittee had commenced, prosecuted, or completed work on the appropriations within the time stated in the final extension, the Department determined that the Permittee must be required to show cause why the Permits should not be revoked, and contacted the Permittee. As a result of Department contact concerning revocation, the Permittee requested that a show cause hearing be held in Helena, Montana. (October 18, 1982 letter from Joyce Haugen to Vivian Lighthizer.)

Ronald Guse, Administrative Officer of the Department's Water Rights Bureau, notified the Permittee in writing that a show cause hearing would be held. The letter set forth

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§85-2-314 MCA, the statute covering revocation of permits, and informed Ms. Haugen that she would receive written notice of the hearing. (October 27, 1982 letter from Ronald Guse to Joyce Haugen.)

Department records indicate that attempts were made on several occasions to schedule a show cause hearing in this matter, with the Permittee each time requesting continuance. Finally, after a show cause hearing which originally had been scheduled for May 7, 1986 (with a full 30 days notice to the Permittee) was continued until July 15, 1986 after an April 22, 1986 request by the Permittee, and again was continued on the basis of a last minute (July 14) request for continuance by the Permittee, the Permittee was notified that no further continuances would be granted in this matter. (See July 16, 1986 Grant of Continuance.)

A certified Notice of Revocation Hearing and Order to Show Cause was issued on March 2, 1987, rescheduling the show cause hearing in this matter for April 9, 1987. The Hearing Examiner ordered the parties to notify the Department as to whether or not they intended to appear at the hearing, and stated that it would be presumed that a party not contacting the Department did not intend to appear. The certified mail receipts were signed and returned by all parties of record.

The Department received a telephone communication indicating that Olaf, Gregory, Larmon, and Arne Haugen did not intend to appear at the hearing. Joyce Haugen made telephone contact with

the Department's Hearings Reporter and with Hearings Examiner Robert Scott, but did not indicate whether or not she intended to appear at the hearing.

The hearing was duly convened on April 9, 1987 at the appointed place and hour. The hearing was delayed approximately 40 minutes while the Hearings Examiner and the Department representative waited for the Permittee to appear. After an attempt to contact the Permittee by telephone had been unsuccessful, the hearing was opened.

Counsel for the Department discussed the Department actions in this matter, made a motion to introduce the Hearings Unit files into evidence as part of the record and to make the Department legal files available to the Hearing Examiner for reference, and called upon Vivian Lightizer of the Glasgow Water Rights Bureau Field Office to testify as to the field investigation made on the Permits in this matter.

The record was closed at the end of the show cause hearing. The Permittee did not appear at the hearing.

EXHIBITS

The Department of Natural Resources and Conservation moved for admission of the contested case files into the record in this matter.[2] Upon review of the files, the Hearing Examiner

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[2]The contested case files contain photocopies of the Applications for Beneficial Water Use Permits, correspondence and documents relating to the Applications, the Provisional Permits which were issued, and the letters and documents referred to above in the Statement of the Case.

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determined that the files contain no documents or information which the Permittee in this matter had not received. Therefore, the contested case files were accepted into the record.

The Department offered nineteen additional exhibits for admission into the record:

Department Exhibit 1 is a two-page document which lists the priority date, point of diversion, means of diversion, purpose of use, place of use, flow rate, volume, completion date, and Notice of Completion date for each of the fifteen Provisional Permits involved in this matter.

Department Exhibit 2 is a photocopy of a list which specifies the completion dates and notice dates specified on the final extensions of time granted on the Provisional Permits, except for Permit No. 3529-g40R. (One page.)

Department Exhibit 3 is a photocopy of a one-page memorandum by Vivian Lighthizer, entitled "Field investigation performed February 25, 1985", and dated February 28, 1985. The memorandum has two attachments: a photocopied page from a computer printout which lists the Permits in question, and a photocopy map marked with the places of use designated in the Permits.

Department Exhibit 4 is a two-page photocopy of a warranty deed which conveys ownership of lands which comprise the greater part of the locations of points of diversion and places of use specified in the Provisional Permits, ownership being conveyed from the Permittee in this matter to other named parties.

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Department Exhibits 5 through 19 consist of photocopies of 1979 USGS aerial maps. Each Exhibit is one page, and shows the specified place of use for one Provisional Permit. The relevant Permit number is indicated on the page. Exhibit 5 shows the place of use for Provisional Permit ("P") No. 2049-g40R; Exhibit 6 shows place of use for P2050-g40R; Exhibit 7 for P2051-g40R; Exhibit 8 for P3480-g40R; Exhibit 9 for P3481-g40R; Exhibit 10 for P3482-g40R; Exhibit 11 for P3483-g40R; Exhibit 12 for P3484-g40R; Exhibit 13 for P3485-g40R; Exhibit 14 for P3486-g40R; Exhibit 15 for P3487-g40R; Exhibit 16 for P3488-g40R; Exhibit 17 for P3489-g40R; Exhibit 18 for P3490-g40R; and Exhibit 19 for Permit No. 3529-g40R.

Department Exhibits 1 through 19 were accepted for the record in this matter.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following proposed Findings of Fact, Conclusions of Law, and Order.

PROPOSED FINDINGS OF FACT

1. The Department has a statutory grant of jurisdiction over the subject matter and the parties in this case. See §85-2-112(1), §85-2-302, and §85-2-314 MCA.

2. Beneficial Water Use Permits Nos. 2049-g40R, 2050-g40R, 2051-g40R, 3480-g40R, 3481-g40R, 3482-g40R 3483-g40R, 3484-g40R, 3485-g40R, 3486-g40R, 3487-g40R, 3488-g40R, 3489-g40R, and

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3490-g40R were issued to Joyce L. Haugen on June 19, 1975, each with a priority date of April 23, 1974. These Provisional Permits granted Ms. Haugen a combined total of 11,200 gallons per minute up to 6,300 acre-feet of water per year for irrigation. The source of water for all of the specified Permits is groundwater.

Provisional Permit No. 2049-g40R specifies a point of diversion in the NW¼ of Section 22, Township 34 North, Range 51 East in Sheridan County, and the place of use as 160 acres in the same quarter-section as the point of diversion.

Permit No. 2050-g40R designates a point of diversion in the NW¼ of Section 16, Township 34 North, Range 51 East in Daniels County, and the place of use as 80 acres in the same quarter-section.

Permit No. 2051-g40R designates a point of diversion in the SW¼ of Section 32, Township 33 North, Range 52 East in Sheridan Sheridan County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3480-g40R designates a point of diversion in the SW¼ of Section 10, Township 34 North, Range 51 East in Sheridan County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3481-g40R designates a point of diversion in the SE¼ of Section 10, Township 34 North, Range 51 East in Sheridan County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3482-g40R designates a point of diversion in the NW¼ of Section 14, Township 34 North, Range 51 East in Sheridan County, and the place of use as 100 acres in the same quarter section.

Permit No. 3483-g40R designates a point of diversion in the NE¼ of Section 15, Township 34 North, Range 51 East in Sheridan County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3484-g40R designates a point of diversion in the NW¼ of Section 15, Township 34 North, Range 51 East in Sheridan County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3485-g40R designates a point of diversion in the SW¼ of Section 15, Township 34 North, Range 51 East in Sheridan County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3486-g40R designates a point of diversion in the SE¼ of Section 15, Township 34 North, Range 51 East in Sheridan County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3487-g40R designates a point of diversion in the NE¼ of Section 21, Township 34 North, Range 51 East in Daniels County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3488-g40R designates a point of diversion in the NW¼ of Section 32, Township 33 North, Range 52 East in Sheridan County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3489-g40R designates a point of diversion in the NE¼ of Section 31, Township 34 North, Range 51 East in Daniels County, and the place of use as 160 acres in the same quarter-section.

Permit No. 3490-g40R designates a point of diversion in the NW¼ of Section 31, Township 34 North, Range 51 East in Daniels County, and the place of use as 160 acres in the same quarter-section.

The period of appropriation specified in each of these Permits is April 15 through October 15 of each year, except for Permits Nos. 3484-g40R and 3485-g40R, which list a period of appropriation from April 1 through October 15 of each year.

Permit No. 3529-g40R was issued to Joyce Haugen on August 26, 1974. This Provisional Permit granted Ms. Haugen the right to pump water from four wells located in the S½ of Section 15 and the NE¼NE¼NW¼ of Section 22, Township 34 North, Range 51 East in Sheridan County, for the purpose of draining a high water table. The Permit grants Joyce Haugen the right to pump 5.57 cfs (no volume limitation) January 1 through December 31 of each year, and to allow the water to flow into Wolf Creek at points in the S½ of Section 15 and the NW¼ of Section 22, Township 34 North, Range 51 East, Sheridan County.

Permits Nos. 2051-g40R and 3488-g40R specify that the diversion and distribution works for the appropriations must be completed, and water must be applied to beneficial use as specified in the Permits, on or before August 1, 1976. The Permits further specify that the Notice of Completion of Water

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Development must be filed on or before October 1, 1976. Permit No. 2050-g40R specifies a completion date of September 1, 1976, and a filing of the Notice of Completion by November 1, 1976. Each of the remaining twelve Permits specifies a completion date of September, 1976, with Notices of Completion of Groundwater Development to be filed on or before November 15, 1976.

2. The Permittee filed Applications for Extensions of Time on all Permits except Permit No. 3529-g40R, requesting that the completion deadlines be extended by two years. (Applications received by Department on December 23, 1976.) The Permittee cited excessive rainfall and injuries received in a car accident as the reasons for requesting an extension.

Extensions of Time granted to the Permittee on January 1, 1977, stating that the Permittee's appropriations were to be perfected on or before January 10, 1978, and that Notices of Completion were to be filed on each Permit by March 11, 1978.

3. The Permittee filed Applications for Extensions of Time on all Permits for which Extensions had previously been granted, requesting that the completion dates be extended for an additional two years. (Applications were filed on February 24, 1978.) The Permittee cited insufficient time to complete the engineering and drilling of the wells as the reason for requesting additional time in which to complete her appropriations.

Extensions of Time were granted to the Permittee on March 14, 1978, for each of these fourteen Permits. The Extensions specified that the Permittee's appropriations were to

be perfected on or before March 9, 1980, and Notices of Completion were to be filed on or before May 10, 1980. The Extensions stated that no further extensions would be granted, since the Permittee had been allowed sufficient time to complete the projects for which Permits had been granted, and that any additional request for extension would be viewed as an attempt to reserve water.

4. The Permittee did not file Notices of Completion on any of the projects on or before May 10, 1980, or at any time subsequent thereto.

5. Upon being informed that the Department would require the Permittee to show cause why her fifteen Permits should not be revoked, the Permittee requested a show cause hearing. (October 18, 1982 letter from Joyce Haugen to Vivian Lighthizer, Glasgow Water Rights Bureau Field Office.)

6. A show cause hearing was scheduled, and attempts were made to reschedule, several times in this matter. Each time, the hearing was continued at the instigation of the Permittee. (Department records.) Therefore, the Permittee was duly notified that no further continuances would be granted, but that she must appear in person or by representation at the next scheduled hearing. (See July 16, 1986 Grant of Continuance; March 2, 1987 Notice of Revocation Hearing and Order to Show Cause.)

7. The Permittee was notified of the date, time, and location of the show cause hearing, and the bases on which the Department proposed to revoke the fifteen enumerated Provisional

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Permits. (See Notice of Revocation Hearing and Order to Show Cause and Appointment of Hearing Examiner, issued April 4, 1986; and Notice of Revocation Hearing and Order to Show Cause, issued March 2, 1987, with return receipt signed by Joyce Haugen on March 10, 1987.)

8. The Permittee did not appear at the hearing, either personally or by representation.

9. The Permittee has never provided the Department with any information that the projects authorized under Beneficial Water Use Permits Nos. 2049-g40R, 2050-g40R, 2051-g40R, 3480-g40R, 3481-g40R, 3482-g40R, 3483-g40R, 3484-g40R, 3485-g40R, 3486-g40R, 3487-g40R, 3488-g40R, 3489-g40R, 3490-g40R, and 3529-g40R have been commenced or completed, or that any work has been done or water put to beneficial use pursuant to the Provisional Permits. (Review of Department records.)

10. A field investigation was made by Vivian Lighthizer and Don Cox of the Glasgow Water Rights Bureau Field Office, on February 25, 1985. Mr. Cox and Ms. Lighthizer visited the legal locations of the points of diversion and places of use specified in the Permits under consideration in this matter. They were unable to discover any sign of well development, sprinkler irrigation, or other project development. (Testimony of Vivian Lighthizer. (See February 28, 1985 Memorandum by Vivian Lighthizer entitled "Field investigation performed February 25, 1985.")

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Based upon the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

PROPOSED CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and the parties hereto, whether present at the hearing or not.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled, therefore the matter was properly before the Hearings Examiner.

3. Section 85-2-314 MCA states:

> If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be modified or revoked. If the permittee fails to show sufficient cause, the department may modify or revoke the permit.

4. The Department has the burden of production (going forward) in this matter. See generally In the Matter of Beneficial Water Use Permits Nos. 31587-g41F and 33294-g41F, Proposal for Decision, March 4, 1985 (Final Order October 29, 1985); 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE §16.9 (2d ed. 1980). Therefore, it must produce evidence which indicates that the Permits were not perfected within the terms in which they were issued, or that the work on the appropriations was not commenced, prosecuted, or completed within the time stated in

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the Permits or within any extensions of time which may have been granted.

5. The Department met its burden by producing evidence that the Permittee had not filed the requisite Notices of Completion, and that she had not commenced, prosecuted, or completed work on the projects for which the Permits were issued. (See Statement of the Case; Findings of Fact 9 and 10; Department's Exhibits 3, and 5 through 19.)

6. The Permittee has the burden of persuasion in this case; that is, the burden of proving by a preponderance of the evidence that the projects were commenced, prosecuted, and completed within the time stated in the Permits or within the granted extensions of time, and that the Permits were perfected within the terms of the Permits. See generally 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE §16.9 (2d ed. 1980.)

7. The Permittee failed to meet her burden in this matter. She did not provide any evidence that the Permits had been perfected through completion of the appropriation works and the application of the water to the beneficial uses contemplated in the Permits. No documentation exists in the record to indicate that the Department's field investigation is erroneous and that the Permittee actually had completed the appropriation projects, and the Permittee did not appear at the show cause hearing to present testimony on the issue. (See Findings of Fact 8 and 10.)

8. The Permittee has placed herself in default by failing to appear at the show cause hearing in this matter.

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Administrative Rule of Montana 36.12.208 states, in relevant part, "Upon default, the defaulting party's claim or interest in the proceeding may be dismissed (with or without prejudice), denied, disregarded, or disposed of adverse to him."

9. On the basis of the Permittee's failure to meet her burden of proof, and her default at the show cause hearing in this matter, the Permits properly may be revoked.

WHEREFORE, based upon the proposed Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Provisional Permits Nos. 2049-g40R, 2050-g40R, 2051-g40R, 3480-g40R, 3481-g40R, 3482-g40R, 3483-g40R, 3484-g40R, 3485-g40R, 3486-g40R, 3487-g40R, 3488-g40R, 3489-g40R, 3490-g40R, and 3529-g40R, granted to Joyce L. Haugen, are hereby revoked.

DONE this 28th day of April, 1987.

Peggy A. Elting

Peggy A. Elting, Hearing Examiner
Department of Natural Resources
and Conservation
1520 E. 6th Avenue
Helena, Montana 59620-2301
(406) 444 - 6612

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the proposed order, including the legal land descriptions. Any party

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adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (1520 E. 6th Ave., Helena, MT 59620-2301); the exceptions must be filed within 20 days after the proposal is served upon the party. MCA § 2-4-623.

Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed. Any adversely affected party has the right to present briefs and oral arguments before the Water Resources Administrator, but these requests must be made in writing within 20 days after service of the proposal upon the party. MCA § 2-4-621(1). Written requests for an oral argument must specifically set forth the party's exception(s) to the proposed decision.

Oral arguments held pursuant to such a request will be scheduled for the locale where the contested case hearing in this matter was held, unless the party asking for oral argument requests a different location at the time the exception is filed.

Parties who request oral argument are not entitled to present evidence that was not presented at the original contested case hearing: no party may give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will be limited to discussion of the information which already is present in the record. Oral argument will be restricted to those issues which the parties have set forth in their written request for oral argument.

AFFIDAVIT OF SERVICE
MAILING

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Sally Martinez, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on April 29, 1987, she deposited in the United States mail, first class postage prepaid, a Proposal for Decision by the Department of Natural Resources & Conservation (DNRC) in the Matter of Beneficial Water Use Permits Nos. P002049-g40R through P-002051g40R, P-003480-g40R through P-003490-g40R, and P-003529-g40R issued to Joyce L. Haugen, addressed to each of the following persons or agencies:

Joyce L. Haugen
PO Box 8308
6339 E. Exeter Blvd.
Scottsdale, AZ 85252

Olaf, Gregory, Larmon
& Arne Haugen
% Haugen Properties
7013 N. 19th Ave.
Phoenix, AZ 85201

Faye B. McKnight
Legal Counsel
DNRC
1520 E. 6th Ave.
Helena, MT 59620-2301
(hand-issue)

Sterling Sundheim
& Vivian Lighthizer
Water Rights Bureau
Field Office
PO Box 894
Glasgow, MT 59230
(inter-departmental mail)

Gary Fritz
Administrator
DNRC-Water Resources
1520 E. 6th Ave.
Helena, MT 59620-2301
(hand-issue)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Sally Martinez

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 29th day of April, 1987, before me, a Notary Public in and for said state, personally appeared , known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires 1-21-1990

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