

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 4140-s41-0 BY
NEW ROCKPORT COLONY

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FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

Pursuant to the Montana Water Use Act and the Administrative Procedures Act, after due notice a hearing on the objections to the above-named application was held on May 19, 1975, in Great Falls, Montana.

George J. Waldner, secretary of the New Rockport Colony, and Jacob J. Wipf, president of the New Rockport Colony, appeared at the hearing and presented testimony for the Applicant. The Applicant was represented by counsel, Lester H. Loble II, Esq., of Helena, Montana. Jerry Hayward presented testimony for the Applicant.

The following parties submitted timely objections to the application: Gertrude Proff Estate, Wayne L. Proff; William E. Reichelt; Harold J. Roudebush, Jr.; Bruno Reichelt; Donald J. Scott; William A. Shaw; Jack Stallcup; Lloyd L. Stubsten; Kurt T. Squires; V. F. Squires; Gladys C. Squires; Mark N. Squires; Arganbright Farms; Gary Arganbright; William P. Bandel; Paul Burney; Jane L. Castor; Ray A. Castor; Chouteau County Commissioners; Corey Ranch Company; Chester Corey; Donald E. Craig; Paul R. Craig; Wayne E. Crawford; Dan E. Danreuther; Janet Danreuther; Charles Danreuther; Roger DeBruycker; Jeremy J. Dietz; Kenneth Evans; Katherine Fatz; Victor Fatz; Bernard E. Hardy; Donald H. Jackson; Robert Jacobsen; Paul P. Kalanick; William K. Kelly; Kalanick Ranch, Inc.; Edwin Knecht; Ed Krumewiede; Mary J. Krumewiede; Mr. and Mrs. Joe Kueffler; Kenneth M. Laubach; Robert W. Laubach; Virginia P. Laubach; Claude Laubach; George Lippert; William F. Lohse;

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Brad Lotton; Orville McKinlay; Gerald A. Myers; John L. Nelson; Lester M. Naeseth, and Naeseth's Redi-Mix.

The following persons submitted objections to the application after the deadline of April 10, 1975, as stated in the Public Notice: Larry L. Maurer; Ray J. Habel; Lester and Sadie Lippert; and Ernest T. Hardford. These are not valid objections because they were received after the deadline.

Larry L. Maurer appeared at the hearing and presented testimony in support of the Objectors.

The Corey Ranch Company was represented by counsel, Gorham Swanberg, Esq., of Great Falls, Montana. Various other objectors were represented by counsel, Channing J. Hartelius, Esq., of Great Falls.

All parties represented by counsel stipulated to the Hearing Examiner taking judicial notice of the Teton and Chouteau County Water-Resources Survey Reports, the U.S. Geological Survey flow figures for the Teton River and its tributaries, and maps and aerial photographs from which the resources survey reports were compiled. There were no objections to this stipulation.

Gorham Swanberg, Esq., moved to dismiss the application for reason that the Applicant failed to show beneficial use of the water subject to the application, because the Applicant claims other water rights which could possibly be used on this property. That motion was denied for reason that there was no evidence presented to show that other water rights were not being fully and beneficially used upon the property to which those other rights are appurtenant.

A Proposed Order (Proposal for Decision) on the above hearing was issued by the Hearing Examiner, James A. Lewis, on September 26, 1975. The Proposed Order specified that the Proposed Order would become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation, that written exceptions to the

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Proposed Order must be filed with the Department within ten (10) days of receipt of same, and that upon receipt of any written exceptions by the Department, opportunity would be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

On October 10, 1975, the Department received a written letter dated October 8, 1975, from Charles and Janet Danreuther, taking Exception to the Proposed Order as entered by the Hearing Examiner in the matter of Application No. 4140-s41-0, and further requesting an opportunity to make oral argument before the Water Resources Division Administrator.

A second Exception dated October 12, 1975, and received by the Department on October 14, 1975, in opposition to the Proposed Order as entered in the matter of Application No. 4140-s41-0 by the Hearing Examiner, was filed by Channing J. Hartelius, attorney at law, on behalf of Objectors William E. Reichelt, Kermit Olson, Mr. Lunde, Gene Hardy, Jeremy J. Dietz, Lester M. Naeseth, Paul Kalanick, Kurt Squires, William Kelly, Buck Bridgewell, William F. Lohse, Charles Danreuther, Paul Onstead, Vick Schuler, William P. Bandel, and Larry Maurer.

By the Department's letter of October 24, 1975, Mr. Hartelius was informed that they had an opportunity to file a brief supporting their exceptions and objections within fifteen (15) days after receipt of the Department's notice. It was pointed out in said letter that the exception was not timely; however, in the interest of justice it was accepted, since his clients, Mr. and Mrs. Charles Danreuther, did file a timely exception necessitating a possible oral argument hearing before the Administrator. Copies of this letter were also sent to Charles Danreuther, George Waldner, and Lester H. Loble II.

Lester H. Loble II, attorney at law, on behalf of the Applicant filed a Brief in Opposition to Exceptions to Proposal for Decision as dated November 24, 1975.

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The Department by its letter of February 3, 1976, to Channing J. Hartelius, attorney for sixteen objectors, stated that the 15-day time period had long since expired without any requested extension of time and without the filing of a brief from Mr. Hartelius or the Danreuthers, supporting their Exceptions as filed. Therefore, it was assumed that neither Mr. Hartelius nor the Danreuthers intended to file a brief. Mr. Hartelius was further advised that he and his clients still had the opportunity to request oral argument on their objections and exceptions before the Water Resources Division Administrator before he prepares and issues a Final Order on this matter. Mr. Hartelius was requested to respond in writing within seven (7) days after receipt of our letter indicating if he wished to make oral argument before the Administrator. He was also informed that if the Department did not receive a reply by February 18, 1976, or a request for oral argument within that time period, this matter would be decided and a Final Order issued by the Administrator, based on the documents at present on record in the application file. Copies of said letter dated February 3, 1976, were also sent to Mr. and Mrs. Charles Danreuther, George Waldner, and Lester H. Loble II.

On February 9, 1976, the Department received a letter dated February 7, 1976, from Charles and Janet Danreuther in which they requested to make oral argument before the Administrator on their objection and exception.

The Department by letter of February 20, 1976, to Mr. and Mrs. Charles Danreuther, informed them that since oral argument had been requested this matter would be forwarded to the Administrator of the Water Resources Division for scheduling of a hearing and that all parties would be notified by certified mail when the hearing date, time, and place was selected. Copies of this letter were also sent to Channing J. Hartelius, George Waldner, and Lester H. Loble II. Mr. Loble was informed by the Department's letter of February 20, 1976, that oral argument before the Administrator had been

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requested by Mr. and Mrs. Charles Danreuther and therefore the matter was being forwarded to the Administrator for scheduling of said hearing. A copy of this letter was sent to Mr. George Waldner.

The Administrator of the Water Resources Division issued on March 10, 1976, a Notice of Hearing on Exceptions in the matter of Application for Beneficial Water Use Permit No. 4140-s41-0 by New Rockport Colony, stating that on Thursday, April 8, 1976, at 1:30 p.m., a hearing would be held before the Administrator of the Water Resources Division, in Room 211 or the Conference Room as the situation may require, of the Department of Natural Resources and Conservation Building, 32 South Ewing, Helena, Montana. The purpose of the hearing was to hear oral arguments in support of the written briefs. If certain parties did not wish to make oral argument they were requested to so advise in writing, before the hearing, of their wish to waive this right; in such case, the briefs would stand as filed. This Notice of Hearing on Exceptions was mailed by certified mail to all parties in this matter, including the original objectors and their attorneys.

Paul R. Craig, Robert W. Laubach, Mr. and Mrs. Ray A. Castor, Herbert R. Corey, Chester Corey, and Mr. and Mrs. Kenneth M. Laubach all informed the Department in writing that they did not wish to appear and make oral argument before the Administrator on April 8, 1976, in Helena, Montana.

William E. Reichelt, by letter of March 17, 1976, informed the Department that he did wish to appear before the Administrator to present oral argument.

The oral argument hearing was held in Helena, Montana, on April 8, 1976, in the Conference Room of the Department of Natural Resources Building, for the purpose of hearing oral arguments in support of written objections, exceptions, and briefs.

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George Waldner and Jacob J. Wipf appeared at the hearing and presented testimony on behalf of the Applicant and were represented by Lester H. Loble II, attorney for the Applicant.

Mr. and Mrs. Charles Danreuther, Mr. and Mrs. Bill Reichelt, and William P. Bandel appeared at the hearing and presented testimony on behalf of the Exceptors. The above Exceptors were not represented by counsel.

The hearing was also attended by five Department personnel, other than the Water Resources Division Administrator.

The Administrator of the Water Resources Division hereby makes the following Final Order, based on the Hearing Examiner's Proposed Order of September 26, 1975, the objections, exceptions, briefs, the testimony of the oral argument hearing held on April 8, 1976, and all pertinent information and documents filed by parties to this matter, and made a permanent record of the application file.

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on September 26, 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. 4140-s41-0 to appropriate when available and not needed to satisfy prior water users downstream on the Teton River, 1,200 gallons per minute of water, not to exceed 351 acre-feet from May 1 to July 31, and not to exceed 130 acre-feet from September 15 to October 1, for a total not to exceed 481 acre-feet per annum in Teton County, Montana, to be diverted by means of a pumping plant from the Teton River, a tributary of the Marias River, at a point in the NW $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$ Section 8, Township 24 North, Range 3 West, M.P.M., and used for irrigation on one 135-acre center pivot circle located in the S $\frac{1}{2}$ S $\frac{1}{2}$ Section 6 and

N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 7, and one 135-acre center pivot circle located in the E $\frac{1}{2}$ of Section 7 and the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 8, all in Township 24 North, Range 3 West, M.P.M., and containing a total of 270 acres, more or less, from May 1 to July 31, inclusive, of each year, and from September 15 to October 1, inclusive, of each year.

2. The Provisional Permit is granted subject to the condition that an adequate measuring device be installed and maintained, and accurate records kept of all periods of diversion and quantities of water diverted and reported to the Department on or before November 15 of each year.

3. The Provisional Permit is granted subject to all prior existing water rights in the source of supply, and any final determination of prior existing water rights as provided by Montana law. In the event that any of the objectors or other existing water-right users have factual proof within a three-year period after the effective date of this order showing that they are being adversely affected as a result of the Permittee's appropriation during the periods granted, to the point that they 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 factual 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. 4140-s41-0.

4. The issuing of this Provisional Permit by the Department in no way reduces the Permittee's liability for damage caused by the Permittee's

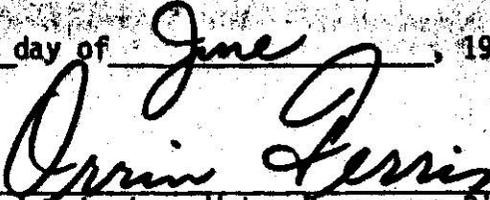
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exercise of his Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of his Provisional Permit.

Recommendation

The Department recommends that all parties in this matter properly install and maintain adequate measuring devices to fit their particular situation, and keep records of water used for their own proof of their water rights.

Done this 10th day of June, 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 # 4140

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 4140-s41-0
BY NEW ROCKPORT COLONY

}
AGREED AMENDMENT TO FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER

On June 10, 1976, Findings of Fact, Conclusions of Law, and Order was adopted by Orrin Ferris, Administrator, Water Resources Division, Department of Natural Resources and Conservation, in the above-entitled matter. Subsequently, Mr. William E. Reichelt and Mr. and Mrs. Charles Danreuther filed requests for a hearing before the Board of Natural Resources and Conservation.

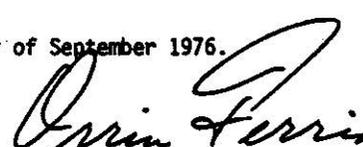
By written agreement of Mr. Reichelt, Mr. and Mrs. Charles Danreuther, and the New Rockport Colony, on file herein, the said requests for hearing will be withdrawn if certain changes are made to void Findings of Fact, Conclusions of Law, and Order.

NOW THEREFORE, IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Order are amended on page 7, paragraph 3, second sentence, by changing the three-year period to a five-year period, so that said second sentence reads as follows:

In the event that any of the objectors or other existing water-right users have factual proof within a five-year period after the effective date of this order showing that they are adversely affected as a result of the Permittee's appropriation during the periods granted, to the point that they 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 factual 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.

IT IS FURTHER ORDERED that said requests for hearing before the Board shall be considered as withdrawn.

Done this 14th day of September 1976.


Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 4140

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 4140-s41-0, NEW ROCKPORT COLONY)

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice, a hearing on objections to the above-named application was held in Great Falls, Montana, on May 19, 1975.

Mr. George J. Waldner, Secretary of the New Rockport Colony, and Mr. Jacob J. Wiff, President of the New Rockport Colony, appeared at the hearing and presented testimony for the applicant. The Applicant was represented by counsel, Mr. Lester H. Loble II, Esq., of Helena, Montana. Mr. Jerry Hayward presented testimony for the Applicant.

The following parties submitted timely objections to the application: Gertrude Proff, Estate; Wayne L. Proff; William E. Reichelt; Harold J. Roudebush, Jr.; Bruno Reichelt; Donald J. Scott; William A. Shaw; Jack Stallcup; Lloyd L. Stubsten; Kurt T. Squires; V. F. Squires; Gladys C. Squires; Mark N. Squires; Arganbright Farms; Gary Arganbright; William P. Bandel; Paul Burney; Jane L. Castor; Ray A. Castor; Chouteau County Commissioners; Corey Ranch Co.; Chester Corey; Donald E. Craig; Paul R. Craig; Wayne E. Crawford; Dan E. Danreuther; Janet Danreuther; Charles Danreuther; Roger DeBruycker; Jeremy J. Dietz; Kenneth Evans; Katherine Fatz; Victor Fatz; Bernard E. Hardy; Donald H. Jackson; Robert Jacobsen; Paul P. Kalanick; William K. Kelly; Kalanick Ranch, Inc.; Edwin Knecht; Ed Krumewiede; Mary J. Krumewiede; Mr. & Mrs. Joe Kueffler; Kenneth M. Laubach; Robert W. Laubach; Virginia P. Laubach; Claude Laubach; George Lippert;

William F. Lohse; Brad Lotton; Orville McKinlay; Gerald A. Myers; John L. Nelson; Lester M. Naeseth, and Naeseth's Redi Mix.

The following persons submitted objections to the application after the deadline of April 10, 1975 as stated in the Public Notice: Larry L. Maurer; Ray J. Habel; Lester and Sadie Lippert; and Ernest T. Hardford. These are not valid objections because they were received after the deadline.

Mr. Larry L. Maurer appeared at the hearing and presented testimony in support of the Objectors.

The Corey Ranch Company was represented by counsel, Mr. Gorham Swanberg, Esq., of Great Falls, Montana. Various other objectors were represented by counsel Mr. Channing J. Hartelius Esq. of Great Falls, Montana.

All parties represented by counsel stipulated to the Hearing Examiner taking judicial notice of the Teton and Chouteau County Water Resources Survey Books; the U.S. Geological Survey flow figures for the Teton River and its tributaries; and maps and aerial photographs from which the Resources Survey Books were compiled. There were no objections to this stipulation.

Mr. Gorham Swanberg, Esq. moved to dismiss the Application for reason that the Applicant failed to show beneficial use of the water subject of the application because the Applicant claims other water rights which could possibly be used on this property. This motion is hereby denied for reason that there was no evidence presented to show that other water rights were not being fully and beneficially used upon the property to which those other rights are appurtenant.

As required by law the Hearing Examiner hereby makes the following Proposed Findings of Fact, Conclusions of Law and Order to the Administrator, Water Resources Division, Department of Natural Resources and Conservation .

PROPOSED FINDINGS OF FACT

1. On November 12, 1974 the Applicant submitted an application with the Department seeking to appropriate 2400 gpm and not to exceed 700 acre feet per annum from the source of the Teton River. The water is to be diverted by means of an electric powered pump at a point in the NW $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 8, T.24N., R. 3W., M.P.M. Teton County, Montana and used to irrigate by means of a center pivot sprinkler system to irrigate 205 acres in Section 7, and 75 acres in Section 6 of said township and range.

2. On April 9, 1975 the Gertrude Proff Estate by its executor, Mr. Wayne L. Proff, submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect their prior existing water right.

On April 9, 1975 Mr. Wayne L. Proff submitted a timely objection to the application on grounds that the proposed appropriation would adversely affect his prior existing water right.

On April 9, 1975 Mr. William E. Reichelt submitted a timely objection to the Application on the grounds that the proposed appropriation would adversely affect his prior existing water right to irrigate 225 acres of hayland and to water 250 head of cattle.

On April 8, 1975, Mr. Harold J. Roudebush, Jr., submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to water from the Buck Bridge well. On April 8, 1975, Mr. Bruno Reichelt submitted a timely objection to the application on the grounds that there are no unappropriated waters in the Teton River, the proposed source of supply. On April 9, 1975, Mr. Donald J. Scott submitted a timely objection to the application on the grounds that the proposed application would adversely affect his prior existing water right. On April 9, 1975, Mr. William A. Shaw submitted a timely objection to the application on the grounds that there are no unappropriated waters in the source of supply. On April 8, 1975, Mr. Jack Stallcup submitted a timely objection to the application on the

grounds that the proposed appropriation would adversely affect his prior existing water right to water from the source of the Buck Bridge well, and also that the proposed appropriation would adversely affect the Apple School Community Hall's prior existing water right. On April 8, 1975, Mr. Lloyd L. Stubsten submitted a timely objection to the application on the grounds that it would adversely affect his prior existing water right for household use for 3 persons and for toilet use for the Carter Tavern. On April 8, 1975, Mr. Kurt T. Squires submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to water 25 cows. On April 8, 1975, Mr. V. F. Squires submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply, and that the proposed appropriation would adversely affect his prior existing water right to irrigate 53 acres. On April 8, 1975, Ms. Gladys C. Squires submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect her prior existing water right. On April 8, 1975, Mr. Mark N. Squires submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply. On April 8, 1975, the Arganbright Farms, by President, Mr. Earl Arganbright and Mr. Gary Arganbright on his own behalf submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect their prior existing water right. On April 9, 1975, Mr. William P. Bandel submitted a timely objection to the application on the grounds that the proposed diversion would adversely affect his prior existing water right, and that for the last two years there has not been unappropriated water in the source of supply. On April 8, 1975, Mr. Paul Burney submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to take water from the Buck Bridge well. On April 8, 1975, Ms. Jane L. Castor submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply. On April 8, 1975,

Mr. Ray A. Castor submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply, and that the proposed appropriation would adversely affect his prior existing water right. On April 9, 1975, Chouteau County Commissioners submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect the prior existing water rights of the three community wells located near the Teton River. On April 7, 1975, the Corey Ranch Company by Treasurer, Mr. Chester Corey submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect the Corey Ranch Company's prior existing water right for irrigation. On April 7, 1975, Mr. Chester Corey submitted a timely objection to the application on the grounds that in 1973 there were no unappropriated waters in the proposed source of supply, and that the proposed appropriation would adversely affect his prior existing water right. On April 8, 1975, Mr. Donald E. Craig submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect the Buck Bridge Well Association's prior existing water right to the community well located close to the Teton River. On April 8, 1975, Mr. Paul R. Craig submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to household water from the source of the Buck Bridge well. On April 8, 1975, Mr. Wayne E. Crawford submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to household water from the source of the Buck Bridge well. On April 8, 1975, Mr. Dan E. Danreuther submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply. On April 8, 1975, Ms. Janet Danreuther submitted a timely objection to the application on the grounds that there are no unappropriated waters in the source of supply, and that the proposed appropriation would adversely affect her prior existing water right. On April 8, 1975, Mr. Charles Danreuther submitted a timely

objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right. On April 9, 1975, Mr. Roger DeBruycker submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply. On April 9, 1975, the Teton Land Corporation by Mr. Jeremy J. Dietz, President, submitted a timely objection to the application on the grounds that there are no unappropriated waters in the Teton River, and that the proposed appropriation would adversely affect their prior existing water right to water 100 cows and irrigate 170 acres. On April 8, 1975, Mr. Kenneth Evans submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to take household water from the Buck Bridge well and also to water 160 head of cattle. On April 8, 1975, Ms. Katherine Fatz submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect her prior existing water rights. On April 8, 1975, Mr. Victor Fatz submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right. On April 8, 1975, Mr. Bernard E. Hardy submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right. On April 8, 1975, Mr. Donald H. Jackson submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to water from the source of Buck Bridge well for 70 head of cattle. On April 8, 1975, Mr. Robert Jacobsen submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to take household water from the source of the Buck Bridge well. On April 8, 1975, Mr. Paul P. Kalanick submitted a timely objection to the application on the grounds that the proposed application would adversely affect his prior existing water right to water 60 head of cattle. On April 9, 1975, Mr. William K. Kelly submitted a timely objection to the

application on the grounds that there are no unappropriated waters in the Teton River, the proposed source of supply, and that the proposed appropriation would adversely affect his prior existing water right to water 500 head of cattle, 20 head of horses, and for household use. On April 8, 1975, the Kalanick Ranch Inc., by its Secretary, Ms. Diane R. Kalanick, submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect their prior existing water right to water 435 cattle, 160 head of hogs, and irrigate 154 acres. On April 8, 1975, Mr. Edwin Knecht submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right. On April 8, 1975, Mr. Ed Krumewiede submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right. On April 8, 1975, Ms. Mary J. Krumewiede submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect her prior existing water right. On April 8, 1975, Mr. and Mrs. Joe Kueffler submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect their prior existing water right for household use. On April 8, 1975, Mr. Kenneth M. Laubach submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right. On April 8, 1975, Mr. Robert W. Laubach submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right. On April 8, 1975, Ms. Virginia P. Laubach submitted a timely objection to the application on the grounds that the proposed application would adversely affect her prior existing water right. On April 8, 1975, Mr. Claude Laubach submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply.

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On April 9, 1975, Mr. George Lippert submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right from the source of the Buck Bridge well. On April 9, 1975, Mr. William F. Lohse submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply, and that the proposed appropriation would adversely affect his prior existing water right to irrigate 150 acres of land and water 200 head of cows. On April 8, 1975, Mr. Brad Lotton submitted a timely objection to the application on the grounds that there are no unappropriated waters in the proposed source of supply and that the proposed appropriation would adversely affect his prior existing water right to stockwater. On April 8, 1975, Mr. Orville McKinlay submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to household water, water for 40 head of hogs, 70 head of cattle, and 1 horse. On April 8, 1975, Mr. Gerald A. Myers submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right to water from the source of the Buck Bridge well. On April 8, 1975, Mr. John L. Nelson submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right for stockwater. On April 8, 1975, Mr. Lester M. Naeseth submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right for household water from the source of the Buck Bridge well. On April 8, 1975, Naeseth's Redi Mix by Mr. Charles J. Naeseth, owner, submitted a timely objection to the application on the grounds that the proposed appropriation would adversely affect his prior existing water right for operation of his cement plant.

Testimony at the hearing indicated that:

3. The Applicant seeks to irrigate two 135 acre circles of land by means of one 1200 gpm pump and one continuous movement sprinkler system and two center pivots. For production of barley the sprinkler system will be used on one circle of land for 6 days and then towed to the other circle for 6 days as needed during the period from May 1 to July 31 of each year. For the production of winter wheat the circles will be used also in the period September 15 to October 1 inclusive of each year. The soil comprising these two circles of land is a heavy clay soil. The system costs \$45,000. The Applicant intends to periodically rotate the land into the production of winter wheat to preserve the soil's productivity. Winter wheat requires an application of water sometime in the period Sept. 15 to Oct. 15. At the hearing the Applicant asked that his application be modified to be for one 1200 gpm pump for both circles from May 1 to July 31, and from Sept. 15 to Oct. 1 inclusive of each year.

Mr. Waldner, Secretary of the Colony, has lived there since 1948 and has never seen the river dry at that point.

4. The Applicant, New Rockport Colony, has filed with the Department nine Declarations of Existing Water Right as follows:

1. D10-41-0 claims 60 acre-feet of water per annum from the Teton River to irrigate 20 acres of corn and potatoes by means of pump and sprinkler. The pump is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 7, T.24N., R.3W. The water was first put to beneficial use on June 4, 1973 on 20 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.24N., R.3W.
11. D9-41-0 claims 65 acre-feet of water per annum from the Teton River to irrigate 26 acres of potatoes by means of a pump and sprinkler. The pump is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.24N., R.3W. The water was first put to beneficial use on July 15, 1964 on 26 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.24N., R.3W.

- iii. D8-41-0 claims 65 acre-feet of water per annum from the Teton River to irrigate 26 acres of potatoes by means of a pump and sprinkler. The pump is located in the SE $\frac{1}{2}$ NE $\frac{1}{2}$ of Section 18, T.24N., R.3W. The water was first put to beneficial use on July 12, 1958. No legal land description is given for the place of use. The place of use according to the Declaration map is the same as ii, (D941-0).
- iv. D7-41-0 claims 53 acre-feet of water per annum from the Teton River to irrigate 21 acres of potatoes by means of a pump and sprinkler. The pump is located in the SW $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 5, T.24N., R.3W. The water was first put to beneficial use on June 15, 1973 on approximately 21 acres in the NE $\frac{1}{2}$ SW $\frac{1}{2}$ of Section 5, T.24N., R.3W.
- v. D6-41-0 claims 50 acre-feet of water per annum from the Teton River to irrigate 20 acres of potatoes by means of a pump and sprinkler. The pump is located in the NE $\frac{1}{2}$ NE $\frac{1}{2}$ of Section 8, T.24N., R.3W. The water was first put to beneficial use on July 3, 1962 on 20 acres in the NE $\frac{1}{2}$ NE $\frac{1}{2}$ of Section 8, T.24N., R.3W.
- vi. D5-41-0 claims 60 acre-feet of water per annum from the Teton River to irrigate 20 acres of corn and potatoes by means of a pump and sprinkler. The pump is located in the NW $\frac{1}{2}$ SW $\frac{1}{2}$ of Section 8, T.24N., R.3W. The water was first put to beneficial use on June 6, 1973 on 20 acres in the NE $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 7, T.24N., R.3W.
- vii. D4-41-0 claims 63 acre-feet of water per annum from the Teton River to irrigate 25 acres of corn and potatoes by means of a pump and sprinkler. The pump is located in the NE $\frac{1}{2}$ SW $\frac{1}{2}$ of Section 8, T.24N., R.3W. The water was first put to beneficial use on June 25, 1962 on 25 acres in the SE $\frac{1}{2}$ NW $\frac{1}{2}$ of Section 8, T.24N., R.3W.
- viii. D3-G-41-0 claims 31 gpm for stock and domestic uses from a well located in the NE $\frac{1}{2}$ SW $\frac{1}{2}$ of Section 5, T.24N., R.3W. The water was first put to beneficial use in 1940.

ix. D2-S-41-0 claims 36 acre-feet of water per annum from the Teton River to irrigate 12 acres of leveled land by means of a pump and ditches. The pump is located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 24 N., R. 3 W. The water was first put to beneficial use on 12 acres in the NE $\frac{1}{4}$ Section 4, T. 24 N., R. 3 W. on June 6, 1971.

5. The Applicant New Rockport Colony has received a permit to appropriate 2.67 cfs to be diverted from Spring Coulee at a point in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T. 24 N., R. 3 W., and used for irrigation purposes from May 1 to October 1 inclusive of each year on 40 acres in the NE $\frac{1}{4}$ of Section 5, T. 24 N., R. 3 W. M.P.M., Teton County, Montana.

6. The objector, Corey Ranch Company, of Dutton, Montana, has received a permit to appropriate 3.0 cubic feet per second of water to be diverted from the Teton River at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 25 N., R. 2 W., M.P.M., Teton County, Montana and used for irrigation purposes from May 1 to September 15 inclusive of each year on 80 acres in the S $\frac{1}{2}$ of Section 19 T. 25 N. R. 2 W. M.P.M., Teton County, Montana.

7. Mr. Donald J. Scott (an objector) of Fort Benton, Montana has an apparent prior existing use right to irrigate 176 acres at the location shown in the Water Resources Survey Book for Chouteau County, Montana on the map on page 26, T. 25 N., R. 9 E. Said irrigation is labeled Hardy Pumps and Sprinklers and is located primarily in Section 22, 23, and 27 of said T. 25 N., R. 9 E. Mr. Scott also used this water from the source of the Teton River to water 111 cattle, 200 pigs and 4 people.

8. Mr. Chester Corey of Choteau, Montana has watered cattle from the source of the Teton River since the year of 1951 and has filed a Declaration of Existing Rights declaring this right to stockwater from the source of the Teton River.

9. Objector Mr. Kermit Olson has an apparent existing right to irrigate 25 acres from the source of the Teton River and water for 25 head of cattle. The Water Resources Survey for Chouteau County, Montana shows an Olson pump and sprinkler located at the approximate site seven miles northeast of Fort Benton declared by Mr. Olson to be his irrigation site.

10. Objector, Mr. Lunde has an apparent prior existing water right to irrigate 35 acres of alfalfa and grass for the purposes of producing hay and for stockwater purposes for approximately 80 head of cattle.

11. Objector, Mr. Gene Hardy has an apparent prior existing water right to irrigate 240 acres of ground for alfalfa, barley and oats and to water approximately 125 head of cattle. Mr. Hardy has a feedlot in which he has approximately 1,000 head of cattle which he has been watering for a period of one year from a well which apparently draws water from the river bottom aquifer. Mr. Hardy keeps a daily log of occurrences around the ranch. On June 25, 1973, because the water was very low, Mr. Hardy placed a dam on the Teton River this effectively cut off all downstream users. On July 10 the Teton River went completely dry above Mr. Hardy's dam and the flow did not return again until October 22, 1973. In 1974 Mr. Hardy's daily log indicates that the Teton River went completely dry on July 13, 1974 and the flow resumed again on August 12, 1974.

12. Jeremy J. Dietz, President of the Teton Land Corporation (an objector), has an apparent prior existing water right to irrigate 170 acres from a point of diversion in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10, T. 24 N., R. 8 E., and for stockwater for approximately 250 head of cattle. This water right was claimed in a filing for 25 cubic feet per second filed December 11, 1916 and is shown on page 14 of the Water Resources Survey for Chouteau County, Montana as the Shaw Pump and the Shaw Ditch showing approximately 170 acres of irrigated land with a point of diversion in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 9, T. 24 N., R. 8 E.

13. Mr. Lester M. Naeseth testified that he diverts 20,000 gallons per day for mixing cement from a well located approximately 200 feet from the Teton River, and that he believes that this well is served by water from the Teton River for the reason that in 1973 when the river went dry, the well went dry. He has been using water from this source for approximately 2½ years. His cement plant is located 4 miles northeast of Fort Benton.

14. Mr. Paul Kalanick has an apparent prior existing water right to irrigate 170 acres of land and for stockwater purposes for approximately 500 head of cattle. His point of diversion is located approximately 5 miles northwest of Fort Benton. Mr. Kalanick saw that the river was dry in 1973 and 1974.

15. Objector, Mr. Kurt Squires has an apparent prior existing water right to 75 head of cattle from the source of the Teton River.

16. Mr. William Kelly (an objector) has an apparent prior existing water right to irrigate 150 acres of ground from two points of diversion in Section 33, T. 24 N., R. 7 E. and water for approximately 550 head of cattle, plus domestic use.

17. The Buck Bridge Well has an apparent existing water right for domestic use for 69 persons. In 1973 the Buck Bridge Well diverted 2,529,000 gallons, in 1974 the Buck Bridge Well diverted 2,417,000 gallons, and in 1974 the Buck Bridge Well went dry in late August.

18. Mrs. William F. Lohse, an objector, has an apparent prior existing water right to approximately 25 acres of irrigation and stockwater for approximately 210 head. Her point of diversion is located approximately 1 mile upstream from the Buck Bridge Well in the area which the Water Resources Survey indicates is irrigated by means of Drube Pump and shows an irrigated acreage of about 25 acres. Mrs. Lohse saw the stream dry in August of 1973. In the same year of 1973, Mrs. Lohse saw that the Teton River was dry at Choteau, and that the river was running below Choteau but above the point of her diversion. The water was dry at her point of diversion. The river did not run dry at Mrs. Lohse's point of diversion in 1974 but the water did get so low that they could not run their irrigator full-time.

19. Objector Mr. Charles Danreuther has an apparent prior existing water right to irrigate 160 acres and stockwater for 150 head and domestic use. In August of 1973 Mr. Danreuther flew the length of the Teton River from the upper Mauer Ranch to his point of diversion. He testified that there was a small amount of water at the upper Mauer Ranch, but that the river was dry below the upper Mauer Ranch and dry all the way 25 miles downstream to his point of diversion. Mr. Danreuther said that in 1964 the quantity of water applied for by the Applicant would not have made any difference to anyone's water rights downstream. Mr. Danreuther said he had seen the water run longer in some portions of the river than in other portions of the river.

20. Mr. William E. Reichelt, an objector, has an apparent prior existing right to irrigate 225 acres and for stockwater purposes for 250 head of cattle. Mr. Reichelt's diversion works are listed on the map in the Chouteau County Water Resources Survey as the Reichelt Ditch and Sprinklers and are located in T. 25 N., R. 5 E. in Sections 26, 27 and 36.

21. Objector Mr. Paul Onstead has an apparent prior existing right for watering 270 head of cattle. Mr. Onstead in the past has irrigated on his property but the flood in 1964 destroyed his diversion works and he had not yet reconstructed those diversion works. He does intend to do so.

22. Mr. Vick Schuler, an officer of the Dent Bridge Well Corporation, said that in 1973 when the river was dry, it made the pump on the Dent Bridge Well draw air and increase the loading time. The Dent Bridge Well serves 45 users.

23. Mr. William P. Bandel, an objector, has an apparent prior existing water right to irrigate 70 acres shown on the Chouteau County Water Resources Survey map as Bandel pump and ditch located in Section 33 of T. 25 N., R. 4 E. He also has an apparent prior existing water right watering 300 head of cattle and for domestic use.

24. Mr. Larry Maurer has an apparent prior existing water right to irrigate 160 acres located in T. 25 N., R. 2 E., Teton County. The Water Resources Survey

for Teton County shows approximately 160 acres entitled the Spencer Ditch located in Sections 1, 2, and 3, T. 25 N., R. 2 E. and in Sections 34 and 35, T. 26 N., R. 2 E., Teton County, Montana. Mr. Maurer also has a prior existing water right for 400 cattle and domestic use.

25. Mr. Wayne L. Proff, an objector, has an apparent prior existing water right to irrigate 60 acres of alfalfa and for stockwater and domestic purposes. In July and August 1973 and 1974, Mr. Proff was able to exercise his water right to irrigate. In 1974, Mr. Proff used 174.87 acre feet of water for 60 acres of alfalfa.

26. The Water Resources Survey for Choteau County, Montana published in June of 1964, shows on page 29 that there are 1,027 acres presently under irrigation as of 1964 and that the total maximum irrigable acres from the source of the Teton River in Chouteau County is 1,928.33 acres.

27. Page 21 of the Water Resources Survey states a wire-weight water gauge is located five miles northeast of Fort Benton. The drainage area is 1,989 square miles. Records are available for March 1929 through September 1932. The maximum discharge observed was 5,660 cfs on August 22, 1932 and the minimum of no-flows at times each year. There are many diversions for irrigation above the station. The total runoff in the period March 21 to September 31, 1929 was 49,800 acre-feet of water. The total runoff in acre-feet in the period October 1, 1929 to September 31, 1929 was 63,292 acre-feet. Total run-off in acre-feet from the period October 1, 1930 to August 31, 1931 was 22,100 acre-feet. The total runoff in acre-feet from December 1, 1931 to September 1932 was 29,344 acre-feet.

28. Examination of the township maps on page 26, 27 and 28 of the Water Resources Survey for Teton County, Montana published by the State Engineer's office in June of 1962 indicates that there is very little acreage under cultivation in Teton County from the source of the Teton River in those three townships downstream from the new Rockport Colonies.

29. The gauging station in the SW $\frac{1}{4}$ of Section 12, T. 25 N., R. 1 E., Teton County, U.S.G.S. (Montana water records) for the year October 1971 to September 1972 indicate that the drainage area served by the measuring station is 1,307 square miles, that the average annual discharge is 121,000 acre-feet per year, and in the calendar year 1971 the drainage produced 136,300 acre-feet. In the water year 1972 the drainage area produced 180,000 acre feet. Diversions for irrigation of about 4,000 acres are performed above the station. Examination of the records of the same gauging station for the water year 1973 measured from October 1972 to September 1973 indicate that the drainage produced 187,600 acre-feet in the calendar year of 1972 and 53,300 acre feet in the water year 1973. Maximum discharge recorded at the gauging station occurred on June 9, 1964 of 71,300 cubic feet per second. Minimum discharge recorded at the station was 6.1 cubic feet per second, on August 27, 1973.

30. Testimony at the hearing indicated, that there are 2,475 acres under irrigation by the people who testified at the hearing. If each one of these acres required 3 acre-feet of water per acre to properly irrigate it, it should mean that the total annual irrigation water requirement is 7,425 acre-feet of water per annum.

31. The testimony at the hearing indicated that people testifying at the hearing have stockwater rights for approximately 8,000 head of cattle. If each of these 8,000 animals drank 25 gallons of water per day, they would have a total average annual water requirement of approximately 224 acre-feet.

32. Testimony at the hearing indicated that approximately 150 families take domestic water from the source of the Teton River which means a total water requirement for domestic use from the source of the Teton River is 150 acre-feet of water per annum.

33. Water usage testified to at the hearing indicates a total average annual use of approximately 9,000 acre-feet per annum.

34. Total average annual runoff as measured at the gauging station at the Kerr Bridge indicates a total average annual runoff of 121,000 acre feet per annum. From the Proposed Findings of Fact, the Proposed Conclusions of Law are hereby made.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit is required to appropriate water from the Teton River.
2. There are unappropriated waters in the source of supply.
3. The rights of appropriators will be protected if the permit is conditioned to protect those rights.
4. The proposed means of diversion is adequate.
5. The proposed use of water for production of barley is a beneficial use.
6. The criteria for issuance of a permit set forth in Section 89-885, R.C.M. 1947, have been met.
7. The Application for Beneficial Water Use Permit may be granted in accordance with the provisions of Chapter 8 of Title 89 of the laws of the State of Montana.

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 permit be granted to allow the appropriation of 1200 gpm not to exceed 504 acre feet per annum to be used on one 135 acre circle located in the S $\frac{1}{4}$ of Section 6 and the North half of Section 7 and one 135 acre circle located in the E $\frac{1}{4}$ of Section 7 and the West $\frac{1}{2}$ of Section 8 T. 24 N. R., R. 3 W. in Teton County Montana; and to allow the application of water to one, 135 acre circle by means of one center pivot for six days and then towed to the other circle of 135 acres for six days as needed during the

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period from May 1 to July 31 of each year and from September 15 to October 1 of each year.

2. The Applicant's permit is granted subject to the following conditions: An adequate measuring device be installed and records kept of all periods of diversion and quantities of water diverted and reported to this Department on or before November 15 of each year.

3. The Applicant's permit is granted subject to all 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 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 26th day of September, 1975.

James A. Lewis
HEARING EXAMINER *By ALC*

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