

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

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 4659-s43D BY
LARRY G. MATHIS

FILMED
APR 9 1976

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on April 6, 1976, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

FINAL ORDER

1. The Applicant's Provisional Permit is hereby granted allowing the appropriation of no more than 1.46 cubic feet per second or 660 gallons per minute of water but not to exceed 385 acre-feet of water per annum from Rock Creek, a tributary of the Clarks Fork River, in Carbon County, Montana. The water is to be diverted from Rock Creek by means of the Carbonado Ditch at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, Township 4 South, Range 21 East, M.P.M., and used for new irrigation on 30 acres in Section 27, 80 acres in Section 28, and supplemental water on 10 acres in Section 28, all in Township 4 South, Range 22 East, M.P.M., and containing a total of 120 acres, more or less, from May 1 to October 31, inclusive, of each year.

2. This Provisional Permit is further conditioned on the Applicant containing the necessary permission or easements to convey the water through the Carbonado Ditch.

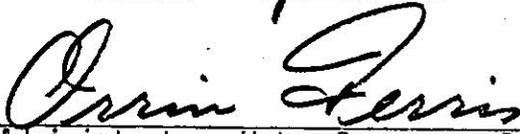
3. This Provisional Permit is granted subject to all prior existing water rights in the source of supply and any final determination of prior existing water rights as provided by Montana law.

CASE # 4659

4. At the discretion of the Department of Natural Resources and Conservation, the Applicant shall install and maintain adequate measuring devices to enable the Applicant to keep a record of all quantities of water diverted, as well as the periods of diversion.

5. This order shall be conveyed by the Department to the Water Commissioner in the District Court in charge of administering the decreed waters of Rock Creek.

Done this 24th day of May, 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 # 4657

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

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE) PROPOSAL FOR DECISION
PERMIT NO. 4659-s43D BY LARRY)
G. MATHIS)

Pursuant to the Montana Water Use Act and Administrative Procedure Act, after due notice, a hearing was held December 4, 1975, at Joliet, Montana, with a purpose of hearing objections to the above-named application.

The Applicant, Mr. Larry G. Mathis, appeared at the hearing and presented testimony.

Mr. George W. Gauger, Mr. Walter A. Schwend, and Mrs. Preston R. Sweeney, and the Rock Creek-Clear Ditch Company all filed timely objections to the application. Mr. George Gauger and Mr. Toivo Lantta on behalf of the Rock Creek-Clear Creek Ditch Company appeared at the hearing and presented testimony.

Mr. Scott Guenther of the Department's Billings field office, appeared at the hearing and presented testimony. The Applicant also appeared and presented testimony as to his plans. Mr. Gauger and Mr. Lantta asked some questions of the Applicant and seemed to be primarily concerned with limiting this application to floodwaters from Rock Creek.

The Hearing Examiner hereby makes the following Proposed Findings of Fact, Conclusions of Law and Proposed Order:

PROPOSED FINDINGS OF FACT

1. On January 22, 1975 at 1:18 p.m., the Applicant submitted with the Department an Application for Beneficial Water Use Permit seeking to appropriate 1.46 cubic-feet per second or 660 gallons per minute of water, but not to exceed 385 acre-feet per annum from Rock Creek, a tributary of the Clarks Fork River in Carbon County, Montana. The water is to be diverted from Rock Creek by means of the Carbonado Ditch at a point in the NW1/4 SE1/4 of Section 35, Township 4 South, Range 21 East, Montana Principal Meridian, and used for new irrigation on 30 acres in Section 27, 80 acres in Section 28 and supplemental water on 10 acres in Section 28, all in Township 4 South, Range 22 East, Montana Principal Meridian, and containing a total of 120 acres, more or less, from May 1 to October 31, inclusive, of each year.

2. The Applicant testified that he intended on diverting the water from Rock Creek through the Carbonado Ditch and would pump the water to the tract of land out of the ditch. He further testified that while some of the acreage that he intends on irrigating had been irrigated in the past, the water had come from a now defunct ditch known as the Ward Ditch. Mr. Mathis further testified that he realized that water would only be available generally until the first part of July at the very most. As of yet no provision has been made with the Carbonado Ditch to transfer the water to

the proposed site.

From the foregoing Proposed Findings of Fact, the following 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 Rock Creek.

2. There are at times unappropriated waters in the source of supply, principally in the spring during the flood season.

3. Valid prior water rights of prior appropriators of water from Rock Creek must, by statute, be protected.

4. The rights of prior appropriators will be protected if the permit is conditioned to protect these rights.

5. The Objectors present at the hearing appear to have valid decreed rights along Rock Creek.

6. The proposed means of diversion is adequate.

7. The proposed use of water constitutes a beneficial use.

8. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

9. The Application for Beneficial Water Use Permit should be granted in accordance with the provisions of Chapter 8, Title 89 of the Revised Codes of the state of Montana.

10. Nothing decided herein has bearing upon the status of water rights claimed by the Applicant other than those applied for, nor does anything herein have bearing upon the status of claimed rights of any other party except in relation to those rights herein applied for, to the extent necessary to reach a conclusion herein.

Based upon the above Proposed Findings of Fact and Proposed Conclusions of Law, the following Proposed Order is hereby made:

PROPOSED ORDER

1. The Applicant's Provisional Permit is hereby granted allowing the appropriation of no more than 1.46 cubic feet per second or 660 gallons per minute of water but not to exceed 385 acre-feet of water per annum from Rock Creek, a tributary of the Clarks Fork River in Carbon County, Montana. The water is to be diverted from Rock Creek by means of the Carbonado Ditch at a point in the NW1/4 SE1/4 of Section 35, Township 4 South, Range 21 East, Montana Principal Meridian and used for new irrigation on 30 acres in Section 27, 80 acres in Section 28 and supplemental water on 10 acres in Section 28, all in Township 4 South, Range 22 East, Montana Principal Meridian, and containing a total of 120 acres, more or less, from May 1 to October 31, inclusive, of each year.

2. This Provisional Permit is further conditioned on the Applicant containing the necessary permission or easements

to convey the water through the Carbonado Ditch.

3. This 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.

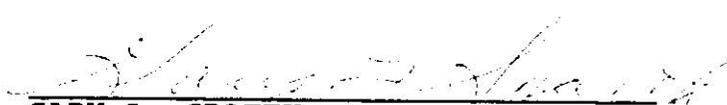
4. At the discretion of the Department of Natural Resources and Conservation, the Applicant shall install and maintain adequate measuring devices to enable the Applicant to keep a record of all quantities of water diverted, as well as the periods of diversion.

5. This order shall be conveyed by the Department to the Water Commissioner in the District Court in charge of administering the decreed waters of Rock Creek.

NOTICE

This is a Proposed Order and will not become final until accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the Proposed Order, if any, shall be filed with the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs to make oral or written arguments to the Administrator of the Water Resources Division.

DATED this 6th day of April, 1976.


GARY L. SPAETH
HEARING EXAMINER