

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

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 5277-s76L
BY DELBERT MUSTER

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

APR 9 1976

The Proposed Findings of Fact, Conclusions of Law, and Order, in this matter as entered on February 27, 1976, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

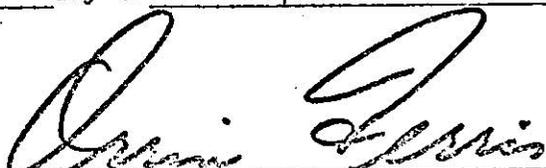
FINAL ORDER

1. Subject to restrictions cited below, the Applicant's Provisional Permit is hereby granted allowing the appropriation of no more than 2.5 cubic feet per second or 1,123 gallons per minute of water and not to exceed 240 acre-feet per annum from Camas Creek, a tributary of the Flathead River in Sanders County, Montana, at a point in the SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, Township 19 North, Range 24 West, M.P.M., to be used for irrigation on a total of 80 acres, more or less, in the NW $\frac{1}{4}$ of Section 1, Township 19 North, Range 24 West, from April 1 to November 20, inclusive, of each year.
2. The Provisional Permit is granted subject to all prior existing water rights in the source of supply. Appropriation pursuant to the permit must be reduced when adverse effect would result to a prior existing right. The reduction must be sufficient to prevent or alleviate any adverse effect.
3. The Applicant is not to be held accountable for decreased streamflow in Camas Creek at points below the Applicant's point of diversion which are not a direct or indirect result of the Applicant's appropriation or actions.

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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. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

Done this 30th day of April, 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

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

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) ADDENDUM TO
5277-s76L, BY DELBERT MUSTER) PROPOSED ORDER
_____)

For purposes of clarification, the Hearing Examiner in the above-entitled matter hereby makes the following Addendum to Proposed Order to be construed as a part of said Proposed Order:

1. It was and remains the intention of the Hearing Examiner in the above-entitled matter that the language in paragraph number 3 of the Proposed Order granting the permit subject to all prior water rights in the source of supply includes and renders the permit subject to all valid prior water rights of the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation in the source of supply.

NOTICE

This is a Proposed Addendum to Proposed Order. Written exceptions to this Addendum, 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 and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 9th day of March, 1976.

Richard Gordon
RICHARD GORDON
HEARING EXAMINER

CASE # 5277

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

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 5277-s76L BY DELBERT MUSTER)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedure Act, after due notice, a hearing on objections to the above-entitled application was held in the Plains City Hall, at Plains, Montana, at 9:30 a.m. on Friday, December 19, 1975, Richard Gordon, Hearing Examiner, presiding.

Mr. Delbert Muster, the Applicant, appeared personally and presented testimony in support of his application.

Mr. James Rehbein appeared personally and presented testimony on behalf of the Department of Natural Resources and Conservation.

Ms. Lottie Cummings, an Objector, appeared personally and presented testimony in support of her objection.

Ms. Rita Knerr, an Objector, appeared personally and presented testimony in support of her objection.

Mr. Archie M. Knerr, Jr., an Objector, appeared personally and presented testimony in support of his objection.

Mr. Herbert F. Cross and Mrs. Mary D. Cross, Objectors, appeared personally and presented testimony in support of their objection.

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Mr. Arden Davis and Mr. Bill Phillips, representatives of the Pack River Company, an Objector, appeared personally and presented testimony in support of the Pack River Company's objection.

Additionally, the Pack River Company submitted into evidence one map of the lower portion of Camas Creek, showing the Pack River Company's point of diversion. Said exhibit was entered and numbered Pack River Exhibit #1 accordingly.

Other individuals objecting, but not present are:

Mr. Jack Marrinan, Mr. Joe & Mrs. Virginia Erchul, Mr. David L. Erchul, Mr. Herbert F. and Mrs. Mary D. Cross, and the U.S. Department of the Interior, Solicitor's Office.

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 April 21, 1975 the Applicant, Mr. Delbert Muster, submitted Application No. 5277-s76L, seeking to appropriate 2.5 cubic feet per second of water or 1,123 gallons per minute of water, not to exceed 240 acre-feet per annum from Camas Creek, a tributary of the Flathead River, in Sanders County, Montana, to be diverted from Camas Creek at a point in the SW1/4SW1/4NE1/4 of Section 2, Township 19 North, Range 24 West, and to be used for irrigation on a total of 80 acres, more or less, in the NW1/4 of Section 1, Township 19 North, Range 24 West, from April 1 to November 20, inclusive, of each

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year.

2. On September 23, 1975, the United States Department of the Interior, Solicitor's Office, submitted a timely objection to the above-described application. Said objection was filed by Mr. E. L. Meredith for the field solicitor. Said objection alleged that the land upon which the applicant intends to apply water, and the water which the Applicant intends to appropriate, arises and lies within the boundaries of the Flathead Indian Reservation. The objection further alleged that the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation claim these waters, and that the State of Montana lacks jurisdiction over both the land and the water in question. The Objector consequently requested that the application be denied. Neither the Department of the Interior, nor a representative of the Department of the Interior appeared at the hearing or presented evidence or testimony at the hearing.

3. On October 31, 1975, Mr. Herbert F. Cross and Mrs. Mary D. Cross submitted an objection to the above-described application alleging a prior downstream filed ground water appropriation right on Camas Creek dating from 1963, and a prior downstream stock water use right along Camas Creek dating from 1925.

4. On October 31, 1975, Mr. David L. Erchul submitted an objection to the above-described application alleging insufficient water in Camas Creek, and further alleging that the applicant is seeking to appropriate more than an equitable portion of the water in Camas Creek. Neither the Objector, nor a representative

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of the objector appeared at the hearing.

5. On October 31, 1975, Mr. Joe Erchul and Mrs. Virginia Erchul submitted an objection to the above-described application alleging that the stream flow in Camas Creek is inadequate for irrigation and ought to be reserved for livestock use. Neither the Objectors nor a representative of the Objectors appeared at the hearing.

6. On October 29, 1975, Mr. Jack Murrinan submitted a timely objection to the above-described application requesting that after July 15 of each year water appropriations on Camas Creek should be restricted so as to allow sufficient downstream flow. Neither the Objector, nor a representative of the Objector appeared at the hearing.

7. On October 28, 1975, Ms. Lottie Cummings submitted a timely objection to the above-described application alleging insufficient water to satisfy her claimed prior downstream use right to 150 gallons of water per minute from Camas Creek dating from 1963 for irrigation on 11 acres and for stock water for forty head of livestock.

8. On October 28, 1975, Mr. Archie Knerr, Sr., and Ms. Rita Knerr, submitted a timely objection to the above-described application alleging that the Applicant is seeking to appropriate too much water, that there is insufficient water in Camas Creek to support the use proposed by the Applicant in addition to prior uses, and that the Objectors claim a prior downstream use right for 150 gallons of water per minute dating

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from 1963 and used both for irrigation on 12 acres and for the watering of seventy-five head of stock.

9. On October 28, 1975, Mr. Archie M. Knerr, Jr., submitted a timely objection to the above-described application alleging insufficient water in Camas Creek to satisfy his prior downstream use right dating back to 1966 for stock-watering of up to 100 head of stock.

10. On October 29, 1975, the Pack River Company, through its attorney, Mr. Edward J. Parry, Esq., of Spokane, Washington, submitted a timely objection to the above-described application alleging a prior filed right dating from 1911 for 200 miners inches from Camas Creek used for stock water and irrigation purposes, and further alleging insufficient water in Camas Creek to supply existing rights.

11. At the hearing, the Applicant testified that pursuant to his application, he plans to sprinkle irrigate 80 acres of alfalfa and grain as described in his application. The Applicant further testified that said 80 acres is currently under cultivation but is not currently under irrigation. The Applicant testified that he plans to construct irrigation facilities and irrigate pursuant to Soil Conservation Service guidelines by expanding his present sprinkler irrigation system. The Applicant testified that his present system was installed in 1972 and irrigates 120 acres of land with a 120 miners inches filed right dating back to a 1955 filing as found in Book 3, Page 355 of the Sanders County Records. The Applicant testified that the date of the first use of the above-described right was 1972. The Applicant further testified that he presently uses

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his full filed water right plus approximately an occasional additional 300 gallons per minute which the Applicant testified he began using prior to the passage of the Montana Water Rights Act. The Applicant further testified that he has not had difficulty obtaining sufficient water in the past at his point of diversion in order to satisfy his prior needs, and that there generally appears to be sufficient water flowing past his point of diversion to satisfy both prior downstream users, and the additional amount of water applied for pursuant to the application. The Applicant finally testified that he plans to utilize four separate pumps, each with a capacity of 240 gallons of water per minute, that he does not intend to irrigate when an adverse downstream effect might result and that by using four separate pumps at his point of diversion he could easily shut down one or more pumps so as to decrease stream flow depletion in the event that overall stream flow decreases and there is insufficient water to satisfy prior downstream rights. The Applicant specifically testified that the proposed point of diversion for this application is the same point of diversion that he is presently using.

12. Mr. Rehbein testified that the drainage area on Camas Creek, above the Applicant's point of diversion, is approximately 96 square miles, that stream flow data on Camas Creek is not available, but that available streamflow data on the little Bitterroot River can be used to estimate annual average runoff in the Camas Creek Basin. Said estimate amounted to 250 acre-feet of water per square mile or a total of 24,000 acre-feet

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of water per year. Mr. Rehbein testified that the irrigation requirements for the proposed 80 acre project amount to 2.3 acre-feet of water per acre on a normal year, and 3.1 acre-feet per acre of water on a dry year, amounting to a total requirement of 184 acre-feet on a normal year and 248 acre-feet on a dry year. Mr. Rehbein further testified that he personally observed several beaver dams along Camas Creek at points below the Applicant's point of diversion and that these confirmed beaver dams and other possible beaver dams along Camas Creek could possibly account for the lack of downstream flow during the summer months at times when there is sufficient flow upstream at the Applicant's point of diversion.

13. Mr. Phillips, the Manager of the Pack River Company's operation along Camas Creek, testified that in July and August, Camas Creek generally is completely dry at the point it passes through the Pack River property. Mr. Phillips testified that the Pack River property lies downstream from the Applicant's point of diversion. He further testified that he has seen beaver dams along Camas Creek naturally holding water at points upstream from the Pack River property.

Mr. Phillips testified that Pack River presently waters 5-6 head of saddle horses and as many as 250 head of cattle along the creek when possible. Mr. Phillips testified that he used to irrigate 5 acres plus a hay meadow from a pump located on Camas Creek. Mr. Davis testified that Pack River possess a

filed right for 80 miners inches dating from 1911 for the irrigation of 65 acres. Mr. Davis testified that said filed right was filed by a Mr. John Rohrig. The water withdrawn pursuant to this filed right was to be withdrawn from both Camas Creek and Clear Creek, the amount to be withdrawn from each being somewhat uncertain. However, testimony was presented to show that historically this filing has been principally satisfied through withdrawal of water from Camas Creek unless Camas Creek Water has not been available. The Pack River Company representatives also testified that Pack River possess a second filed right, specifically for Camas Creek water, dating back to 1911. Said second right is in the amount of 200 miners inches to be used for stock water, and for irrigation purposes in Sections 18, 19 and 30, Township 19 North, Range 23 West. The Pack River Company representatives testified that an irrigation system was used irregularly, on and off, until about 1955 when a sprinkler system was installed. Use of the sprinkler system was discontinued in 1958, except upon the five acre tract and hay meadow previously noted. The Pack River Company representatives testified that sprinkling on the five acre tract and hay meadow was discontinued approximately three years ago due to insufficient water.

14. Ms. Lottie Cummings testified that she has a downstream use right to water from Camas Creek for irrigation purposes dating back to 1964 or 1965. She testified that she could not remember the precise date. Ms. Cummings testified that she claimed a use right in an amount sufficient to irrigate 11 acres. Additionally, she claimed a use right for occasional

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stock watering of 40 head of stock along Camas Creek dating back to either 1948 or 1949. Testimony was introduced at the hearing by Mr. Rehbein to the effect that a 1968 aerial photo shows only approximately 2 acres under irrigation from Ms. Cummings' point of diversion. Ms. Cummings testified that there has been insufficient water at her point of diversion on Camas Creek to irrigate for the last several years. She did not recall at what point in time during the irrigation season the water level drops to below her irrigation needs, nor did she recall the last year of use of her irrigation system. She did, however, recall that in 1975 the stream ran dry at her point of diversion, although as noted above, she did not recall the date.

15. Ms. Rita Knerr testified that she has a 1,000 acre pasture below the Applicant's point of diversion, above the Pack River Company property, and bordering on Ms. Cummings' property. Ms. Knerr testified that this pasture contains several small springs, but that they are usually dry during the summer months. Camas Creek is the principal source of stock water on this pasture. Ms. Knerr testified that Camas Creek ran completely dry through her pasture in July of 1975. She testified that Camas Creek had not previously gone dry where it passed through her pasture during any of the last several years. Ms. Knerr testified that she has observed beaver dams along Camas Creek on her property. She testified that the first stock water use of Camas Creek water along her pasture dates back to 1932. She testified that the number of head of stock which she waters along Camas Creek is constantly changing. Ms. Knerr additionally testified that from 1964

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to 1968 approximately 12 acres of the pasture were under sprinkler irrigation. The irrigation system utilized water from Camas Creek in the amount of 126 gallons per minute. Ms. Knerr testified that use of the system was discontinued in 1968. She also testified that there has been insufficient water for use of the system for at least the past two years.

16. Mr. Archie M. Knerr, Jr. testified that he is the operator of the above-described properties of Lottie Cummings, Archie and Rita Knerr, as well as his own. He testified that all the above-described properties have utilized the same point of diversion, when water has been diverted, and that a single five-horse power electric pump is utilized for diversion for all three properties. Mr. Knerr testified that this combined point of diversion is located along Camas Creek at a point in the SW1/4NE1/4 of Section 13, Township 19 North, Range 24 West of the Montana Principal Meridian in Sanders County, Montana. Mr. Knerr testified that the three combined properties usually support a total of 50 to 150 head of stock which are watered along Camas Creek during the time that said head of stock are in summer pasture. Mr. Knerr testified that there is presently no irrigation on his property.

17. Mr. Herbert Cross testified that his point of diversion on Camas Creek is located at a point above the Applicant's point of diversion, and that he claims a prior use right for the watering of between 150 and 250 head of stock along Camas Creek dating back at least 50 years. Mrs. Mary Cross testified that at the Cross point of diversion Camas Creek frequently overflowed during spring runoff. She testified that this overflow had not

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occurred for at least the last four or five years, and that Camas Creek's level has generally been lower than in the past. She also testified that she has observed beaver dams along Camas Creek and that such beaver dams have withheld water so as to permit irrigation at upstream points at times when there has been insufficient water for irrigation further downstream, below the dams.

From the foregoing Proposed Findings of Fact, the following Proposed Conclusions of Law are hereby made:

PROPOSED CONCLUSIONS OF LAW

1. Until such time as otherwise determined, the State of Montana maintains jurisdiction over the issues determined herein.
2. Under the provision of Section 89-880, R.C.M. 1947, a permit is required to appropriate water from Camas Creek.
3. There are at times unappropriated waters in the source of supply.
4. The Objectors presenting evidence and testimony at the hearing all appear to have valid prior use rights for their respective uses along Camas Creek amounting to flow sufficient to supply 280 miners inches to Pack River, a total of 40 miners inches to the combined Cummings and Knerr properties and 12 miners inches to Mr. and Mrs. Cross, all during the irrigation season, or when stock are watering from Camas Creek.
5. Pursuant to 89-886(2), R.C.M. 1947, the valid rights of prior appropriators must be protected.
6. The valid rights or prior appropriators will be protected if the permit is conditioned so as to protect those rights.

7. Proper scheduling of appropriation of water from Camas Creek by the Applicant, particularly by reducing diversion when the Camas Creek stream flow is low, will insure that the prior existing water rights of the Objectors will be protected from adverse affect resulting from the Applicant's appropriation.

8. The Applicant ought not, however, be held accountable for decreased stream flow below his point of diversion resulting from natural causes below his point of diversion which are not a direct or indirect result of the Applicant's appropriation or actions.

9. The proposed means of diversion is adequate.

10. The proposed use of the water constitutes a beneficial use.

11. 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.

12. The criteria for issuance of a permit set forth in Section 89-885, R.C.M. 1947, have been met.

13. Nothing decided herein has bearing upon the status of water rights claimed by the Applicant other than those herein 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. Subject to restrictions cited below, the Applicant's Provisional Permit is granted allowing the appropriation of no more than 2.5 cubic feet per second or 1,123 gallons of water, not to exceed 240 acre-feet of water per annum from Camas Creek, a tributary of the Flathead River in Sanders County, Montana, at a point in the ^{SW1/4}/SW1/4NE1/4 of Section 2, Township 19 North, Range 24 West, M.P.M. to be used for irrigation on a total of 80 acres, more or less, in the NW1/4 of Section 1, Township 19 North, Range 24 West from April 1 to November 20, inclusive, of each year.

2. The permit is granted subject to all prior existing water rights in the source of supply. Appropriation pursuant to the permit must be reduced when adverse effect would result to a prior existing right. The reduction must be sufficient to prevent or alleviate any adverse effect.

3. The Applicant is not to be held accountable for decreased stream flow in Camas Creek at points below the Applicant's point of diversion which are not a direct or indirect result of the Applicant's appropriation or actions.

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. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

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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 and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 27th day of February, 1976.

Richard Gordon

RICHARD GORDON
HEARING EXAMINER

CASE # 5277