

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

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 5392-s76L BY
HERBERT F. CROSS

FILMED

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

APR 1976

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on July 9, 1976, by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order, except that the Proposed Order is modified as follows:

FINAL ORDER

1. Subject to the conditions cited below, the Permittee's Provisional Permit is hereby granted allowing the appropriation of 450 gallons per minute of water and not to exceed 80 acre-feet of water per year, from Camas Creek, a tributary of the Flathead River, in Sanders County, Montana. The water is to be diverted by pumping at two points, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$, all in Section 35, Township 20 North, Range 24 West, M.P.M., Sanders County, Montana, and used to sprinkle irrigate a total of 80 acres, more or less, of pasture and hay in Section 35.
2. The Provisional Permit is granted subject to the following conditions:
 - a. The period of use granted is April 15 to June 15 of each year, or until the end of the spring runoff in Camas Creek, whichever occurs first.
 - b. It shall be the responsibility of the objector to notify the Permittee when, in fact, there is insufficient water in Camas Creek to satisfy both the prior rights of the objector and the water use granted by this permit. It shall be the responsibility of the Permittee to cease diverting water pursuant to this permit when there is insufficient water in Camas Creek to satisfy both the prior rights of the objector and the water use granted by this permit, whether or not he is notified by the objector. It shall be the responsibility of each of the parties not to abuse his water rights at the expense of the other, since these conditions must be essentially self-policing. The Department cannot provide personnel to oversee this use of water.
 - c. The Provisional Permit is subject to any final determination of prior existing water rights in the source of supply as provided by Montana

law.

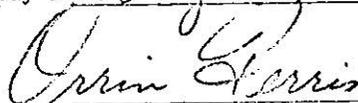
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d. The Provisional Permit is subject to all prior water rights in the source of supply, including all prior Indian (Confederated Salish and Kootenai Tribes of the Flathead Reservation) reserved water rights in the source of supply.

Recommendation

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

Done this 26th day of August, 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 APPLICATION)
FOR BENEFICIAL WATER USE)
PERMIT NO. 5392-761 BY) PROPOSAL FOR DECISION
HERBERT F. CROSS)

A hearing on this Application for Beneficial Water Use Permit was held on June 15, 1976, at Plains, Montana, before Allen Chronister, Hearing Examiner for the Department. The Applicant, Herbert Cross, and the Objector, Delbert Muster, attended the hearing and presented testimony. Objections were filed by the Confederated Salish and Kootenai Tribes and by the U.S. Department of the Interior, Solicitor's Office, but no representatives of either of these objectors attended the hearing. James Rehbein from the Department's Field Office in Kalispell was present at the hearing and explained for the record the contents of the Department's file upon this application.

FINDINGS OF FACT

From the information obtained at the hearing and the data in the Department's file, the following Findings of Fact are made:

1. The applicant has applied for 450 gallons of water per minute, not to exceed 80 acre-feet of water per year from Camas Creek, a tributary of the Flathead River in Sanders County, Montana. Mr. Cross wishes to use this water

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to sprinkler irrigate 80 acres of pasture and hay by pumping water from two points of diversion about 1/4 mile apart in Sec. 35, T. 20N., R. 24W. The application contemplates "spring time high water" as it may occur between April 15 and June 15 of each year.

2. The spring runoff period in Camas Creek varies year-to-year. It can begin in early April and can extend until the middle of June. The runoff period can end as early as the middle of May.

3. Mr. Cross wishes to only use spring runoff water, and is agreeable to a condition that he cease using water when the runoff ends.

4. The Objector, Mr. Muster, has been using water from Camas Creek for about four years pursuant to the following claimed water rights:

a. A filed appropriation dated April 21, 1955 for 120 miner's inches. Mr. Muster first used this water in the spring of 1973.

b. A Beneficial Water Use Permit for 2.5 cubic feet of water per second, up to 240 acre-feet per annum. Mr. Muster currently sprinkle irrigates about 220 acres of alfalfa and grain with these two rights, which he pumps from the creek approximately 3/4 mile from Mr. Cross' proposed points of diversion. Mr. Muster has four 15-horsepower electric pumps with a capacity of 250 gallons per minute each.

Mr. Muster normally begins irrigating in April, and can

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normally run at least one of his lines all summer.

5. Both Mr. Muster and Mr. Cross agree that there is normally sufficient spring runoff in Camas Creek to allow both of them to pump water. Mr. Muster's primary concern is that Mr. Cross cease pumping as soon as the water level in the creek reaches the critical point at which there is insufficient water for both of their uses.

CONCLUSIONS OF LAW

1. During most spring runoff periods there is unappropriated water in Camas Creek.

2. Under the provisions of Section 89-880, R.C.M. 1947, a permit is required to appropriate water from Camas Creek.

3. The objector, appearing at the hearing, appears to have valid prior water rights from Camas Creek.

4. The prior water rights of the objector must be protected.

5. Prior water rights can be protected by conditioning the permit so that the applicant ceases pumping water when the spring runoff in Camas Creek drops to the point that there is not sufficient water to allow his pumping without interfering with the objector's prior rights.

6. The proposed means of diversion is adequate.

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

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

9. The Application for Beneficial Water Use Permit

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should be granted, subject to the conditions in the Proposed Order.

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

PROPOSED ORDER

1. Subject to the conditions cited below, the Applicant's Provisional Permit is hereby granted allowing the appropriation of 450 gallons of water per minute, not to exceed 80 acre-feet per year, from Camas Creek, a tributary of the Flathead River in Sanders County, Montana. The water is to be diverted by pumping at two points, the NE1/4 SW1/4 and the SE1/4 SW1/4, all in Sec. 35, T. 20N., R. 24W., Sanders County, Montana, and is to be used to sprinkler irrigate 80 acres of pasture and hay in Sec. 35.

2. The permit shall be subject to the following conditions:

a. The period of use is April 15 to June 15 of each year, or until the end of the spring runoff in Camas Creek, whichever occurs first.

b. It shall be the responsibility of the objector to notify the applicant when, in fact, there is insufficient water in Camas Creek to satisfy both the prior rights of the objector and the water use granted by this permit. It shall

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be the responsibility of the applicant to cease diverting water pursuant to this permit when there is insufficient water in Camas Creek to satisfy both the prior rights of the objector and the water use granted by this permit, whether or not he is notified by the objector. It shall be the responsibility of each of the parties not to abuse his water rights at the expense of the other, since these conditions must be essentially self-policing. The Department cannot provide personnel to oversee this use of water.

c. The permit shall be subject to all prior water rights, including Indian reserved water rights.

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 this 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 9th day of July, 1976.


ALLEN B. CHRONISTER
HEARING EXAMINER