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

* * * * * * * *

IN THE MATTER OF THE APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 7523-S41J, 7524-S41J, 7527-S41J, 9237-S41J, AND 9238-S41J BY CASTLE MOUNTAIN RANCH, INC.	)	NOTICE OF TERMINATION

* * * * * * * *

Castle Mountain Ranch has withdrawn the above-mentioned Applications; therefore all action by the Department on these Applications is hereby terminated and the Status Meeting scheduled to be held on August 20, 1991, is hereby vacated.

Dated this 19th day of July, 1991.

Vivian A. Lighthizer

Vivian A. Lighthizer,
Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6625

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Termination was duly served upon all parties of record at their address or addresses this 19th day of July, 1991 as follows:

Castle Mountain Ranch Company
P.O. Box 409
White Sulphur Springs, MT 59645

Tom K. Hopgood
Luxan and Murfitt
P.O. Box 1144
Helena, MT 59624

CASE #

Fred Buckingham
Box 332
White Sulphur Springs, MT 59645

Gertrude McStravick
Box 332
White Sulphur Springs, MT 59645

Rose and Axel Holmstrom
Box 612
White Sulphur Springs, MT 59645

Ronald L. and Oakley R. Jackson
Box 673
White Sulphur Springs, MT 59645

James A. and Dellamae O. Lind
Box 563
White Sulphur Springs, MT 59645

Robert and Virginia Fowlie
White Sulphur Springs, MT 59645

Geraldine and Clifford Olsen
White Sulphur Springs, MT 59645

William L. Miller
White Sulphur Springs, MT 59645

John V. Potter, Jr.
Attorney at Law
Box 629
White Sulphur Springs, MT 59645

Mrs. Arthur Fisher
1716 5th Avenue
Helena, MT 59601

Elmer Hanson
Riverside Ranch
White Sulphur Springs, MT 59645

Floyd O. Small
Small, Hatch, Doubek & Pyfer
39 Neill Avenue
Helena, MT 59601

Edwin and Pearl Bodell
Route 1
White Sulphur Springs, MT 59645

CASE #

Sam Rodriguez, Manager
Lewistown Water Resources
Regional Office
P.O. Box 438
Lewistown, MT 59457

Cindy G. Campbell

Cindy G. Campbell
Hearings Unit Legal Secretary

CASE #

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

* * * * * * * * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMITS)
NOS. 7523-s41J, 7524-s41J,)
7527-s41J, 9237-S41J, and 9238-s41J)
BY CASTLE MOUNTAIN RANCH, INC.)

* * * * * * * * * * *

As we discussed during our conference call (October 21, 1988), I will expect each attorney of record to file a statement with me by January 9, 1989, which specifies whether his clients prefer to proceed directly to a hearing in this matter or to have the Department certify certain issues to the Water Court. Please file a copy of this statement with the other attorneys of record.

If we proceed to a hearing, the Applicant will be required to prove that the criteria of 85-2-311, MCA, are met on the permit applications. This means, for example, that the Applicant's Statements of Claim for Existing Water Rights will be assumed arguendo to not be in existence, so that a determination on the availability of unappropriated water may be made based on a comparison of other uses and whatever amount of water is shown to be available in the source (unless the Applicant feels that it can show the requested amount is available over and above its own claims combined with all other uses). In other words, the Applicant will not be allowed to utilize its present use of water as proof that the permit criteria are met.

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As an alternative to proceeding directly to a hearing, the Department may certify certain issues to the Water Court. See 85-2-309(2), MCA. For example, the Department could certify the issue of the quantification of those of the Applicant's Statements of Claim which "duplicate" the Applications in this matter. Once the Water Court had made its determination, the matter would be remanded to the Department (see 85-309(2)(b)), and the Department would proceed to hearing on any portions of the Applications which do not duplicate claimed water rights which the Water Court has recognized. Alternatively, the Department could ask the Water Court to quantify the claimed rights of all the parties in this matter, perhaps by having the parties petition the Water Court to change the order of the basins being adjudicated to allow for an earlier resolution in this basin. As it is uncertain what status the Water Court's determination of the certified issues would have in the general adjudication (although it is likely the Court's Findings and Conclusions would be binding as against the other parties in this matter), this question should be one of the issues certified.

Please consult your respective clients and discuss the alternatives with them. Once I have received and reviewed the statements of preference which you will be filing on or before January 9, I will contact the attorneys of record to discuss going forward in this matter.

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Dated this 4th day of November, 1988.

Peggy A. Elting

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

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was duly served upon all parties of record at their address or addresses this 4th day of November, 1988, as follows:

Bruce Loble
P.O. Box 176
Helena, Montana 59601

John V. Potter, Jr.
P.O. Box 629
White Sulphur Springs,
Montana 59645

Floyd O. Small
Hatch, Doubek & Pyfer
39 Neill Avenue
Helena, Montana 59602

Irene LaBare

Irene LaBare
Legal Secretary

CASE #

Larry

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

* * * * * * * * * * *

IN THE MATTER OF THE APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 7523-s41J, 7524-s41J, 7526-s41J, 7527-s41J, 7544-s41J, 9237-s41J, AND 9238-s41J BY WARD PAPER BOX CO.	)	INTERLOCUTORY ORDER

* * * * * * * * * * *

Pursuant to MCA § 85-2-310, the Department of Natural Resources and Conservation may "cease action on an application and return it to the applicant when it finds the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use." Applicant in the above-entitled matter has not made timely response to requests by the Department that Applicant notify the Department whether the above-entitled applications will be pursued and/or amended or withdrawn. For this and other sufficient reasons, the Department hereby makes the following:

ORDER

That the Applicant furnish the following information to the Department within 30 days of receipt of this Order:

(1) Copies of any feasibility study on Applicant's project.

(2) Detailed information regarding the present status of any project for which applications for beneficial water use permits have been made, and details of all planning and work accomplished so far.

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(3) Detailed description of the measuring equipment and other irrigation equipment which will be used.

(4) Time line for completion of the project, with a detailed account of how much water will actually be put to beneficial use and at what time.

(5) What, if anything, would prevent Applicant from immediately putting the water applied for to beneficial use, if the permit is issued immediately.

DONE this 1st day of February, 1984.

Peggy A. Elting

Peggy A. Elting, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 444 - 6612

CASE #

AFFIDAVIT OF SERVICE

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

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on February 2, 1983, she deposited in the United States mail, Certified Mail mail, an order by the Department on the Application by Ward Paper Box Co., Application Nos. 7523-s41J, 7524-s41J, 7526-s41J, 7527-s41J, 7544-s41J, 9237-s41J, and 9238-s41J , for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. C. Bruce Loble, PO Box 176, Helena, MT 59624
2. John V. Potter, Box 629, White Sulphur Springs, MT 59645
3. Peggy A. Elting, Hearing Officer (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Donna K. Elser

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

On this 2nd day of February, 1983, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

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

Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____

NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires April 6, 1984

CASE #

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
WATER RESOURCES DIVISION

TED SCHWINDEN, GOVERNOR

32 SOUTH EWING

STATE OF MONTANA

(406) 449-2872 ADMINISTRATOR
(406) 449-2864 ENGINEERING BUREAU
(406) 449-3760 WATER DEVELOPMENT BUREAU
(406) 449-2872 WATER MANAGEMENT BUREAU
(406) 449-3962 WATER RIGHTS BUREAU

HELENA, MONTANA 59620

January 31, 1984

Mr. C. Bruce Loble
Loble & Pauly
P.O. Box 176
Helena, MT 59624

RE: Applications for Beneficial Water Use Permits Nos. 7523-s41J, 7524-s41J, 7526-s41J, 7527-s41J, 7544-s41J, 9237-s41J and 9238-s41J by Ward Paper Box Co.

Dear Mr. Loble:

On December 29, 1983, the Department of Natural Resources and Conservation granted a 30-day extension, upon your request, to allow further time in which to review information pertaining to the above-entitled matter. A response, specifying the actions the Applicant intends to take in pursuing and/or amending or withdrawing the applications for beneficial water use permits, was to be delivered to the Department on or before January 30, 1984. No timely response has been received.

As I suggested in my November 23, 1983 letter to you on the above-entitled matter, failure to pursue applications for beneficial water use permits may be a factor considered in determining whether "bona fide intent to appropriate water for beneficial use" exists, pursuant to MCA § 85-2-310. Therefore, the Department requires information upon which to base a decision as to whether the above-entitled applications show genuine intent to appropriate waters for a beneficial use.

If a determination is made that no bona fide intent exists, a hearing will be set at which the Applicant will be required to show cause why the Department should not cease action on the applications and return them to the Applicant. Failure to timely furnish the required information in the detail required will also result in a show cause hearing.

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AN EQUAL OPPORTUNITY EMPLOYER

The Order which accompanies this letter specifies the information which is to be furnished to the Department. If you have any questions as to what information should be included, please contact Sam Rodriquez, Water Rights Bureau Field Office, P.O. Box 438, 613 N.E. Main Street, Lewistown, Montana 59457, telephone (406) 537-7459.

Sincerely,

Peggy A. Elting

Peggy A. Elting
Hearings Officer
Water Rights Bureau

PAE/dke

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