STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 7554-s40J AND 7555-s40J BY IRA A. HALL	)))	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on August 4, 1977, by the hearing examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

FINAL ORDER

1. The application by Ira A. Hall for Beneficial Water Use Permit No. 7554-s40J is granted allowing the appropriation of 1.11 cfs or 500 gpm of water and not to exceed 96 acre-feet per annum for irrigation and 3 acre-feet per annum for stock watering, for a total of 99 acre-feet per annum, to be impounded in an enlarged existing reservoir with a new capacity of 150 acre-feet on Badger Coulee, a tributary of Fort Belknap Canal, at a point in the NE¼ SE¼ NW¼ of Section 11, Township 33 North, Range 18 East, M.P.M., and used for supplemental irrigation purposes by water spreading on 20 acres in Section 11, 55 acres in Section 12, 13 acres in Section 13, and 39 acres in Section 14, all in Township 33 North, Range 18 East, M.P.M., and containing a total of 127 acres, more or less, from April 1 to November 1, inclusive, of each year, and for stock watering from January 1 to December 31, inclusive, of each year.

2. The application by Ira A. Hall for Beneficial Water Use Permit No. 7555-s40J is granted allowing the appropriation of 240 acre-feet of water per annum, to be diverted from an unnamed tributary of Fort Belknap Canal by means of spreader dikes at a point in the SE¼ NE¼ SW¼ of Section 12, Township 33 North, Range 18 East, M.P.M., and used for new irrigation by water spreading on 20 acres in Section 11, 55 acres in Section 12, 13 acres in Section 13, and 39 acres in Section 14, all in Township 33 North, Range 18 East, M.P.M., and containing a total

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of 127 acres, more or less, for erosion control, all from April 1 to November 1, inclusive, of each year.

3. The Applicant's permits referred to herein are granted subject to all existing water rights in the source of supply, and any final determination of existing water rights as provided by Montana law.

4. The Applicant's permits are further granted subject to the condition that the enlargement of the existing reservoir and the construction of the spreader-dike system must be built to the design specifications and safety standards of the local Soil Conservation Service, to ensure proper construction and safety of said facilities.

RECOMMENDATION

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

Done this 9th day of September, 1977.

Orrin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NOS. 7554-s40J and 7555-s40J BY IRA A. HALL	))))	PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice, a hearing was held July 20, 1977 at Havre, Montana, for the purpose of hearing objections to the above-named applications, William F. Throm, Hearing Examiner, presiding.

The Applicant, Ira A. Hall, appeared at the hearing and presented testimony in of above applications. Applicant was represented by counsel, Mr. Don Ranstrom, Attorney at Law, Chinook, Montana, who was present. Also present and testifying on behalf of Applicant was Neil Neibauer, Ft. Belknap Irrigation District, Patty Hall, and Linda Ortner.

Mr. Bryan J. Edwards, U. S. Bureau of Reclamation, Billings, Montana, filed timely objections to the above applications. Mr. Edwards was not present at the hearing, however, the Bureau of Reclamation was represented by Mr. Ed Bartlett, Office of the Field Solicitor, USBR and Mr. Gordon Aycock, Hydraulic Engineer, USBR.

The Department of Natural Resources and Conservation was represented by Ms. Vivian Lighthizer of the Water Resources Division, Glasgow Field Office.

PROPOSED FINDINGS OF FACT

1. On February 23, 1976, the Applicant submitted to the Department of Natural Resources and Conservation:

a) Application No. 7554-s40J to appropriate 1.11 cfs or 500 gpm of water and not to exceed 96 acre-feet per annum for irrigation and 3 acre-feet per annum for stock watering, for a total of 99 acre-feet per annum, to be

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impounded in an enlarged existing reservoir with a new capacity of 150 acre-feet on Badger Coulee, a tributary of Ft. Belknap Canal, at a point in the NE¼SE¼NW¼ of Sec. 11, T. 33 N., R. 18 E., M.P.M., and used for supplemental irrigation purposes by water spreading on 20 acres in Sec. 11, 55 acres in Sec. 12, 13 acres in Sec. 13, and 39 acres in Sec. 14, all in T. 33 N., R. 18 E., M.P.M., and containing a total of 127 acres, more or less, from April 1 to November 1, inclusive, of each year, and for stock watering from January 1 to December 31, inclusive, of each year.

b) Application No. 7555-s40J to appropriate 240 acre-feet of water per annum, to be diverted from an unnamed tributary of Ft. Belknap Canal by means of "spreader dikes at a point in the SE¼NE¼SW¼ of Sec. 12, T. 33 N., R. 18 E., M.P.M., and used for new irrigation by water spreading on 20 acres in Sec. 11, 55 acres in Sec. 12, 13 acres in Sec. 13, and 39 acres in Sec. 14, all in T. 33 N., R. 18 E., M.P.M., and containing a total of 127 acres, more or less, for erosion control, all from April 1 to November 1, inclusive, of each year."

2. On December 1, 8, and 15, 1976 the Department caused to be published in the Chinook Opinion, notice of above application Nos. 7554-s40J and 7555-s40J.

3. On January 6, 1977, Bryan J. Edwards, U.S. Bureau of Reclamation, filed timely objections to the above applications.

4. Mr. Hall, the Applicant, testified at the hearing that the source of supply for the proposed point of diversion for Application No. 7554-s40J is entirely within lands under his control; that the source of supply for the proposed point of diversion for Application No. 7555-s40J is substantially within lands under his control; that the proposed project has been planned by the Soil Conservation Service and is needed and is feasible; that because of the embankment formed by the Ft. Belknap Irrigation Canal on property under his control and below the proposed place of use, such embankment forms a closed basin for the source of supply; that runoff from the source of supply is entirely

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contained in the closed basin so formed except in conditions of extreme rainfall and resultant flash flooding at which times the canal embankment is overtopped and severe damage is caused to the canal, canal structures and lower lying croplands; and that there is no other appropriator of the waters flowing into this closed basin.

5. Mr. Neil Niebauer, Ft. Belknap Irrigation District verified the testimony presented by Mr. Hall and further stated that waters from the source of supply overtopping the canal embankment were damaging to the Ft. Belknap Irrigation District canal and that Mr. Hall's proposed use would be beneficial to the Irrigation District in that the proposed use would further help to contain the runoff in the closed basin formed by the canal even during periods of extreme runoff.

6. Mr. Ed Bartlett, representing the U.S. Bureau of Reclamation withdrew the U.S. Governments objection to Application No. 7554-s40J and 7555-s40J in view of the evidence presented by the Applicant and Mr. Niebauer that the U.S. Government's prior right would not be adversely affected by the proposed diversions.

PROPOSED CONCLUSIONS OF LAW

1. The Objector to this Application has an apparent prior appropriation right to the water from the proposed source of supply.

2. Under the provisions of Section 89-880, R.C.M. 1947, a permit is required to appropriate water from the proposed source of supply which is an unnamed tributary of an artificial closed basin to the Ft. Belknap Irrigation Canal, said closed basin being formed by the embankment of the Ft. Belknap Irrigation Canal in the NW¼, Section 13, and the N½ of Section 14, all in Township 33 North, Range 18 East, M.P.M.

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3. There are unappropriated waters in the source of supply.

4. The Applicant has provided clear and convincing evidence that the rights or prior appropriators will not be adversely affected.

5. The proposed means of diversion is adequate.

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

7. 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.

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

9. 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.

PROPOSED ORDER

1. The application by Ira A. Hall for Beneficial Water Use Permit No. 7554-s40J is granted allowing the appropriation of 1.11 cfs or 500 gpm of water and not to exceed 96 acre-feet per annum for irrigation and 3 acre-feet per annum for stock watering, for a total of 99 acre-feet per annum, to be impounded in an enlarged existing reservoir with a new capacity of 150 acre-feet on Badger Coulee, a tributary of Ft. Belknap Canal, at a point in the NE¼SE¼NW¼ of Sec. 11, T. 33 N., R. 18 E., M.P.M., and used for supplemental irrigation purposes by water spreading on 20 acres in Sec. 11, 55 acres in Sec. 12, 13 acres in Sec. 13, and 39 acres in Sec. 14, all in T. 33 N., R. 18 E., M.P.M., and containing a total of 127 acres, more or less, from April 1 to November 1, inclusive, of each year, and for stock watering from January 1 to December 31, inclusive, of each year.

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2. The application by Ira [illegible] Hall for Beneficial Water Use Permit No. 7555-s40J is granted allowing the appropriation of 240 acre-feet of water per annum, to be diverted from an unnamed tributary of Ft. Belknap Canal by means of "spreader dikes at a point in the SE¼NE¼SW¼ of Sec. 12, T. 33 N., R. 18 E., M.P.M. and used for new irrigation by water spreading on 20 acres in Sec. 11, 55 acres in Sec. 12, 13 acres in Sec. 13, and 39 acres in Sec. 14, all in T. 33 N., R. 18 E., M.P.M., and containing a total of 127 acres, more or less, for erosion control, all from April 1 to November 1, inclusive, of each year."

3. The Applicant's permits referred to herein are granted subject to all existing water rights in the source of supply, and any final determination of existing water rights as provided by Montana law.

4. The Applicant's permits are further granted subject to the condition that the enlargement of the existing reservoir and the construction of the spreader dike system must be built to the design specifications, and safety standards of the local Soil Conservation Service, to ensure proper construction and safety of said facilities.

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 and with opposing parties with ten (10) days of receipt of same. Upon receipt of any written exceptions, the Department will provide an opportunity to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 4th day of August, 1977.

WILLIAM F. THROM, HEARING EXAMINER

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