

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 8306-s40D BY HELM HEREFORD RANCH
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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 on July 19, 1977 at Jordan, Montana, for the purpose of hearing objections to the above named application, William F. Throm Hearing Examiner, presiding.

Mr. Gerhard W. Helm, President, Helm Hereford Ranch, appeared on behalf of the Applicant, Helm Hereford Ranch. Applicant was not represented by legal counsel. Applicant entered into evidence two exhibits in support of the Application.

Applicant's Exhibit No. 1 was "Stream Gaging Site Data, Little Dry Creek near Van Norman, Montana, Annual Maximum Data for Water Years 1958-1968." Applicant's Exhibit No. 2, was a letter dated February 7, 1977 from Helm Hereford Ranch to the Hearings Coordinator, Water Rights Bureau, supporting the Helm Hereford Ranch Application. Mr. John R. Carr, Attorney, representing Objectors James Whiteside, John T. Gibbs, and Sidney D. Bollinger objected to admission of Applicant's Exhibit No. 1 on the technical grounds that it was an outdated record and does not represent current stream flow conditions. Mr. Carr objected to the admission of the Applicant's Exhibit No. 2 on the grounds that it was a selfserving declaration which was unnecessary and not proper evidence. Mr. Carr's objections were noted and the Applicant's Exhibits No. 1 and No. 2 were received into evidence for further consideration to the extent of their relevancy.

Six objectors were present to offer testimony. They were Mr. Ross A. and Mrs. Evelyn Billing, Mr. Sidney D. Bollinger, Mr. John W. McKerlick, Mr. James Whiteside, Mr. John T. Gibbs, and Mr. Gerald R. Gibbs. Mr. John Carr, Attorney at Law, was

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present to represent, Mr. James Whiteside, Mr. John Gibbs and Mr. Sidney Bollinger. Mr. Carr entered into evidence water right filings on behalf of his clients, however, he did not make these Exhibits available to the Hearings Examiner, therefore, they were not received into evidence.

Ms. Vivian Lighthizer, Glasgow Field Office, Water Resources Division, Montana Department of Natural Resources and Conservation was present to testify on behalf of the Department. Ms. Lighthizer entered into evidence Department's Exhibit A, Garfield County Map, showing location of Helm's point of diversion and drainage area in Garfield County above the point of diversion; Department's Exhibit B, a map showing Applicant's proposed project and location of Objectors' points of diversion and places of use; and Department Exhibit C, consisting of 14 photos pertaining to the proposed project. Department's Exhibits A, B, and C were received into evidence without objections.

A Proposed Order (Proposal for Decision) dated August 30, 1977 was issued by the Hearing Examiner William F. Throm.

The Proposed Order as issued on August 30, 1977, provided that the Order would not become final until accepted by the Administrator of the Water Resources Division, and that any written exceptions to the Proposed Order, if any, shall be filed with the Department within ten (10) days of service upon the parties herein, and upon receipt of any written exceptions, opportunity would be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

On September 20, 1977 the Department received Exception letters, both dated September 17, 1977, from John T. Gibbs and James Whiteside in opposition to the Hearing Examiner's Proposed Order of August 30, 1977.

The Department also received a letter from Sidney D. Bollinger dated September 18, 1977 written in reference to the Proposed Order. The letter stated in part, "This letter is not protesting the issuing of the permit, but I would like a few things clarified." The Department by letter of September 21, 1977 to Mr. Bollinger informed Mr. Bollinger that, "Since you have specifically stated your letter is not protesting

the issuing of the permit, your letter will not be considered an Exception to the Proposed Order, but a letter of clarification. Please be informed that your letter will be routed to the Hearing Examiner for review to see if possibly a need for modification of the Proposed Order is necessary."

The Department received a letter dated September 20, 1977 from Mr. John R. Carr, filed on behalf of his clients, James Whiteside, John T. Gibbs, and Sidney D. Bollinger, which stated in part, "It is my understanding that the Objectors have filed written objections to your proposed decision and we will not on their behalf be filing any further objections. I believe the ones they have raised are appropriate and that your decision should be modified accordingly."

On September 29, 1977 the Department received Mr. Carr's letter of September 28, sent on behalf of his three clients stating in part, "...the Whitesides would like the Board to consider their letter as an official exception to the proposed findings, and they will be filing a supporting brief and request to have an oral argument before the Administrator of the Water Resources Division. This would be the same consideration for Mr. Gibbs and his letter and while I note that the letter directed to Mr. Bollinger has indicated that it is not an official protest, they would likewise feel that the proposed order should make the corrections and changes which have been suggested in three of the letters."

By letter of October 7, 1977 to Mr. Carr, the Hearing Examiner responded to his letters of September 20, 22, and 28, 1977 by providing written responses to each comment or point addressed by Mr. Carr. In general the Hearing Examiner refused to amend the Proposed Order, since the testimony presented at the hearing did not demonstrate a beneficial use requirement, for water by prior appropriators, in excess of the flood stage as defined in the issued Proposed Order. The Hearing Examiner responded by letter of October 7, 1977 to Mr. John Gibb's comments contained in his letter of September 17, 1977, and also responded by letter of October 11, 1977 to Mr. Bollinger's letter of September 18, 1977.

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On October 20, 1977 the Department sent a letter to Mr. Carr, which provided in part; "Please be advised that if Mr. Throm's explanation of his Proposed Order is not acceptable that you now have the opportunity on behalf of Mr. Gibbs, Mr. Bollinger, and Mr. Whiteside, or individually if they prefer, to file a Brief in support of the written exceptions within fifteen (15) days after receipt of this letter." On November 3, 1977 the Department received a telephone request from Mr. Carr for an extension of time to November 22, 1977 in which to file a Brief in support of their written exceptions on behalf of his clients. By letter of November 3, 1977 to Mr. Carr the Department granted the requested extension to November 22. On November 21, 1977 the Department received a second request from Mr. Carr for an extension of time to November 28, which was verbally granted, pending receipt of a letter from Mr. Carr for the request.

On November 25, 1977 the Department received from Mr. Carr, "Objections to Proposed Findings of Fact, Conclusions of Law, and Order," dated November 23, 1977. as filed on behalf of his clients, Gibbs, Bollinger and Whiteside.

By letter of December 12, 1977 to Mr. Carr the Department acknowledged receipt of their Exceptions dated November 23, 1977 and advised that the Applicant would be sent a copy of their Exceptions and afforded the opportunity to file a Reply or Reply Brief in answer to the Exceptions. By letter of December 12, 1977 to Mr. Helm, the Department advised him of his opportunity to file a Reply or Reply Brief to the exceptions within fifteen (15) days after receipt of said letter. He was also advised that Mr. Carr on December 9, 1977 by telephone informed the Department that he would not be filing a supporting Brief.

On December 12, 1977 the Department received Mr. Carr's letter of December 9, stating "This is to confirm our telephone conversation concerning the above. It is not the intention of the objectors to file a further brief in support of their exceptions, and they would like to reserve the right to make a decision as to whether or not oral argument shall be requested until after they have had an opportunity to

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see the applicants reply to their objections." The Department by letter of December 13, to Mr. Carr acknowledged receipt of his December 9 letter and informed him he would be sent a copy of any Reply or Reply Brief filed by the Applicant.

On December 21, 1977 the Department received Mr. Helm's Reply Brief to Mr. Carr in Miles City on Tuesday December 20, 1977.

On January 20, 1978 the Department received Mr. Carr's letter dated January 18, 1978 which stated in part, "This is to confirm our telephone conversation of this date and to my knowledge the objectors are not going to request an oral argument before the administrator and therefore the matter may be set for final determination by the Department."

The Department by letter of January 25, 1978 to Mr. Carr with a copy to Mr. Helm acknowledged receipt of his January 18 letter and informed him that the Administrator was presently in the process of preparing a Final Order on this matter and would take into full consideration the entire record in reaching his decision.

Since none of the parties in this matter specifically requested an oral argument hearing on the exceptions and brief before the Administrator of the Water Resources Division, the Administrator hereby makes the following Final Order, based on the Hearing Examiner's Proposal for Decision of August 30, 1977, the objections, exceptions, brief and all other information of record in the application file.

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on August 30, 1977 by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and Order, except that the Proposed Order is hereby modified by adding new Conditions 5, 6, 7 and 8.

FINAL ORDER

1. Subject to the conditions cited below the Permittee's Provisional Permit No. 8306-s40D by Helm Hereford Ranch is hereby granted as modified (at the hearing), to appropriate 14.99 cubic feet per second or 6,728 gallons per minute of water, not to exceed 1,290 acre-feet per annum for irrigation, 5 acre-feet per annum for stock

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watering, and 5 acre-feet per annum for wildlife, for a total of 1,300 acre-feet per annum, from Little Dry Creek, a tributary of Big Dry Creek, in Garfield County, Montana to be diverted from Little Dry Creek by means of two pumps, at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, Township 17 North, Range 43 East, M.P.M., and impounded in an enlarged existing reservoir with a new capacity of 500 acre-feet, located on the section line between the NE $\frac{1}{4}$ of Section 28 and the NW $\frac{1}{4}$ of Section 27, both in Township 17 North, Range 43 East, M.P.M., and used for new irrigation on 190 acres in Section 27, 160 acres in Section 34, and 130 acres in Section 35; and supplemental irrigation on 121 acres in Section 27, and 30 acres in Section 28, all in Township 17 North, Range 43 East, M.P.M., and containing a total of 631 acres, more or less, from April 1 to November 1, inclusive, of each year, and for stock-water and wildlife purposes from January 1 to December 31, inclusive, of each year.

2. Permittee's Provisional Permit No. 8306-s40D as granted is subject to all prior water rights in the source of supply and is further conditioned as follows:

A. Water shall be diverted from Little Dry Creek at such times only as Little Dry Creek is at flood stage as defined below, or at such other times as prior water right holders downstream from the Permittee's point of diversion are not calling for said water.

(1) Flood stage, for the purpose of this order, shall be that stage of flow when water from Little Dry Creek is flowing freely and unobstructed over the concrete slab of the stream crossing located on Little Dry Creek in the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 21, Township 17 North, Range 43 East, or in the event said slab is altered or rendered unusable for this purpose the Department shall prescribe an alternate method of determination of flood stage upon request from Little Dry Creek water right holders.

(2) It shall be the Permittee's responsibility to ascertain that prior right holders are not calling for the water during periods of diversion other than at flood stage.

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(3) Permittee shall maintain a satisfactory record of all diversions made during periods other than flood stage and shall submit this record to the Department upon request.

B. The storage facility shall be provided with an adequate release device or devices, so that when necessary water may be released to satisfy prior downstream water rights.

(1) Water diverted and stored under the conditions set forth in 2-A above shall not be required to be released.

(2) Water which shall be released upon demand by the Permittee for prior water right holders is that water appropriated by the Permittee at a time when such appropriation adversely affected prior water right holders.

C. Plans and specifications for this project, including diversion facilities, storage facilities and the distribution system shall be presented to the Department by the Permittee for approval prior to appropriation of the water granted herein.

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

4. The issuance of this Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of this Provisional Permit.

5. The granting of this Provisional Permit in no way guarantees that the Permittee will be able to exercise the Provisional Permit.

6. The Provisional Permit is granted subject to the right of the Department to revoke the permit in accordance with 89-887, R.C.M. 1947, and to enter onto the premises for investigative purposes in accordance with 89-898, R.C.M. 1947.

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7. The Permittee or his successor upon receipt of notification from the Department that prior appropriators on the source of supply are being unduly adversely affected by this appropriation, shall immediately cease withdrawing water from the source and shall not resume pumping until such time as the Department provides written notice to the Permittee, or his successor, to resume pumping.

8. The above conditions to the granting of this Provisional Permit shall hold for any predecessor in interest to the Permittee herein named.

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 3rd day of March, 1978.



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
NO. 8306-s40D BY HELM HEREFORD
RANCH

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedures Acts, after due notice, a hearing was held on July 19, 1977 at Jordan, Montana, for the purpose of hearing objections to the above named application, William F. Throm, Hearing Examiner, presiding.

Mr. Gerhard W. Helm, President, Helm Hereford Ranch, appeared on behalf of the Applicant, Helm Hereford Ranch. Applicant was not represented by legal counsel. Applicant entered into evidence two exhibits in support of the Application. Applicant's Exhibit No. 1 was Stream Gaging Site Data, Little Dry Creek near Van Norman, Montana, Annual Maximum Data for Water Years 1958-1968. Applicant's Exhibit No. 2 was a letter dated February 7, 1977 from Helm Hereford Ranch to the Hearings Coordinator, Water Rights Bureau, supporting the Helm Hereford Ranch Application. Mr. John R. Carr, Attorney, representing Objectors James Whiteside, John T. Gibbs and Sidney D. Bollinger objected to admission of the Applicant's Exhibit No. 1 on the technical grounds that it was an outdated record and does not represent current stream flow conditions. Mr. Carr objected to admission of the Applicant's Exhibit No. 2 on the grounds that it was a self-serving declaration which was unnecessary and not proper evidence. Mr. Carr's objections were noted and the Applicant's Exhibits No. 1 and No. 2 were received into evidence for further consideration to the extent of their relevancy.

Six objectors were present to offer testimony. They were Mr. Ross A. and Mrs. Evelyn Billing, Mr. Sidney D. Bollinger, Mr. John W. McKerlick, Mr. James Whiteside, Mr. John T. Gibbs, and Mr. Gerald R. Gibbs. Mr. John Carr, Attorney

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at Law was present to represent Mr. James Whiteside, Mr. John Gibbs and Mr. Sidney Bollinger. Mr. Carr entered into evidence a June 20, 1973 filing by Mr. Sidney Bollinger, and four filings by Mr. Whiteside. Mr. Carr did not make these Exhibits available to the Hearings Examiner therefore they were not received into evidence.

Ms. Vivian Lighthizer, Glasgow Field Office, Water Resources Division, Montana Department of Natural Resources and Conservation was present to testify on behalf of the Department. Ms. Lighthizer entered into evidence Department's Exhibit A, Garfield County Map, showing location of Helm point of diversion and drainage area in Garfield County above the point of diversion; Department's Exhibit B, a map showing Applicant's proposed project and location of Objectors' points of diversion and places of use; and Department Exhibit C consisting of 14 photos pertaining to the proposed project. Department's Exhibits A, B, and C were received into evidence without objections.

FINDINGS OF FACT.

1. On May 17, 1976, the Applicant submitted to the Department of Natural Resources and Conservation Application for Beneficial Water Use Permit No. 8306-s40D to appropriate 16 cfs or 7,184 gpm of water, and not to exceed 1,290 acre-feet per annum for irrigation, 5 acre-feet per annum for stock watering, and 5 acre-feet per annum for wildlife, for a total of 1,300 acre-feet per annum, from Little Dry Creek, a tributary of Big Dry Creek, in Garfield County, Montana, to be diverted from Little Dry Creek by means of two pumps, at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, Township 17 North, Range 43 East, M.P.M., and impounded in an enlarged existing reservoir with a new capacity of 500 acre-feet, located on the section line between the NE $\frac{1}{4}$ of Section 28 and the NW $\frac{1}{4}$ of Section 27, both in Township 17 North, Range 43 East, M.P.M., and used for new irrigation on 190 acres in Section 27, 160 acres in Section 34, and 130 acres in Section 35, and supplemental irrigation on 121 acres in Section 27 and

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30 acres in Section 28, all in Township 17 North, Range 43 East, M.P.M., and containing a total of 631 acres, more or less, from April 1 to November 1, inclusive, of each year, and for stock-watering and wildlife purposes from January 1 to December 31, inclusive, of each year.

2. On December 9, 16 and 23, 1976 the Department caused to be duly published in the Jordan Tribune, Jordan, Montana, notice of above Application for Beneficial Water Use No. 8306-s40D.

3. Timely objections to Application No. 8306-s40D were filed with the Department as follows:

December 27, 1976 by Ted A. Kountz
January 3, 1977 by John W. Billing
January 3, 1977 by John W. Mckerlick
January 4, 1977 by Sidney Bollinger, Bollinger Inc.
January 12, 1977 by Ross A. Billing and Evelyn Billing
January 13, 1977 by George W. Huss, Attorney at Law
Representing C. G. Glasscock III
January 20, 1977 by James Whiteside, Secretary, Whiteside Livestock Co.
January 24, 1977 by John T. Gibbs
January 25, 1977 by Gerald Gibbs for Gibbs Ranches

4. The January 13, 1977 Objection filed by George W. Huss, Attorney at Law, representing C. G. Glasscock III relates to the Objector's place of use and apparent point of diversion 35 miles or more upstream from Applicant's point of diversion and if Objector has prior water rights for lands described as the place of use in his objection, such prior water rights cannot be adversely affected by granting of Applicant's permit. This objection therefore is invalid.

5. At the time of the hearing, Applicant stated that he wished to revise his application downward to read 14.99 cubic feet per second or 6,728 gallons per minute. This revision was accepted by the Hearings Examiner over the objection of Mr. John Carr, representing the three aforementioned Objectors.

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6. Applicant, represented by Gerhard W. Helm, testified that there are surplus waters in the Little Dry Creek and that the proposed project was planned by the Soil Conservation Service to put these surplus waters to a beneficial use by pumping during flood periods and diverting the excess water to an off-stream storage site for later use on cropland during dry periods. Water would be diverted from Little Dry Creek by means of two pumps each connected to 10" to 12" diameter pipes and set in such a manner as to take water, above normal flow, so as not to interfere with prior appropriators at a time when they need the water and are putting it to beneficial use. Mr. Helm testified that the stored water would be pumped from the reservoir and applied to cropland in the most efficient manner possible. In support of his claim that there are surplus waters in Little Dry Creek, Mr. Helm introduced Applicant's Exhibit No. 1, heretofore referred to. In reiteration of his intent and willingness to construct and operate the project in such a manner as to honor and not interfere with prior rights in any way, Mr. Helm introduced Applicant's Exhibit No. 2, also heretofore referred to.

7. Mr. John Carr, testifying for James Whiteside, John Gibbs and Sidney Bollinger, stated that his clients have no objection to the granting of this permit to the Applicant providing three conditions are met. These conditions are:

- (1) The permit is confined to the flood water stage.
- (2) That their prior rights are protected.
- (3) That proper means of releasing any water required to protect their rights is made.

Mr. Carr's clients affirmed this stand.

8. Objectors, other than Mr. Carr and his clients, who testified were Mr. John W. Mckerlick, Mr. Gerald Gibbs and Mr. Ross Billing. The testimony of these Objectors was substantially the same as that presented by Mr. Carr and his clients. Mr. Mckerlick also testified that he uses streamflow in Little

Dry Creek for watering 300 head of cattle and 1200 head of sheep and is concerned about maintaining flow for this purpose. Mr. Gerald Gibbs also testified that he waters 1500 head of livestock from Little Dry Creek and is concerned with maintaining water quality and quantity to continue this use and that the water has been used for this purpose since 1907. Mr. Ross Billing testified that he pumps water from Big Dry Creek for irrigation purposes for which he has a permit. Little Dry Creek is a tributary of Big Dry Creek. Mr. Ross Billing's permit is Beneficial Water Use Permit No. 5756-s40D.

PROPOSED CONCLUSIONS OF LAW

1. The Objectors of this Application have apparent prior rights to the water from the proposed source of supply.^{1/}

2. Under the provisions of Section 89-880 R.C.M. 1947, a permit is required to appropriate water from Little Dry Creek, a tributary of Big Dry Creek in Garfield County, Montana.

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

4. The rights of prior appropriators will not be adversely affected if the permit is conditioned to protect these rights.

5. The proposed means of diversion or construction are 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 application as modified is for less than 15 cubic feet per second, therefore, the Applicant is not responsible for the burden of proof showing that the rights of prior appropriators will not be adversely affected.

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

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10. 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.

1/ NOTE: The Applicant and many of the Objectors have records of water right filings. Their validity would be somewhat questionable as to whether the amount stated in the filing was ever put to beneficial use. Rather than ruling on their validity, the filings were used as an indicia of a right in the preparation of this proposed order.

Based upon the above Proposed Findings of Fact and Conclusions of Law, the following Order is proposed.

PROPOSED ORDER

1. Application for Beneficial Water Use Permit No. 8306-s40D by Helm Hereford Ranch is granted as modified, to appropriate 14.99 cfs or 6,728 gpm of water, not to exceed 1,290 acre-feet per annum for irrigation, 5 acre-feet per annum for stock watering, and 5 acre-feet per annum for wildlife, for a total of 1,300 acre-feet per annum, from Little Dry Creek, a tributary of Big Dry Creek, in Garfield County, Montana, to be diverted from Little Dry Creek by means of two pumps, at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, Township 17 North, Range 43 East, M.P.M., and impounded in an enlarged existing reservoir with a new capacity of 500 acre-feet, located on the section line between the NE $\frac{1}{4}$ of Section 28 and the NW $\frac{1}{4}$ of Section 27, both in Township 17 North, Range 43 East, M.P.M., and used for new irrigation on 190 acres in Section 27, 160 acres in Section 34, and 130 acres in Section 35, and supplemental irrigation on 121 acres in Section 27 and 30 acres in Section 28, all in Township 17 North, Range 43 East, M.P.M., and containing a total of 631 acres, more or less, from April 1 to November 1, inclusive, of each year, and for stock-watering and wildlife purposes from January 1 to December 31, inclusive, of each year.

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2. Applicant's Permit No. 8306-s40D is granted subject to all prior water rights in the source of supply and is further conditioned as follows:

(A) Water shall be diverted from Little Dry Creek at such times only as Little Dry Creek is at flood stage or at such other times as prior water rights holders downstream from Applicant's point of diversion are not calling for said water.

(1) Flood stage, for the purpose of this order, shall be that stage of flow when water from Little Dry Creek is flowing freely and unobstructed over the concrete slab of the stream crossing located on Little Dry Creek in the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 21, Township 17 North, Range 43 East, or in the event said slab is altered or rendered unusable for this purpose the Department shall prescribe an alternate method of determination of flood stage upon request from Little Dry Creek water right holders.

(2) It shall be the Applicant's responsibility to ascertain that prior rights holders are not calling for the water during periods of diversion other than at flood stage.

(3) Applicant shall maintain a satisfactory record of all diversions made during periods other than flood stage and shall submit this record to the Department upon request.

(B) The storage facility shall be provided with an adequate release device or devices so that when necessary water may be released to satisfy prior downstream water rights.

(1) Water diverted and stored under the conditions set forth in 2-A above shall not be required to be released.

(2) Water which shall be released upon demand by prior water rights holders is that water appropriated by Applicant at a time when such appropriation adversely affected prior water rights holders.

(C) Plans and specifications for this project including diversion facilities, storage facilities and distribution system shall be presented to the Department for approval prior to appropriation of the water requested.

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

4. The issuing of this Permit by the Department in no way reduces the Applicant's liability for damages caused by Applicant's exercise of this Permit nor does the Department in issuing the Permit in any way acknowledge liability for damage caused by the Applicant's exercise of this Permit.

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 30th day of August, 1977.


WILLIAM F. THROM, HEARING EXAMINER

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