

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.)
8863-s42L BY ROBERT GRAY)

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

Pursuant to the Montana Water Use Act and to the Montana Administrative Procedures Act, after due notice, a hearing was held on September 20, 1977, at Miles City, Montana for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit, William F. Throm, Hearing Examiner, presiding.

The Applicant, Robert Gray, appeared at the hearing to present testimony in support of his application. Mr. Gray was represented by Mr. Keith Strong, Attorney at Law. The Applicant introduced into evidence six (6) exhibits to wit: Exhibit No. 1, an aerial photo of the project area; Exhibits No. 2, 3 and 4, photos of the proposed damsite; and Exhibits No. 5 and 6, photos of the existing lower dam from which water will be pumped. All of the above exhibits were received into evidence without objection and were marked Applicant's Exhibit No. 1, 2, 3, 4, 5 and 6 respectively. Mr. Charles Shumaker also appeared at the hearing and presented testimony in support of the application.

Mr. Eugene Garber, President, Garber Land and Livestock Company, appeared at the hearing to testify in objection to the granting of the permit. Mr. Garber introduced into evidence 3 exhibits, to wit: Exhibit No. 1, Baker Recreational Access Guide Map showing the proposed project area, the Dry Creek Watershed and the Garber holdings; Exhibit No. 2, a sketch of the Garber irrigation system in Section 1, irrigated from Ash Creek; and Exhibit No. 3, Notice of Appropriation filed for record by Eugene Garber on December 31, 1962. The Objector's Exhibits No. 1, 2 and 3 were received into the record without objection and were marked accordingly. Mr. Garber was not represented by legal counsel.

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Mr. Don Riddle, Water Rights Bureau Field Manager, Billings Field Office, Water Resources Division, Montana Department of Natural Resources and Conservation attended the hearing to testify on behalf of the Department. Mr. Ron Butler, Soil Conservation Service Technician, Miles City, Montana, also appeared to present testimony on behalf of the Department. Mr. Butler introduced into evidence two (2) exhibits to wit: Exhibit No. 1, Ash Creek watershed map; and Exhibit No. 2, Hydrology Computations consisting of four pages. These exhibits were received into evidence with the stipulation by the Applicant that acceptance was not a confirmation of the accuracy of values given or conclusions made, and with the stipulation by the Objector that the values given and conclusions drawn are not of practical value in forecasting actual year to year value because of many unpredictable variables that influence runoff. The Exhibits were marked as Department's Exhibits No. 1 and 2 respectively.

A Proposed Order (Proposal for Decision) dated December 7, 1977 was issued by the Hearing Examiner, William F. Throm.

The Proposed Order Notice as issued on December 7, 1977 provided that the Proposed Order would 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 mailed to the Department within ten (10) days after receipt of service of the Proposal for Decision upon parties herein. No extensions of time for filing exceptions will be granted. 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.

On December 14, 1977 the Hearing Examiner received a letter from Mr. John R. Carr, as dated December 13, 1977, requesting a transcript of the September 20, 1977 hearing proceeding and an extension of time in which to file written exceptions in opposition to the Proposal for Decision on behalf of his client Mr. Eugene Garber. The Hearing Examiner, Mr. William F. Throm, by letter of December 21, 1977 to Mr. Carr stated in part that, "Upon your receipt of the transcript of the hearing

you will be granted ten (10) days to file briefs, if any. Should this time prove to be inadequate, you may be granted a reasonable extension of time upon my receipt of a written request from you to that effect."

Mr. Carr by letter of December 30, 1977 to the Department acknowledged receipt of the hearing transcript and requested an additional 15 days or until January 18, 1978 to prepare and file his Brief and Objections to the proposed decision. Mr. Throm by letter of January 3, 1978 to Mr. Carr granted the 15 day requested extension of time, therefore, he would have 25 days after receipt of the Hearing transcript to submit his Exception and Brief.

On January 19, 1978 the Department received Mr. Carr's Exception and Brief as dated January 13, 1978 and filed on behalf of Eugene Garber and Garber Land and Livestock in opposition to Application No. 8863-s42L by Robert Gray.

The Department by letter of January 26, 1978 to Mr. Carr acknowledged receipt of his letter of January 13, 1978 and his attached, "Objections to Proposed Findings of Fact and Conclusions of Law and Brief in Support Thereof", including therein the Statement of Case, Objectors Exceptions, Argument, Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order. It was also acknowledged that Mr. Garber requests a hearing before the Administrator of the Water Resources Division so he could present oral argument in support of his objections. Mr. Carr was advised that the Applicant and his counsel, Mr. Keith Strong would be sent a copy of their filed Exception and Brief and be afforded the right to file a Reply Brief on their behalf before we proceed on to the requested oral argument hearing before the Water Resources Division Administrator.

By letter of January 26, 1978 the Department informed Mr. Strong of Mr. Carr's Exception and Brief and advised him of the opportunity to file a Reply Brief on behalf of his client the Applicant, Mr. Gray, within fifteen (15) days after receipt of the Department's letter.

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On February 2, 1978 the Department received a letter from Mr. Strong which stated that he does intend to file a Reply Brief. On February 14, 1978 the Department received Mr. Strong's Reply Brief (Applicant's Response to Objections) as dated February 13, 1978.

The Department by letter of February 16, 1978 to Mr. Strong with copies to Mr. Gray, Mr. Garber, and Mr. Carr, informed all parties that since oral argument had been requested by Mr. Garber, that the application would be forwarded to the Administrator for scheduling of the requested oral argument hearing and all parties to this matter would be notified at least two weeks in advance by certified mail of the hearing time, place and date to be held in Helena.

On June 20, 1978 the Administrator issued a Notice of Oral Argument Hearing on Exceptions to Proposal for Decision in the matter of Application for Beneficial Water Use Permit No. 8863-s42L by Robert Gray. The Notice stated, that on Wednesday, July 19, 1978 at 1:30 p.m. an oral argument hearing would be held before the Administrator of the Water Resources Division in the County Community Room, located in the basement of the Custer County Courthouse at Miles City, Montana for the purpose of hearing oral arguments on the filed exception and briefs. Oral arguments must be on the established record and no new evidence could be introduced. Parties herein were requested to notify the Administrator in writing before the hearing if they did not wish to attend, which in such case the exception and briefs would stand as filed.

The oral argument hearing before the Administrator was held in Miles City, Montana on July 19, 1978 in the County Community Room of the Custer County Courthouse for the purpose of hearing oral arguments by the Applicant and Exceptor.

The Applicant, Robert Gray, was present and was represented by his attorney, Mr. R. Keith Strong.

The Exceptor, Eugene Garber was present and was represented by his attorney, Mr. Dennis Corbin.

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The hearing was also attended by Don Riddle and Keith Kerbel of the Department's Water Rights Bureau.

The Administrator of the Department's Water Resources Division hereby makes the following Final Order, based on the Hearing Examiner's Proposal for Decision of December 7, 1977, the application, objections, exceptions, briefs, the testimony of the oral argument hearing held in Miles City on July 19, 1978, both hearing tape recordings, and all pertinent information and documents filed in connection with this matter, and made a permanent record of the Application file.

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on December 7, 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 to existing Condition Nos. 1 and 3, and by adding new Condition Nos. 4, 5, 6, 7 and 8.

FINAL ORDER

1. Subject to the conditions cited below, Application No. 8863-s42L by Robert Gray, is hereby granted allowing the appropriation for a maximum of 11.13 cubic feet per second or 5,000 gallons per minute, not to exceed 168.5 acre-feet of water per annum for irrigation and one (1) acre-foot of water per annum for stockwatering, for a total of 169.5 acre-feet of water per annum from Dry Creek, a tributary of Ash Creek in Custer County, Montana, to be impounded in a new 169.5 acre-foot reservoir on Dry Creek at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 9 North, Range 54 East, M.P.M., and used for new irrigation on 25 acres in the NE $\frac{1}{4}$ and 30 acres in the SE $\frac{1}{4}$ for a total of 55 acres, more or less, in Section 28, Township 9 North, Range 54 East, M.P.M., from March 1 to October 15, inclusive, of each year, and for stock watering from May 1 to September 1, inclusive, of each year.

The Permittee intends to construct a new earth-fill dam on Dry Creek at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 9 North, Range 54 East, M.P.M. Water granted by this Permit will be stored in the new reservoir and released when needed downstream to an existing dam and reservoir owned by the Permittee on Dry Creek located in Section 28, Township 9 North, Range 54 East, M.P.M. The water will then be pumped from said existing reservoir in Section 28, and used to sprinkle irrigate 55 acres, more or less, in said Section 28 as described above.

2. The above granted permit is provisional and is granted subject to all prior existing water rights in the source of supply, including but not necessarily limited to all existing water rights in the source of supply of those objecting herein, and subject to any final determination of prior existing water rights, as provided by Montana law.

3. The above Provisional Permit is granted subject to the following conditions:

- a. Installation and maintenance of satisfactory devices to measure inflow and outflow, into and from the new impoundment.
- b. Installation and maintenance by Permittee of an adequate drainage device and/or by-pass structure in the new dam capable of draining the reservoir and capable of releasing water at a rate of flow equal to the rate of inflow when necessary to satisfy downstream prior water rights.
- c. The Permittee shall cooperate with prior downstream water rights holders and shall allow reasonable access to said water rights holders and authorized Department personnel for the purpose of inspection and verification of water flow measurements.
- d. Plans and specifications for this project shall be submitted by the Permittee to the Department for review and approval prior to the start of construction.

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4. The Provisional Permit is granted subject to the Permittee's installation and maintenance of an adequate drainage device and/or by-pass structure in the Permittee's existing dam located on Dry Creek in Section 28, Township 9 North, Range 54 East, M.P.M. and including any other existing dams or dikes downstream between the Permittee and the Objector, that is capable of releasing water from the Permittee's said existing dam and any dikes within a twenty-four hour period when necessary to protect and satisfy prior downstream water rights.

5. The Permittee shall submit to the Department plans and specifications for the adequate drainage device(s) and/or by-pass structure(s) noted in Condition No. 4 above, for review and approval by the Department prior to the start of construction.

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

7. The issuing of a Provisional Permit by the Department in no way reduces the Permittee's liability for damage caused by the Permittee's exercise of his Provisional Permit, nor does the Department in issuing a Provisional Permit, in any way acknowledge liability for damage caused by the Permittee's exercise of his Provisional Permit.

8. The above conditions to the granting of this Provisional Permit shall hold in full effect for any successor 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.

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Done this 16th day of November, 1978.

Orin Harris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

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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) PROPOSAL FOR DECISION
NO. 8863-s42L BY)
ROBERT GRAY)

* * * * *

Pursuant to the Montana Water Use Act and to the Montana Administrative Procedures Act, after due notice, a hearing was held on September 20, 1977, at Miles City, Montana, for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit, William F. Throm, Hearing Examiner, presiding.

The Applicant, Robert Gray, appeared at the hearing to present testimony in support of his application. Mr. Gray was represented by Mr. Keith Strong, Attorney at Law. The Applicant introduced into evidence six (6) exhibits to wit: Exhibit No. 1, an aerial photo of the project area, Exhibits No. 2, 3 and 4, photos of the proposed damsite, and Exhibits No. 5 and 6, photos of the existing lower dam from which water will be pumped. All of the above exhibits were received into evidence without objection and were marked Applicant's Exhibit No. 1, 2, 3, 4, 5, and 6 respectively. Mr. Charles Shumaker also appeared at the hearing and presented testimony in support of the application.

Mr. Eugene Garber, President, Garber Land and Livestock Company appeared at the hearing to testify in objection to the granting of the permit. Mr. Garber introduced into evidence 3 exhibits, to wit: Exhibit No. 1, Baker Recreational Access

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Guide Map showing the proposed project area, the Dry Creek Watershed and the Garber holdings, Exhibit No. 2, a sketch of the Garber irrigation system in Section 1, irrigated from Ash Creek, and Exhibit No. 3, Notice of Appropriation filed for record by Eugene Garber on December 31, 1962. The Objector's Exhibits No. 1, 2 and 3 were received into the record without objection and were marked accordingly. Mr. Garber was not represented by legal counsel.

Mr. Don Riddle, Office Manager, Billings Field Office, Water Resources Division, Montana Department of Natural Resources and Conservation attended the hearing to testify on behalf of the Department. Mr. Ron Butler, Soil Conservation Service Technician, Miles City, Montana also appeared to present testimony on behalf of the Department. Mr. Butler introduced into evidence two (2) exhibits to wit: Exhibit No. 1; Ash Creek Watershed Map and Exhibit No. 2, Hydrology Computations consisting of four (4) pages. These exhibits were received into evidence with the stipulation by the Applicant that acceptance was not a confirmation of the accuracy of values given or conclusions made, and with the stipulation by the Objector that the values given and conclusions drawn are not of practical value in forecasting actual year to year values because of many unpredictable variables that influence runoff. The Exhibits were marked as Department's Exhibits 1 and 2 respectively.

PROPOSED FINDINGS OF FACT

1. On April 21, 1976 the Department received Application for Beneficial Water Use Permit No. 8863-s42L from Robert Gray to appropriate 11.13 cfs or 5,000 gpm not to exceed 168.5 acre-feet

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per annum for irrigation and 1 acre-foot per annum for stock watering, for a total of 169.5 acre-feet, from Dry Creek, a tributary of Ash Creek, in Custer County, Montana, to be impounded in a new 169.5 acre-foot reservoir on Dry Creek, at a point in the NW1/4 NW1/4 NE1/4 of Section 33, Township 9 North, Range 54 East, M.P.M., and used for new irrigation on a total of 55 acres, more or less in Section 28, Township 9 North, Range 54 East, M.P.M. from March 1 to October 15, inclusive, of each year, and for stockwatering from May 1 to September 1, inclusive of each year.

2. On August 26 and September 2 and 9, 1976 the Department caused to be duly published in the Miles City Star, Miles City, Montana, notice of above Application for Beneficial Water Use Permit No. 8863-s42L.

3. On May 18, 1976 the Department received an Objection to Application for the above Application No. 8863-s42L from Eugene Garber, President, Garber Land and Livestock Company.

4. The Applicant, Robert Gray, testified that he proposes to build a new earth-fill dam on Dry Creek, a tributary to Ash Creek which is a tributary to O'Fallon Creek. The new dam will be a large structure, larger than necessary in order to take advantage of a good natural spillway, and will store approximately 169 acre-feet of water. There will be a pipe through the bottom of the dam to release stored water to an existing dam located about 1/2 mile down Dry Creek from the new dam site. Water in turn will be pumped from the lower existing dam and will be used for new irrigation on 50 to 56 acres of hay by means of a sprinkler irrigation system. In addition, approximately 1.0

acre-foot per annum will be used for livestock watering. Mr. Gray testified that he has had technical assistance from the Soil Conservation Service for site selection and planning of the project and that it will be a beneficial use of surplus water from Dry Creek, however, he does not believe the dam will fill every year. He testified that he has lived and ranched in the area for 21 years and has observed Dry Creek almost every day and has seen water running in Dry Creek almost every year during that period at times of spring snow melt or summer cloudburts. He further testified that he believes there is sufficient water in Dry Creek to satisfy this application in addition to the requirements of the Objector. He testified that his proposed new damsite is about 1-1/4 miles upstream from Ash Creek; that Dry Creek drains about 1300 acres and that the total Ash Creek watershed consists of 18,000 to 19,000 acres.

5. Mr. Charles Shumaker testified that he has lived and ranched on Ash Creek for 69 years and has observed it practically every year during that time; that it is an intermittent stream that flows almost every year during periods of snow melt and heavy rains and that he believes there is sufficient water to satisfy Mr. Gray's application request as well as the requirements of Mr. Garber. He testified that on several occasions from about July of 1966 to as recent as about 2 years ago, Mr. Garber has approached him concerning easements for the construction of an irrigation storage dam in Section 12, Township 9 North, Range 54 East above the mouth of Ash Creek for the purpose of storage of unused water for irrigation of benchland on Ash Creek.

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Mr. Shumaker testified that such easements would have been for canals and flooding of lands he controlled or owned at that time, however, the dam was never constructed and since that time, Mr. Garber has obtained water by pumping from O'Fallon Creek.

Mr. Shumaker testified that Mr. Garber had stated to him that there was excess water flowing from Ash Creek into O'Fallon Creek which was Mr. Garber's purpose for wanting to build this irrigation storage dam.

6. Mr. Eugene Garber testified that he uses Ash Creek water for water spreading on a total of 168 acres of hayland in Section 1, Township 9 North, Range 54 East; that he has a December, 1962 filing for 3,500 miners inches (87.5 cfs) for this purpose and that there is no excess water from Ash Creek, further, that granting the permit would adversely affect his prior water right. Mr. Garber testified that the past year he did not irrigate any of this acreage because of weather conditions, he further testified that some of the 168 acres under this system is not irrigable from Ash Creek without land preparation or pumping to it and that he has never irrigated more than approximately 118 acres in any one year. Mr. Garber testified that in the 17 years that the system has been in there has never been sufficient water to cover the entire acreages which would require 1 foot per acre; that in only 1 year out of 3 there has been sufficient water to cover as much as 50 acres; that in 1976 there was sufficient water for only 35.6 acres and in 1977 there was no runoff and that in the very best years which were 1963 and 1965 they still lacked 50 acre feet; that the remainder of the years

there were lesser amounts. He testified there has never been a year in the past 17 years when there has been too much water. He also testified that in the past he has planed high areas to obtain better coverage and it is his intention to continue the planing operations in order to place the remaining high areas under the water spreading system. Mr. Garber concluded his testimony by stating that if this permit were not denied a prior usage and water right would only be a mockery in the state of Montana because he has established a prior use and a water right.

7. Mr. Don Riddle, in presenting testimony on behalf of the Department, called upon Mr. Ron Butler, Soil Conservation Service Technician, to present hydrologic data. Mr. Butler testified that the data he was presenting was prepared by Keith Nelson, Area Engineer, Soil Conservation Service, Miles City, Montana, who had recently been transferred to South Dakota and was not available to present the testimony at this hearing. Mr. Butler testified that the entire Ash Creek watershed consisted of 17,152 acres or 26.8 square miles; that the watershed above Mr. Gray's proposed dam consisted of 1,337 acres and that other dams on Ash Creek intercepted additional drainage areas of 8,403 acres, leaving 8,749 acres of watershed to supply Mr. Garber's Ash Creek water requirements. Mr. Butler further testified that SCS hydrologic computations for 6 hour, 2 year frequency rainfall in the area revealed a runoff of 149.3 acre-feet from the proposed new damsite and snow melt runoff of 39 acre-feet for a total of approximately 188 acre feet. For the entire Ash Creek watershed computations for 6 hour, 2 year frequency storm showed 1,915 acre-feet runoff from rainfall and 500 acre-feet runoff from snow melt

for a total yield of 2,415 acre-feet. Bearing in mind that existing dams and the proposed new dam would intercept runoff from approximately one-half of the Ash Creek watershed Mr. Butler projected that runoff from the remaining area would be 250 acre-feet from snow melt and 957 acre-feet from rainfall for a total of 1,207 acre-feet.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880 R.C.M. 1947, a Beneficial Water Use Permit is required by the Applicant to appropriate water from the proposed source of supply.

2. The Objector, Eugene Garber, has an apparent prior existing water right from the source of supply which by law must be protected, however, the quantification and final determination of the validity of such rights must await the adjudication process mandated by Section 89-870 et seq., of the Montana Water Use Act, and any permits issued must be subject to that final determination.

3. It is recognized that the Objectors method of appropriation and use of the waters from the source of supply by diking and water spreading requires a high rate of flow for a short duration of time for maximum beneficial use; further it is recognized that there are times when water is available during periods of extremely high runoff produced by snow melt and high intensity summer rainfall when there is water surplus to the beneficial use requirements of prior appropriators; further, there are times when runoff occurs at rates of flow which are insufficient for beneficial use by means of the Objectors water spreading systems. All of the above conclusions were borne out by testimony presented by the Applicant,

the Objector and the witness for the Department. It is therefore concluded that there are unappropriated waters in the source of supply and in accordance with Section 89-866(3) of the Montana Water Use Act, the Department must encourage the development of facilities which would store and conserve such waters for beneficial use and for the maximization of the use of those waters in the state of Montana.

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

5. The proposed means of diversion or construction will be adequate if built in accordance with Soil Conservation Service plans and specifications and if said plans and specifications are approved by the Department prior to the start of construction.

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 for Beneficial Water Use Permit No. 8863-s42L by Robert Gray 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. Subject to the conditions cited below, the Application for Beneficial Water Use Permit No. 8863-s42L by Robert Gray is hereby granted allowing the appropriation for a maximum of 11.13 cfs or 5,000 gpm, not to exceed 168.5 acre-feet per annum for irrigation and 1 acre-foot per annum for stock watering, for a total of

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169.5 acre-feet, from Dry Creek, a tributary of Ash Creek, in Custer County, Montana, to be impounded in a new 169.5 acre-foot reservoir on Dry Creek, at a point in the NW1/4 NW1/4 NE1/4 of Section 33, Township 9 North, Range 54 East, M.P.M., and used for new irrigation on a total of 55 acres, more or less, in Section 28, Township 9 North, Range 54 East, M.P.M., from March 1 to October 15, inclusive, of each year, and for stock watering from May 1 to September 1, inclusive of each year.

2. The above Provisional Permit is granted subject to all prior existing water rights in the source of supply, including but not necessarily limited to all existing water rights in the source of supply of those objecting herein, and subject to any final determination of prior existing water rights, as provided by Montana Law.

3. The above Provisional Permit is subject to the following additional conditions:

- a. Installation and maintenance of satisfactory devices to measure inflow and outflow to and from the impoundment.
- b. Installation and maintenance by Permittee of an adequate drainage device and/or by-pass structure in the dam capable of releasing water, at a rate of flow equal to the rate of inflow when necessary to satisfy downstream prior water rights.
- c. The Permittee shall cooperate with prior downstream water rights holders and shall allow reasonable access to said water rights holders and authorized Department personnel for the purpose of inspection and verifica-

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tion of water flow measurements.

d. Plans and specifications for this project shall be submitted to the Department for review and approval prior to the start of construction.

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 mailed to the Department within ten (10) days after receipt of service of the Proposal for Decision upon parties herein. No extensions of time for filing exceptions will be granted. 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 7th day of December, 1977.


WILLIAM F. THROM
HEARING EXAMINER