STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATIONS FOR BENEFICIAL WATER USE PERMIT NOS. 11,798-s40D AND 11,800-s40D BY HOWARD WITTMAYER AND JOHN KRIKORIAN	))))	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on March 31, 1978 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 hereby modified by changing Item 4 and adding new items 5, 6 and 7.

FINAL ORDER

1. Subject to the conditions cited below, the Application for Beneficial Water Use Permit No. 11,798-s40D filed by Howard Wittmayer and John Krikorian is granted to appropriate 120 acre-feet per annum of water to be diverted from Sand Creek, a tributary of Big Dry Creek, in Garfield County, Montana, at a rate not to exceed 5.124 cubic feet per second or 2,300 gallons per minute, by means of a pump, at a point in the NW¼ SW¼ NW¼ of Section 17, Township 17 North, Range 38 East, M.P.M., and used on a total of 60 acres, more or less, of new irrigation in said Section 17, from March 1 to October 15, inclusive, of each year.

a. The permit is for the appropriation of Sand Creek flood waters only. Diversion shall not commence until such time as the flow passing the point of diversion exceeds 6.5 cfs. Diversion shall be discontinued when the flow passing down Sand Creek at the point of diversion, while pumping is in progress, recedes to 1.0 cfs.

b. Measurement of the rate of flow shall be by means of a

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measuring device designed by a qualified engineer and approved by the Department, or by measurement methods approved by the Department.

c. Satisfactory water measurement records shall be maintained and submitted to the Department upon request. Such records shall show the periods of diversion, and for those periods shall show the rate of flow passing down Sand Creek and the rate of flow and volume of water diverted.

2. Subject to the conditions cited below, the Application for Beneficial Water Use Permit No. 11,800-s40D filed by Howard Wittmayer and John Krikorian is granted to appropriate 10.0 acre-feet of water per annum to be diverted by a revised existing spreader dike system on Long Branch, a tributary of Sand Creek, in Garfield County, Montana, at a point in the NE¼ SW¼ SE¼ of Section 21, Township 17 North, Range 38 East, M.P.M., and used on 5.0 acres of new irrigation in said Section 21, from March 1 to October 15, inclusive, of each year.

3. The above permits are provisional and are subject to all prior existing water rights in the source of supply, including but not limited to, prior decreed water rights, if any, and not necessarily limited to all existing water rights of those objecting herein, and subject to any final determination of prior existing water rights, as provided by Montana Law.

4. The Permittees shall submit plans and specifications for the projects to the Department for review and approval prior to the start of construction, within 180 days after receipt of the Provisional Permits. This time period may be extended upon timely written request for an extension of time to the Department.

5. The Provisional Permits are granted subject to the right of the Department to revoke the permits 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.

6. The issuing of the Provisional Permits by the Department in no way reduces

the Permittees' liability for damage caused by the Permittees' exercise of their Provisional Permits, nor does the Department in issuing the Provisional Permits, in any way acknowledge liability for damage caused by the Permittees' exercise of their Provisional Permits.

7. The above conditions to the granting of these Provisional Permits shall hold in full effect for any successor in interest to the Permittee's 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 14th day of June, 1978.

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 APPLICATIONS FOR BENEFICIAL WATER USE PERMIT NOS. 11,798-s40D and 11,800-s40D BY HOWARD WITTMAYER AND JOHN KRIKORIAN	)))))	PROPOSAL FOR DECISION

* *

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on November 17, 1977, at Jordan, Montana, for the purpose of hearing objections to the above-named Applications for Beneficial Water Use Permit Nos. 11,798-s40D and 11,800-s40D, William F. Throm, Hearing Examiner, presiding.

The Applicants, John Krikorian and Howard Wittmayer, appeared at the hearing and presented testimony in support of the application. Mr. Krikorian and Mr. Wittmayer were represented by legal counsel, Matt Knierim, Attorney at Law, Glasgow, Montana. One exhibit was introduced supporting the applications, to wit: Applicant's Exhibit No. 1, Conservation Plan Map, John and Francis A. Krikorian, Garfield County, Montana. The Applicant's exhibit was marked accordingly and received into the record without objections.

Others appearing at the hearing and testifying in support of the application were Mr. Coleman Murnion.

Objectors, Kirby and Harbaugh, attended the hearing and presented testimony or statements. The Objectors, Paul, Larry and Cornelia Harbaugh were represented by legal counsel, Robert Funk, Attorney at Law, Jordan, Montana. The Objector, Jack Kirby, was represented by legal counsel, James Lucas, Attorney at Law of the law firm, Lucas, Jardine and Monaghan, Miles City, Montana. The Objectors introduced one exhibit supporting their objection to wit: Exhibit No. AA, Objector Kirby's Ownership Map. The Objector's

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2. On April 28 and May 5 and 12, 1977, the Department caused to be duly published in the Jordan Tribune, Jordan, Montana, notice of the above Applications for Beneficial Water Use Permits Nos. 11,798-s40D and 11,800-s40D.

3. On May 24, 1977, the Department received individual objections to Application No. 11,798-s40D from Paul H. Harbaugh, Cornelia E. Harbaugh and Larry Harbaugh.

4. On May 25, 1977, the Department received an objection to Application No. 11,798-s40D from the Kirby Ranch by Jack Kirby.

5. On May 31, 1977, the Department received individual objections to Application No. 11,800-s40D from Larry Harbaugh, Cornelia E. Harbaugh and Paul H. Harbaugh.

6. On or about August 4, 1977, the Department received a hand carried letter at the Glasgow Field Office from Francis Krikorian requesting that Application 11,798-s40D be amended to "60 acres to be irrigated" not 108 acres shown on the original application.

7. Mr. John Krikorian testified that the area he proposes to irrigate with the Sand Creek project consists of a flat area bisected by Sand Creek. He proposes to construct two border dikes along Sand Creek. He proposes to pump water from Sand Creek at times when there is ample flow during high water periods by means of an 8 inch Crisafulli pump which will deliver about 2,300 gpm to approximately 60 acres within the diked area for new irrigation of alfalfa. Mr. Krikorian testified that there will be no construction or blockage in Sand Creek other than the suction end of the pump itself. He testified that return flows from the system would discharge into Sand Creek. He further testified the fields to be irrigated consist of a sandy subsoil which will subirrigate from springs and seepage from Sand Creek and that once the alfalfa is started very little irrigation water would be required.

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estimated storage capacity of 2,282 acre-feet. He stated that he did not know the use made of this stored water, therefore, the annual available space to contain the runoff might be less than the average runoff produced. In any event, he testified that the Sand Creek watershed below the LaCosta dams would produce 859 acre-feet of runoff at the proposed point of diversion. He further testified that the Long Branch Watershed consists of 32 square miles and based upon the same estimates as previously cited would produce an average of 341 acre-feet of runoff per year.

10. The Objectors, Harbaughs, testified that they farm and run cattle and horses and had, in the past, irrigated about 10 acres of alfalfa, but no longer do so. They testified that they use the water from Sand Creek and Long Branch Creek for livestock watering purposes of about 300 head; that their place lies about 6 miles downstream from the proposed points of diversion and that since construction of the LaCosta dams the flow in Sand Creek has been reduced to the extent that a further reduction in flow will adversely affect their prior rights and will deprive them of good quality livestock water. They testified that the flood flows are necessary to flush out salt accumulations and stagnated water holes and that granting of the permits would reduce the flows to the extent that this flushing action would no longer occur. They testified that in the last year or two the creeks have been so dry that the volume of water requested is not available. They testified that the LaCosta dam and other dams on tributaries of Sand Creek and Long Branch Creek have almost completely intercepted the normal flow.

11. Mr. Jack Kirby testified that his father homesteaded his place in 1916 or 1917 and that since that time, they have depended upon the waters of Sand Creek which flows through their place for livestock watering purposes which consists of approximately 1,100 head and goes as high as 1,500 head. He testified that since the construction of the LaCosta dams

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

4. The proposed means of diversion or construction will be adequate if built in accordance with Soil Conservation Service plans and specifications or plans and specifications prepared by a qualified consulting engineer, and if said plans and specifications are approved by the Department prior to the start of construction.

5. The proposed use of water is a beneficial one.

6. 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.

7. The Application for Beneficial Water Use Permits Nos. 11,798-s40D and 11,800-s40D by Howard Wittmayer and John Krikorian 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. 11,798-s40D filed by Howard Wittmayer and John Krikorian is granted to appropriate 120 acre-feet per annum of water to be diverted from Sand Creek, a tributary of Big Dry Creek, in Garfield County, Montana, at a rate not to exceed 5.124 cubic feet per second or 2,300 gpm, by means of a pump, at a point in the NW¼ SW¼ NW¼ of Sec. 17, T. 17 N., R. 38 E., M.P.M., and used on a total of 60 acres, more or less, of new irrigation in said Sec. 17, from March 1 to October 15, inclusive, of each year.

a. The permit is for the appropriation of Sand Creek flood waters only. Diversion shall not commence until such time as the flow passing the point of

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 31st day of March, 1978.

WILLIAM F. THROM
HEARING EXAMINER

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