

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR)
SEVER OR SELL APPROPRIATION WATER)
RIGHT NO. 12,203-ss41-I BY TREASURE)
STATE ACRES, INCORPORATED)

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on April 18, 1978 by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

FINAL ORDER

The Application for Sever or Sell Appropriation Water Right No. 12,203-ss41-I by Treasure State Acres, Incorporated, is hereby denied.

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 15th day of June, 1978.

Orvin Ferris

Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 12203

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

IN THE MATTER OF APPLICATION)
FOR SEVER OR SELL APPROPRIATION) PROPOSAL FOR DECISION
WATER RIGHT NO. 12,203-ss41-I)
BY TREASURE STATE ACRES, INCORPORATED)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on February 24, 1978, at Helena, Montana, for the purpose of hearing objections to the above-named Application for Sever or Sell of Appropriation Water Right No. 12,203-ss41-I, William F. Throm, Hearing Examiner, presiding.

The Applicant, Treasure State Acres, Inc., represented by Thomas J. Allen, President, appeared at the hearing and presented testimony in support of the application. Treasure State Acres, Inc. was represented by legal counsel, John F. Bell, Attorney at Law, who would be the recipient of the water right. Eight exhibits were introduced by the Applicant supporting the application, to wit: Exhibit Nos. A-1, Contract for Option to Purchase Water Right between John F. Bell and H.C. Larson; A-2, Notice of Water Appropriation, H.C. Larson, Seller and John F. and Marjorie B. Bell, Buyers; A-3, Affidavit executed by Harold R. Cranmer; A-4, DNR&C Proposal for Decision, Application to Sever or Sell Appropriation Water Right No. 1940-ss41-I; A-5, Clarification Order on Seven-Mile Water Rights No. 5860 in the District Court of the First Judicial District; A-6, a copy of a page from a decree (not legible); A-7 DNR&C Authorization to Change Appropriation Water Right No. 1940-ss41-I; and A-8, Bill of Sale of Severed Water Right, Treasure State Acres to Frank J. Schatz, Jr.

The Applicant's exhibits were marked accordingly and received into the record with objections which were later withdrawn. No others appeared

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at the hearing to testify in support of the application.

Fifteen Objectors attended the hearing. Seven Objectors presented testimony or statements. The Objectors, Green Meadow-Seven Mile Creek Water User's Association and Russell Weingartner were represented by legal counsel, Keith Keller, Attorney at Law; Objector Montana Department of Military Affairs was represented by Assistant Adjutant General B/G Harry Thode, Lt. Col. Steve Keim, and legal counsel, Philip W. Strobe, Attorney at Law. The Objectors introduced three exhibits supporting their objection to wit: Exhibit Nos. 0-1, By Laws of the Green Meadow-Seven Mile Creek Water Associations; 0-2, Ditch Riders Water Rotation records for 1974-1977 consisting of six (6) sheets; and 0-3, a map of Green Meadow-Seven Mile Creek "Paydirt Irrigation System". The Objectors' exhibits were marked accordingly and received into the record without objections. Objectors present were the Department of Military Affairs, The Green Meadow-Seven Mile Creek Water User's Association, John S. Anderson, W.B. Andrews, Edwin L. Baum, Laurence Bird, David J. Brown, Bobbie (Roberta) Burcar, Jennifer Craig, Mrs. Robert E. Fifer, John E. and Rae M. Haas, the R.V. Ranch Co. by James O'Connell, President, Julia E. Sparks, L.C. Stetzner, and Russell Weingartner.

Others present were Jeff Andrews and Bill Romine.

Montana Department of Natural Resources and Conservation personnel and witnesses present and testifying on behalf of the Department were Stan Jones, Hearings Technical Representative, Water Rights Bureau; Jack Collings, former Ten Mile Creek and Seven Mile Creek Water Commissioner; and Allen Smith, present Ten Mile Creek and Seven Mile Creek Water Commissioner. The Department was represented by legal counsel, Gary Spaeth, Attorney at Law. Seventeen exhibits were introduced by the Department to wit: Exhibit Nos. D-1, Memo dated December 2, 1977, To File, From Stan Jones, Subject - Field Investigation on November 10, 1977; D-2, map and photos of project area; D-3 was

the same as Applicants' Exhibits A-4 and A-7 and was not introduced; D-4, average annual precipitation overlay, Ten Mile Creek and Seven Mile Creek and tributaries; D-5, Average Annual Precipitation, Montana, based on 1941-1970 base period; D-6, computer printout of Ten Mile Creek USGS records, 1909-1954; D-7, General Summary of USGS Stream Flow Records for Ten Mile and Seven Mile Creeks; D-8, worksheet by Stan Jones derived from USGS Surface Water Records, 1909-1913, Ten Mile and Seven Mile Creeks; D-9, computation sheet prepared by Stan Jones for Treasure State Acres Irrigation Requirements; D-10, copy of Seven Mile Creek District Court, First Judicial District Decree; D-11, copy of District Court First Judicial District Ten Mile Creek Decree; D-12, listing of Seven Mile Creek decreed rights; D-13, listing of Ten Mile Creek decreed rights; D-14, hypothetical flow computations for Ten Mile and Seven Mile Creeks (3 sheets); D-15, priority listing, Ten Mile Creek Water Users; D-16, copy of Water Delivery Records, 1976 and 1977, Ten Mile and Seven Mile Creeks; D-17, copy of 1977 Water Delivery Records, Brown and Weingartner; and D-18, copies of Monthly Water Reports, 1964-1975, Ten Mile and Seven Mile Creeks.

SUMMARY OF THE RECORD

1. On April 13, 1977, the Department received an Application to Sever or Sell Appropriation Water Right No. 12,203-ss41-I filed by Treasure State Acres, Incorporated of Helena, Montana, and described as follows: The Applicant has requested to sever and sell a portion of the following decreed water right: Decree Case No. 4989 granted to Prickley Pear Land Co., priority date May 1, 1865, for 81 miners inches from Ten Mile Creek. The Applicant proposes to sever and sell 24.30 miners inches or 272.16 gallons per minute of water, up to 100 acre-feet per annum from Ten Mile Creek of the original 81 miners inches decreed to Prickley Pear Land Co. (Note: 24.30 miners inches represents 30% of the original 81 miners inches. The other 70% of the

original 81 miners inches was previously sold by the Applicant.) The water has been diverted from Ten Mile Creek at a point in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 7, T. 10 N., R. 3 W., M.P.M., and used for irrigation on a total of 75 acres, more or less, in Sec. 8, T. 10 N., R. 3 W., M.P.M., from May 1 to September 15, inclusive of each year.

Thirty-percent or 272.16 gallons per minute (24.30 miners inches) of the above decreed right will be diverted from Seven Mile Creek, a tributary of Ten Mile Creek, at points in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Sec. 5, T. 10 N., R. 4 W., M.P.M., and will be used for irrigation on a total of 65 acres, more or less, in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Sec. 5 from May 1 to September 15, and for stock watering from May 1 to September 15, inclusive, of each year.

The Applicant proposes to sever and sell the above water right from Ten Mile Creek to John F. Bell who will divert and use said water out of Seven Mile Creek.

2. On August 10, 17 and 24, 1977, the Department caused to be duly published in the Independent Record, Helena, Montana, notice of the above Application for Sever or Sell Appropriation Water Right No. 12,203-ss41-I. Objections were received and filed/ⁱⁿopposition to the Application for Sever or Sell Appropriation Water Right as follows:

- September 6, 1977 from Lyle F. and Helen Clow
- September 12, 1977 from John S. Anderson
- September 14, 1977 from Edwin L. Baum
- September 16, 1977 from Julia E. Sparks
- September 16, 1977 from L.C. Stetzner
- September 20, 1977 from Laurence and Jane M. Bird
- September 21, 1977 from John M. and Eleanor M. Kinsey
- September 21, 1977 from Hugh R. Kelleher

September 21, 1977 from Barbara A. Rawdon
September 21, 1977 from Robert F. Fifer
September 22, 1977 from W.B. Andrews
September 23, 1977 from Theodore D. and Rita A. Tenneson
September 23, 1977 from Mary Ellen Poole
September 23, 1977 from David J. Brown
September 26, 1977 from the R.V. Ranch Co. by James O'Connell,
President
September 26, 1977 from Bobbie (Roberta) Burcar
September 26, 1977 from John E. and Rae M. Haas
September 27, 1977 from Dennis Buswell
September 27, 1977 from Stephen P. and Beverly J. Weber

Untimely Objections

September 29, 1977 from Montana Department of Military Affairs by
Steve I. Keim, Lt. Col.
December 2, 1977 from William and Jennifer Craig
December 20, 1977 from Harold A. Hoffman
December 21, 1977 from Harold Nelson
December 28, 1977 from James W. Glosser

4. Mr. John Bell testified that he is the prospective purchaser of the remaining 24 inches of water right from Ten Mile Creek belonging to Treasure State Acres and that he is also representing Treasure State Acres as legal counsel in the prospective sale of those remaining water rights from Ten Mile Creek. He testified that he acquired a right by purchase from H.C. Larson (reference Applicant's Exhibits A-1 and A-2) for 9.38 inches of water from Seven Mile Creek, which he stated isn't much water. With the precedence set by the Department in the Schatz Case in 1977 of 70% of the Treasure State Acres water right from Ten Mile Creek as being attributable to the Ten Mile Creek catch basin and 30% of the Treasure State Acres water right attributable

to Seven Mile Creek watershed, Mr. Bell and Mr. Tom Allen of Treasure State Acres made application to the Department of Natural Resources to transfer the 30% of Treasure State Acres water right attributable to Seven Mile Creek, 24.3 miners inches, to the Bell property on Seven Mile Creek above the confluence of Ten Mile and Seven Mile Creeks for irrigation of approximately 26 or 27 acres which would supplement the Bell present right of 9.38 inches.

5. Mr. Thomas J. Allen, President of Treasure State Acres, Inc. testified that the property when purchased in 1964 or 1965 was agricultural land used for raising and putting up hay; that since purchase, subdivision has been taking place; that about half of the acreage has been subdivided into small residential lots of less than 1 acre in size leaving approximately 120 acres in agricultural land that has been hayed in the last two or three years and was last irrigated in 1972. He testified that in 1975 he was authorized by the Department of Natural Resources to sell 70% of their first rights (meaning Treasure State Acres first rights, not Ten Mile Creek decreed first priority water rights) to Frank Schatz and that in 1975 Mr. Bell approached him concerning the sale of the remaining 30% of Treasure State Acres Ten Mile Creek decreed water right to which he agreed and is still willing to sell to Mr. Bell. Mr. Allen testified that Ten Mile Creek usually dries up at his point of diversion around the first of July.

6. Mr. Jones testified that the 70%-30% split in the matter of the Frank Schatz application, heretofore referred to, was based to the best of his knowledge, proportional to the size of the drainage areas only. He testified that 70% of the total drainage area above the confluence of Ten Mile and Seven Mile Creek is on Ten Mile Creek and 30% of the total drainage area is on Seven Mile Creek. Mr. Jones further testified that differences in the hydrological characteristics of the Ten Mile Creek and Seven Mile Creek watersheds such as cover, exposure, precipitation etc. convinced him that

the 70%-30% split was not realistic. He cited documents and calculations to substantiate this opinion, including United States Geological Survey surface water records for a period of five years, 1909-1913, that show a relationship of 83.6% from Ten Mile Creek and 16.4% from Seven Mile Creek. Mr. Jones testified that he believed this to be a more realistic split, but he cautioned that it can vary from year to year depending upon climatic conditions and other variables and cannot be realistically apportioned based upon area only.

7. Mr. Jones testified that the Treasure State Acres Ten Mile Creek decreed water right, in question, is No. 12 in priority with a date of May 1, 1865 and that the earliest right on Seven Mile Creek has a priority date of June 11, 1865. Mr. Jones testified that Ten Mile Creek, from its headwaters to its mouth, is covered by the Ten Mile Creek Decree and that Seven Mile Creek, from its headwaters to its confluence with Ten Mile Creek, is covered by the Seven Mile Creek Decree and that to his knowledge each has been administered separately. This was confirmed by the Department witnesses, Mr. Jack Collings and Mr. Allen Smith. Mr. Collings testified that he was instructed by District Court Judge Fall to administer the decrees separately, however, no document was presented substantiating such an order.

8. Mr. Collings and Mr. Smith each testified that, at no time in their cumulative service of approximately 14 years as commissioners on Ten Mile Creek and Seven Mile Creek, did they ever cut water off from Seven Mile Creek users to satisfy Ten Mile Creek decreed water right users. Each also testified that it was his experience that when Ten Mile Creek was short of water, sufficient to satisfy the decreed rights below its confluence with Seven Mile Creek, Seven Mile Creek was also short of water, and what water did remain was not of sufficient volume to reach Ten Mile Creek in measurable or useable quantities after about July 1st of each year except with the

possibility of a flash flood on Seven Mile Creek.

9. Mr. Keller, on behalf of his clients Weingartner and Seven Mile Creek Water Users, moved that the application be dismissed upon the grounds that Seven Mile Creek is not, in fact, a tributary of Ten Mile Creek during the irrigation season.

10. Mr. Keller's motion to dismiss was not accepted by the Hearing Examiner.

11. Mr. Strobe, on behalf of the Department of Military Affairs, joined with Mr. Keller in his motion for dismissal and set forth two further grounds for dismissal, the first, that the evidence before the examiner clearly established that other persons would be injured by authorizing the change and secondly, that the proposal is to take a portion of an adjudicated water right and transport it over and give it priority over other adjudicated rights in another adjudicated stream.

12. Mr. Spaeth, on behalf of the Department of Natural Resources and Conservation, urged that the motions for dismissal be denied and the hearing go forward with the burden being placed upon the Objectors to show adverse affect or injury to other persons.

Mr. Spaeth argued that there are three critical questions to be decided in this case: First, the question of injury, secondly, the question as to whether or not one stream is tributary to the other, and thirdly, the question of how the Department will deal with the fact that there are two separate adjudications. He further argued that the question of injury to others now be placed upon the Objectors and the motion for dismissal be denied.

13. The motion for dismissal was denied by the Hearings Examiner.

14. Mr. Harrer testified that he has owned and operated the Green Meadow Ranch for 24 years, and for the entire period leased the Head Ranch and operated the two together, and irrigated between 800 and 1,000 acres on the

Green Meadow Ranch and in the neighborhood of 400 acres on the Head Ranch. He testified that he had first water rights on Seven Mile Creek of 300 inches which he used from the time the ditches thawed out in the spring on all of the Government Place (Head Ranch) and all of the Green Meadow Ranch irrigated land west of the Great Northern Railroad. He further testified that during his years of operating these units the only time that water from Seven Mile Creek ran into Ten Mile Creek during the irrigation season was in the spring of the year when the snow melted fast from the mountains, or when there was a heavy rain or cloudburst; that other than at such times he used all the water in Seven Mile Creek and could have used a lot more; that many times it was down to 150 inches by the first of September. He testified that in all those years nobody ever objected to his using all the water from Seven Mile Creek and that he was never told by a water commissioner to let Seven Mile Creek water flow down to Ten Mile Creek. He testified that when he sold the Green Meadow Ranch in 1972 in various size parcels, including to the Seven Mile Water Users, he sold the water rights proportionate to the acreage of the parcels. Mr. Harrer testified that in addition to the 300 miners inches from Seven Mile Creek, he had other rights which never materialized.

15. Mr. Gunlock testified that he has been responsible for irrigation, as Ranch Foreman, for the Green Meadow, Head and R.V. Ranches for a total of about 30 years; that the Green Meadow and Head Ranches have the Seven Mile Creek first and second water rights totalling 300 miners inches and that the R.V. Ranch has the third water right for 125 miners inches; that in his thirty years of irrigation experience on Ten Mile and Seven Mile Creeks, there has not been a sufficient supply of water in Seven Mile Creek to satisfy the R.V. Ranch decreed right of 125 miners inches after the 1st of July, and that after the 1st of July, the flow always recedes to less than the 300 miners inches necessary to supply the 1st and 2nd rights held by the Green Meadows and

Head Ranches. Mr. Gunlock testified that any water taken from Seven Mile Creek ahead of these rights would harm the Seven Mile Creek decreed water users because there is always a short supply from that source after the 1st of July of every year.

16. Mr. Brown testified as to the operation, management, and maintenance plan of the Green Meadow-Seven Mile Creek Water Users Association. He presented testimony to show that there is presently an insufficient supply of water to meet all requirements nor to satisfy the demands of the successors in interest to the Green Meadows decreed water rights of 150 miners inches.

Mr. Brown testified that any water taken from Seven Mile Creek as a result of an authorized change, which would predate the Green Meadows decreed water right, would deprive the Green Meadow-Seven Mile Creek Water Users Association members of the rights they have enjoyed and have been rightfully entitled to since purchase of their interests in 1972.

17. Mr. Andrews testified that he does not now have a sufficient quantity of water to satisfy the water rights to which he is successor in interest as a result of the sub-division of the Green Meadows Ranch. Mr. Andrews testified that approval of the proposed change in appropriation water right would result in a reduction of his water supply and would be harmful to his operation.

18. Mr. Weingartner testified that he leases the Head Ranch and irrigates about 400 acres of hay and pasture. He testified that he didn't move on to the ranch until June of 75, which was an exceptionally wet year, consequently, did not irrigate the first crop, but also had plenty of water for the second crop. He testified that 1976 was a normal year and that he just barely had enough water for the first crop and not enough for the second crop.

He testified that 1977 was a dry year and there was a shortage of water from the start of the irrigation season. He testified that in June 1977 he split what water there was with the Green Meadows-Seven Mile Water Users Association and they each got about 30 miners inches. He further testified that, should the application for change in appropriation water right be approved, it would place a water right senior to his on the creek and would reduce his short supply to the extent that, at times, he would not have enough water to irrigate at all, whereas under the present condition, he does get some water even in dry years, such as 1977.

PROPOSED FINDINGS OF FACT

1. For the purpose of these proceedings, Ten Mile Creek, to its confluence with Seven Mile Creek, is referred to as "Upper Ten Mile Creek". Ten Mile Creek, from its confluence with Seven Mile Creek to its mouth, is referred to as "Lower Ten Mile Creek". Seven Mile Creek, to its confluence with Ten Mile Creek, is referred to as "Seven Mile Creek". Any reference to "Ten Mile Creek" shall be construed to mean "Upper Ten Mile Creek" and "Lower Ten Mile Creek" combined.

2. The subject application is to change an appropriation water right from a point of diversion on Lower Ten Mile Creek to a new point of diversion on Seven Mile Creek.

3. Seven Mile Creek has been legally defined by the First Judicial District Court of Montana as a tributary of Ten Mile Creek (Reference Sec. 27-f, Case No. 4989, Witcomb vs. The Helena Water Works Company).

4. Seven Mile Creek is, topographically and hydrologically, a tributary of Ten Mile Creek.

5. It is not a valid assumption to conclude that Ten Mile Creek and Seven Mile Creek watersheds contribute to stream flows in proportion to their sizes, therefore, a conclusion that the decreed waters from the two

sources should be administered in this proportion is not valid.

6. Ten Mile Creek and Seven Mile Creek have been adjudicated under separate court decrees. (Reference First Judicial District Court Cases i.o. 4989, Witcomb vs. Helen Water Works Company and Case No. 5860, Head vs. Hale.)

7. Historically, within present memory, Ten Mile Creek and Seven Mile Creek decrees have been administered separately.

8. No court order or conclusive evidence was introduced to show that it was the intent of the court that the Ten Mile Creek and the Seven Mile Creek decrees were, in fact, to be administered separately except as a matter of convenience and practicality.

9. The rights of other persons would be adversely affected should the Department approve the proposed change. This is established conclusively by an examination of the Department's Exhibit D-14, sheet 3 attached as Exhibit "A" to this Proposal for Decision, wherein the decreed water rights on Ten Mile Creek and Seven Mile Creek are arranged in priority groupings and treated as though the two decrees were administered together. All decreed water rights in group ① are senior to group ② etc. Group ⑤ is a decreed right for 81 miners inches of which 24.3 miners inches is the subject matter of this application. Group ⑦ is the senior right on Seven Mile Creek consisting of 300 miners inches which has been transferred to successors in interest who are the Objectors to the proposed change.

A study of sheet 3 of Exhibit D-14 reveals that when the rate of flow in Ten Mile Creek is sufficient to satisfy all decreed rights through and including ⑤, no demand can be placed upon Seven Mile Creek waters by Ten Mile Creek decreed appropriators. Seven Mile Creek water can, thus, be appropriated to meet the total demands of ⑦. If the application for change were approved, ⑤ would be placed in a position to demand Seven Mile Creek

water regardless of Seven Mile Creek flow stage even though Ten Mile Creek would have had sufficient water to satisfy [5]'s decreed rights from that source of supply.

The testimony presented at the hearing showed that, traditionally and historically, the Seven Mile Creek decreed water users have been enjoying these rights without pre-emption by Ten Mile Creek senior decreed water rights appropriators. Furthermore, the testimony showed that normally, in the later months of the irrigation season, Seven Mile Creek water would not reach Ten Mile Creek in usable quantities, thus, should the application for change be approved, the Applicant would be placed in a position of seniority to obtain water from a tributary source not historically used by him and not normally available to him when needed.

In view of the evidence presented at the hearing in this matter, it is found to be indisputable that approval of the proposed change would result in an adverse affect to the present decreed water appropriators on Seven Mile Creek.

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 89-893(3), an appropriator may not sever any part of an appropriation right from the land to which it is appurtenant or sell the appropriation right to other lands without obtaining prior approval from the Department.

2. Under the provisions of Section 89-893(3), the Department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons.

3. The Department has determined that the rights of other persons will be adversely affected should the proposed change be approved. therefore, the application for change of appropriation water right must be denied.

4. The Department's decision in the Frank J. Schatz, Jr. Case wherein

a split allocating 70% of the waters as originating from the Ten Mile Creek watershed and 30% of the water as originating from the Seven Mile Creek watershed has no relevance in this matter in view of Conclusion "3" above.

5. Seven Mile Creek is a legal tributary of Ten Mile Creek as defined in paragraph 27-f, Case No. 4989, Witcomb vs. The Helena Water Works Company, First Judicial Court proceedings, however, in view of Conclusion "3" this becomes moot.

6. Ten Mile Creek and Seven Mile Creek have been decreed separately. This fact does not necessarily imply that the decrees should be administered separately. If the court had so intended and unimpeachable evidence to this effect had been introduced, then this action could have been dismissed in the Objectors' favor. In the absence of such evidence, it must be assumed that the decrees are to be administered together, if and when the conditions of streamflow and beneficial use demands so warrant.

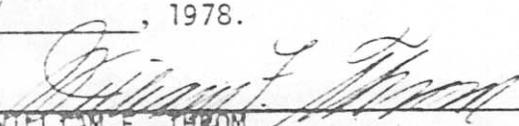
PROPOSED ORDER

1. The Application for Sever or Sell Appropriation Water Right No. 12,203-ss41-I by Treasure State Acres, Inc., is hereby denied.

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 Department Hearing Examiner.

DATED this 18th day of April, 1978.


WILLIAM F. THROM
HEARING EXAMINER

CASE # 12203

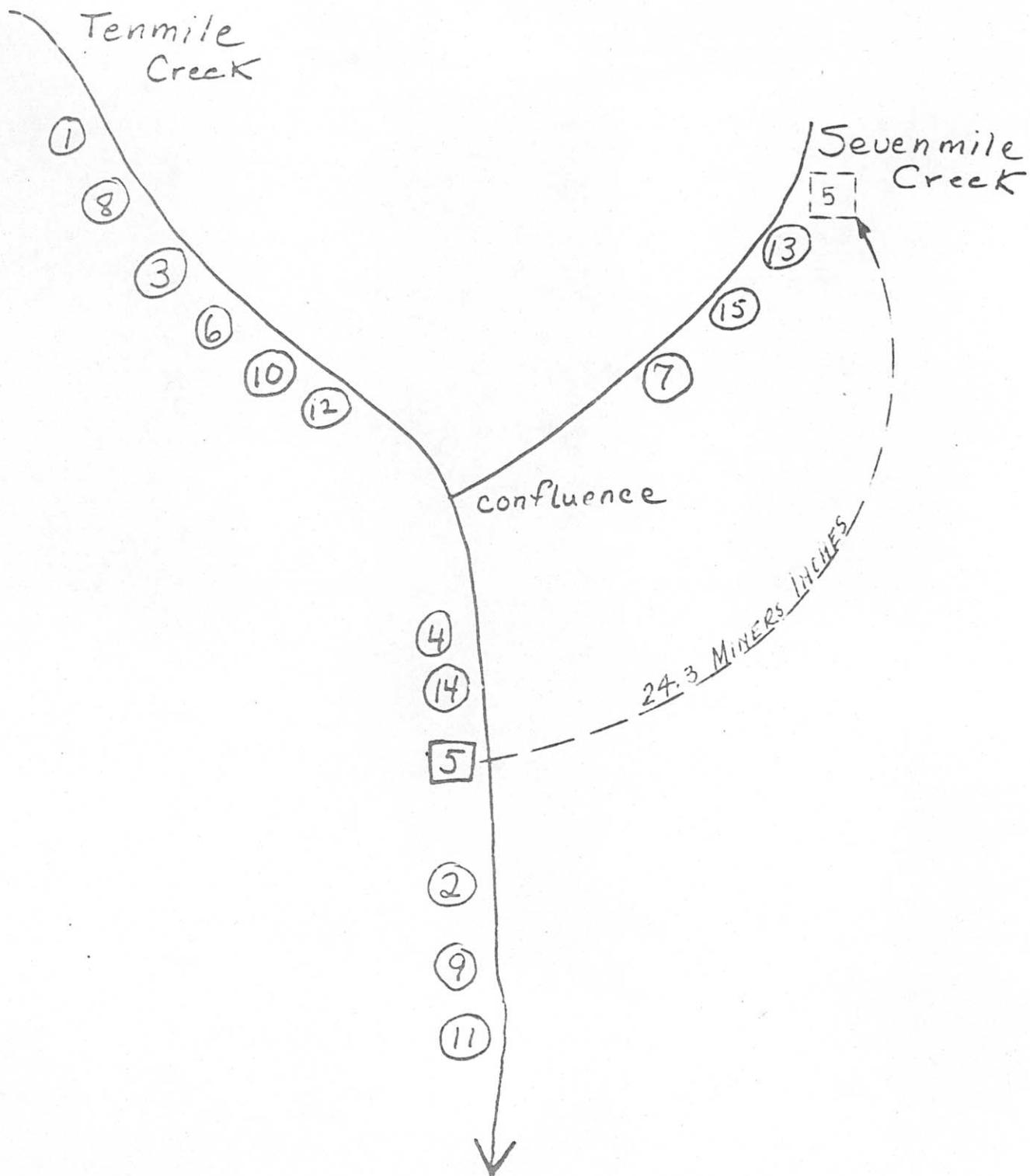


EXHIBIT "A"

Proposal for Decision in the Matter of Application for Sever or Sell
Appropriation Water Right No. 12,203-ss41-I by Treasure State Acres, Inc.

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