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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) FINDINGS OF FACT,
PERMIT NO. 12,868-s76M) CONCLUSIONS OF LAW,
BY DONALD I. AND JAN D. NYQUIST) AND ORDER

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on May 9 and May 11, 1978, at Missoula, Montana, for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit No. 12,868-s76M, William F. Throm, Hearing Examiner, presiding.

The Applicant, Mr. Donald I. Nyquist, appeared at the hearing and presented testimony in support of the application. Mr. Nyquist was not represented by legal counsel. Seven exhibits were introduced supporting the application, to wit: Exhibits No. A-1 and A-2, photos of proposed Grant Creek subdivision; Exhibit No. A-3, Grantland Rankin subdivision plat; Exhibit No. A-4, photo of Grant Creek at Topaze Drive; Exhibit A-5, letter from Mr. Bob Small together with 2 photos of Nyquist's pumphouse; Exhibit No. A-6, invoices and cancelled checks; and Exhibit No. A-7, excavation statement. The Applicant's exhibits were marked accordingly and received into the record without objection. No other persons appeared at the hearing to testify in support of the application.

Objectors attended the hearing and presented testimony or statements. The Objectors present were Mrs. Reed Marbut, Mr. Richard H. Ostergren, Mr. Elmer Flynn, Mr. Vernon and Randle White, Mr. Alvin Goodan, represented by legal counsel,

CASE # 12868

1 Shelton C. Williams, Attorney at Law. Others appearing on
2 behalf of the Objectors were Mr. Gary Marbut, Mr. Jack
3 Flynn, Mr. Jack Daugherty, Mr. Ted Ikeman, and Mr. Bob
4 Wheeler. The Objectors introduced twenty-two (22) exhibits
5 supporting their objection to wit:

- 6
7 Exhibits 0-1 through 0-7, photos of soil profiles
8 Exhibit 0-8, photocopy - list of Water Commissioners
9 Exhibit 0-9, photo, Petition and resignation (5 pages)
10 Exhibits 0-10, photocopy - 1965 Summary of Appropriators
11 (4 pages)
12 Exhibits 0-11 through 0-17, photos of soil profiles
and sorted rocks
13 Exhibit 0-18, soils map
14 Exhibit 0-19, photocopy - Water Commissioners' Flow
15 Records
16 Exhibit 0-20, available water capacity
17 Exhibit 0-21, Grantsdale soil requirements
18 Exhibit 0-22, Grant Creek Water records and computations
(5 pages)

19
20 The Objector's exhibits were marked accordingly and received
21 into the record without objections.

22
23 Montana Department of Natural Resources and Conservation
24 personnel and witnesses present and testifying on behalf of
25 the Department were Mr. Stan Jones, Hearings Technical
26 Representative, Water Rights Bureau, and Mr. James Rehbein,
27 Field Manager, Field Office, Water Rights Bureau. The
28 Department was not represented by legal counsel. Ten (10)
29 exhibits were introduced by the Department to wit:

- 30 Exhibit D-1, Memo - Field Investigation
31 Exhibit D-2, photocopy of Grant Creek map, USGS
32 Exhibit D-3, photocopy of Grant Creek map, USGS

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Exhibit D-4, photocopy of aerial photo of Lower Grant Creek

Exhibit D-5, photocopy of Grant Creek Decree (21 pages)

Exhibit D-6, photocopy of Abstract of Appropriations involved in Case #5504 (9 pages)

Exhibit D-7, photocopy of Summary of Grant Creek Appropriations (5 pages)

Exhibit D-8, photocopy of Permit No. 2399-s76M (1 page)

Exhibit D-9, photocopy of Water Resources Survey Field Notes (42 pages)

Exhibit D-10, photocopy of flow computations based on Water Commissioners' Records (5 pages) (This exhibit is the same as Objector's Exhibit 0-22.)

Exhibits D-1 through D-9 were objected to for lack of foundation, and Exhibit D-8 was objected to based on relevancy. These objections were overruled. An initial objection to Exhibit D-4, deletion of some irrigated land, was entered, however, this was later withdrawn after further explanation. The Department exhibits were marked accordingly and received into the record with objections.

SUMMARY OF RECORD

1. On May 17, 1977, the Department received an Application for Beneficial Water Use Permit No. 12,868-s76M by Donald I. and Jan D. Nyquist to appropriate 0.11 cubic foot per second or 50 gallons per minute of water, not to exceed 17 acre-feet per annum from Grant Creek, a tributary of the Clark Fork River, in Missoula County, Montana. The water is to be diverted from Grant Creek by means of a pump at a point in the NW1/4 SW1/4 SE1/4 of Section 16, T. 14 N., R. 19 W., M.P.M., and used for new irrigation on 1 acre in the SE1/4 and supplemental water on 5.5 acres in the SE1/4 all in Section 16, T. 14 N., R. 19 W., M.P.M., and containing a total of 6.5 acres, more or less, from April 15 to October 15, inclusive of each year.



CASE # 12868

1 2. On September 21, 28, and October 5, 1977, the
2 Department caused to be duly published in the Missoulian,
3 Missoula, Montana, notice of the above Application for
4 Beneficial Water Use Permit No. 12,868-s76M.

5 3. The Department received objections to the above
6 Application for Beneficial Water Use Permit No. 12,868-s76M
7 as follows:

8 November 4, 1977, from Grant Creek Ranch

9 November 7, 1977, from Mr. Alvin F. and Mrs. Leviene
10 Goodan

11 November 8, 1977, from Richard H. Ostergren

12 November 8, 1977, from Messrs. Vernon R. and Randle
13 V. White

14 November 9, 1977, from Elmer Flynn

15 4. The Applicant, Mr. Nyquist, testified that the
16 proposed appropriation would be made from Grant Creek by
17 means of a 2 horsepower pump and used to sprinkler irrigate
18 one (1) acre of new pasture and to supplement existing
19 irrigation on five and onehalf (5.5) acres of pasture. He
20 further testified that the proposed diversion from Grant
21 Creek would be connected to and delivered through an existing
22 irrigation system that had been previously supplied fully
23 from two wells.

24 Mr. Nyquist described the recent depletion of his
25 groundwater sources which necessitated his surface water
26 application. Later testimony disclosed that water had been
27 pumped from Grant Creek in 1977 to test his delivery system
28 for fire protection purpose

29 He further stated that it was not his intention to
30 appropriate the full irrigation supply of 17 acre-feet per
31 annum for the acreage shown in his application from Grant
32 Creek, but that the amount pumped would only be sufficient
to bring his combined groundwater and surface water flow up

1 to 50 gallons per minute. The combined flow of 50 gallons
2 per minute would be adequate for his irrigation system
3 requirement.

4 Mr. Nyquist testified that the amount of his intended
5 diversion from Grant Creek would not adversely affect downstream
6 appropriators and that any permit for water granted to him
7 would be subject to the rights of prior appropriators.

8 Mr. Stan Jones of the Department described the size,
9 history and characteristics of the Grant Creek drainage and
10 testified that his investigation indicated very high water
11 losses due to the porosity of the soil classes that comprise
12 that basin. Mr. Jones further testified that with high
13 delivery losses and current water use levels that Grant
14 Creek water would be exhausted between June 15, and July 1
15 during most years. He also stated that his research of
16 Grant Creek Water Commissioners' records from 1918 to 1947
17 show that for 6 of those years Commissioners were hired in
18 May to apportion the 1914 decreed water rights. Mr. Jones
19 testified that Grant Creek is usually over appropriated
20 after June 15, except for some years of late runoff.

21 Mr. Ted Ikeman testified that he has lived on Grant
22 Creek since 1916 and served as Water Commissioner from 1935
23 to 1954. Further testimony revealed that some years during
24 that period he was appointed as early as May 15 and started
25 cutting junior water rights off as early as June 1. Mr.
26 Ikeman also stated that the reason he was appointed early
27 was because of a water shortage in Grant Creek. He testified
28 that a great amount of surface water was lost to seepage.

29 Mr. Gary Marbut testified that he has resided at the
30 Grant Creek Ranch since 1956 and irrigates 350 acres. He
31 stated that the land is extremely porous and that during the
32 22 years he has lived on the creek there has never been a

1 surplus of water available for appropriation after the
2 spring runoff period.

3 Mr. Al Goodan, who lives below the interstate highway
4 on Grant Creek, testified that he has been irrigating
5 approximately 100 acres since 1948. He stated that his
6 water right from Grant Creek was in the top five (1870), but
7 that in some years he did not receive sufficient water for
8 his crops through the month of June. He further stated that
9 water losses were very great (more than 50%) due to soil
10 porosity.

11 Mr. Vernon White testified that he was born on Grant
12 Creek in 1910 and lived there until 1942. He currently is
13 irrigating 31 to 35 acres with water from a May, 1892 water
14 right. Mr. White stated that his right is "one of the later
15 rights" and that he cannot satisfy his water right into July
16 during many years. Further, he stated that generally the
17 only water surplus to the needs of prior appropriators that
18 flowed in Grant Creek was during spring runoff.

19 Mr. Randle White testified that during the 4 years that
20 he has farmed on Grant Creek, water losses to the creek
21 bed and ditches was between 60% and 75%. He also stated
22 that allowing new appropriators on this source of supply
23 would cause a "policing" problem during periods of low water
24 in order to guarantee the rights of prior appropriators.

25 Mr. Jack Daugherty, 36, stated that he was born on
26 Grant Creek and is the fourth generation of his family to
27 live on the same property. He testified that he irrigates
28 approximately 300 acres of grain and 160 acres of hay from
29 Grant Creek. Further testimony revealed that he is the
30 owner of the second, third and fourth water right on Grant
31 Creek, yet in dry years there is not sufficient flow to
32 satisfy his rights through the month of June. He stated

1 that in extremely dry years (1973 and 1946 or 1947) water
2 was not available for his needs past May 20th. Mr. Daugherty
3 said that conveyance losses, because of the gravelly makeup
4 of the soil, exceeded 50%.

5 Mr. Jack Flynn testified that he was born on his family's
6 ranch 64 years ago and that he served as Grant Creek Water
7 Commissioner in 1939. He testified that a supplemental
8 conveyance of water from the Clark Fork River was developed
9 in 1910 because of a water shortage on lower Grant Creek.
10 Further, he stated that granting new appropriations on Grant
11 Creek would be harmful to existing appropriators.

12 Mr. Elmer Flynn testified that his family has ranched
13 on Grant Creek and in the immediate area since 1872 and that
14 he has been a lifelong resident of the area. He stated that
15 he irrigates 400 acres both from Grant Creek and from the
16 Clark Fork River Ditch and that all of this acreage was
17 originally irrigated from Grant Creek. A supplemental
18 source of water from the river was developed before 1910
19 because of this inadequacy of Grant Creek water for the
20 needs of the existing uses. Mr. Flynn testified that the
21 Grant Creek water supply has been exhausted during the month
22 of June for about one-third of the years for which he has
23 knowledge. Because of the forestated historic water shortage
24 in Grant Creek, Mr. Flynn now irrigates only 50-60 acres from
25 that source. He testified that his Grant Creek water right
26 dates back to 1867.

27 Mr. Richard Ostergren testified that he has lived on
28 the old Lehsou place since 1940 and, originally irrigated
29 approximately 300 acres. This acreage has since been reduced
30 to 30 acres due to the sale of all of his original 465 inch
31 appropriation, except 50 inches, to Evans Product Company.
32 He testified that Evans now uses that water for fire protection

1 and to control log shrinkage.

2 Mr. Ostergren stated that water for additional appropriation
3 is not available after spring runoff, and that in two or
4 three years there was no significant flood runoff in Grant
5 Creek.

6 Mr. Reed Marbut who has lived in Grant Creek "on and
7 off" since 1956, testified that depending on the availability
8 of Grant Creek water, he irrigates between 250 and 300 acres
9 of his 4000 acre ranch. He stated that the water "loss is
10 terrific" on the irrigated portion of Grant Creek Ranch due
11 to the gravelly, rocky nature of the soil and produced an
12 excerpt from a 1949 court proceeding to enforce his contention.
13 Mr. Marbut estimated that water delivery loss is between 60%
14 and 90% on his portion of Grant Creek. He further produced
15 a letter from Mr. Theo Upman to the District Court Judge
16 responsible for administering the 1914 Grant Creek Decree,
17 which stated that Mr. Upman was resigning as Grant Creek
18 Water Commissioner because the creek was "so low there was
19 nothing to quarrel about." This letter was dated July 3,
20 1926. Mr. Marbut testified that water for new uses was not
21 available after June 1 during most years. Mr. Marbut stated
22 that a Water Commissioner has not been necessary on Grant
23 Creek during recent years because of a spirit of cooperation
24 that has prevailed among water users and that if new appro-
25 priations were granted that it may be necessary to hire one
26 and that this would cause additional financial burden on
27 water right holders.

28 Mr. Bob Wheeler, a consulting geologist from Clinton,
29 Montana, testified that he has been familiar with the Grant
30 Creek area since 1940. Mr. Wheeler produced photographs and
31 soil porosity computations to corroborate his testimony that
32 the soils of the Grant Creek basin were more prone to surface

1 water loss than earlier testimony had indicated. Mr.
2 Wheeler testified that according to the Water Resources Survey,
3 Missoula County, Montana, 1960 that Grant Creek is over
4 appropriated.

5
6 FINDINGS OF FACT

7
8 1. That the normal flow of Grant Creek is fully appropriated
9 during the irrigation season.

10 2. That there are unappropriated waters in Grant Creek
11 during normal spring runoff and occasionally throughout the
12 year following periods of heavy and prolonged precipitation.

13 3. That the occurrence of such water produced by
14 precipitation during the normal irrigation season is both
15 unreliable and predictable.

16 4. That the vast preponderance of testimony has shown
17 that the period in which the waters of Grant Creek are in
18 critical supply is after the spring runoff and that the
19 period of runoff is usually between May 15, and June 15.

20 5. That unappropriated waters could be appropriated
21 without adverse effect to prior existing water rights if the
22 Permit were conditioned to limit that period of diversion to
23 that time when Grant Creek waters were not historically in
24 demand.

25
26 CONCLUSIONS OF LAW

27 1. Under the provisions of Section 89-880, R.C.M.
28 1947, a Beneficial Water Use Permit is required by the
29 Applicant to appropriate water from the proposed source of
30 supply.

31 2. The Objectors to this Application for Beneficial
32 Water Use Permit No. 12,868-s76M, have apparent valid prior

1 appropriations from Grant Creek as Decreed on December
2 19, 1914 which under the provisions of Section 89-885(1),
3 R.C.M. 1947, must be protected in the issuance of Beneficial
4 Water Use Permit. It is concluded that the rights of prior
5 appropriators will be protected if the Provisional Permit is
6 conditioned to protect those rights.

7 3. There are unappropriated waters in the source of
8 supply:

9 (a) at times when the water can be put to the
10 use proposed by the applicant;

11 (b) in the amount the applicant seeks to appropriate;
12 and

13 (c) during a portion of the time which the applicant
14 seeks to appropriate, the amount requested is
15 available.

16 4. The proposed means of diversion or construction are
17 adequate.

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

19 6. The proposed use will not interfere unreasonably
20 with other planned uses or developments for which a permit
21 has been issued or for which water has been reserved.

22 7. Sufficient criteria for issuance of a permit set
23 forth under the provisions of Section 89-885, R.C.M. 1947,
24 has been met and the Application for Beneficial Water Use
25 Permit No. 12,868-s76M may be granted in accordance with the
26 provisions of Chapter 8 of Title 89 of the Laws of the State
27 of Montana.

28 FINAL ORDER

29 1. Application for Beneficial Water Use Permit No.
30 12,868-s76M by Donald I. and Jan D. Nyquist is hereby granted
31 to appropriate 0.11 cubic foot per second or 50 gallons per
32 minute of water, not to exceed 10.4 acre-feet per annum from
Grant Creek, a tributary of the Clark Fork River in Missoula

1 County, Montana, to be diverted from Grant Creek by means of
2 a pump at a point in the NW1/4 SW1/4 SE1/4 of Section 16 T.
3 14 N., R. 19W., M.P.M., and used for new irrigation of 1
4 acre in the SE1/4 and supplemental water on 5.5 acres in the
5 SE1/4 all in Section 16, T. 14 N., R. 19W., M.P.M., and
6 containing a total of 6.5 acres, more or less, from April 15
7 to June 1, inclusive, of each year.

8 2. The Provisional Permit is granted subject to all
9 prior water rights in the source of supply, any final
10 determination of existing water rights as provided by Montana
11 law and is further conditioned as follows:

- 12 a. The Permittee shall install and maintain a flow
13 meter at the pump and shall keep records of the
14 rate and time of pumping and shall submit such
15 records to the Department upon request.
- 16 b. Upon receipt of written complaint by any prior
17 appropriator in the source, the Department may
18 inspect and monitor said flow meter.

19
20 NOTICE

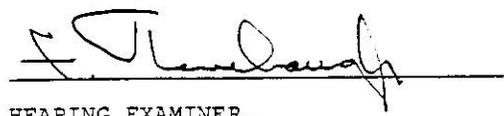
21 This Final Order and Decision may be appealed in accordance
22 with the Montana Administrative Procedures Act, by filing a
23 petition in the appropriate court within thirty (30) days
24 after service.

25 RECOMMENDAION

26 The Department recommends that all parties in this
27 matter install and maintain adequate measuring devices to
28 fit their particular individual situation, and keep a log of
29 records of water used for their own proof of their water
30 rights and protection.

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Done this 17th day of March, 1979



HEARING EXAMINER,
DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

CASE # 12868

Exhibits 0-1 through 0-7, photos of soil profiles
Exhibit 0-8, photocopy - list of Water Commissioners
Exhibit 0-9, photo, Petition and resignation (5 pages)
Exhibits 0-10, photocopy - 1965 Summary of Appropriators (4 pages)
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The Objector's exhibits were marked accordingly and received into the record without objections.

Montana Department of Natural Resources and Conservation personnel and witnesses present and testifying on behalf of the Department were Mr. Stan Jones, Hearings Technical Representative, Water Rights Bureau, and Mr. James Rehbein, Field Manager, Field Office, Water Rights Bureau. The Department was not represented by legal counsel. Ten (10) exhibits were introduced by the Department to wit:

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November 8, 1977, from Messrs. Vernon R. and Randle
V. White

November 9, 1977, from Elmer Flynn

4. The Applicant, Mr. Nyquist, testified that the proposed appropriation would be made from Grant Creek by means of a 2 horsepower pump and used to sprinkler irrigate one (1) acre of new pasture and to supplement existing irrigation on five and one-half (5.5) acres of pasture. He further testified that the proposed diversion from Grant Creek would be connected to and delivered through an existing irrigation system that had been previously supplied fully from two wells.

Mr. Nyquist described the recent depletion of his groundwater sources which necessitated his surface water application. Later testimony disclosed that water had been pumped from Grant Creek in 1977 to test his delivery system for fire protection purpose.

He further stated that it was not his intention to appropriate the full irrigation supply of 17 acre-feet per annum for the acreage shown in his application from Grant Creek, but that the amount pumped would only be sufficient to bring his combined groundwater and surface water flow up to 50 gallons per minute. The combined flow of 50 gallons per minute would be adequate for his irrigation system requirement.

Mr. Nyquist testified that the amount of his intended diversion from Grant Creek would not adversely affect downstream appropriators and that any permit for water granted to him would be subject to the rights of prior appropriators.

Mr. Stan Jones of the Department described the size, history and characteristics of the Grant Creek drainage and testified that his investigation indicated very high water losses due to the porosity of the soil classes that comprise that basin. Mr. Jones further testified that with high delivery losses and current water use levels that Grant Creek water

would be exhausted between June 15 and July 1 during most years. He also stated that his research of Grant Creek Water Commissioners' records from 1918 to 1947 show that for 6 of those years Commissioners were hired in May to apportion the 1914 decreed water rights. Mr. Jones testified that Grant Creek is usually over appropriated after June 15, except for some years of late runoff.

Mr. Ted Ikeman testified that he has lived on Grant Creek since 1916 and served as Water Commissioner from 1935 to 1954. Further testimony revealed that some years during that period he was appointed as early as May 15 and started cutting junior water rights off as early as June 1. Mr. Ikeman also stated that the reason he was appointed early was because of a water shortage in Grant Creek. He testified that a great amount of surface water was lost to seepage.

Mr. Gary Marbut testified that he has resided at the Grant Creek Ranch since 1956 and irrigates 350 acres. He stated that the land is extremely porous and that during the 22 years he has lived on the creek there has never been a surplus of water available for appropriation after the spring runoff period.

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Mr. Vernon White testified that he was born on Grant Creek in 1910 and lived there until 1942. He currently is irrigating 31 to 35 acres with water from a May, 1892 water right. Mr. White stated that his right is "one of the later rights" and that he cannot satisfy his water right into July during many years. Further, he stated that generally the only

water surplus to the needs of prior appropriators that flowed in Grant Creek was during spring runoff.

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Mr. Jack Daugherty, 36, stated that he was born on Grant Creek and is the fourth generation of his family to live on the same property. He testified that he irrigates approximately 300 acres of grain and 160 acres of hay from Grant Creek. Further testimony revealed that he is the owner of the second, third and fourth water right on Grant Creek, yet in dry years there is not sufficient flow to satisfy his rights through the month of June. He stated that in extremely dry years (1973 and 1946 or 1947) water was not available for his needs past May 20th. Mr. Daugherty said that conveyance losses, because of the gravelly makeup of the soil, exceeded 50%.

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Grant Creek water for the needs of the existing uses. Mr. Flynn testified that the Grant Creek water supply has been exhausted during the month of June for about one-third of the years for which he has knowledge. Because of the forestated historic water shortage in Grant Creek, Mr. Flynn now irrigates only 50-60 acres from that source. He testified that his Grant Creek water right dates back to 1867.

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PROPOSED FINDINGS OF FACT

1. That the normal flow of Grant Creek is fully appropriated during the irrigation season.
2. That there are unappropriated waters in Grant Creek during normal spring runoff and occasionally throughout the year following periods of heavy and prolonged precipitation.
3. That the occurrence of such water produced by precipitation during the normal irrigation season is both unreliable and unpredictable.
4. That the vast preponderance of testimony has shown that the period in which the waters of Grant Creek are in critical supply is after the spring runoff and that the period of runoff is usually between May 15 and June 15.
5. That unappropriated waters could be appropriated without adverse effect to prior existing water rights if the Permit were conditioned to limit that period of diversion to that time when Grant Creek waters were not historically in demand.

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 Objectors to this Application for Beneficial Water Use Permit No. 12,868-s76M, have apparent valid prior appropriations from Grant Creek as Decreed on December 19, 1914 which under the provisions of Section 89-885(1), R.C.M. 1947, must be protected in the issuance of Beneficial Water Use Permit. It is concluded that the rights of prior appropriators will be protected if the Provisional Permit is conditioned to protect those rights.

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

- (a) at times when the water can be put to the use proposed by the applicant;
- (b) in the amount the applicant seeks to appropriate;
and
- (c) during a portion of the time which the applicant seeks to appropriate, the amount requested is available.

4. The proposed means of diversion or construction are adequate.

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

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. Sufficient criteria for issuance of a permit set forth under the provisions of Section 89-885, R.C.M. 1947, has been met and the Application for Beneficial Water Use Permit No. 12,868-s76M 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. Application for Beneficial Water Use Permit No. 12,868-s76M by Donald I. and Jan D. Nyquist is hereby granted to appropriate 0.11 cubic foot per second or 50 gallons per minute of water, not to exceed 10.4 acre-feet per annum from Grant Creek, a tributary of the Clark Fork River in Missoula County, Montana, to be diverted from Grant Creek by means of a pump at a point in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T. 14 N., R. 19 W., M.P.M., and used for new irrigation on 1 acre in the SE $\frac{1}{4}$ and supplemental water on 5.5 acres in the SE $\frac{1}{4}$ all in Section 16, T. 14 N., R. 19 W., M.P.M., and containing a total of 6.5 acres, more or less, from April 15 to June 1, inclusive, of each year.

2. The Provisional Permit is granted subject to all prior water rights in the source of supply, any final determination of existing water rights as provided by Montana law and is further conditioned as follows:

- a. The Permittee shall install and maintain a flow meter at the pump and shall keep records of the rate and time of pumping and shall submit such records to the Department upon request.

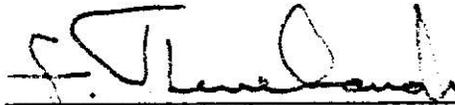
NOTICE

This is a Proposed Order.

Written exceptions to this 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 extension 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 prior to the issuing of a Final Order.

As stated prior to the hearing by William F. Throm, who has since retired, this Proposed Order, Findings of Fact and Conclusions of Law was prepared by the undersigned, who was present during the entire hearing proceeding.

DATED this 11th day of September, 1978.



FORREST TEVEBAUGH
HEARING EXAMINER