

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

* * * * *

IN THE MATTER OF APPLICATION FOR)	
BENEFICIAL WATER USE PERMIT NO.)	
17,743-s76LJ AND APPLICATION FOR)	FINAL DECISION
CHANGE OF APPROPRIATION WATER RIGHT)	
NO. 15,948-c76LJ BY HARRINGTON &)	
BIBLER, INC.)	

* * * * *

Harrington and Bibler, Inc. filed with the Montana Department of Natural Resources and Conservation an Application for Change of Appropriation Water Right No. 15,948-c76LJ on September 7, 1977 and an Application for Beneficial Water Use Permit No. 17,743-s76LJ on February 17, 1978.

Public Notices of the Application for Change of Appropriation Water Right No. 15,948-c76LJ and Application for Beneficial Water Use Permit No. 17,743-s76LJ, both by Harrington and Bibler, were published in the Daily Interlake, Kalispell, Montana on April 12, 19, and 26, 1978. Objections to the above-referenced Harrington and Bibler Applications were filed with the Department on or before May 31, 1978. Objections were filed by the Montana Power Company, Mr. and Mrs. Virgil D. McNeil, Douglas E. Wise, Rowland and Jeanne Adkins, Dulane and Benita Fulton, Dale and Cheryl Pierce, and the Kalispell Christian Church.

Hearing Examiner, Richard Gordon by order of October 4, 1979, directed the Applicants to submit written direct testimony by October 24, 1979. Richard Gordon resigned from the Department of Natural Resources, and on November 28, 1979, Ronda L. Sandquist

CASE # *1102908*

was appointed Hearing Examiner and substituted without objection.

The Objectors were mailed copies of the Applicant's written direct testimony. The Objectors were ordered to submit written direct testimony by December 19, 1979. On her own motion the Hearing Examiner held a pre-hearing conference in Kalispell, Montana, on February 6, 1980.

The hearing was held on February 25, 1980 in the Council Chambers of the Kalispell City Hall.

Harrington and Bibler, Inc. was represented by legal counsel Stephen Berg, from the law firm of Worden, Christianson and Johnson, Kalispell, Montana. Submitting written direct testimony and personally appearing to present evidence and testimony on behalf of Harrington and Bibler were: Sam Bibler and Allen Tudor.

The Kalispell Christian Church and Mr. and Mrs. Virgil McNeil were represented by legal counsel James R. Weaver, Columbia Falls, Montana. Submitting written direct testimony on behalf of the Kalispell Christian Church and the McNeils were: Virgil McNeil and John L. Mulford. The Kalispell Christian Church and the McNeils offered into evidence one (1) exhibit, a drawing by Allen Tudor of the heights of the channel and the church, which was admitted as Objector's Exhibit No. 1.

Cheryl Pierce, on her own behalf, personally appeared at the hearing to present evidence and testimony. Dulane Fulton, on his own behalf, personally appeared at the hearing to present evidence and testimony.

At the request of the Kalispell Christian Church and the McNeils, their case and cross-examination of Harrington and Bibler, Inc. concerning Application for Sever and Sell of Water Right No. 14,607-ss76LJ and concomitant Application for Change of Appropriation Water Right No. 14,607-ss76LJ(Q) by Harrington and Bibler, was presented at the hearing on Harrington and Bibler Application for Beneficial Water Use Permit No. 17,743-s76LJ and Application for Change of Appropriation Water Right No. 15,948-c76LJ. Therefore, the proceedings of these hearings (15,948-c76LJ and 17,743-s76LJ) were fully adopted and incorporated into the proceedings on Application to Sever and Sell Water Right No. 14,607-ss76LJ, particularly the Application for Change of Appropriation Water Right by Harrington and Bibler. The Hearing Examiner, on her motion, has taken judicial notice of the portions of the hearing on Application to Sever and Sell Water Right No. 14,607-ss76LJ which relate to the Harrington and Bibler application.

The Proposal for Decision, including Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, was issued by the Hearing Examiner on December 9, 1980. The parties had fifteen (15) days from service of the Proposal for Decision to file written exceptions. The Department now responds to those filed Exceptions.

Response to Exceptions of Harrington and Bibler, Inc.

Harrington and Bibler, Inc. excepts to the legal descriptions of land in Findings of Fact No. 4, contending the descriptions

contain clerical errors. Clerical errors were made in Finding of Fact No. 4, and therefore, the legal descriptions have been corrected. Order No. 1(a) has been added to reflect the changes.

Response to Exceptions of the Kalispell Christian Church,

Virgil McNeil and Rae D. McNeil, by James R. Weaver

The Kalispell Christian Church and the McNeils except to Proposed Order No. 7. The Kalispell Christian Church and McNeils request that No. 7 be amended to read as follows:

Harrington and Bibler, Inc., shall, before any improvement or construction work on the old stream overflow channel, and before any water is discharged into the same from its premises, present to Kalispell Christian Church and Academy and Virgil D. McNeil and Rae D. McNeil plans for insuring that their premises are not damaged by the overflow from Applicant's premises, and shall obtain approval for said improvements, renovations or work on said old stream overflow channel prior to any work being done thereon or water being discharged from Applicant's premises.

The Final Order is modified so the Kalispell Christian Church and the McNeils will receive copies of Harrington and Bibler's proposed plans for the old stream overflow channel, and also, so, the Kalispell Christian Church and the McNeils will have an opportunity to comment on Harrington and Bibler's plans.

Based upon the Department's file, the applicant's and objectors' testimonies presented and exhibits admitted, the Department hereby makes the following Findings of Fact:

FINDINGS OF FACT

1. Harrington and Bibler, Inc. will change the place of use and purpose of use of 1,125 gallons of water per minute up to a maximum of 250 acre-feet of water per year from Ashley Creek. The water obtained by the change authorization will be used in conjunction with the waters obtained by the Application to Sever and Sell Water Right No. 14,607-ss76LJ and Application for Beneficial Water Use Permit No. 17,743-ss76LJ.

a. The water was previously diverted from April 1 to October 1, inclusive, of each year, at a point in the NE1/4 NW1/4 NW1/4 of Section 21, Township 28 North, Range 22 West. The water was used for flood irrigation on 100 acres, which were in the S1/2 SW1/4 and SW1/4 SE1/4 of Section 11, Township 28 North, Range 22 West, and for stockwater. (Amended Application No. 15,948-c76LJ).

2. Harrington and Bibler, Inc. proposes to divert from Ashley Creek 1,125 gallons of water per minute up to a maximum of 280 acre-feet of water per year to be diverted from October 1 to April 1, inclusive, of each year. The water obtained with the Beneficial Water Use Permit will be used in conjunction with water obtained by the Application to Sever and Sell Water Right No. 14,607-ss76LJ and the Application for Change of Appropriation Water Right No. 15,948-c76LJ (Application No. 17,743-s76LJ, Tudor Letter, February 6, 1980).

3. Harrington and Bibler, Inc. will divert the water from Ashley Creek in the SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North, Range 22 West. Harrington and Bibler, Inc. propose to install two (2) pumps capable of individually pumping one thousand and forty-five (1,045) gallons of water per minute, and having a combined capacity of two thousand and ninety (2,090) gallons of water per minute. An instantaneous flow meter would be installed in the system. (Tudor, H. & B. TR., Pages 111-112; Tudor, Letter, Feb-12, 1980).

a. During July and August, Harrington and Bibler, Inc. will only divert from Ashley Creek two hundred and fifty-eight (258) acre-feet of water, therefore, the pumping rate for July and August will not exceed nine hundred and forty-one and five tenths (941.5) gallons of water per minute. (Tudor, Letter, Feb. 12, 1980).

b. During April, May, June and September, Harrington and Bibler, Inc. will divert water from Ashley Creek at a rate of nine hundred and sixty-five (965) gallons of water per minute. (Tudor, Letter, Feb. 12, 1980).

4. Harrington and Bibler, Inc. will use approximately five hundred and fifteen (515) acre-feet of water per year for irrigation of three hundred and twenty (320) acres of alfalfa, gardens and lawns, which is in the SW1/4 SW1/4 of Section 14, the S1/2 SE1/4 of Section 15, the E1/2 NE1/4 of Section 22, the NW1/4 of Section 23, the N1/2 NE1/4 SE1/4 of Section 22, the N1/2 NW1/4

SW1/4 of Section 23, and the W1/2 NE1/4 of Section 23, all in Township 28 North, Range 22 West. (H. & B. Map, Direct).

a. Approximately one hundred (100) acres will be alfalfa, and the remaining two hundred and twenty (220) acres will be gardens and lawns. (Bibler, H. & B. TR. page 71).

b. Some objectors contended that the use of water for irrigating gardens and lawns in a subdivision and lake rejuvenation is less beneficial than agriculture.

5. Harrington and Bibler, Inc. propose to use two hundred and sixty-three and three tenth (263.3) acre-feet of water diverted from Ashley Creek each year for rejuvenation of Middle Foy's Lake and Lower Foy's Lake, which are eutrifying, and to create an impoundment below Lower Foy's Lake. The total volume required for lake rejuvenation and impoundment is three hundred and ninety-two (392) acre-feet.

a. Middle Foy's Lake has a surface area of thirty-nine (39) acres and a volume of approximately five hundred and eighty-five (585) acre-feet. (Carver letter, Aug. 17, 1977).

Occasionally Upper Foy's Lake drains into Middle Foy's Lake. (Tech. Report, page 10).

b. Lower Foy's Lake has a surface area of twenty (20) acres and a volume of approximately one hundred and sixty (160) acre-feet. (Carver, Letter, Aug. 17, 1977). The overflow

from Middle Foy's Lake will flow into Lower Foy's Lake.

(Carver, Letter, Aug. 17, 1977).

c. The overflow from Lower Foy's Lake will be retained in an impoundment in the NE1/4 NW1/4 of Section 23, Township 28 North, Range 22 West. (H. & B. Map). The impoundment will have a surface area of approximately six (6) acres and a volume of approximately thirty (30) acre-feet. (Carver, Letter, Aug. 17, 1977).

6. Harrington and Bibler, Inc. have not decided how to control the overflow from the impoundment, but an engineer testifying for Harrington and Bibler, Inc. suggested that a gate valve with a throttling device on the pipe may be used. (Tudor, H. & B. TR., page 83).

a. Middle Foy's Lake will be raised approximately three (3) feet, to its spillpoint. (Bibler, H. & B. TR., page 62).

b. Water levels in Middle Foy's and Lower Foy's Lakes are highest during June and July. (Bibler, H. & B. TR., page 16).

c. The impoundment to be constructed will be used for storage, six (6) acre-feet, more or less, of space will be available for storage, although design modifications could be made to increase the storage capacity to nine (9) acre-feet. (Bibler, H. & B. TR., pages 30, 69; Tudor, Letter, Feb. 6, 1980).

(1) The engineer testified that flows from the impoundment would not increase suddenly if there were heavy rains or early spring thaws. (Tudor, H. & B. TR., page 86).

7. The overflow from the Harrington and Bibler, Inc. impoundment will be approximately 300 to 350 gallons of water per minute, and will flow northeast through an old intermittent channel to Ashley Creek. (Tudor, TR., pages 146, 147, 198, and Bibler, Harrington and Bibler, Inc. TR., page 50). The remaining portion of the water, approximately 2,066.5 to 2,090 gallons of water per minute, that will be diverted, will be consumed by irrigation, stored, or evaporated. (Carver, Letter, Aug. 17, 1977; Tudor, H. & B. TR., page 86, Tudor, TR., page 141).

a. The overflow channel is approximately one (1) foot deep, and only flows in normal years during spring runoff. (Bibler, H. & B. TR., pages 49-50). The overflow channel has an estimated one and two-tenths percent (1.2%) gradient. (Bibler and Tudor, TR., page 157).

(1) The engineer hypothesized that a channel with a 1.2% gradient, if it were one (1) foot deep and a uniform width of four (4) feet, had a capacity for fourteen (14) cubic feet of water per second or six thousand two hundred and ninety (6,290) gallons of water per minute. (Tudor, Letter, Feb. 6, 1980).

(2) The water in the channel has been observed at depths of three (3) to four (4) inches, approximately. (McNeil, H. & B. TR., page 155).

(3) The engineer for testified that the overflow channel was poorly defined in the lower areas, was overgrown with vegetation in lower areas, and that water in the channel would overflow onto pastures. (Tudor, H. & B. TR., page 115).

(4) The engineer measured the ice in the overflow channel during the winter of 1980 and found it was approximately ten (10) to twelve (12) inches deep. (Tudor Map, Letter, Feb. 6, 1980; Tudor, H. & B. TR., page 82). The engineer estimated the flow, prior to freezing, was approximately six hundred (600) gallons of water per minute. (Tudor, H. & B. TR., page 82).

b. The overflow channel has not carried overflow from Lower Foy's Lake since about 1940 or 1950. During the past forty (40) years the lands adjacent to the overflow channel have been developed, buildings have been constructed for residences, businesses and churches. (Bibler, H. & B. TR., pages 32, 40).

c. Whether the overflows into the channel will be at a constant or fluctuating rate is undetermined.

(1) Mr. Bibler testified that overflow into the channel would be at a constant rate of approximately three hundred (300) gallons of water per minute. (Bibler, Harrington and Bibler, Inc. TR., page 50).

(2) The direct testimony submitted stated: "The overflow would be closed during the spring runoff period to retain all surface runoff from the area above Lake Shore Drive ...; and the overflow would not exceed the historic spring runoff at any time." (Harrington and Bibler, Inc. Direct).

8. Objectors to the Harrington and Bibler, Inc. project are downstream property owners along the overflow channel. Objectors, McNeil and the Kalispell Christian Church, are in the S1/2 SW1/4 of Section 13, Township 28 North, Range 22 West. (Church & McNeil Direct).

a. On Objectors' premises the groundwater level rises only during the spring runoff. Water is visible on the land surface of Objectors' properties in the spring. (Church Direct).

b. The soils on the objector's property and around the overflow channel are poorly drained. (Tudor, TR., page 151).

c. The United States Soil Conservation has identified areas of saline seep near the overflow channel; one saline seep

area is immediately east of the Objector's property. (DNRC. Technical Report, page 9; Tudor, TR., pages 167, 174).

d. The engineer testified that the overflow channel would be a losing stream; water would be lost from the channel to the surrounding banks. (Tudor, Harrington and Bibler, Inc. TR., pages 115-116).

9. The level of the bottom of the crawl space in the church was approximately the same level as the ice in the overflow channel during the winter of 1980.

(a) The engineer reported that the crawl space of the church had been excavated "to an elevation of 0.15 feet lower than the ice level in the channel." (Tudor, Letter, Feb. 6, 1980).

(b) The objector testified that during the spring there would be water in the crawl space at the church. (McNeil, TR., page 143).

(c) The objector testified that a continuous pool of water in the crawl space of the church would raise the humidity and cause the wood structures of the church to rot. (McNeil, H. & B. TR., page 158).

10. The overflow channel will require improvements before three hundred (300) to three hundred and fifty (350) gallons of water per minute can be discharged through the channel without affecting downstream or property owners.

a. Objector McNeil testified that excavation of the channel, or lining or tiling the channel may eliminate the adverse effects. (McNeil, H. & B. TR., page 157).

b. Harrington and Bibler, Inc. believe that the culvert for the overflow channel on McNeil's property should be re-aligned. (Bibler, Harrington and Bibler, Inc. TR., page 170). Mr. Bibler, committed Harrington and Bibler, Inc. to aid in improving the overflow channel. (Bibler, H. & B. TR. page 171).

11. Water flows in Ashley Creek from January 1 through December 31, inclusive, of each year; the majority of prior appropriators claim rights to divert water from Ashley Creek only during the irrigation season, approximately April 1 through October 1, inclusive, of each year.

Based upon the above Findings of Fact, the following Conclusions of Law are hereby made:

CONCLUSIONS OF LAW

1. Section 85-2-311, M.C.A., 1979, specifies the criteria that must be met for the department to issue a permit to appropriate water.

2. Application No. 17,743-s76LJ by Harrington and Bibler is for a Beneficial Water User Permit to divert from Ashley Creek 1,125 gallons of water per minute up to a maximum of 280 acre-feet

of water per year, to be diverted from October 1 thorough April 1, inclusive, of each year for lake rejuvenation.

3. Section 85-2-311 (1), M.C.A., 1979, requires in part that the department shall issue a permit if:

"there are unappropriated waters in the source of supply:

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

4. It appears, for the purposes herein only, that water is generally available in Ashley Creek from October 1 through April 1, inclusive of each year in quantites sufficient for Harrington and Bibler Inc.'s proposed lake rejuvenation.

5. Section 85-2-311 (2), M.C.A., 1979, requires in part that the department shall issue a permit if:

"the rights of a prior appropriation will not be adversely affected".

6. The rights of prior appropriators will not be adversely affected since the proposed appropriation is not during the irrigation season, and, because the appropriation permit, if issued, will be subject to prior rights.

7. Section 85-2-311 (3), M.C.A., 1979, requires in part that the department shall issue a permit if:

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

8. The proposed means of diversion, to divert the water from Ashley Creek at a point in the SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North, Range 22 West to Middle Foy's Lake, Lower Foy's Lake and the impoundment are adequate. The proposed means of construction for the impoundment and discharges into the old channel will require plan modifications. Modification will be necessary to regulate overflows from the channel and improve portions of the channel so that it will adequately carry overflows.

9. Section 85-2-312, M.C.A., 1979, provides:

The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits.

10. If a permit is issued the department can impose conditions for the design to be modified so that the means of diversion and construction are adequate.

11. Section 85-2-311 (4), M.C.A., 1979, requires in part that the department shall issue a permit if:

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

12. Harrington and Bibler, Inc.'s proposed uses of water, to rejuvenate Middle Foy's Lake and Lower Foy's Lake and construct an

impoundment, are beneficial uses. The Montana Legislature has not established a preference system for water rights. The objector's argument that agriculture is a more beneficial use than lake rejuvenation is rejected.

13. Section 85-2-311 (5), M.C.A., 1979, requires in part that the department shall issue a permit if:

"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."

14. Issuance of a permit for the Ashley Irrigation District to Sever and Sell their water rights on Ashley Creek has been approved. (Application No. 14,607-ss76LJ) Harrington and Bibler, Inc. is one of the purchasers of the Ashley Irrigation District water rights, and has signed a purchase and management agreement with the other purchasers. Harrington and Bibler, Inc.'s proposed diversion of water under Application No. 17,743-s76LJ will not unreasonably interfere with the uses planned by the Ashley Irrigation District, or with other planned uses for which water has been reserved.

15. Section 85-2-402 provides that:

"An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of others."

16. Application for Change of Appropriation Water Right No. 15,948-c76LJ by Harrington and Bibler, Inc., proposes to change

the point of diversion, place of use, and purpose of use for 1125
gallons of water per minute up to a maximum of 250 acre-feet of
water per year from Ashley Creek. The water will be diverted from
Ashley Creek at a point in SE1/4 NW1/4 NW1/4 of Section 14,
Township 28 North, Range 22 West and used for lake rejuvenation
and irrigation in the NE1/4 of Section 22, the SE1/4 of Section
15, the SW1/4 of Section 23, and the SW1/4 of Section 14, all in
Township 28 North, Range 22 West.

17. Harrington and Bibler, Inc.'s proposed use of the water
may adversely affect the rights of others, unless the permit, if
issued, is conditioned such that modifications of the present
design are required. Adverse affects may result, if changes in
design are not made, because overflow and discharges from the
groundwater cannot be adequately regulated given the present
design, and discharges into the old channel, in its present
unimproved condition, may have adverse affects.

Based upon the above Findings of Fact and the Conclusions of
Law, the following Orders are hereby made:

ORDER

Application No. 17,743-s76LJ

1. Subject to the following conditions, modifications and
limitations imposed below, the Application for Beneficial Water
Use Permit No. 17,743-s76LJ by Harrington and Bibler, Inc. is

approved to divert 1,125 gallons of water per minute up to a maximum of 280 acre-feet per year from Ashley Creek at a point in the SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North, Range 22 West, from October 1 through April 1, inclusive, of each year for lake rejuvenation of Middle Foy's Lake and Lower Foy's Lake, and construction of an impoundment.

2. The approval of Beneficial Water Use Permit No. 17,743-s76LJ is granted subject to all prior rights in the source of supply.

3. This is to inform you, the Permittees, that the Confederated Salish and Kootenai Tribes of the Flathead Reservation claim prior reserved water rights, and it is the Indian Tribe's position that economic investments made in association with the appropriation water rights do not create in the appropriators any equity or vested right against the Indian Tribes.

4. Harrington and Bibler, Inc. shall install and maintain adequate measuring devices to enable Harrington and Bibler, Inc. to keep a record of the flow rate and volume of water diverted, and the periods of such diversion and use. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

5. Prior to constructing the impoundment, Harrington and Bibler, Inc., shall obtain the approval of the Department of Natural Resources and Conservation. Harrington and Bibler, Inc.

shall submit to the Department detailed engineering plans and specifications for construction of the impoundment, which plans must include an adequate system for controlling the discharge of water from the impoundment.

6. Harrington and Bibler, Inc. shall limit discharges of water from the impoundment to a maximum quantity of 350 gallons of water per minute. Harrington and Bibler shall install and maintain adequate measuring devices to enable Harrington and Bibler, Inc. to keep a record of the flow rate and volume of water discharged, and the periods of such discharges. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

7. Harrington and Bibler, Inc. shall present plans for improving the old stream channel, where the necessity for improvement exists, so that the channel is capable of carrying discharges of 350 gallons of water per minute.

8. The granting of the Change for Appropriation Water Right in no way grants Harrington and Bibler, Inc. any right to violate the real property rights of any other party, nor does it excuse Harrington and Bibler, Inc. from any liability for the same, even if such violation is an unavoidable consequence of exercising the Change of the Appropriation Water Right.

9. The Department's granting of Beneficial Water Use Permit No. 17,743-s76LJ to Harrington and Bibler in no way reduces or alters Harrington and Bibler's liability for damage caused by

their exercise of the Water Rights changed, nor does the department in granting the Beneficial Water Use Permit in any way acknowledge liability for damage caused by Harrington and Bibler's exercise of the water rights changed.

ORDER

Re: Application No. 15,948-c76LJ

1. Subject to the following conditions and limitations imposed below, the Application for Change of Appropriation Water Right No. 15,948-c76LJ by Harrington and Bibler, Inc., is approved, to divert 1,125 gallons of water per minute up to a maximum of 250 acre-feet of water per year from Ashley Creek at a point in the SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North, Range 22 West from April 1 through October 1, inclusive, of each year for supplemental irrigation of 320 acres and lake rejuvenation of Middle Foy's Lake and Lower Foy's Lake and storage of water in a constructed impoundment.

a. The 320 acres to be irrigated are located in the SW1/4 SW1/4 of Section 14, the S1/2 SE1/4 of Section 15, the E1/2 NE1/4 of Section 22, the NW1/4 of Section 23 and the N1/2 NE1/4 SE1/4 of Section 22, the N1/2 NW1/4 SW1/4 of Section 23 and the W1/2 NE1/4 of Section 23, all in Township 28 North, Range 22 West.

2. The approval of Change of Appropriation Water Right No. 15,948-c76LJ is granted subject to all prior rights in the source of supply.

3. This is to inform you, the Permittees, that the Confederated Salish and Kootenai Tribes of the Flathead Reservation claim prior reserved water rights, and it is the Indian Tribe's position that economic investments made in association with the appropriation water rights do not create in the appropriators any equity or vested right against the Indian Tribes.

4. Harrington and Bibler, Inc. shall install and maintain adequate measuring devices to enable Harrington and Bibler, Inc. to keep a record of the flow rate and volume of water diverted, and the periods of such diversion and use. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

5. Prior to constructing the impoundment, Harrington and Bibler, Inc., shall obtain the approval of the Department of Natural Resources and Conservation. Harrington and Bibler, Inc. shall submit to the Department detailed engineering plans and specifications for construction of the impoundment, which plans must include an adequate system for controlling the discharge of water from the impoundment.

Copies of the plans and specifications shall be made available to the Kalispell Christian Church and Virgil D. and Rae

D. McNeil; and the Kalispell Christian Church and the McNeils may present the Department with comments on the plans and specifications.

6. Harrington and Bibler shall limit discharges of water from the impoundment to 350 gallons of water per minute. Harrington and Bibler shall install and maintain adequate measuring devices to enable Harrington and Bibler, Inc. to keep a record of the flow rate and volume of water discharged, and the periods of such discharges. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

7. Harrington and Bibler, Inc. shall present plans for improving the old stream channel, where the necessity for improvement exists, so that the channel is capable of carrying discharges of 350 gallons of water per minute.

8. The granting of the Change for Appropriation Water Right in no way grants Harrington and Bibler, Inc. any right to violate the real property rights of any other party, nor does it excuse Harrington and Bibler, Inc. from any liability for the same, even if such violation is an unavoidable consequence of exercising the Change of the Appropriation Water Right.

9. The Department's granting of the Change for Appropriation Water Right No. 15,948-c76LJ to Harrington and Bibler in no way reduces or alters Harrington and Bibler's liability for damage caused by their exercise of the Water Rights changed, nor does the

Department in granting the Change for the Appropriation Water
right in any way acknowledge liability for damage caused by
Harrington and Bibler's exercise of the water rights changed.

NOTICE

The Department's Final Order may be appealed in accordance
with the Montana Administrative Procedures Act by filing a
petition in the appropriate court within thirty (30) days after
service of the Final Order.

DATED this 10 day of August, 1981.

Gary Fritz
Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 449-2872

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

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The hearing was held on February 25, 1980 in the Council Chambers of the Kalispell City Hall.

Harrington and Bibler, Inc. was represented by legal counsel Stephen Berg, from the law firm of Worden, Christianson and Johnson, Kalispell, Montana. Submitting written direct testimony and personally appearing to present evidence and testimony on behalf of Harrington and Bibler were: Sam Bibler and Allen Tudor.

The Kalispell Christian Church and Mr. and Mrs. Virgil McNeil were represented by legal counsel James R. Weaver, Columbia Falls, Montana. Submitting written direct testimony on behalf of the Kalispell Christian Church and the McNeils were: Virgil McNeil and John L. Mulford. The Kalispell Christian Church and the McNeils offered into evidence one (1) exhibit, a drawing by Allen Tudor of the ~~rights~~^{heights} of the channel and the church, which was admitted as Objector's Exhibit No. 1.

Cheryl Pierce, on her own behalf, personally appeared at the hearing to present evidence and testimony. Dulane Fulton, on his own behalf, personally appeared at the hearing to present evidence and testimony.

At the request of the Kalispell Christian Church and the McNeils, their case and cross-examination of Harrington and Bibler, Inc. concerning Application for Sever and Sell of Water Right No. 14,607-ss76LJ and concomitant Application for Change of Appropriation Water Right No. 14,607-ss76LJ by Harrington and Bibler, was presented at the hearing on Harrington and Bibler Application for Beneficial Water Use Permit No. 17,743-s76LJ and Application for Change of Appropriation Water Right No. 15,948-c76LJ. Therefore, the proceedings of these hearings (15,948-c76LJ and 17,743-s76LJ) were fully adopted and incorporated into the proceedings on Application to Sever and Sell Water Right No. 14,607-ss76LJ, particularly the Application for Change of Appropriation Water Right by Harrington and Bibler. The Hearing Examiner, on her motion, has taken judicial notice of the portions of the hearing on Application to Sever and Sell Water Right No. 14,607-ss76LJ which relate to the Harrington and Bibler application.

Based upon the Department's file, the applicant's and objectors' testimonies presented and exhibits admitted, the Hearing Examiner hereby makes the following Proposed Findings of Fact:

PROPOSED FINDINGS OF FACT

1. Harrington and Bibler (H & B) will change the place of use and purpose of use of 1,125 gallons of water per minute up to a maximum of 250 acre-feet of water per year from Ashley Creek.

The water obtained by the change authorization will be used in conjunction with the water obtained by the Application to Sever and Sell Water Right No. 14,607-ss76LJ and Application for Beneficial Water Use Permit No. 17,743-ss76LJ.

a. The water was previously diverted from April 1 to October 1, inclusive, of each year, at a point in the NE1/4 NW1/4 NW1/4 of Section 21, Township 28 North, Range 22 West. The water was used for flood irrigation on 100 acres, which were in the S1/2 SW1/4 and SW1/4 SE1/4 of Section 11, Township 28 North, Range 22 West, and for stockwater. (Amended Application No. 15,948-c76LJ).

2. Harrington and Bibler propose to divert from Ashley Creek 1,125 gallons of water per minute up to a maximum of 280 acre-feet of water per year to be diverted from October 1 to April 1, inclusive, of each year. The water obtained with the Beneficial Water Use Permit will be used in conjunction with water obtained by the Application to Sever and Sell Water Right No. 14,607-ss76LJ and the Application for Change of Appropriation Water Right No. 15,948-c76LJ (Application No. 17,743-s76LJ, Tudor Letter, February 6, 1980).

3. H. & B. will divert the water from Ashley Creek in the SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North, Range 22 West. H. & B. will probably install two (2) pumps capable of individually pumping one thousand and forty-five (1,045) gallons of water per minute, and having a combined capacity of two

thousand and ninety (2,090) gallons of water per minute. An instantaneous flow meter would be installed in the system. (Tudor, H. & B., Tr. pages 111-112; Tudor, Letter, Feb-12, 1980).

a. During July and August, H.& B. will only divert from Ashley Creek two hundred and fifty-eight (258) acre-feet of water, therefore, the pumping rate for July and August will not exceed nine hundred and forty-one and five tenths (941.5) gallons of water per minute. (Tudor, Letter, Feb. 12, 1980).

b. During April, May, June and September, H. & B. will divert water from Ashley Creek at a rate of nine hundred and sixty-five (965) gallons of water per minute. (Tudor, Letter, Feb. 12, 1980).

4. H. & B. will use approximately five hundred and fifteen (515) acre-feet of water per year for irrigation of three hundred and twenty (320) acres of alfalfa, gardens and lawns, which is in the W1/2 SE1/4 of Section 14, the S1/2 SE1/4 of Section 15, the E1/2 NE1/4 of Section 22, and the W1/2 NE1/4 of Section 23, all in Township 28 North, Range 22 West. (H. & B. Map, Direct).

a. Approximately one hundred (100) acres will be alfalfa, and the remaining two hundred and twenty (220) acres will be gardens and lawns. (Bibler, H. & B. TR. page 71).

b. Some objectors contended that the use of water for irrigating gardens and lawns in a subdivision, and lake rejuvenation will be less beneficial uses than agriculture.

5. H. & B. will use two hundred and sixty-three and three tenths (263.3) acre-feet of water diverted from Ashley Creek each year for rejuvenation of Middle Foy's Lake and Lower Foy's Lake, which are eutrifying, and to create an impoundment below Lower Foy's Lake. The total volume required for lake rejuvenation and impoundment is three hundred and ninety-two (392) acre-feet.

a. Middle Foy's Lake has a surface area of thirty-nine (39) acres and a volume of approximately five hundred and eighty-five (585) acre-feet. (Carver letter, Aug. 17, 1977). Occasionally Upper Foy's Lake drains into Middle Foy's Lake. (Tech. Report, page 10).

b. Lower Foy's Lake has a surface area of twenty (20) acres and a volume of approximately one hundred and sixty (160) acre-feet. (Carver, Letter, Aug. 17, 1977). The overflow from Middle Foy's Lake will flow into Lower Foy's Lake. (Carver, Letter, Aug. 17, 1977).

c. The overflow from Lower Foy's Lake will be retained in an impoundment in the NE1/4 NW1/4 of Section 23, Township 28 North, Range 22 West. (H. & B. Map). The impoundment will have a surface area of approximately six (6) acres and a volume of approximately thirty (30) acre-feet. (Carver, Letter, Aug. 17, 1977).

6. H. & B. have not decided how to control the overflow from the impoundment, but H. & B.'s engineer suggested that a gate

valve with a throttling device on the pipe may be used. (Tudor, H. & B., TR., page 83).

a. Middle Foy's Lake will be raised approximately three (3) feet, to it's spillpoint. (Bibler, H. & B. TR., page 62).

b. Water levels in Middle Foy's and Lower Foy's Lakes are highest during June and July. (Bibler, H. & B. TR., page 16).

c. The impoundment to be constructed will be used for storage, approximately six (6) acre-feet will be available for storage, although design modifications could be made to increase the storage to nine (9) acre-feet. (Bibler, H. & B. TR., pages 30, 69; Tudor, Letter, Feb. 6, 1980).

(1) The engineer for H. & B. testified that flows from the impoundment would not increase suddenly if there were heavy rains or early spring thaws. (Tudor, H. & B. TR., page 86).

7. The overflow from the H. & B. impoundment will be approximately 300 to 350 gallons of water per minute, and will flow northeast through an old intermittent channel to Ashley Creek. (Tudor, TR., pages 146, 147, 198, and Bibler, H. & B. TR., page 50). The remaining portion of the water, approximately 2,066.5 to 2,090 gallons of water per minute, that will be diverted, will be consumed by irrigation, stored, or evaporated.

(Carver, Letter, Aug. 17, 1977; Tudor, H. & B. TR., page 86, Tudor, TR., page 141).

a. The overflow channel is approximately one (1) foot deep, and only flows in normal years during spring runoff.

(Bibler, H. & B., TR., pages 49-50). The overflow channel has an estimated one and two-tenths percent (1.2%) gradient.

(Bibler and Tudor, TR., page 157).

(1) The engineer for H. & B. hypothesized that a channel with a 1.2% gradient, if it were one (1) foot deep and a uniform width of four (4) feet, ^{would have} ~~had~~ a capacity for fourteen (14) cubic feet of water per second or six thousand two hundred and ninety (6,290) gallons of water per minute. (Tudor, Letter, Feb. 6, 1980).

(2) The water in the channel has been observed to be a depth of three (3) to four (4) inches. (McNeil, H. & B., TR., page 155).

(3) The engineer for H. & B. testified that the overflow channel was poorly defined in the lower areas, was overgrown with vegetation in areas, and that water in the channel would overflow onto pastures. (Tudor, H. & B., TR., page 115).

(4) The engineer for H. & B. measured the ice in the overflow channel during the winter of 1980 and found it

was approximately ten (10) to twelve (12) inches deep. (Tudor Map, Letter, Feb. 6, 1980; Tudor, H. & B. TR., page 82). The engineer estimated the flow, prior to freezing, was approximately six hundred (600) gallons of water per minute. (Tudor, H. & B. TR., page 82).

b. The overflow channel has not carried overflow from Lower Foy's Lake since about 1940 or 1950. During the past forty (40) years the lands adjacent to the overflow channel have had buildings constructed upon them. (Bibler, H. & B. TR., pages 32, 40).

c. Whether the overflows into the channel will be at a constant or fluctuating rate is undetermined.

(1) Mr. Bibler testified that overflow into the channel would be at a constant rate of approximately three hundred (300) gallons of water per minute. (Bibler, H. & B. TR., page 50).

(2) The direct testimony submitted stated: "The overflow would be closed during the spring runoff period to retain all surface runoff from the area above Lake Shore Drive ...; and the overflow would not exceed the historic spring runoff at any time." (H. & B. Direct).

8. Objectors to the H. & B. project are downstream property owners along the overflow channel. Objectors, McNeil and the

Kalispell Christian Church, are in the S1/2 SW1/4 of Section 13, Township 28 North, Range 22 West. (Church & McNeil Direct).

a. The groundwater level on objectors premises rises only during the spring runoff, so water is visible on the surface in the spring. (Church Direct).

b. The soils on the objector's property and around the overflow channel are poorly drained. (Tudor, TR., page 151).

c. The United States Soil Conservation has identified areas of saline seep near the overflow channel; one saline seep area is immediately east of the Objector's property. (DNRC. Technical Report, page 9; Tudor, TR., pages 167, 174).

d. The engineer for H. & B. testified that the overflow channel would be a losing stream; water would be lost from the channel to the surrounding banks. (Tudor, H. & B. TR., pages 115-116).

9. The level of the bottom of the crawl space in the church was approximately the same level as the ice in the overflow channel during the winter of 1980.

(a) The engineer for H. & B. reported that the crawl space of the church had been excavated "to an elevation of 0.15 feet lower than the ice in the channel."
(Tudor, Letter, Feb. 6, 1980).

(b) The objector testified that during the spring there would be water in the crawl space. (McNeil, TR., page 143).

(c) The objector testified that a continuous pool of water in the crawl space will raise the humidity and might cause the wood structures to rot. (McNeil, H. & B. TR., page 158).

10. The overflow channel will require improvements before three hundred (300) to three hundred and fifty (350) gallons of water per minute can be discharged through the channel without affecting downstream or property owners.

a. Objector McNeil testified that excavation of the channel, or lining or tiling the channel may eliminate the adverse effects. (McNeil, H. & B. TR., page 157).

b. H. & B. testified that the culvert for the overflow channel on McNeil's property should be re-aligned. (Bibler, H. & B. TR., page 170). H. & B. testified that they will aid in improving the overflow channel. (Bibler, H. & B., TR. page 171).

11. Water flows in Ashley Creek from January 1 through December 31, inclusive, of each year; the majority of prior appropriators claim rights to divert water from Ashley Creek only during the irrigation season, approximately April 1 through October 1, inclusive, of each year.

Based upon the above Proposed Findings of Fact, the following Proposed Conclusions of Law are hereby made:

PROPOSED CONCLUSIONS OF LAW

1. Section 85-2-311, M.C.A., 1979, specifies the criteria that must be met for the department to issue a permit to appropriate water.

2. Application No. 17,743-s76LJ by Harrington and Bibler is for a Benefiical Water User Permit to divert from Ashley Creek 1,125 gallons of water per minute up to a maximum of 280 acre-feet of water per year, to be diverted from October 1 thorough April 1, inclusive, of each year for lake rejuvenation.

3. Section 85-2-311 (1), M.C.A., 1979, requires in part that the department shall issue a permit if:

"there are unappropriated waters in the source of supply:

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

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

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available."

4. It appears, for the purposes herein only, that water is generally available in Ashley Creek from October 1 thorough April 1, inclusive of each year in quantites sufficient for Harrington and Bibler's proposed lake rejuvenation.

5. Section 85-2-311 (2), M.C.A., 1979, requires in part that the department shall issue a permit if:

"the rights of a prior appropriation will not be adversely affected".

6. The rights of prior appropriators will not be adversely affected since the proposed appropriation is not during the irrigation season, and, because the appropriation permit, if issued, will be subject to prior rights.

7. Section 85-2-311 (3), M.C.A., 1979, requires in part that the department shall issue a permit if:

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

8. The proposed means of diversion, to divert the water from Ashley Creek at a point in the SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North, Range 22 West to Middle Foy's Lake, Lower Foy's Lake and the impoundment are adequate. The proposed means of construction for the impoundment and discharges into the old channel will require plan modifications. Modification will be necessary to regulate overflows from the channel and improve portions of the channel so that it will adequately carry overflows.

9. Section 85-2-312, M.C.A., 1979, provides:

The department may require modification of plans and specifications for the appropriation or related diversion or

construction. It may issue a permit subject to terms, conditions, restrictions and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits.

10. If a permit is issued the department can impose conditions for the design to be modified so that the means of diversion and construction are adequate.

11. Section 85-2-311 (4), M.C.A., 1979, requires in part that the department shall issue a permit if:

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

12. Harrington and Bibler's proposed uses of water, to rejuvenate Middle Foy's Lake and Lower Foy's Lake and construct an impoundment, are beneficial uses. The Montana Legislature has not established a preference system for water rights. The objector's arguments that agriculture is a beneficial use is rejected.

13. Section 85-2-311 (5), M.C.A., 1979, requires in part that the department shall issue a permit if:

"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."

14. Issuance of a permit for the Ashley Irrigation District to Sever and Sell their water rights on Ashley Creek is pending. (Application No. 14,607-ss76LJ) Harrington and Bibler is one of the purchasers of the Ashley Irrigation District water rights, and has signed a purchase and management agreement with the other purchasers. Harrington and Bibler's proposed diversion of water under Application No. 17,743-s76LJ will not unreasonably interfere

with the uses planned by the Ashley Irrigation District, or with other planned uses for which water has been reserved.

15. Section 85-2-402 provides that:

"An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of others."

16. Application for Change of Appropriation Water Right No. 15,948-c76LJ by Harrington and Bibler, proposes to change the point of diversion, place of use, and purpose of use for 100 gallons of water per minute up to a maximum of 250 acre-feet of water per year from Ashley Creek. The water will be diverted from Ashley Creek at a point in SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North, Range 22 West and used for lake rejuvenation and irrigation in the NE1/4 of Section 22, the SE1/4 of Section 15, the SW1/4 of Section 23, and the SW1/4 of Section 14, all in Township 28 North, Range 22 West.

17. Harrington and Bibler's proposed use of the water may adversely affect the rights of others, unless the permit, if issued, is conditioned such that modifications of the present design are required. The adverse affects would result, if changes in design were not made, because overflow and discharges from the impoundment cannot be adequately regulated given the present design, and discharges into the old channel, in its present unimproved condition, may have adverse affects.

Based upon the above Proposed Findings of Fact and the Proposed Conclusions of Law, the following Proposed Orders are hereby made:

PROPOSED ORDER

Application No. 17,743-s76LJ

1. Subject to the following conditions, modifications and limitations imposed below, the Application for Beneficial Water User Permit No. 17,743-s76LJ by Harrington and Bibler, Inc. is approved to divert 1,125 gallons of water per minute up to a maximum of 280 acre-feet per year from Ashley Creek at a point in the SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North, Range 22 West, from October 1 through April 1, inclusive, of each year for lake rejuvenation of Middle Foy's Lake and Lower Foy's Lake, and construction of an impoundment.

2. The approval of Beneficial Water use Permit No. 17,743-s76LJ is granted subject to all prior rights in the source of supply.

3. This is to inform you, the Permittees, that the Confederated Salish and Kootenai Tribes of the Flathead Reservation claim prior reserved water rights, and it is the Indian Tribe's position that economic investments made in association with the appropriation water rights do not create in

the appropriators any equity or vested right against the Indian Tribes.

4. Harrington and Bibler, Inc. shall install and maintain adequate measuring devices to enable Harrington and Bibler, Inc. to keep a record of the flow rate and volume of water diverted, and the periods of such diversion and use. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

5. Prior to constructing the impoundment, Harrington and Bibler, Inc., shall obtain the approval of the Department of Natural Resources and Conservation. Harrington and Bibler, Inc. shall submit to the Department detailed engineering plans and specifications for construction of the impoundment, which plans must include an adequate system for controlling the discharge of water from the impoundment.

6. Harrington and Bibler shall limit discharges of water from the impoundment to 350 gallons of water per minute. Harrington and Bibler shall install and maintain adequate measuring devices to enable Harrington and Bibler, Inc. to keep a record of the flow rate and volume of water discharged, and the periods of such discharges. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

7. Harrington and Bibler, Inc. shall present plans for improving the old stream channel, where the necessity for

improvement exists, so that the channel is capable of carrying discharges of 350 gallons of water per minute.

8. The granting of the Change for Appropriation Water Right in no way grants Harrington and Bibler, Inc. any right to violate the real property rights of any other party, nor does it excuse Harrington and Bibler, Inc. from any liability for the same, even if such violation is an unavoidable consequence of exercising the Change of the Appropriation Water Right.

9. The Department's granting of Beneficial Water Use Permit No. 17,743-s76LJ to Harrington and Bibler in no way reduces or alters Harrington and Bibler's liability for damage caused by their exercise of the Water Rights ~~changed~~, nor does the Department in granting the Beneficial Water Use Permit in any way acknowledge liability for damage caused by Harrington and Bibler's exercise of the water rights changed.

PROPOSED ORDER

Re: Application No. 15,948-c76LJ

1. Subject to the following conditions and limitations imposed below, the Application for Change of Appropriation Water Right No. 15,948-c76LJ by Harrington and Bibler, Inc., is approved, to divert 1,125 gallons of water per minute up to a maximum of 250 acre-feet of water per year from Ashley Creek at a point in the SE1/4 NW1/4 NW1/4 of Section 14, Township 28 North,

Range 22 West from April 1 through October 1, inclusive, of each year for supplemental irrigation of 320 acres and lake rejuvenation of Middle Foy's Lake and Lower Foy's Lake and storage of water in a constructed impoundment.

2. The approval of Change of Appropriation Water Right No. 15,948-c76LJ is granted subject to all prior rights in the source of supply.

3. This is to inform you, the Permittees, that the Confederated Salish and Kootenai Tribes of the Flathead Reservation claim prior reserved water rights, and it is the Indian Tribe's position that economic investments made in association with the appropriation water rights do not create in the appropriators any equity or vested right against the Indian Tribes.

4. Harrington and Bibler, Inc. shall install and maintain adequate measuring devices to enable Harrington and Bibler, Inc. to keep a record of the flow rate and volume of water diverted, and the periods of such diversion and use. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

5. Prior to constructing the impoundment, Harrington and Bibler, Inc., shall obtain the approval of the Department of Natural Resources and Conservation. Harrington and Bibler, Inc. shall submit to the Department detailed engineering plans and specifications for construction of the impoundment, which plans

must include an adequate system for controlling the discharge of water from the impoundment.

6. Harrington and Bibler shall limit discharges of water from the impoundment to 350 gallons of water per minute. Harrington and Bibler shall install and maintain adequate measuring devices to enable Harrington and Bibler, Inc. to keep a record of the flow rate and volume of water discharged, and the periods of such discharges. Such records shall be presented to the Department of Natural Resources and Conservation for inspection upon demand by the Department.

7. Harrington and Bibler, Inc. shall present plans for improving the old stream channel, where the necessity for improvement exists, so that the channel is capable of carrying discharges of 350 gallons of water per minute.

8. The granting of the Change for Appropriation Water Right in no way grants Harrington and Bibler, Inc. any right to violate the real property rights of any other party, nor does it excuse Harrington and Bibler, Inc. from any liability for the same, even if such violation is an unavoidable consequence of exercising the Change of the Appropriation Water Right.

9. The Department's granting of the Change for Appropriation Water Right No. 15,948-c76LJ to Harrington and Bibler in no way reduces or alters Harrington and Bibler's liability for damage caused by their exercise of the Water Rights changed, nor does the Department in granting the Change for the Appropriation Water

Right in any way acknowledge liability for damage caused by
Harrington and Bibler's exercise of the water rights changed.

NOTICE

This is a Proposed Decision 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 Proposal for Decision, if any, shall be filed with the Hearing Examiner within fifteen (15) days of receipt of service.

DATED this 9th day of December, 1980.



RONDA L. SANDQUIST
HEARING EXAMINER
32 S. Ewing
Helena, MT 59601

CASE #