

Exhibit "A"
 BEFORE THE DEPARTMENT
 OF
 NATURAL RESOURCES AND CONSERVATION
 OF THE STATE OF MONTANA

 IN THE MATTER OF APPLICATION) FINDINGS OF FACT,
 FOR BENEFICIAL WATER USE PERMIT) CONCLUSIONS OF LAW,
 NO. 18,962-g41-O BY NORTH) AND ORDER
 MONTANA FEEDERS, INC.)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on June 28, 1979, at Choteau, Montana, for the purpose of hearing objections to the above named Application for Beneficial Water Use Permit No. 18,962-g41-O by North Montana Feeders, Inc., Forrest Tevebaugh, Hearing Examiner presiding.

The Applicant, North Montana Feeders, Inc., was represented at the Hearing by Mr. Doug Crary, Mr. Lloyd DeBruycher, Mr. Lyle Otness and Mr. Harold Yeager. Mr. Crary, Mr. DeBruycher and Mr. Yeager presented testimony in support of the application. North Montana Feeders, Inc., was not represented by legal counsel. One exhibit was introduced supporting the application, to wit:

APPLICANT'S EXHIBIT:

A-1 U.S.G.S. Choteau Quadrangle Map

The Applicant's exhibit was marked accordingly and received into the record without objections.

Five Objectors attended the Hearing and presented testimony or statements. The Objectors were Gladys Chalmers representing Crumpled Horn; Bill Reichelt and Charles Danreuther representing Teton Water User's Association; and William A. Leys and A. B. Guthrie, who were represented by legal counsel, Keith Strong of Great Falls. Mr. Strong also represented Objectors, Farmer's Co-op Canal Company; Eldorado Cooperative Canal Company; Alva L. Armstrong;

1 Rudolph Simonson; Alvin Guse and Lowry I. Larson. The Objectors introduced
2 three exhibits supporting their objections, to wit:

3 OBJECTORS' EXHIBITS:

- 4 O-1 Location Map of Applicant's Wells and Objectors' Wells and Springs
- 5 O-2 Memorandum to Ed Miller, Chief, Technical Services Bureau, from
6 Tom Rediski, Geologist, Technical Services Bureau, Department of
7 Natural Resources and Conservation, March 8, 1979.
- 8 O-3 Ground Water Investigation of Muddy Creek Artesian Basin by Peter
9 Norbeck, Hydrologist, Montana Bureau of Mines and Geology.

10 The Objectors' Exhibits were marked accordingly and received into the
11 record without objections.

12 Montana Department of Natural Resources and Conservation personnel
13 and witnesses present and testifying on behalf of the Department were Tom
14 Rediski, Department Hydrogeologist, and Bob Larson, Havre Water Rights
15 Bureau Field Office Manager. Also present was Vicki Woodrow, Hearing
16 Recorder. The Department was not represented by legal counsel. One exhibit
17 was introduced by the Department, to wit:

18 DEPARTMENT'S EXHIBIT:

- 19 D-1 Report on North Montana Feeders' Case by Bob Larson, June 27, 1979.

20 The Department's Exhibit was marked accordingly and received into the
21 record without objections.

22 MOTION

23 Counsel for the Objectors made a Pre-hearing motion that the permit
24 be denied due to the lack of unappropriated waters in the source. The
25 motion was denied by the Hearing Examiner.
26

27 FINDINGS OF FACT

28 1. On May 6, 1978, the Department received an Application for

CASE # 18962

1 Beneficial Water Use Permit No. 18,962-g41-0 by North Montana Feeders, Inc.,
2 to appropriate 400 gallons per minute or .89 cubic feet per second of water,
3 not to exceed 375 acre-feet per annum in Teton County, Montana. The water
4 is to be withdrawn from a new well approximately 9 feet deep at a point in
5 the NE1/4 SW1/4 SW1/4 of Section 21, and conveyed by means of a pump and
6 pipeline to a point in the SE1/4 NW1/4 SW1/4 of Section 28, both in Township
7 25 North, Range 5 West, M.P.M., and used for stock-watering from January 1
8 to December 31, inclusive, of each year.

9 2. On October 26, November 2, and 9, 1978, the Department caused to
10 be duly published in the Choteau Acantha, Choteau, Montana, notice of the
11 above Application for Beneficial Water Use Permit No. 18,962-g41-0.

12 3. The Application was reduced from 400 gallons per minute (with a
13 maximum of 375 acre-feet per annum) to 120 gallons per minute (with a
14 maximum of 193.7 acre-feet per annum) at the Pre-hearing Conference held
15 in Choteau, Montana, on April 10, 1979. .

16 4. On November 6, 1978, the Department received an objection to the
17 above Application from William A. Leys.

18 5. On November 21, 1978, the Department received an objection to the
19 above Application from Crumpled Horn.

20 6. On December 8, 1978, the Department received an objection to the
21 above Application from Farmer's Cooperative Canal Company.

22 7. On December 11, 1978, the Department received objections to the
23 above Application from Alvin G. Guse, Harold Baker, and Patrick Lemmon.

24 8. On December 12, 1978, the Department received objections to
25 the above Application from Rudolph N. Simonson and the Eldorado Cooperative
26 Canal Company.

27 9. On December 13, 1978, the Department received objections to the
28 above Application from Bert Guthrie and Alva L. Armstrong.

1 10. On December 14, 1978, the Department received objections to the
2 above Application from Cecil Cole, Lowry I. Larson, and Teton Water Users
3 Association.

4 11. Doug Crary testified (for the Applicant) that 56 gallons
5 per minute currently satisfies North Montana Feeders' needs at their
6 feedlot, but North Montana Feeders is applying for 120 gallons per
7 minute to enable expansion to a maximum of 10,000 head of cattle.
8 North Montana Feeders wishes to take all of their needed water from
9 one well so they won't have to operate three (3) separate pumps.
10 North Montana Feeders feels there is sufficient water in the source
11 of supply, since the water levels in their current wells fluctuate
12 very little when pumped.

13 12. Tom Rediski testified for the Department, that his report
14 was based entirely on the initial Application for 400 gallons per
15 minute. The reduction in withdrawal to 120 gallons per minute would
16 decrease the magnitude of the impacts listed in the report.

17 13. Bill Leys testified that the first winter the feedlot was
18 in operation the water level in all three of his wells dropped. He
19 complained about the situation to North Montana Feeders, and then
20 deepened his wells after no action was taken by North Montana Feeders.
21 His spring used for livestock dried up in 1973 following the drought
22 and pumping of Bert Guthrie's wells by North Montana Feeders. He
23 testified further that only his spring might be affected, if North
24 Montana Feeders does not pump their existing wells, but only pump
25 their proposed well.

26 14. Bert Guthrie testified that the Applicant's proposed well
27 would draw water from Farmer's Ditch (Farmer's Cooperative Canal) due
28 to the porous nature of the soils in the area. He also testified that
his spring was dried up in the spring of 1978 due to pumping of his

CASE # 18962

1 wells by the Applicants and also because of the drought that previous
2 summer. His spring was not dried up by the Applicant's pumping in
3 1974 - 1977.

4 15. Gladys Chalmers read a statement for the Objector Crumpled
5 Horn supporting development of the aquifer, but requested that all
6 users pay for monitoring the aquifer based on the relative amount
7 of water withdrawn.

8 16. Bill Reichelt testified for Teton Water Users Association
9 stating that downstream appropriators are short on water already, and
10 that any new upstream surface or ground water appropriations might
11 adversely affect their rights.

12 17. Bob Larson testified for the Department that he made a field
13 investigation of the site on January 12, 1979, after receiving a
14 complaint on January 5, 1979, from Bill Leys regarding a new well
15 being pumped by North Montana Feeders. The well is manifolded to the
16 original North Montana Feeders' well. Mr. Larson advised North Montana
17 Feeders that they were in violation of the 1973 Montana Water Use Act by
18 not applying for a Beneficial Water Use Permit. North Montana Feeders
19 filed a Notice of Completion of Ground Water Development form for 30
20 gallons per minute on April 9, 1979. Mr. Larson stated that the 1973
21 Montana Water Use Act might still be circumvented by manifolding two wells
22 together to produce more than 100 gallons per minute without receiving
23 a Beneficial Water Use Permit.

24 18. Counsel for the Objectors listed a set of conditions to be
25 placed on the permit if granted.

26 CONCLUSIONS OF LAW

27 1. Under Section 85-2-311, MCA, "The Department shall issue a
28 permit if:

CASE # 189162

- 0-
1. there are unappropriated water 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. throughout the period during which the applicant seeks to appropriate, the amount requested is available;
 2. the rights of a prior appropriator will not be adversely affected;
 3. the proposed means of diversion or construction are adequate;
 4. the proposed use of water is a beneficial use;
 5. 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; . . ."

2. Based upon testimony given at the Hearing, it is concluded that there are unappropriated water in the source of supply, except during periods of drought.

3. Based upon testimony given at the Hearing, it is concluded that the maximum withdrawal from the proposed well will occur during the winter months when the Farmer's Cooperative Canal is not in use.

4. For the purpose herein, based upon testimony given at the Hearing, it is concluded that there are unappropriated waters which could be put to beneficial use as requested in the Application for Beneficial Use Permit No. 18,962-g41-0 by North Montana Feeders, Inc., without adversely affecting the rights of prior appropriators.

5. It is concluded that the issuing of Beneficial Water Use Permit No. 18,962-g41-0 in no way reduces the Applicant's liability for damage caused by the Applicant's exercises of said permit.

Based on the above Findings of Fact and Conclusions of Law, the following Final Order is hereby made:

-7-

FINAL ORDER

1
2 1. Subject to the conditions and limitations listed below,
3 Provisional Permit No. 18,962-g41-0 by North Montana Feeders, Inc.,
4 is hereby granted to appropriate 120 gallons per minute or .27 cubic
5 feet per second of water, not to exceed 193.7 acre-feet per annum
6 in Teton County, Montana. The water is to be withdrawn from a new
7 well approximately 9 feet deep at a point in the NE1/4 SW1/4 SW1/4 of
8 Section 21, and conveyed by means of a pump and pipeline to a point
9 in the SE1/4 NW1/4 SW1/4 of Section 28, both in Township 25 North, Range
10 5 West, M.P.M., and used for stock-watering from January 1 to December
11 31, inclusive, of each year.

12 The Provisional Permit is subject to existing water rights in the
13 source of supply, and any final determination of existing water rights,
14 as provided by Montana law.

15 2. The Applicant shall install and maintain an adequate flow meter
16 to accurately measure the rate and volume of water diverted from the well.
17 The Applicant shall ~~keep~~^{keep} an accurate written log record of periods of diversion.
18 This includes the times and dates the pump was started and shut off, the rate
19 water is diverted during each pumping period, and the total volume of water
20 diverted during each period. Such records shall be presented to the
21 Department upon demand by the Department.

22 3. The granting of Provisional Permit No. 18,962-g41-0 by
23 the Department in no way reduces or alters the Applicant's liability
24 for damage caused by the Applicant's exercise of said Permit, nor
25 does the Department in issuing this Permit in any way acknowledge
26 liability for damage caused by the Applicant's exercise of this Permit.

27 4. The granting of this Provisional Permit in no way grants the
28 Applicant any right to violate rights of any other party, nor does

CASE # 18962

1 it excuse the Applicant from any liability for same, even if such
2 violation is a necessary and unavoidable consequence of exercising
3 this Permit.
4

5 NOTICE

6 This Final Order may be appealed in accordance with the Montana
7 Administrative Procedures Act by filing a petition in the appropriate
8 court within thirty (30) days after service.

9 Forrest Tevebaugh, Hearing Examiner at the time of the Hearing,
10 has resigned and is no longer available to the Department. This
11 Final Order was prepared by the undersigned who has read the entire
12 transcript of the Hearing and the Department's complete file on
13 this matter.
14

15 RECOMMENDATION

16 The Department recommends that all parties in this matter install
17 and maintain adequate measuring devices to fit their particular
18 individual situation, and keep a log of records of water used for their
19 own proof of their water rights and protection.
20

21 DATED this 9th day of JANUARY 1980.

22
23 David L. Pengelly
24 DAVID L. PENGELLY
25 Hearing Examiner, D.N.R.&C.
26
27
28

CASE # 18962

AFFIDAVIT OF SERVICE
(Final Order)

STATE OF MONTANA)
) ss.
County of Lewis and Clark)

Vicki J. Woodrow, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That, on January, 7 19 80, he deposited in the United States mail, a "certified" copy of the Final Order by the Administrator, Water Resources Division, on the application by North Montana Feeders, Inc., Application No. 18,962-g41-O, for a permit to appropriate water, addressed to each of the following persons or agencies: Certified Nos. _____ to _____

1. North Montana Feeders, Inc.; Box 118, Route 2; Choteau, MT 59422
2. Mr. Lloyd DeBruycher, President; North Montana Feeders, Inc.; Dutton, MT 59433
3. Mr. Alvin G. Guse; Route 2; Choteau, MT 59422
4. Eldorado Cooperative Canal Company; c/o Citizen State Bank; Choteau, MT 59422
5. Mr. William E. Reichelt, President; Teton Water Users Association; P.O. Box 22 Choteau, MT 59422
6. Mr. Bert Guthrie; P.O. Box 541; Choteau, MT 59422
7. Mrs. Alva L. Armstrong; P.O. Box 307; Choteau, MT 59422
8. Mr. William A. Leys; Route 2; Choteau, MT 59422
9. Farmers Cooperative Canal Company; Choteau, MT 59422
10. Mr. Rudolph N. Simonson; Route 2, Box 62; Choteau, MT 59422
11. Mr. Harold Baker; Rural Route 2; Choteau, MT 59422
12. Mr. Patrick Lemmon; Route 2; Choteau, MT 59422
13. Mr. Leslie Chalmers; Crumpled Horn; Route 2; Choteau, MT 59422
14. Mr. Lowry I. Larson; Bynum, MT 59419
15. Mr. Dale Forbes; Attorney at Law; P.O. Box 1645; Great Falls, MT 59403
16. Mr. R. Keith Strong; Attorney at Law; Northwestern Bank Building; Great Falls, MT 59403
17. Mr. David L. Pengelly; Hearing Examiner; D.N.R.&C.; Helena, MT 59601
18. Mr. Arlin Krogstad; Hearing Representative; D.N.R.&C.; Helena, MT 59601

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
by Vicki J. Woodrow

STATE OF MONTANA)
) ss.
County of LEWIS AND CLARK)

On this 7th day of January, 1980, before me, a Notary Public in and for said State, personally appeared Vicki J. Woodrow, known to me to be the Hearing Reporter, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

T.J. Reynolds
Notary Public for the State of Montana

Residing at NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My commission expires July 16, 1980

CASE # 18962

1 Cooperative Canal Co.; Alva L. Armstrong; Rudolph Simonson; Alvin Guse
2 and Lowry I. Larson. The Objectors introduced three exhibits supporting
3 their objections, to wit:

4 0-1 Objector's Exhibits: Location Map of Applicant's Wells and
5 Objectors' Wells and Springs.

6 0-2 Memorandum to Ed Miller, Chief, Technical
7 Services Bureau, from Tom Rediske, Geologist,
8 Technical Services Bureau, Department of
9 Natural Resources and Conservation, March
10 8, 1979.

11 0-3 Ground-Water Investigation of Muddy Creek
12 Artesian Basin by Peter Norbeck, Hydrologist,
13 Montana Bureau of Mines and Geology.

14 The Objectors' Exhibits were marked accordingly and received into the
15 record without objections.

16 Montana Department of Natural Resources and Conservation personnel
17 and witnesses present and testifying on behalf of the Department were Tom
18 Rediski, Department Hydrogeologist, and Bob Larson, Havre Water Rights
19 Bureau Field Office Manager. Also present was Vicki Woodrow, Hearing
20 Recorder. The Department was not represented by legal counsel. One
21 exhibit was introduced by the Department, to wit:

22 D-1 Department's Exhibits: Report on North Montana Feeder's Case
23 by Bob Larson, June 27, 1979.

24 MOTION

25 Counsel for the Objectors made a Pre-hearing motion that the permit
26 be denied due to the lack of unappropriated waters in the source. The
27 motion was denied by the Hearing Examiner.

28 PROPOSED FINDINGS OF FACT

1. On May 6, 1978, the Department received an Application for
Beneficial Water Use Permit No. 18,962-g41-0 by North Montana Feeders,

1 Inc., to appropriate 400 gallons per minute or .89 cubic feet per second
2 of water, not to exceed 375 acre-feet per annum in Teton County, Montana.
3 The water is to be withdrawn from a new well approximately 9 feet deep at
4 a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, and conveyed by means of a pump
5 and pipeline to a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, both in Township
6 25 North, Range 5 West, M.P.M., and used for stockwatering from January 1
7 to December 31, inclusive, of each year.

8 2. On October 26, November 2 and 9, 1978, the Department caused
9 to be duly published in the Choteau Acantha, Choteau, Montana, notice of
10 the above Application for Beneficial Water Use Permit No. 18,962-g41-0.

11 3. The Application was reduced from 400 gallons per minute (with a
12 maximum of 375 acre-feet per annum) to 120 gallons per minute (with a
13 maximum of 193.7 acre-feet per annum) at the Pre-hearing Conference held
14 in Choteau, Montana, on April 10, 1979.

15 4. On November 6, 1978, the Department received an objection to the
16 above Application from William A. Leys.

17 5. On November 21, 1978, the Department received an objection to the
18 above Application from Crumpled Horn.

19 6. On December 8, 1978, the Department received an objection to the
20 above Application from Farmer's Cooperative Canal Company.

21 7. On December 11, 1978, the Department received objections to the
22 above Application from Alvin G. Guse, Harold Baker, and Patrick Lemmon.

23 8. On December 12, 1978, the Department received objections to
24 the above Application from Rudolph N. Simonson and the Eldorado Cooperative
25 Canal Company.

26 9. On December 13, 1978, the Department received objections to the
27 above Application from Bert Guthrie and Alva L. Armstrong.

28 10. On December 14, 1978, the Department received objections to the

CASE # 18962

1 above application from Cecil Cole, Lowry I. Larson, and Teton Water
2 Users Association.

3 11. Doug Crary testified (for the Applicant) that 56 gallons
4 per minute currently satisfies North Montana Feeders' needs at their
5 feedlot, but North Montana Feeders is applying for 120 gallons per
6 minute to enable expansion to a maximum of 10,000 head of cattle.
7 North Montana Feeders wishes to take all of their needed water from
8 one well so they won't have to operate three (3) separate pumps.
9 North Montana Feeders feels there is sufficient water in the source
10 of supply, since the water levels in their current wells fluctuate
11 very little when pumped.

12 12. Tom Rediske testified for the Department, that his report
13 was based entirely on the initial Application for 400 gallons per
14 minute. The reduction in withdrawal to 120 gallons per minute would
15 decrease the magnitude of the impacts listed in the report.

16 13. Bill Leys testified that the first winter the feedlot was
17 in operation the water level in all three of his wells dropped. He
18 complained about the situation to North Montana Feeders, and then
19 deepened his wells after no action was taken by North Montana Feeders.
20 His spring used for livestock dried up in 1973 following a drought
21 and pumping of Bert Guthrie's wells by North Montana Feeders. He
22 testified further that only his spring might be affected, if North
23 Montana Feeders does not pump their existing wells, but only pump
24 their proposed well.

25 14. Bert Guthrie testified that the Applicant's proposed well
26 would draw water from Farmers Ditch (Farmer's Cooperative Canal) due
27 to the porous nature of the soils in the area. He also testified
28 that his spring was dried up in the spring of 1978 due to pumping of
his wells by the Applicant's and also because of a drought the previous

CASE # 18962

1 summer. His spring was not dried up by the Applicant's pumping in
2 1974-1977.

3 15. Gladys Chalmers read a statement for the Objector Crumpled
4 Horn supporting development of the aquifer, but requested that all
5 users pay for monitoring of the aquifer based on the relative amount
6 of water withdrawn.

7 16. Bill Reichelt testified for Teton Water Users Association
8 stating that downstream appropriators are short on water already,
9 and that any new upstream surface or groundwater appropriations might
10 adversely affect their rights.

11 17. Bob Larson testified for the Department that he made a field
12 investigation of the site on January 12, 1979, after receiving a
13 complaint on January 5, 1979, from Bill Leys regarding a new well
14 being pumped by North Montana Feeders. The well is manifolded to the
15 original North Montana Feeders' well. Mr. Larson advised North Montana
16 Feeders that they were in violation of the 1973 Montana Water Use Act
17 by not applying for a Beneficial Water Use Permit. North Montana
18 Feeders filed a Notice of Completion of Ground-Water Development
19 form for 30 gallons per minute on April 9, 1979. Mr. Larson stated
20 that the 1973 Montana Water Use Act might still be circumvented by
21 manifolding two wells together to produce more than 100 gallons per
22 minute without receiving a Beneficial Water Use Permit.

23 18. Counsel for the Objectors listed a set of conditions to be
24 placed on the permit if granted.

25 PROPOSED CONCLUSIONS OF LAW

26 1. Under Section 85-2-311, MCA, "The Department shall issue a
27 permit if:
28

- 1 (1) there are unappropriated waters in the source of supply:
 - 2 (a) at times when the water can be put to the use proposed
 - 3 by the applicant;
 - 4 (b) in the amount the applicant seeks to appropriate; and
 - 5 (c) throughout the period during which the applicant seeks
 - 6 to appropriate, the amount requested is available;
- 7 (2) the rights of a prior appropriator will not be adversely
- 8 affected;
- 9 (3) the proposed means of diversion or construction are adequate;
- 10 (4) the proposed use of water is a beneficial use;
- 11 (5) the proposed use will not interfere unreasonably with other
- 12 planned uses or developments for which a permit has been
- 13 issued or for which water has been reserved; . . ."

14 2. Based upon testimony given at the Hearing, it is concluded
15 that there are unappropriated waters in the source of supply, except
16 during periods of drought.

17 3. Based upon testimony given at the Hearing, it is concluded
18 that the maximum withdrawal from the proposed well will occur during
19 the winter months when the Farmer's Cooperative Canal is not in use.

20 4. For the purpose herein, based upon testimony given at the
21 Hearing, it is concluded that there are unappropriated waters which
22 could be put to beneficial use as requested in the Application for
23 Beneficial Use Permit No. 18,962-g41-0 by North Montana Feeders, Inc.,
24 without adversely affecting the rights of prior appropriators.

25 5. It is concluded that the issuing of Beneficial Water Use
26 Permit No. 18,962-g41-0 in no way reduces the Applicant's liability for
27 damage caused by the Applicant's exercise of said permit.

28 Based on the above Proposed Findings of Fact and Proposed

Conclusions of Law, the following Proposed Order is hereby made:

CASE # 18962

PROPOSED ORDER

1
2 1. Subject to the conditions and limitations listed below,
3 Provisional Permit No. 18,962-g41-0 by North Montana Feeders, Inc.,
4 is hereby granted to appropriate 120 gallons per minute or .27 cubic
5 feet per second of water, not to exceed 193.7 acre-feet per annum
6 in Teton County, Montana. The water is to be withdrawn from a new
7 well approximately 9 feet deep at a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
8 Section 21, and conveyed by means of a pump and pipeline to a point
9 in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, both in Township 25 North, Range 5
10 West, M.P.M., and used for stock-watering from January 1 to December 31,
11 inclusive, of each year.

12 The Provisional Permit is subject to existing water rights in
13 the source of supply, and any final determination of existing water
14 rights, as provided by Montana law.

15 2. The Applicant shall install and maintain an adequate flow
16 meter measuring device to accurately measure the rate and volume of
17 water diverted from the well. The Applicant shall keep an accurate
18 written log record of periods of diversion. This includes the times and
19 dates the pump was started and shut off, the rate water is diverted during
20 each pumping period, and the total volume of water diverted during
21 each period. Such records shall be presented to the Department upon
22 demand by the Department.

23 3. The granting of Provisional Permit No. 18,962-g41-0 by
24 the Department in no way reduces or alters the Applicant's liability
25 for damage caused by the Applicant's exercise of said Permit, nor
26 does the Department in issuing this Permit in any way acknowledge
27 liability for damage caused by the Applicant's exercise of this Permit.

28 4. The granting of this Provisional Permit in no way grants the

CASE # 18962

1 Applicant any right to violate rights of any other party, nor does
2 it excuse the Applicant from any liability for same, even if such
3 violation is a necessary and unavoidable consequence of exercising
4 this Permit.

5
6 NOTICE

7 This Proposal for Decision is offered for the review and comment
8 of all parties of record. The review and comment period shall commence
9 with the mailing of this Proposal for Decision and shall end ten (10)
10 days thereafter. No extensions of time for comment will be granted.

11 The Final Order in this matter will be sent to all parties by
12 certified mail.

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

17 Forrest Tevebaugh, Hearing Examiner at the time of the hearing,
18 has resigned and is no longer available to the Department. The
19 Proposal for Decision was prepared by the undersigned who has read
20 the entire transcript of the hearing and the Department's complete
21 file on this matter.

22 DATED This 9th day of November, 1979.

23
24
25 David L. Pengelly
26 DAVID L. PENGELLY, D.N.R.&C.
27 Hearing Examiner
28

AFFIDAVIT OF SERVICE
(Hearing Notice)

STATE OF MONTANA)
COUNTY OF LEWIS AND CLARK)

ss.

Vicki J. Woodrow, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That pursuant to the requirements of Section 85-2-309, MCA, on November 8, 1979, he deposited in the United States mail, "certified mail, return receipt requested," a notice of hearing by the department for the purpose of hearing objections on the application by North Montana Feeders, Inc., Application No. 18,962-g41-0, for a permit to appropriate water, addressed to each of the following persons or agencies:

Certified Nos. 56734 to 56750

1. North Montana Feeders, Inc.; Box 118, R-oute 2; Choteau, MT 59422
2. Mr. Lloyd DeBruycher, President; North Montana Feeders, Inc.; Dutton, MT 59433
3. Mr. Alvin G. Guse, Route 2; Choteau, MT 59422
4. Eldorado Cooperative Canal Co.; c/o Citizen State Bank; Choteau, MT 59422
5. Mr. Cecil Cole; Rural Route 2; Choteau, MT 59422
6. Mr. William E. Reichelt, President; Teton Water Users Assoc.; P.O. Box 222; Choteau, MT 59422
7. Mr. Bert Guthrie; P.O. Box 541; Choteau, MT 59422
8. Mrs. Alva L. Armstrong; P.O. Box 307; Choteau, MT 59422
9. Mr. William A. Leys; R-oute 2; Choteau, MT 59422
10. Farmers Cooperative Canal Co.; Choteau, MT 59422
11. Mr. Rudolph N. Simonson; Route 2, Box 62; Choteau, MT 59422
12. Mr. Harold Baker; Rural Route 2; Choteau, MT 59422
13. Mr. Patrick Lemmon; Route 2; Choteau, MT 59422
14. Mr. Leslie Chalmers; Crumpled Horn; Route 2; Choteau, MT 59422
15. Mr. Lowry I. Larson; Bynum, MT 59419
16. Mr. Dale Forbes; Attorney at Law; P.O. Box 1645; Great Falls, MT 59403
17. Mr. R. Keith Strong; Attorney at Law; Northwestern Bank Bldg.; Great Falls, MT 59403
18. Mr. David L. Pengelly; Hearing Examiner; Helena, MT 59601
19. Mr. Robert Larson; Water Rights Bureau Field Manager; P.O. Box 1828; Havre, MT 59501
20. Mr. Tom Rediski, Geologist; Technical Services Bureau; Helena, MT 59601
21. Mr. Arlin Krogstad; Depart. Hearings Representative; Helena, MT 59601

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Vicki J. Woodrow

STATE OF MONTANA)
County of LEWIS AND CLARK)

ss.

On this 9TH day of November, 1979, before me, a Notary Public in and for said State, personally appeared Vicki J. Woodrow, known to me to be the Hearing Reporter, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

T. J. Reynolds
Notary Public for the State of Montana

Residing at NOTARY PUBLIC for the State of Montana

My Commission Expires July 16, 1980

CASE # 18962