

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

\*\*\*\*\*  
IN THE MATTER OF APPLICATION FOR )  
CHANGE OF APPROPRIATION WATER RIGHT ) FINAL ORDER  
NO. 19,244-c76H BY MILTON J. LAW )  
\*\*\*\*\*

The Proposed Findings of Fact, Conclusions of Law and Order as adopted by the Hearing Examiner on June 2, 1980, are hereby adopted as the Findings of Fact, Conclusions of Law, and Order.

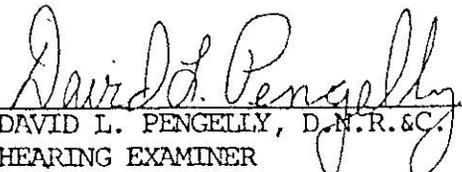
FINAL ORDER

Application For Change of Appropriation Water Right No. 19,244-c76H by Milton J. Law is hereby denied.

NOTICE

The Hearing Examiner'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 23rd day of June, 1980.

  
DAVID L. PENGELLY, D.N.R.&C.  
HEARING EXAMINER

**CASE #** 19244

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

\*\*\*\*\*  
IN THE MATTER OF APPLICATION FOR )  
CHANGE OF APPROPRIATION WATER RIGHT ) PROPOSAL FOR DECISION  
NO. 19,244-c76H BY MILTON J. LAW )  
\*\*\*\*\*

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on April 23, 1980, in the Small Courtroom of the Missoula County Courthouse, Missoula Montana, for the purpose of hearing objections to the above-named Application for Change of Appropriation Water Right No. 19,244-c76H, David Pengelly, Hearing Examiner, presiding.

The Applicant, Mr. Jim Law, appeared at the hearing and presented testimony in support of the Application. Mr. Law was not represented by legal counsel. No exhibits were introduced supporting the Application.

Two (2) Objectors attended the hearing. The Objectors were Mr. Larry Kolb and Mr. David J. Maclay. Mr. Kolb was represented by legal counsel, Mr. William T. Wagner, Missoula, Montana. Mr. Maclay was represented by legal counsel Mr. Robert Knight and Ms. Helena Maclay, both of Missoula, Montana. Mr. Reed Marbut, a witness for Mr. Larry Kolb, introduced two (2) exhibits supporting Mr. Kolb's objection, to wit:

Objector's Exhibits:

- O-1 Copy of map of ditches and irrigated lands (Missoula County Water Resources Survey, page 4)
- O-2 Copy of map of ditches and irrigated lands (Missoula County Water Resources Survey, page 10)

**CASE # 19244**

1 The Objector's Exhibits were marked accordingly and received into the  
2 record without objections.

3 Montana Department of Natural Resources and Conservation personnel  
4 present on behalf of the Department were Mr. Arlin Krogstad, Hearing  
5 Representative; Mr. Larry Brown, Hydrologist; and Mr. Jan Mack, Missoula  
6 Water Right Bureau Field Office Manager; and Ms. Vicki Woodrow, Hearing  
7 Recorder. The Department was not represented by legal counsel. No  
8 exhibits were introduced by the Department.

9  
10 SUMMARY OF RECORD

11 1. On June 11, 1978, the Department received an Application for  
12 Change of Appropriation Water Right No. 19,244-c76H by Milton J. Law to  
13 change a portion of the following water right: a filed appropriation by  
14 Patrick McCarty for 250 miner's inches of water from Mormon Creek, with  
15 a priority of May 28, 1894 as recorded in Book E, Page 156 of Missoula  
16 County Records.

17 The water has been diverted by means of Rock Ditch at a point in  
18 the SW1/4 NE1/4 NW1/4 of Section 9, Township 11 North, Range 20 West,  
19 M.P.M., at a rate of 11 miner's inches (123.75 gallons per minute) up to  
20 40 acre-feet per annum and used to irrigate a total of 16 acres, more or  
21 less, in the SE1/4 of Section 4, Township 11 North, Range 20 West,  
22 M.P.M., from April 15 to October 15, inclusive, of each year.

23 This application is to change the point of diversion to a point in  
24 the NW1/4 SW1/4 SE1/4, Section 4, Township 11 North, Range 20 West,  
25 M.P.M.

26 The proposed change is to change the point of diversion, and for no  
27 other reason.

28 2. On April 25, May 2 and 9, 1979, the Department caused to be

July published in the Missoulian, Missoula, Montana, notice of Application

**CASE # 19244**

1 for Change of Appropriation Water Right No. 19,244-c76H.

2 3. On May 22, 1979, the Department received an objection to the  
3 above Application from Ms. Mary Jean Chapieski.

4 4. On May 23, 1979, the Department received an objection to the  
5 above Application from Mr. Larry R. Kolb and Larry R. Kolb, Inc. The  
6 objection form was prepared by Mr. A. Reed Marbut.

7 5. On May 25, 1979, the Department received an objection to the  
8 above Application from Mr. R. Alan Boyd. The objection form was prepared  
9 by Mr. James H. Sadler, Esq., Attorney at Law, Missoula, Montana.

10 6. On June 12, 1979, the Department received an objection to the  
11 above Application from Mr. David J. Maclay and Mrs. Frances H. Maclay.

12  
13 PROPOSED FINDINGS OF FACT

14 1. That the Applicant proposes to change a portion of a 1/3 share  
15 of a 30-inch decreed right, not a portion of a 250-inch filed appropriation  
16 as listed in Application for Change of Appropriation Water Right No.  
17 19,244-c76H.

18 2. That the Applicant does not know what his portion of the above  
19 decreed right is.

20 3. That granting an application to change appropriation water  
21 right for a portion of a decreed right rather than the 250-inch filed  
22 appropriation listed in Application No. 19,244-c76H may adversely affect  
23 prior appropriators since the public notice of this Application listed  
24 the 250-inch filed appropriation, not a portion of a decreed right.

25 PROPOSED CONCLUSIONS OF LAW

26 1. Section 85-2-402, MCA, 1979, states in part that, "The department  
27 shall approve the proposed change if it determines that the proposed  
28 change will not adversely affect the right of other persons".

**CASE # 19244**

1 2. It is concluded that Application No.19,244-c76H is an improper  
2 application.

3 The denial and granting of Applications for Change of  
4 Appropriation Water Right No. 19,244-c76H may adversely affect prior  
5 appropriators due to improper public notice of the Application.

6 Based on the Proposed Findings of Fact and Proposed Conclusions of  
7 Law, the following Proposed Order is hereby made:

8  
9 PROPOSED ORDER

10 1. Application for Change of Appropriation Water Right No. 19,244-  
11 c76H by Milton J. Law is hereby denied.

12  
13 NOTICE

14 This Proposed Order is offered for the review and comment of all  
15 parties of record. The review and comment period shall commence with  
16 the receipt of this Proposed Order and shall end ten (10) days thereafter.  
17 No extensions of time for comment will be granted.

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

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

24 DATED this 2nd day of June, 1980.

25  
26  
27 David L. Pengelly  
28 DAVID L. PENGELLY, D.N.R. & C.  
HEARING EXAMINER

**CASE #** 19244