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

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) FINAL ORDER
20,885-s76H BY ZION INVESTMENT)
CORPORATION)

The Proposed Findings of Fact, Conclusions of Law and Order as entered by the Hearing Examiner on May 1, 1980, are hereby adopted as the Findings of Fact, Conclusions of Law and Order.

Exceptions to Proposed Order; One letter of exception to the Proposed Order was received from Verne and Iliene Shreve. The exception questioned the finding that there are unappropriated waters in the source of supply. It was found that there are unappropriated waters available for this particular Application because it is for a non-consumptive flow-through use of the water. The Permit is conditioned to require the water diverted from and returned to the source of supply to be measured to protect prior rights.

FINAL ORDER

1. Subject to the conditions and limitations listed below, Provisional Permit No. 20,885-s76H by the Zion Investment Corporation is hereby granted to appropriate 7.8 cubic feet per second or 3500 gallons per minute of water, not to exceed 5,645 acre-feet per annum from Sheafman Creek, a tributary of Mill Creek, a tributary of the Bitterroot River in Ravalli County, Montana. The water is to be diverted by means of a 12-inch pipeline at a point in the SW1/4 NE1/4 NW1/4 of Section 28, Township 7 North, Range 21 West, M.P.M., and carried across the Applicant's land to a power plant used to produce hydro-electric power at a point in the

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1 NEL/4 SEL/4 NEL/4 of said Section 28 from January 1 to December 31,
2 inclusive, of each year. The 5,645 acre-feet per annum is for non-
3 consumptive use only and must be returned to Sheafman Creek.

4 2. Provisional Permit No. 20,885-s76H is granted subject to any
5 final determination of existing water rights in the source of supply as
6 provided by Montana law.

7 3. Provisional Permit No. 20,885-s76H is granted subject to prior
8 water rights in the source of supply.

9 4. The Permittee shall install adequate measuring devices as close
10 as possible to the point of diversion and the point of return to allow
11 the flow rate and volume of water diverted from and returned to the
12 source of supply to be recorded. The Permittee shall keep a written
13 record of the flow rate and volume of all waters diverted from and
14 returned to the source of supply, including the period of time and shall
15 submit said records to the Department upon request.

16 5. The Permittee shall install an impermeable (to water) pipe or
17 channel from the power plant to carry the return flow of water to the
18 source of supply without a loss of water.

19 6. Plans and specifications for this project, including diversion
20 facilities, location and type of control valves and measuring devices
21 and precise location of the power plant shall be presented to the Department
22 by the Permittee for approval prior to appropriation of the water granted
23 herein.

24 7. The granting of Provisional Permit No. 20,885-s76H by the
25 Department in no way reduces or alters the Permittee's liability for
26 damages caused by the Permittee's exercise of said permit, nor does the
27 Department in issuing this Permit in any way acknowledge liability for
28 damage caused by the Permittee's exercise of this Permit.

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

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) PROPOSAL FOR DECISION
20,885-s76H BY ZION INVESTMENT)
CORPORATION)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on February 28, 1980 in the Courtroom of the Ravalli County Courthouse, Hamilton, Montana, for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit No. 20,885-s76H, David Pengelly, Hearing Examiner, presiding.

The Applicant, Zion Investment Corporation, appeared at the hearing by Mr. Bill Koerner and Mr. Ron Bierer. The Applicant was not represented by legal counsel. No exhibits were introduced supporting the Application.

Three (3) Objectors attended the hearing and presented testimony. The Objectors were: Mr. Daniel J. Chontos, Mr. Norman E. Allison, and Mr. Frank T. Williams. The Objectors Sam R. and Jewel Deane McDowell were not present at the hearing but were represented by legal Counsel, Mr. Robert Knight, of Missoula, Montana. Other Objectors present at the hearing were Ms. Ann S. Chontos, Mr. Philip Baden, Ms. Iliene Shreve and Ms. Sharon Mathews. Objector Frank Williams introduced one (1) exhibit supporting his objection, to wit:

Objector's Exhibit:

O-1 A letter from Frank Williams to Jan Mack, dated January 15, 1980, stating stipulations for the issuance of permit No. 20,885-s76H

1 The Objector's Exhibit was marked accordingly and received into the
2 record without objection.

3 Montana Department of Natural Resources and Conservation personnel
4 present at the hearing were: Jan Mack, Missoula Water Rights Bureau
5 Field Office Manager, and Rita Nason, Hearing Recorder. The Department
6 was not represented by legal counsel. One exhibit was introduced by the
7 Department, to wit:

8
9 Department's Exhibit:

10 D-1 Copy of U. S. G. S. quadrangle map (Hamilton North, MT) showing
11 location of Applicant's and Objectors' properties along Sheafman
12 Creek

13
14 The Department's Exhibit was marked accordingly and received into the
15 record without objection.

16
17 SUMMARY OF RECORD

18 1. On October 31, 1978, the Department received an Application for
19 Beneficial Water Use Permit No. 20,885-s76H by Zion Investment Corporation
20 to appropriate 7.8 cubic feet per second or 3500 gallons per minute of
21 water, not to exceed 5,645 acre-feet per annum from Sheafman Creek, a
22 tributary of Mill Creek, a tributary of the Bitterroot River in Ravalli
23 County, Montana. The water is to be diverted by means of a 12-inch
24 pipeline at a point in the center of the NW1/4 NW1/4 of Section 28,
25 Township 7 North, Range 21 West, M.P.M., and carried across the Applicant's
26 land to a power plant used to produce hydro-electric power at a point in
27 the N1/2 SE1/4 NE1/4 of said Section 28 from January 1 to December 31,
28 inclusive, of each year. The 5,645 acre-foot per annum is a non-consumptive

1 flow-through figure and will be returned to the creek.

2 2. On February 28 and March 7 and 14, 1979, the Department caused
3 to be duly published in the Ravalli Daily Republic, Hamilton, Montana,
4 notice of Application for Beneficial Water Use Permit No. 20,885-s76H.

5 3. On March 19, 1979, the Department received an objection to the
6 above Application from Norman E. and Olga J. Allison.

7 4. On March 23, 1979, the Department received an objection to the
8 above Application from Richard A. Grant.

9 5. On March 26, 1979, the Department received objections to the
10 above Application from Donald Rudolph and Larry G. Locatelli.

11 6. On March 27, 1979, the Department received objections to the
12 above Application from Sam R. and Jewell Deane McDowell, Joelina E.
13 Holt, and Raymond F. Holt.

14 7. On April 2, 1979, the Department received objections to the
15 above Application from Frank T. and Thelma M. Williams and Charles K.
16 Wheat,

17 8. On April 3, 1979, the Department received an objection to the
18 above Application from Thomas G. and Margaret Jones.

19 9. On April 5, 1979, the Department received an objection to the
20 above Application from Daniel J. and Ann S. Chontos.

21 10. On April 9, 1979, the Department received objections to the
22 above Application from James F. Moore, Arthur W. Dittbrender, Vernon R.
23 and Ardis E. Gullingsrud, and Jack S. and Barbara A. Kent, and Verne and
24 Iliene E. Shreve.

25 11. On April 11, 1979, the Department received an objection to the
26 above Application from Michael A. Tyers.

27 12. On April 13, 1979, the Department received an objection to the
28 above Application from Charles V. and Rhonda A. Gividen.

1 13. On April 16, 1979, the Department received objections to the
2 above Application from Rudy and Pamela Selby and from Robert and Anthony
3 Van Marle.

4 14. On May 24, 1979, the point of diversion on the Application was
5 revised from the NW1/4 NW1/4 to the SW1/4 NE1/4 NW1/4, of Section 28,
6 Township 7 North, Range 21 West, M.P.M., Ravalli County, Montana. This
7 change was made upon the suggestion by the Missoula Field Office Manager,
8 Mr. Jan Mack, that the point of diversion be located downstream from two
9 (2) irrigation diversions not owned by the Applicant.

10 15. On June 22, 1979, Mr. Jan Mack, Missoula Field Office Manager,
11 sent objection release forms (used to agree to the issuance of an application
12 under stipulation of certain conditions) to each of the 20 objectors to
13 the above Application. The following objectors signed and returned the
14 release of objection form: Thomas and Margaret Jones, Charles K. Wheat,
15 Richard A. Grant, Charles and Rhonda Gividen, Arthur W. Dittbrender,
16 Raymond F. Holt and Joelina E. Holt. The following objectors received
17 certified letters but did not respond within the seven (7) days allotted
18 by Mr. Mack: Robert and Anthony Van Marle, Donald Rudolph, Larry Locatelli,
19 Vernon and Ardis Gullingsrud, James F. Moore, Jack and Barbara Kent,
20 Michael A. Tyers, Sam and Jewell Deane McDowell, and Frank and Thelma
21 Williams. Objectors Rudy and Pamela Selby were sent a certified letter
22 on June 22, 1979, but the letter was never signed for and was returned
23 to Mr. Mack on July 10, 1979. Objector Iliene Shreve responded to Jan's
24 letter and stated that she did not request a formal hearing. Norman
25 Allison and Daniel and Ann Chontos responded to Mr. Mack's letter and
26 requested a formal hearing.

27 16. On December 11, 1979, a Pre-hearing Conference on the above
28 Application was held in Hamilton, Montana.

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1 17. At the hearing held on February 28, 1980, Philip Baden and
2 Sharon Mathews were admitted by the Hearing Examiner as untimely objectors
3 to the above Application.

4 18. On February 28, 1980, at the hearing, the place of use for the
5 water applied for in the above Application was determined to be the
6 NEL/4 of the SEL/4 NEL/4 of Section 28. It had been referred to on the
7 Application as the N1/2 of the SEL/4 NEL/4 of Section 28.

8 19. Mr. Bill Koerner testified for the Applicant that the use of
9 water being applied for is non-consumptive, and further that there were
10 no points of diversion by prior appropriators, other than the Applicant,
11 between the proposed point of diversion from Sheafman Creek and the
12 proposed point of discharge back into Sheafman Creek. Mr. Koerner
13 further stated that an existing diversion structure would be used, thus
14 there would be no change in the existing streambed for this diversion.
15 The water would be diverted into a 12-inch pipe and delivered to the
16 power plant. There will be a 400 foot drop in elevation from the point
17 of diversion to the point where the power plant is located according to
18 Mr. Koerner. Mr. Koerner further testified that the Applicant would be
19 willing to install a pipe or concrete bed as a means of returning the
20 water from the power plant to the creek, and also that the Applicant
21 would install monitoring devices.

22 20. Mr. Ron Bierer testified for the Applicant regarding some of the
23 specifications of the system. Mr. Bierer described how a Pelton wheel
24 works; he testified that the 12-inch line would be buried approximately
25 five (5) feet underground to avoid frost damage, that the line would be
26 high pressure PVC pipe, and that the pressure in the line would be a
27 maximum of 160 pounds minus whatever is lost due to friction. Mr.
28 Bierer further testified that once the water in the line hits the Pelton

1 wheel, the pressure drops to zero (0), thus the water being returned to
2 the creek would not be under pressure. Mr. Bierer stated that the
3 Power plant would be located approximately five (5) to 20 feet away from
4 the bank of the stream. According to Mr. Bierer, there would be two (2)
5 valves located in the system; one at the point of diversion from the
6 source of supply so that water could be shut off and never introduced
7 into the system, and a second valve at the power plant to control the
8 pressure in the line. Mr. Bierer further testified that the Applicant
9 has two (2) existing point of diversions between the proposed point of
10 diversion and the proposed point of return. Mr. Bierer also stated
11 that there's generally more water in the creek than is being applied for
12 under this Application. He testified that according to his rough estimation,
13 approximately 10,000 gallons per minute of water are generally available
14 in Sheafman Creek, with more than that available during the spring time.

15 21. Mr. Frank Williams introduced one exhibit listing three (3)
16 conditions which he felt must be satisfied before a permit could be
17 granted on the above Application (Objector's Exhibit O-1). These conditions
18 include the submission of a formal engineering plan for the project,
19 that written records of the rate and volume of water diverted be available
20 to interested persons at some location in the Pinesdale Community, and
21 that a firm understanding be established that the 12-inch water supply
22 line not be used for any uses other than that specified in the Application
23 without specific approval of the Department of Natural Resources and
24 Conservation. Mr. Williams further testified that at the present he is
25 not irrigating any of the land that he has water rights for due to the
26 lack of water in Sheafman Creek. He is only using water for livestock,
27 but if the water were available, he would irrigate approximately 20
28 acres of land. Mr. Williams further stated that he shares a water right
with Dan Chontos.

1 5. the proposed use will not interfere unreasonably with
2 other planned uses or developments for which a permit
3 has been issued or for which water has been reserved; . . ."

4 2. Based on the record (material in the file and the hearing
5 transcript) it is concluded that there are unappropriated waters in the
6 source of supply:

- 7 a. at times when the water can be put to the use
8 proposed by the applicant;
9 b. in the amount the applicant seeks to appropriate; and
10 c. throughout the period during which the applicant
11 seeks to appropriate, the amount requested is
12 available.

13 3. Based on the record it is concluded that the rights of prior
14 appropriators will not be adversely affected if this Application is
15 granted.

16 4. Based on the record it is concluded that the proposed means of
17 diversion or construction are adequate, subject to certain conditions in
18 the proposed order.

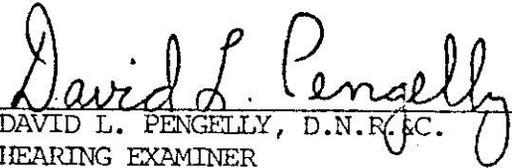
19 5. Based on the record it is concluded that the proposed use of
20 water is a beneficial use.

21 6. Based on the record it is concluded that the proposed use will
22 not interfere unreasonably with other planned uses or developments for
23 which a permit has been issued or for which water has been reserved.

24 7. Section 85-2-312, MCA, 1979, states in part that, "The department
25 may require modification of plans and specifications for the appropriation
26 or related diversion or construction. It may issue a permit subject to
27 terms, conditions, restrictions, and limitations it considers necessary
28 to protect the rights of other appropriators . . ."

1 the appropriate court within thirty (30) days after service of the Final
2 Order.

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4 DATED this 1st day of May, 1980.

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7
8 DAVID L. PENGELLY, D.N.R. & C.
9 HEARING EXAMINER
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