

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) FINAL ORDER
NO. 23246-s76L BY GORDON L. AND)
BARBARA J. BARTELL)

* * * * *

Upon exception and objection to the Proposal for Decision entered in this matter by the Objector Cheff, the Department of Natural Resources and Conservation hereby enters this Final Order. The Proposal for Decision, except as explicitly modified herein, is hereby made a part hereof.

RESPONSE TO OBJECTIONS AND EXCEPTIONS

Objector Scheff takes objection to Finding of Fact No. 15, and the inclusion of Table 1 and Figures 1 and 2 in the Proposed Order. The Hearing Examiner was requested by the parties at the hearing to take notice of the Flathead Irrigation Project's flow records for South LaRose Creek and to use said records in the preparation of said order. Table 1 and Figures 1 and 2 were

CASE # 23246

prepared to present the data in a useable format without having to duplicate more than 30 pages of data. The volume figures (in acre-feet) presented in Table 1 and Figures 1 and 2 represent the actual data taken from the Flathead Irrigation Project records with no modification. The average daily flow figures presented in Table 1 were derived by dividing the volume figures presented in Table 1 for the July-August period by the total number of days (62) in that July-August period. No attempt was made to equate these values to actual daily readings. Objector Cheff took further exception in that their fourth point of diversion is located downstream from the Project's weir. The Hearing Examiner noted that the measuring point was upstream from the Cheff's fourth point of diversion in Finding of Fact No. 14. This point will be further addressed in item No. 6 below. Furthermore, the general finding under Finding of Fact No. 15 was that in most years there has been in excess of 0.42 cubic feet per second (188 gallons per minute) passing over the Flathead Project weir in the months of July and August. This finding is consistent with the testimony of the objectors' witness, Mr. Louis Palmer who testified that after the high water period there was generally one-half of a cubic foot per second flowing into the Flathead Irrigation Project Canal below said weir.

2. Objector Cheff takes exception to Finding of Fact No. 18 as not referencing the Flathead Irrigation Project and Scheff

claimed water rights. Finding of Fact No. 18 does not purport to address such existing rights, but rather addresses the fact that there was no testimony presented at the hearing relating to any water reservations made pursuant to §85-2-316, MCA; nor was there any testimony presented regarding pending permits which have been issued by the Department which may be adversely affected by the Bartell's proposed diversion. These matters must be addressed by the Department before the issuance of a permit pursuant to §85-2-311(5), MCA.

3. Objector Cheff takes exception to the fact that no mention was made in the Proposal for Decision relating to the Durgeloh property located downstream from the objectors' lands. There was no testimony presented at the hearing by any person purporting to speak on behalf of the Durgelohs; furthermore, if there is a federal reserved water right for said property, it will be protected under condition No. 2 of this order.

4. Objector Cheff takes exception to the failure to mention their claimed stockwater right. Additional Finding of Fact No. 20 addresses this point.

5. Objector Cheff takes exception to the fact that the Hearing Examiner did not find that their land requires twice the normal allocation of water for proper irrigation. Finding of Fact No. 11 addresses the Cheff's claimed water right. This finding is taken directly from Statement of Claim No. W114553-76L

as filed by Edward and Karen Cheff in the water courts of Montana. This claim is prima facie evidence of the Cheff's claimed right. Finding of Fact No. 11 shall be further modified to state that the Cheff's claim amounts to three (3) gallons per minute up to two (2) acre-feet per acre of land. It is apparent that the objectors have claimed a different amount of water under Statement of Claim No. W114553-76L than they feel they have a right to. For the purposes of this order, the value claimed by the Cheffs on Claim No. W114553-76L was taken as the best evidence of their claimed right. If the amount of water claimed by the Cheffs and decreed by the water courts of Montana should differ from their original claim, then this permit shall be subject to whatever amount the Cheffs are decreed. This point was and is addressed in Condition No. 1 of the Order.

6. Objector Cheff takes exception to Finding No. 14 in that this finding does not allocate a specified quantity of 11.25 gallons per minute per acre to irrigate the specified eight (8) acres. Based on Statement of Claim No. W114553-76L, the Cheff's are claiming approximately 24 gallons per minute up to 16 acre-feet to irrigate said eight acres. Finding of Fact No. 14 is hereby amended to reflect these figures.

7. Objector Cheff takes exception to Conclusion of Law No. 1 as not being a proper conclusion of law. Item No. 1 under the Conclusions of Law is not strictly a conclusion of law. However,

item No. 1 has been included to clarify the actual statutory criteria upon which the subsequent legal conclusions have been based. Therefore, item No. 1 under the Conclusions of Law shall be included in the Final Order.

8. Objector Cheff takes exception to Conclusion of Law No. 2 based on similar motions made at the hearing. These motions were overruled at the hearing and will not be further considered at this time.

9. Objector Cheff takes exception to Conclusions of Law Nos. 5 and 6 as having no bearing on this matter. These Conclusions of Law are based on Finding of Fact No. 18. Further, these conclusions do have bearing in this matter in that section 5 of 85-2--311(5), MCA, directs the Department to make a determination of whether or not this statutory criterion has been met before the issuance of a permit.

10. Objector Cheff states that Conclusion of Law No. 6 is a statement of fact. Said exception is correct, and Conclusion of Law No. 6 is hereby amended to read: "Since the Application is for less than 10,000 acre-feet a year and less than 15 cubic feet per second, the Applicant need not prove by clear and convincing evidence that the rights of prior appropriators will be adversely affected."

11. Objector Cheff takes exception to Conclusion No. 7 on the grounds that the Flathead Project has appropriated the entire

flow of said source of supply except those waters used by Objector Cheff. There was no testimony presented at the hearing on behalf of the Flathead Irrigation Project stating that they appropriate all of the waters of said source of supply. Furthermore, said Flathead Irrigation Project agreed to the issuance of the permit based on certain conditions which have been made a part of the Final Order. The Department cannot assume that the Flathead Irrigation Project has in fact appropriated all waters of said source of supply without the Project presenting such testimony at the hearing and making themselves available for cross examination. Also, the Findings of Fact demonstrate that during the irrigation season of most years there is water in the source of supply below three of the four diversion points claimed by the objectors; and that the amount of water available is in excess of that amount claimed by the objector as being necessary to irrigate their previously mentioned eight (8) acres. Therefore, it is concluded that there are unappropriated waters in the source of supply.

12. Objector Cheff takes exception to Conclusion of Law No. 8 on the grounds that the Applicant will be able to take water out of the source upstream from the objectors and thus force the objectors into litigation to protect their rights. The Proposal for Decision and this Final Order address this concern under Condition Nos. 1 and 3. Furthermore, the Applicant has been

put on notice that any violation of these conditions may lead to revocation of this permit under Condition No. 5 of the Proposed Order and Final Order.

AMENDED FINDINGS OF FACT

11. The Cheffs claim 240 gallons per minute of water up to 160 acre-feet from this source according to Claim No. W114553-76L. This amounts to a claim of 3 gallons per minute per acre up to 2 acre-feet per acre.

14. The Cheffs irrigate approximately eight (8) acres below the fourth point of diversion. Based on Statement of Claim No. 114553-76L, the Cheffs claim approximately 24 gallons per minute up to 16 acre-feet to irrigate said eight (8) acres.

20. The Cheffs claim a use right for stockwater purposes from this source.

AMENDED CONCLUSIONS OF LAW

6. The Applicant need not prove by clear and convincing evidence that the rights of a prior appropriator will be adversely affected by this permit application since the Applicant is seeking less than 10,000 acre-feet per year and less than 15 cubic feet per second.

AMENDED PROPOSED ORDER

The Administrator and Hearing Examiner hereby amend Condition No. 3 of the Proposed Order as follows:

"The Permittee shall notify the Flathead Irrigation Project Engineer of Proposed diversion dates prior to the diversion of water for irrigation purposes. The Permittee shall cease diversion after notification by the Flathead Irrigation Project that current water supply conditions indicate that water is not available for his use pursuant to this permit."

This condition is hereby amended to read:

"The Permittee shall notify the Flathead Irrigation Project Engineer of proposed diversion dates prior to the diversion of water for irrigation purposes. The Permittee is subject to all prior rights of the Flathead Irrigation District."

WHEREFORE, based on these Findings of Fact and Conclusions of Law, the following Final Order is hereby issued:

FINAL ORDER

Subject to the terms, restrictions and limitations described below, Application for Beneficial Water Use Permit No. 23246-s76L by Gordon L. and Barbara J. Bartell is hereby granted to appropriate 150 gallons per minute up to 25 acre-feet per year for new sprinkler irrigation. The source of supply shall be an unnamed tributary of Post Creek (also known as Cold Creek or South LaRose Creek). The water shall be diverted at a point in the SE1/4 NE1/4 SW1/4 of Section 3, Township 19 North, Range 19 West, M.P.M., Lake County. The water may be diverted from June 1

through August 31, inclusive, of each year. The place of use shall be 25 acres located in the SW1/4 of said Section 3. The priority date for this permit shall be June 8, 1979, at 12:30 p.m.

This permit is issued subject to the following express restrictions, conditions and limitations:

1. This permit is subject to all prior and existing rights, including, but not by way of limitation, the right of Objectors Ed and Karen Cheff to irrigate 75 acres, more or less, out of the source of supply in accordance with their historical demand on that source of supply. This permit is also subject to any final determination of existing rights as provided by Montana law. Nothing herein shall be construed to authorize diversions by the Permittees to the detriment of any senior appropriator.

2. This permit is subject to all prior Indian reserved rights, if any, in the source of supply, of the Confederated Salish and Kootenai Tribes.

3. The Permittee shall notify the Flathead Irrigation Project Engineer of proposed diversion dates prior to the diversion of water for irrigation purposes. The Permittee is subject to all prior rights of the Flathead Irrigation District.

4. The issuance of this Provisional Permit by the Department shall not reduce the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the

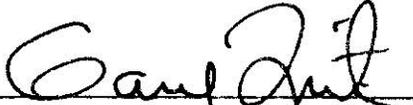
Department in issuing the Permit in any way acknowledge liability for damages caused by the Permittee's exercise of this Provisional Permit.

5. The Permittee shall diligently adhere to the terms and conditions of this order. Failure to adhere to the terms and conditions may result in the revocation of this permit.

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.

DONE this 14th day of January, 1982.



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



David Pengelly, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 449 - 3962

Gary J.

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 23246-s76L BY GORDON L. AND)
BARBARA J. BARTELL)
)

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedures Act, a hearing in the above-entitled matter was held in St. Ignatius, Montana, on May 20, 1982. The Applicants appeared at the hearing through legal counsel Mr. Keith McCurdy of Polson, Montana. Mr. Dave Wolf, an employee of the U.S. Soil Conservation Service, was subpoenaed to present testimony at the hearing on behalf of the Applicants. The objection of Mr. and Mrs. Vern Scheff was transferred to Mr. and Mrs. Ed. Scheff prior to the hearing. Mr. and Mrs. Ed Scheff appeared at the hearing through legal counsel Mr. John French, Ronan, Montana. The Flathead Irrigation Project was represented at the hearing through Mr. E. M. Axtell, Project Engineer. The Confederated Salish and Kootenai Tribes of the Flathead Reservation were represented at the hearing by Mr. Clayton Matt, Water Administrator for the Confederated Salish and Kootenai Tribes of the Flathead Reservation. The Department of Natural Resources and Conservation was represented by Mr.

23246 CASE #



Chuck Brasen and Mr. Jim Rehbein, both of the Department's Kalispell Field Office.

STATEMENT OF THE CASE

On June 8, 1979, an Application for Beneficial Water Use Permit was filed with the Department of Natural Resources and Conservation by Gordon L. and Barbara J. Bartell. This Application seeks 280 gallons per minute up to 25 acre-feet per annum for irrigation purposes from June 1 to August 31, inclusive, of each year. The point of diversion is the SE1/4 NE1/4 SW1/4 of Section 3, Township 19 North, Range 19 West, M.P.M., Lake County. The place of use is 25 acres in the SW1/4 of Section 3, Township 19 North, Range 19 West, M.P.M., Lake County.

The pertinent portions of this application were duly published for three (3) successive weeks in the Flathead Courier, a newspaper of general circulation printed and published in Polson, Montana.

The following individuals filed timely objections to the granting of this application with the Department of Natural Resources and Conservation on the dates listed:

1. United States of America, Department
of Interior, Solicitor's Office August 15, 1979
2. Flathead Irrigation Project August 20, 1979
3. The Montana Power Company August 21, 1979
4. Vern E. and Viola A. Scheff August 22, 1979

The Confederated Salish and Kootenai Tribes of the Flathead Reservation filed an untimely objection to this Application on October 25, 1979.

EXHIBITS

The Applicant offered into evidence the following exhibits, to-wit:

- (A-1) A hand-drawn map outlining the Applicant's proposed diversion point, proposed or conveyance system and proposed mainline and sprinkler laterals.
- (A-2) A photograph of the source of supply taken on or about July 4, 1980.
- (A-3) A photograph of the source of supply taken on or about September 1, 1980.
- (A-4) A worksheet signed by David L. Wolf of the Soil Conservation Service in Polson prepared on September 23, 1981, purporting to show the flow in the source of supply to be approximately 2.2 cubic feet per second (990 gallons per minute).

Applicant's exhibits A-1 through A-3 were entered into the record with no objections. Applicant's exhibit A-4 was entered into the record with an objection raised that the exhibit did not present the actual measurements taken, but only the conclusion.

Objectors Scheff offered the following objection into the record, to-wit:

- (O-1) Photocopy of aerial photo of Objectors' ranch with points of diversion and ditches drawn in on the map.

This exhibit was received into the record with no objections.

The Flathead Irrigation Project offered the following exhibit into the record, to-wit:

(C-2) A set of proposed conditions under which the Flathead Irrigation Project would agree to the issuance of this permit application.

The exhibit of the Flathead Irrigation Project was received into the record with no objections.

No exhibits were introduced on behalf of the Department.

Mr. Dave Wolf of the Soil Conservation Service presented testimony on behalf of the Applicants. Mr. Vern Scheff, Mr. Louis Palmer, and Mr. Rick Jore, presented testimony on behalf of Objector Ed Scheff.

At the request of the parties represented at the hearing, the Hearing Examiner obtained stream flow records for the source of supply in question known as South LaRose Creek by the Flathead Irrigation Project. The records obtained were from 1950 through 1981. The data collected from the Flathead Irrigation Project measurements has been tabulated on the attached Table 1 by the Hearing Examiner. Also, this data has been plotted on the attached Figures 1 and 2. Figure 1 represents acre-feet of discharge from April through August for the period of record, while Figure 2 represents the acre-feet of discharge from July through August for the period of record.

Based on the information contained in the Department's file in this matter, the information contained on the attached table and figures, and the information presented at the hearing, the

Hearing Examiner hereby makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The Department of Natural Resources and Conservation has jurisdiction over the subject matter herein, and over the parties hereto, whether they have appeared or not.

2. The Applicant has a bona fide intent to appropriate water pursuant to a fixed and definite plan, and is not attempting to speculate in the water resource.

3. The applicants' intended use of water for irrigation purposes is a beneficial use.

4. The source of water, an unnamed tributary of Post Creek, is also known by the names Cold Creek and South LaRose Creek.

5. The Applicant proposes to sprinkle irrigate 25 acres of land.

6. Due to the porous nature of the soils, water would be lost in diverting water from the source to the proposed collection box if the diversion is done by means of an open ditch.

7. Any water diverted by the Applicant would not be available to the Scheffs in the form of return flows.

8. A reasonable flow rate for the sprinkler irrigation of 25 acres is 150 gallons per minute.

9. At a flow rate of 150 gallons per minute it would take approximately 37 days to divert 25 acre-feet of water.

10. The Scheffs divert water from the source of supply through four (4) different diversion points.

11. The Scheffs claim 240 gallons per minute of water up to 160 acre-feet from this source according to Claim No. 114553-s-76L.

12. The Scheffs have irrigated approximately 75 acres from this source as of July 1, 1973. (This is the effective date of the Montana Water Use Act which requires a permit for any new uses of water after this date.)

13. The Flathead Irrigation Project operates a wier located between the Scheffs third and fourth points of diversion, (see Exhibit C-1).

14. The Scheffs irrigate approximately eight (8) acres below the fourth point of diversion.

15. The average daily flow as measured at the Flathead Irrigation Project Wier on the Scheff property for the months of July and August over the period of record has been greater than 188 gallons per minute, (0.42 cubic feet per second) every year of record except for the years 1973 and 1975 (see Table 1).

16. The objection to this Application filed by the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation was untimely.

17. The objection filed on behalf of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation by the Solicitor's Office of the Bureau of Indian Affairs was timely.

18. There are no pending permits or water reservations that would be affected by the granting of this permit.

19. The amount of water requested pursuant to this application is less than 15 cubic feet per second and less than 10,000 acre-feet per annum.

CONCLUSIONS OF LAW

1. HCA 05-2-311 (1979) directs the Department of Natural Resources and Conservation to issue a water use permit if the following conditions or criteria exist.

(1) there are unappropriated waters in the source of supply:

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

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

(c) 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;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more or 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected.

2. The Department has jurisdiction over the subject matter herein and over the parties hereto whether they have appeared or not.

3. Applicant's intended use of water is a beneficial use.

4. The Applicant's proposed means of diversion and construction are adequate.

5. The Application as limited herein will not unreasonably affect developments for which a permit has been issued, nor will it affect any water reservation.

6. The Application does not exceed 10,000 acre-feet or 15 cubic feet per second.

7. There are unappropriated waters in the source of supply at times when the water can be put to the use proposed by the Applicant; in the amount the Applicant seeks to appropriate; and throughout the period during which the Applicant seeks to appropriate, the amount requested is available.

8. The appropriation of water as requested by the Applicant will not adversely affect the rights of prior appropriators provided that certain conditions are placed on the appropriation of said water.

WHEREFORE, based on these Findings of Fact and Conclusions of Law, the following Order is hereby issued.

Subject to the terms, restrictions and limitations described below, Application for Beneficial Water Use Permit No. 23246-s76L by Gordon L. and Barbara J. Bartell is hereby granted to

appropriate 150 gallons per minute up to 25 acre-feet per year for new sprinkler irrigation. The source of supply shall be an unnamed tributary of Post Creek (also known as Cold Creek or South LaRose Creek). The water shall be diverted at a point in the SE1/4 NE1/4 SW1/4 of Section 3, Township 19 North, Range 19 West, N.P.M., Lake County. The water may be diverted from June 1 through August 31, inclusive, of each year. The place of use shall be 25 acres located in the SW1/4 of said Section 3. The priority date for this permit shall be June 8, 1979, at 12:30 p.m.

This permit is issued subject to the following express restrictions, conditions and limitations:

1. This permit is subject to all prior and existing rights, including, but not by way of limitation, the right of Objectors Ed and Karen Scheff to irrigate 75 acres, more or less, out of the source of supply in accordance with their historical demand on that source of supply. This permit is also subject to any final determination of existing rights as provided by Montana law. Nothing herein shall be construed to authorize diversions by the Permittees to the detriment of any senior appropriator.

2. This permit is subject to all prior Indian reserved rights, if any, in the source of supply, of the Confederated Salish and Kootenai Tribe.

3. The Permittee shall notify the Flathead Irrigation Project Engineer of proposed diversion dates prior to the diversion of water for irrigation purposes. The Permittee shall cease diversion after notification by the Flathead Irrigation

Project that current water supply conditions indicate that water is not available for his use pursuant to this permit.

4. The issuance of this Provisional Permit by the Department shall not reduce the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Permit in any way acknowledge liability for damages caused by the Permittee's exercise of this Provisional Permit.

5. The Permittee shall diligently adhere to the terms and conditions of this order. Failure to adhere to the terms and conditions may result in the revocation of this permit.

NOTICE

This Proposal for Decision is offered for the review and comment of all parties of record. Objections and exceptions must be filed with and received by the Department of Natural Resources and Conservation on or before September 1, 1982.

DONE this 13th day of August, 1982.

David L. Pengelly
David Pengelly, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 449 - 3962

TABLE 1
COLD (SOURCE LaROSE) CREEK

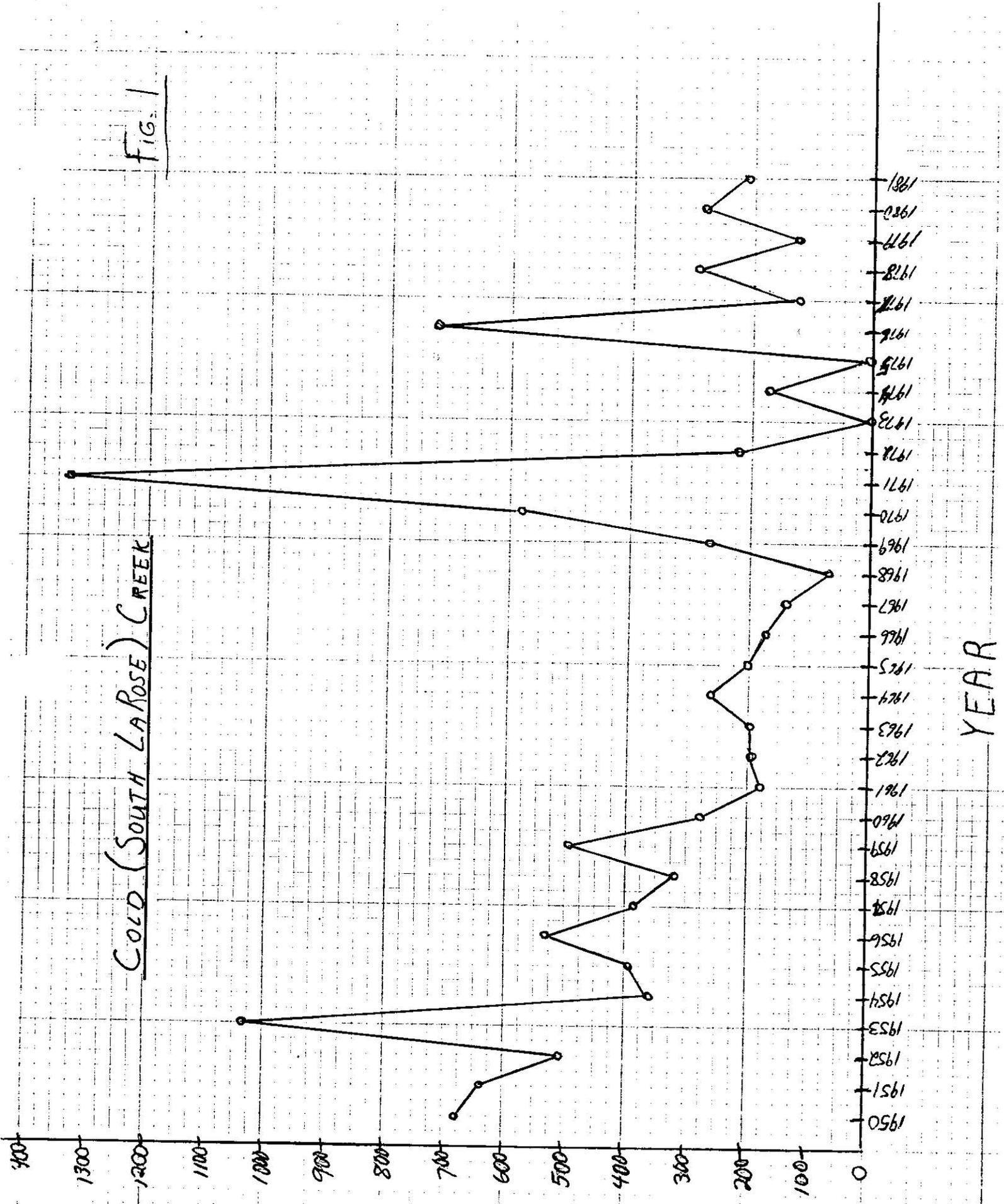
<u>Year</u>	<u>Discharge (Ac-Ft) July-August</u>	<u>Avr. Daily Flow (cfs)</u>
1950	400	3.25
1951	256	2.08
1952	208	1.69
1953	207	1.68
1954	230	1.87
1955	256	2.08
1956	285	2.32
1957	135	1.10
1958	118	0.96
1959	173	1.41
1960	82	0.67
1961	63	0.51
1962	72	0.59
1963	94	0.76
1964	110	0.89
1965	92	0.75
1966	102	0.83
1967	52	0.42
1968	61	0.50
1969	122	0.99
1970	107	0.87
1971	130	1.06
1972	100	0.81
1973	0	0
1974	96	0.78
1975	0	0
1976	120	0.98
1977	60	0.49
1978	120	0.98
1979	60	0.49
1980	88	0.72
1981	80	0.65

NOTE: 1 cfs = 448.8 gpm

CASE # 23244

FIG. 1

COLD (SOUTH LA ROSE) CREEK



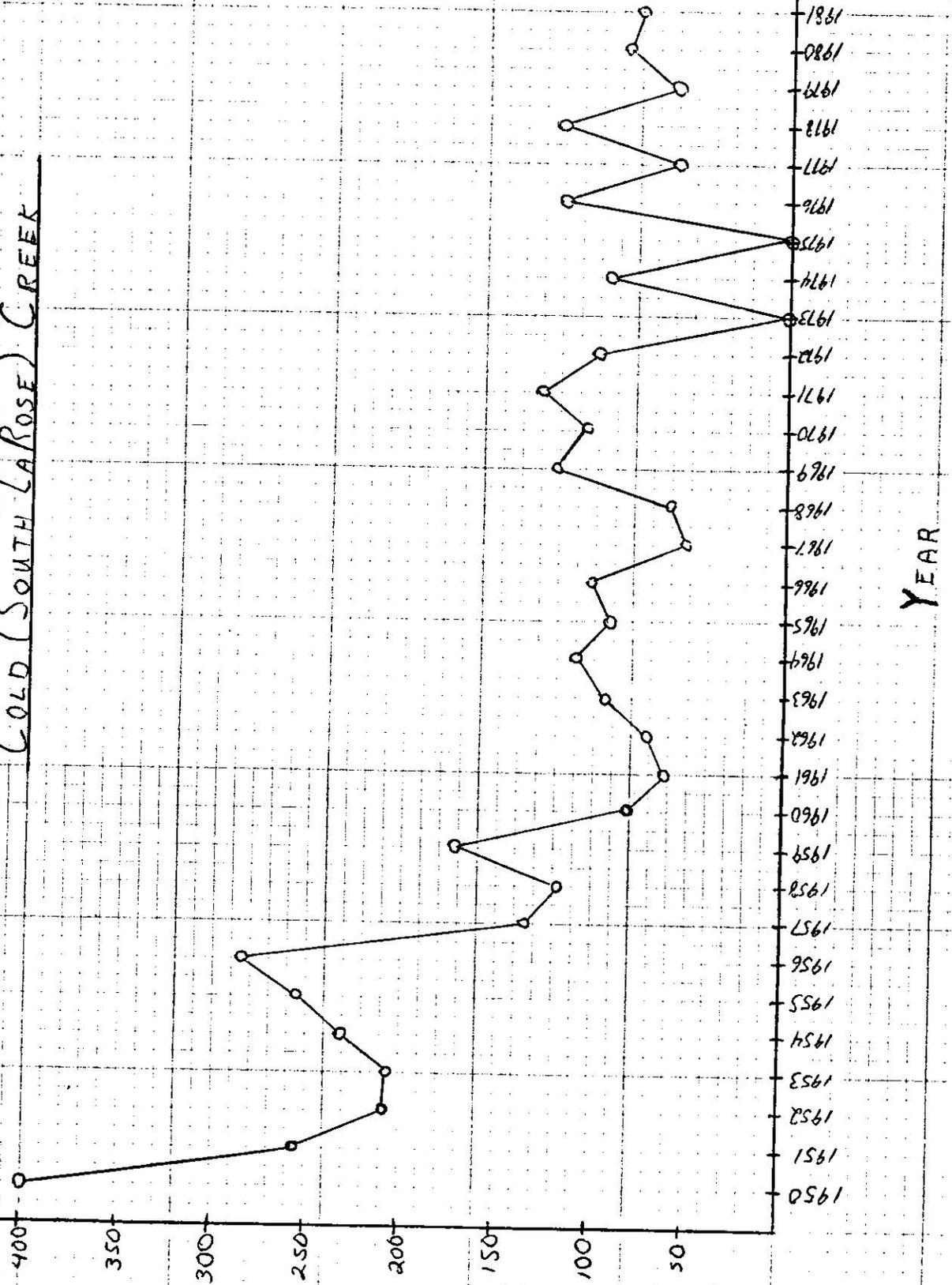
ACRE-FEET OF DISCHARGE

CASE #3324

(APRIL - AUGUST)

FIG. 2

COLD (SOUTH LA ROSE) CREEK



CASE # 22241 DISCHARGE IN ACRE-FEET (JULY-AUGUST)

AFFIDAVIT OF SERVICE

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

Beverly J. Jones, 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 August 23, 1982, he deposited in the United States mail, "certified mail", an Order by the Department on the application by Gordon and Barbara Bartell, Application No. 23246-s76L, for a Permit to Appropriate Water, addressed to each of the following persons or agencies:

1. Gordon & Barbara Bartell, -Rt. 1, Box 110, -Charlo, MT 59824
2. Vern & Viola Cheff and Edward & Karen Cheff, Rt. 1, Box 124, Charlo, MT 59824
3. Flathead Irrigation Project, Bureau of Indian Affairs, Box G, St. Ignatius, MT 59865
4. E. L. Meredith, U.S. Department of Interior, Office of the Solicitor, Box 1538, Billings, MT 59103
5. R. Anthony Rogers, Wilkinson, Cragon & Benker, 1735 New York Avenue NW, Washington, D.C. 20006
6. Michael Zimmerman, Montana Power Legal Department, 40 E. Broadway, Butte, MT 59701
7. K. Paul Stahl, Attorney at Law, P. O. Box 1715, Helena, MT 59624
8. John D. French, French, Grainey & Duckworth, Drawer 7, Ronan, MT 59864
9. Clayton Matt, Box 278, Pablo, MT 59855
10. Dave Pegelly, Hearing Examiner, DNRC, Helena (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

STATE OF MONTANA)

by Beverly J. Jones

) ss.

County of Lewis & Clark)

On this 23rd day of August, 1982, before me, a Notary Public in and for said State, personally appeared Beverly J. Jones, known to me to be the Hearing Recorder, 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.

Judy John
Notary Public for the State of Montana

Residing at Montana City, Montana

My Commission Expires 3/1/85