

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) NOTICE OF TERMINATION
NO. 31441-g41R BY JIM MCALLISTER)

* * * * *

Jim McAllister, Applicant for Beneficial Water Use Permit No. 31441-g41R, has requested the Department of Natural Resources and Conservation to terminate the Application in this matter. Therefore, it is unnecessary to respond to the exceptions which were made to the June 19, 1985 Proposal for Decision.

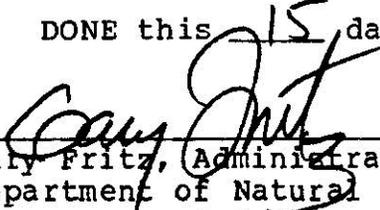
WHEREFORE, on the basis of the Applicant's July 10, 1985 request for termination, the Department makes the following Order:

Application for Beneficial Water Use Permit No. 31441-g41R by Jim McAllister is hereby terminated without prejudice.

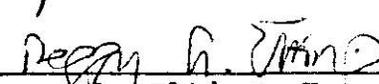
NOTICE

This termination constitutes the Department's final action in this matter, and therefore an appeal, if any, must be had 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 15 day of July, 1985.



Gary Fritz, Administrator
Department of Natural
Resources and Conservation
32 S. Ewing, Helena, MT
(406) 444 - 6605



Peggy A. Elting, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 444 - 6612

CASE # 31441

July 10, 1985
Geysers, MT 59447

Ms. Peggy Elting
Hearing Examiner
DNR
32 S. Ewing
Helena, MT. 59260

RECEIVED

JUL 11 1985

MONTANA DEPT. OF NATURAL
RESOURCES & CONSERVATION

Dear Ms. Elting
Please terminate my application for
beneficial water use permit No. 31441-g41R.

Sincerely yours,
Jim McAllister

CASE # 31441

AFFIDAVIT OF SERVICE
MAILING

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

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on July 15, 1985, she deposited in the United States mail, first class mail, a Notice of Termination by the Department on the Application by Jim McAllister, Application No. 31441-g41R, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Jim McAllister, Geysler, MT 59447
2. Ronald W. Smith, Smith, & Rice, Attorneys at Law, 312 Third Street, Havre, MT 59501
3. Adam and Kathleen Schweitzer, Geysler, MT 59447
4. Walter Schweitzer, Geysler, MT 59447
5. H.L. Nordell, Box 38, Geysler, MT 59447
6. Wayne Wetzel, Energy Division, DNRC (inter-departmental mail)
7. Sam Rodriguez, Field Manager, Water Rights Bureau Field Office at Lewistown, MT (inter-departmental mail)
8. Peggy A. Elting, Hearings Examiner (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Donna Elser

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

On this 15th day of July, 1985, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings 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.

Jim P. Gibson
Notary Public for the State of Montana
Residing at Helena Montana
My Commission expires 1-21-1987

CASE # 31441

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. 31441-g41R BY JIM MCALLISTER)

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing in the above-entitled matter was held on December 1, 1983, in Stanford, Montana.

On the basis of the record, an Interlocutory Order was issued on May 30, 1984, granting the Applicant an Interim Permit for testing purposes. The Permit was valid through September 20, 1984.

The hearing in this matter was reconvened on August 20, 1984, in Stanford, Montana, for the purpose of reviewing evidence and information concerning the effects of the Applicant's test pumping on the source aquifer and on senior beneficial water uses.

On August 20, 1984, the Applicant, Jim McAllister, appeared personally at the hearing.

Objectors Adam and Kathleen Schweitzer appeared personally and by and through counsel, Ronald W. Smith.

Walter Schweitzer appeared personally and by and through Counsel, Ronald W. Smith.

CASE # 31441

Sylvio Rodriguez, Field Manager of the Lewistown Water Right Bureau Field Office; Arlen Tufte, Water Rights Technician for the Lewistown Office; and Wayne Wetzel, Department of Natural Resources and Conservation geohydrologist, appeared as staff experts for the Department of Natural Resources and Conservation (hereafter, the "Department").

The Statement of Case, and those relevant Findings of Fact and Conclusions of Law contained in the May 30, 1984, Interlocutory Order in this matter are incorporated herein by reference, as part of the record in this matter.

REVIEW OF THE CASE

On January 21, 1981, the Applicant filed an Application for a Beneficial Water Use Permit seeking 250 gallons per minute ("gpm") up to 77.76 acre-feet of ground water per annum for flood irrigation on 24 acres, between April 20 and October 15, inclusive, of each year. The point of diversion for the proposed appropriation is located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, Township 17 North, Range 9 East, and the place of use is 10 acres in the NW $\frac{1}{4}$ and 14 acres in the NE $\frac{1}{4}$ of Section 9, Township 17 North, Range 9 East, all in Judith Basin County, Montana. The proposed means of diversion is a flowing artesian well, with the water reaching the points of use by ditch.

The Application was duly published, and objections were received from Adam and Kathleen Schweitzer, Walter Schweitzer, and H.L. Nordell. A hearing in this matter was held on

December 1, 1983, and resulted in the issuance of an Interim Permit for testing purposes. (See May 30, 1984 Interlocutory Order.)

The test period, which was scheduled to run through September 20, 1984, was characterized by lack of cooperation on the part of the Objectors, by accusations and cross-accusations between the parties, by problems affecting the test results, and by attempts at ex parte communication by Walter Schweitzer.

Due to the difficulties which marred the test pumping, the Applicant agreed to cut the test period short. The hearing in this matter was reconvened on August 20, 1984, for the purpose of reviewing the test data and discussing the effects of Applicant's pumping pursuant to the Interim Permit in this matter. The record in this matter closed on September 17, 1984, after being left open for possible submission of further evidence. No further evidence was submitted.

EXHIBITS

The Applicant did not submit any exhibits for inclusion in the record in this matter. The written record which the Applicant made of the flow rate and periods of diversion pursuant to the Interlocutory Order in this matter is appended to the June 29, 1984, File Report submitted by Sam Rodriguez.

In addition to the five exhibits they submitted at the December 1, 1983 hearing (see May 30, 1984 Interlocutory Order), the Objectors submitted seven photographs in support of their objection in this matter:

Objectors' Exhibit A and Objectors' Exhibit B are photographs of the Applicant's well. The pictures show the Applicant's well head and a puddle apparently caused by a small leak in the connection between the well pipe and the hose which extends out from it.

Objectors' Exhibit C and Objectors' Exhibit D are photographs of the Applicant's irrigation ditch. The ditch itself is not visible in the photographs, but is indicated by a path of tall green grass across the stubble field.

Objectors' Exhibit E and Objectors' Exhibit F are photographs of the Applicant's field.

Objectors' Exhibit G is a photograph of Objectors' stockwater pit by Well No. 5.

Applicant objected to the introduction of Objectors' Exhibits A through F on the basis that they had been obtained through trespass on the Applicant's property. It is not necessary to make a decision on the admissibility of Exhibits C through F on this basis since the party attempting to introduce the photographs did not pursue their admission once the Applicant's objection had been made. Exhibits A and B were admitted into the record but proved to have little probative value, and therefore were accorded little weight. Their admission into the record was not prejudicial to the Applicant. Testimony based on the exhibits is admissible (see generally State v. Charles and Vicki Long, 42 State Rptr. 643 (1985)), but also had little probative value and therefore was accorded little weight: its admission was not prejudicial to the Applicant.

Also included in the record in this matter are a June 29, 1984 Memorandum by Sam Rodriguez, entitled "Monitoring of Wells as per Interlocutory Order on Application No. 31441-g41R by Jim McAllister" (6 pages, 3 tables, and 13 photographs); a July 23, 1984 Memorandum by Sam Rodriguez, entitled "Reasons for Terminating the Monitoring of Wells as per Interlocutory Order on Application No. 31441-g41R by Jim McAllister" (2 pages); and Memorandum received on August 27, 1984 from Sam Rodriguez, entitled "Inspection of Jim McAllister's well and Adam Schweitzer's wells" (1 page), which documents the site visit made immediately after the August 20, 1984 hearing in this matter.

At the August 20, 1984, hearing in this matter, the Department submitted one additional exhibit for inclusion in the record:

Department Exhibit 1 is a Memorandum by Sam Rodriguez, entitled "Written Complaint by Adam Schweitzer" (2 pages, accompanied by photographs taken on August 6, 1984, by Gene Gibson, showing two of Objectors' wells, the Applicant's well and place of use, and a panoramic view of the Objectors' place of use).

Department Exhibit 1 was accepted into the record without objection.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following proposed Findings of Fact, Conclusions of Law, and Order.

CASE # 31441

PROPOSED FINDINGS OF FACT

1. The Department has jurisdiction over the subject matter herein and parties hereto, whether they appeared at the hearing or not.
2. Those parties who failed to appear at the hearing in this matter are in default pursuant to Administrative Rule of Montana 36.12.208.
3. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled, therefore the matter was properly before the Hearing Examiner.
4. The use proposed by the Applicant, irrigation, is a beneficial use of water. MCA § 85-2-102(2).
5. The Applicant's proposed means of diversion, construction, and operation of his appropriation works are adequate.
6. The proposed use will not interfere unreasonably with other planned uses or developments for which permit has been issued or for which water has been reserved.
7. The source of supply for the proposed appropriation and all of the Objectors' wells is ground water from the Kootenai Formation, the principal aquifer in the area. The Kootenai is characterized by interbedded red shale and brown to gray sandstone with occasional fresh water limestone. In the region of the place of use, the Kootenai formation dips to the northeast. The sandstone layers therefore tend to act as

confined aquifers which may produce artesian pressure when a well penetrates one of them. The thickness of the Kootenai Formation in the area is not known. None of the wells involved in this matter penetrate through the Kootenai Formation, however. (See October 9, 1981, Geohydrology Report by Wayne Wetzel for this Application, page 2 and Figure 1).

8. The Objectors have four flowing artesian wells. The wells which have been designated as Well 2 (barn well) and Well 5 (well across the highway) do not have pumps but depend upon natural artesian pressure for their flow. Wells 1 and 3 are equipped with pumps. As of the December 1, 1983 hearing in this matter, the Objectors had not been using Well 4 due to the lack of artesian pressure. (Testimony of Adam Schweitzer; October 9, 1981 Geohydrology Report by Wayne Wetzel; December 11, 1981 Field Investigation by Sam Rodriguez; March 23, 1982 Supplemental Geohydrology Report by Wayne Wetzel). Adam Schweitzer testified at the August 20, 1984 hearing that they have begun pumping from Well 4 for stockwater, but that they were not pumping well 4 during the Applicant's test pumping period.

9. As stated in the May 30, 1984 Interlocutory Order in this matter, mutual interference takes place among the Objectors' wells. This effect in whole or in part is the result of interaquifer mixing caused by the well development techniques used in the Objectors' wells. These wells have been only partially cased. "...When previously unconnected water bearing units are cut by an open bore hole, aquifer intermixing occurs. Since deeper aquifers generally have a higher pressure than

shallow aquifers, partial casing of drill holes causes the original higher pressure to be dissipated, and loss of pressure and flow occurs at the surface." (March 23, 1982 Supplemental Geohydrologist Report for Water Right Application 31441, by Wayne Wetzel, page 5.)

The geohydrology reports in this matter also indicate that the Objectors' water management techniques have an effect on the artesian aquifer. "...Water management techniques, or lack of them, have resulted in a general loss of pressure in the artesian system compared to pressure indicated when the wells were drilled. In many ways, the artesian system used by the Nordell and McAllistair (sic) wells is like a reservoir that has had its outlet gate open since it was built. That is, recharge entering the system is almost immediately reflected in discharge at the flowing wells, with the resulting artesian pressure being maintained at a minimal level." (October 9, 1981 Geohydrology Report by Wayne Wetzel, page 5.)

10. Testimony and evidence at the December 1, 1983 hearing indicated that under the "worst case scenario", wherein the Applicant and the Objectors simultaneously used their wells to the maximum extent, the Applicant's appropriation of 150 gpm could have a drawdown effect of 8 to 10 feet on the Objectors' wells, with an additional 6 to 7 feet resulting from the mutual interference of the Objectors' own wells. (Interlocutory Order, Finding of Fact 10.) Projected "worst case scenario" drawdowns at the Objectors' wells were 16 feet at well 5, 15 feet at wells 1 and 2, and 13 feet at Wells 3 and 4. (March 23, 1982 Supplemental Geohydrology Report, pp. 3-5, and Figure 2.)

The drawdown effect under actual use conditions was projected to be less, since the flow and pumping rates of the wells would be variable. Projected drawdowns for a situation where the wells' maximum output was halved, but the withdrawal period was doubled, indicated total drawdowns of 9 feet at Well 5, and 8 feet at the rest of the wells, with the mutual interference of the Objectors' own wells causing 3 to 4 feet of the total drawdown. (March 23, 1982 Supplemental Geohydrology Report, pp. 4-5, Figure 3.)

On the basis of the projected drawdowns, it appeared likely that the Applicant's proposed appropriation would not preclude use of Wells 1 and 3, which are equipped with pumps. Wells 2 and 5 would not have retained artesian flow under the "worst case scenario", but would have had limited flows under less severe circumstances. (See May 30, 1984 Interlocutory Order, Findings of Fact 13 and 14; March 23, 1982 Supplemental Geohydrology Report by Wayne Wetzel.)

11. The Applicant's well is 189 feet in depth, and is cased to the bottom of the hole. The last nine feet of the casing is perforated, and the base of the casing penetrates the limestone artesian aquifer. (Well Log Report; October 9, 1981 Geohydrology Report by Wayne Wetzel, p. 4.)

The Applicant originally applied for 250 gpm up to 77.76 acre-feet, based on the well's artesian flow when it was drilled in 1971. A flow-recovery test performed on the Applicant's well on August 25, 1981, indicated that the well was flowing at 150 gpm. The Applicant subsequently amended his Application to request 150 gpm up to 13.9 acre-feet per year.

Based on the record in this matter as of the December 1, 1987 hearing, the Applicant was granted a 1984 Interim Permit for 150 gpm up to 13.9 acre-feet per year, "for purposes of testing the effect of the Permittee's pumping upon the source aquifer." (May 30, 1984 Interlocutory Order, p. 15.) The Applicant was required to keep a written record of the flow rates and times of diversion, and the Lewistown Water Rights Bureau Field Office was asked to conduct periodic checks during times when the Applicant was irrigating in order to determine the effects of the Applicant's pumping.

12. The Applicant, in conjunction with the Soil Conservation Service, installed a Parshall flume approximately 50 yards downstream from where the pipe leading from the well feeds into the irrigation ditch. (June 29, 1984 Report, photograph p. 2A.). He began diverting water pursuant to the Interim Permit on June 6, 1984. (Testimony of Jim McAllister, McAllister flow measurement record.) He testified that he ran the well "full open" during the entire diversion period, and ran it all the time during this period except for a 35-hour period on June 9 and 10, 1984, when he was away on a trip.

The Applicant shut off his well on June 28, 1984, due to information from the Lewistown Field Office that the Nordells were having problems with their well (Well 3). (Testimony of Jim McAllister, June 29, 1984 Report by Sam Rodriguez, p. 4.) He did not divert water pursuant to the Interim Permit after June 28.

13. The flow measurement data taken on the Applicant's appropriation indicates that the well's artesian flow was initially high, and then dropped nearly 50 gpm after two days and held steady for the remainder of the diversion period.

Sam Rodriguez measured a flow rate of 134.64 gpm on June 6, 1984, the first day of the Applicant's diversion. The Applicant's record of flow indicates a measurement of 108 gpm on June 6, and a June 7 measurement of 117 gpm. On June 8, the Applicant's measurement indicates a drop in flow rate to 99 gpm, which held steady until June 21, when the flow rate is recorded as 86 gpm. The 86 gpm measurement is repeated daily until the end of the diversion period on June 28.

Sam Rodriguez's periodic measurements indicate a steady flow rate of 85.27 gpm on June 13, 20, and 27. In response to questions concerning the discrepancies between the Rodriguez measurements and the Applicant's measurements, Sam Rodriguez testified that he discovered the Applicant was reading the measurements "high", that is, at the top of the marking on the Parshall flume, rather than at the bottom of the mark. Mr. Rodriguez testified that he explained to the Applicant about reading at the bottom of the mark on June 20, 1984, and therefore that the Applicant's records show a corresponding drop in the flow measurements from then on.

This situation was corroborated by the Applicant, who stated that he understood from Mr. Rodriguez's explanation that he had been reading the flume incorrectly, but that he didn't want to go back and correct his measurement record for fear it would look like he was "juggling the figures".

From the internal consistencies of the Applicant's measurements and Mr. Rodriguez's measurements compared with the accurate (field personnel) measurement of the flow, it is apparent that the Applicant's well flowed at a consistent rate of 85.27-86 gpm from June 8 through June 28, 1984. No explanation was given for the discrepancy in the June 6 flow measurements.

14. Well 1, the "house well", is located in the basement of the Objectors' house. It is a flowing artesian well, with a pump used to provide pressure for domestic use. There is no well log for this well. The October 9, 1981 Geohydrology Report indicates that the Objector claims the well is 30 feet deep, and that he irrigated from this well for about three years but quit when he realized that Well 5 was being affected to the point that it would not flow. (Geohydrology Report pp. 1-2.)

Well 1 was not one of the wells about which the Objectors expressed concern, therefore no measurements were taken at Well 1 during the Applicant's diversion period. (June 29, 1984 Report by Sam Rodriguez). The record does not include any testimony indicating adverse effect to Well 1.

15. Well 2, the "barn well", is a flowing artesian well, with the flow regulated by a control valve. Objector's Exhibit 1 from the December 1, 1983 hearing indicates that the well provides stockwater to ten "pen or feeding areas". At this hearing, Adam Schweitzer testified that one of his main concerns regarding the Applicant's proposed appropriation was that the flow in Well 2 would be diminished to the point that the water would freeze up during the winter, necessitating a complete

revamping of the stockwatering system. Mr. Schweitzer testified that the pipes between the troughs fed from Well 2 are laid 6-7 inches deep above a shale layer, and that a diminished flow would require the pipes to be trenched deeper as well as requiring possible installation of a pump, pump house, water heaters for the troughs, power lines, and other attendant outlays of money. At the present time, the stockwater is provided by free-flowing Well 2.

The October 9, 1981 Geohydrology Report indicates that Adam Schweitzer informed the geohydrologist that he stopped irrigating from Well 2 about 1971. (Report, p. 2; see also, December 11, 1981 Field Investigation report by Sam Rodriguez, p. 2.) Mr. Schweitzer testified at the December 1, 1983 hearing that he discontinued his irrigation from this and other wells due to the effect that they had on Well 5. At the August 20, 1984 hearing, Mr. Schweitzer testified that he resumed irrigation from Well 2 during the Applicant's diversion period because he decided he had to "use it or lose it" (to the Applicant).

Prior to the commencement of the Applicant's diversion, the barn well had been used for livestock purposes, with a 2 gpm restricted flow into the stock tanks. (June 29 Report, p. 1.) Flow measurements from Well 2 show flows of 28 gpm on June 7, 1984 (about 16 hours after Applicant began diverting), 27 gpm on June 13 and 20, and 26 gpm on June 27. (June 29, 1984 Report, Table 1.)

During the August 20, 1984 site visit which followed the hearing, the flow at Well 2 was measured at 41.3 gpm. The Rodriguez memorandum documenting this visit (received by the Department on August 27, 1985) states, "The higher flow rate may be due to the location where this measurement took place. For example, prior measurements were taken approximately 300 feet from the well, while the measurement today was taken within 8 feet of the well. Also, I do not know the altitude difference between the previous measuring point and the location where the measurement took place today." Well 2 was being used for stockwater purposes only at the time of the site visit.

16. Mr. Schweitzer objected to the apparently "crude" method of measurement of this well, wherein Mr. Rodriguez utilized a pre-measured container and a stopwatch. (June 29 Report, p. 2). Mr. Rodriguez testified that this is an accurate means of flow measurement. Additionally, Walter Schweitzer stated at the hearing that the field personnel's measurement of water at the "T", without disconnecting the pipe, seemed like it would lead to different results as the pressure dropped when the flow decreased. Mr. Rodriguez testified that the important factor was that the measurements be taken in a consistent fashion, as was done.

17. Well 3, the "Nordell well", is a flowing artesian well with a pump installed to give pressure for domestic use. The well originally was used for stock and irrigation, but currently is used for domestic uses, for limited irrigation, and to provide water for the Nordell veterinary facility. (December 11, 1981

field investigation report by Sam Rodriguez, p. 2; March 23, 1982 Supplemental Geohydrology Report by Wayne Wetzel, p. 2.) The Nordell well water is piped into the house, with the overflow being released through a garden hose connected to the well head. (June 29, 1984 Report by Sam Rodriguez, p. 2; photo, p. 2B).

Flow measurements from Well 3 were taken from the overflow hose. They measured 1 gpm on June 6 (prior to Applicant's diversion), .85 gpm on June 7, and no overflow on June 13, 20, and 27.

At the field investigation on June 13, the well "was apparently shut down for servicing. The switch at the top of the pump was partially disassembled, and no water was flowing from the well. There were two hoses leading from the Nordell trailer house, but no water was flowing from them either." (June 29, 1984 Report, p. 2.)

At the June 28 field investigation, Mrs. Nordell told the field personnel that they were having problems with their well, and mentioned problems had occurred during 1983. The problems ranged from no water to pumping sandy water. The field personnel and Mr. Nordell attempted to measure the static water level at this time, but were unable to do so. (June 29, 1984 Report, p. 4). Mr. Schweitzer testified at the August 20, 1984 hearing that the well has a rusted-on cap which he attempted to remove, but was unable to do so without the risk of breaking the pipe. He stated that he did not know if Well 3 could be pumped. He further testified that he used to irrigate his shelter belt from this well, but had stopped in order to have stockwater year-round.

Well 3 was measured as having an overflow of less than 1 gpm during the 1981 field investigation in this matter. (October 9, 1981 Geohydrology Report by Wayne Wetzel, p. 5.) At the time of the site visit following the August 20, 1984 hearing in this matter, well 3 was overflowing at a rate of 2.3 gpm. This overflow is more than twice the overflow previously recorded from this well. (Rodriquez Memorandum, received August 27, 1984).

Some overflow is necessary from this well, as well as the Schweitzer wells, in order to prevent an encrustation problem resulting from iron sulfide precipitating out of the water. (October 9, 1981 Geohydrology Report, p. 5; December 1, 1983 testimony by Wayne Wetzel.)

18. Well 4 is located almost directly south of Well 3. It flowed initially after it was drilled, but then ceased flowing, although the water level remained above ground level in the casing. (October 9, 1981 Geohydrology Report, p. 4.) The Objectors have not been using Well 4 (testimony of Adam Schweitzer; March 23, 1982 Supplemental Geohydrology Report, p. 2; December 11, 1981 field investigation report, p. 2), but began pumping it for stockwater subsequent to the Applicant's period of diversion in 1984.

Mr. Schweitzer testified at the August 20, 1984 hearing that he uses this well as a monitoring well. The field personnel did not take a measurement in this well prior to the Applicant's commencing his appropriation. (June 29, 1984 Report, p. 2.) On June 28, 1984, Sam Rodriquez and Al Tufte measured the static water level in Well 4 at 82 inches below ground level.

Mr. Schweitzer testified that he had made measurements of the static water level, measuring from the top of the casing, which is about 18 inches from top to ground level. On June 6, 1984, he measured a static water level of $18\frac{1}{4}$ inches below the casing top; on June 7, 26 inches below; June 8, 33 inches below; June 9, 42 inches below; June 10, 52 inches below; June 11, 56 inches below; June 12, 69 inches below; June 15, 76 inches below; June 17, $78\frac{1}{2}$ inches below; June 20, $84\frac{3}{4}$ inches below; June 24, $79\frac{3}{4}$ inches below; June 25, $79\frac{1}{2}$ inches below; June 26, $81\frac{1}{2}$ inches below; June 27, $82\frac{1}{2}$ inches below, and June 28, $81\frac{1}{2}$ inches below. Subsequent to Applicant's ceasing appropriation, measurements were taken on July 26, July 30, and August 7, the measurements being $44\frac{1}{2}$ inches below, $42\frac{1}{2}$ inches below, and $43\frac{1}{2}$ inches below the top of the casing, respectively. At the time of the August 20, 1984 site visit following the hearing, the static well measurement was 38 inches. However, this measurement was taken within a few minutes of shutting off the pump in this well, and it is unlikely that the well had experienced full recovery.

Wayne Wetzel testified that Wells 4 and 5 are the same depth as the Applicant's well and might respond faster to Applicant's well than would Wells 1, 2, or 3. He testified that Well 4 has about an 8-foot (surface) elevation differential from the other wells. (See Figure 6, October 9, 1981 Geohydrology Report).

19. Well 5 is located across the highway from Wells 1-4, and is slightly closer to the Applicant's well than are any of the other wells. It is a flowing artesian well, not equipped with a pump. (Testimony of Adam Schweitzer.) The well log indicates

that Well 5 did not flow when it was drilled. (October 9, 1981 Geohydrology Report, p. 4.) Apparently, the artesian flow was obtained at a later date when the well was deepened.

(December 11, 1981 field investigation report, p. 3.) The fact that well did not initially flow but is now flowing, while Well 4 initially flowed but now does not, indicates much interaquifer mixing. (October 9, 1981 Report, Supra; March 23, 1982 Supplemental Report, p. 5.)

The record indicates that heavy use of the Objectors' other wells affects the flow in Well 5. (Testimony of Adam Schweitzer; statement by Ron Smith; testimony of Ernie Schmail; geohydrology and field reports), and that Adam Schweitzer has controlled the flows of the other wells because he believes it is necessary in order to maintain water in Well 5 during the winter for stockwatering purposes. (Testimony of Adam Schweitzer, Walter Schweitzer; statement by Ron Smith). Adam Schweitzer testified that he learned from experimenting that he could not irrigate from the other wells, or otherwise make heavy use of them, if he wished to maintain year-round flow in Well 5.

The Objectors have flowed Well 5 on a more or less continuous basis. As of the date of the initial geohydrology report, Well 5 was discharging nearly 41 acre-feet per year, and was not equipped with a control valve. (October 9, 1981 Geohydrology Report, p. 5). The water had once been used to irrigate a shelter belt, but irrigation for this purpose has been long discontinued. (December 11, 1981 field investigation report, p. 3.) The excess water more recently has been used for irrigation.

by allowing the stock tank to overflow out into the field.
(Testimony of Adam Schweitzer; Objectors' Exhibit 2, December 1,
1983.)

Adam Schweitzer testified that Well 5 was not capped when Wayne Wetzel did his field visit (initial geohydrology report), but that the Objectors controlled the flow by using lengths of pipe attached above the well; the height of the pipe would control the flow. He stated that Well 5 previously had been capped and valved, but that after the Applicant had drilled his well, Well 5 had lost pressure over a 10-year period. He testified that the reason Mr. Wetzel had found the well free-flowing is because the well had stopped flowing during the preceding winter, and that the hired hand had broken it open to get water for the cattle. Walter Schweitzer stated that ever since then, the well has leaked in the spring. (Testimony at the August 20, 1984 hearing.)

Adam Schweitzer testified that he installed a valve on Well 5 about 3½ years ago, after being informed it was necessary in order to prevent waste. (See Finding of Fact 15, May 30, 1984 Interlocutory Order.)

19. The Interlocutory Order in this matter authorized an Interim Permit so that tests could be made under conditions where the flow of Well 5 was regulated, since all previous observations had been made while Well 5 was not valved. (See Finding of Fact 16, May 30, 1984 Interlocutory Order.) However, this attempt to gain data under "normal" circumstances was rendered impossible by

the breaking of the casing in Well 5 during the spring of 1984. The leakage continued throughout the Applicant's period of diversion.

Adam Schweitzer testified that he first noticed the leakage sometime in April, and believes that the leakage was coming from between the well casing and pack. He stated that he worked with well driller Wes Singley to fix the leak and finally got it sealed, then capped the well a week later. He testified that the capping was done on June 27, 1984. Mr. Schweitzer stated that he informed Sam Rodriguez that the well was controlled, but that Mr. Rodriguez did not take any flow measurements then or after the leak was controlled. Mr. Schweitzer testified that the flow from Well 5 started going down about two weeks after the well was controlled, and that it was out of water by the middle of July.

Measurements taken at Well 5 by field personnel indicate that on June 6, before Applicant began irrigating, Well 5 was flowing 30 gpm with an additional 2 to 3 gpm leakage around the casing. On June 17, after the Applicant had been pumping for 16 hours, the flow was 25 gpm (or 28 gpm, using the measurement method of measuring flow jet height see June 29, 1984 Report, Table 1). On June 13, a large leak at the point where the well casing joins the pipe feeding the stock tank was noted. No accurate flow measurement was obtained. On June 20, a measurement of 53 gpm was obtained by using a pigmy flow meter. The field personnel also documented that a new impoundment had been dug to catch some of the leakage from the well, which had been worked on but was still flowing freely. On June 27, flow from Well 5 measured 37

gpm. At this time, the leakage around the casing had been stopped, but the well was not yet valved. (June 29, 1984 Report by Sam Rodriguez.) At the time of the August 20, 1984 site visit, a flow rate of 6 gpm was measured at the height of the elbow on the well head: the water stopped flowing when the pipe was raised about 2 to 4 inches above the 90° elbow. No water was flowing into the stock tank. (Documentation of site visit, received August 27, 1984.)

20. Mr. Schweitzer testified that Well 5 responded as he would have expected based on past experience. He stated that, as he would have expected based on the Objectors' use of their wells for irrigation and the Applicant's use of his well, Well 5 had quit flowing much earlier than it ever has before. Mr. Schweitzer testified that it was his belief that there is only a minimum amount of water available from the aquifer before artesian pressure is lost, and that Wells 3 and 5 appear to show the loss first.

Mr. Schweitzer further testified that he believes the aquifer is on a "12 month cycle", with the lowest pressure being in December. He stated that there has always been a time lag between the static water level in Well 4 and the flow of Well 5, since Well 4 goes way down before 5 stops flowing, while Well 4 can come back up and Well 5 might not start flowing again before the next spring. He stated that he has to control the flow of other wells in order to maintain water in Well 5 during the winter. He further stated that he had been told by a SCS

geologist that the source aquifer is an localized aquifer, and that expanding the use from it would result in decreased artesian flow.

Walter Schweitzer also testified that Well 5 would not recover until the spring if the Objectors had used too much water for irrigation the previous summer, and that they have been controlling the other wells in order to have year-round stockwater.

21. Sam Rodriguez testified that he had discussed the repair of Well 5 with Wes Singley by telephone. He stated that Wes Singley felt the well casing had broken 13 to 15 feet below the ground, and had tried four times to fix the well. At one time, according to Mr. Singley, gravel fell down into the well and the well stopped flowing, but resumed flowing after he bailed the well out. He stated that all of the water appears to be coming from the bottom of the well.

Mr. Rodriguez testified that Wes Singley stated he had used bentonite tablets to bring the leakage under control, and then had used more gravel and cement to pack it after the Schweitzers told him that the leakage had not been completely shut off.

22. Wayne Wetzel testified that Well 5 stopped flowing when the aquifer itself was in a state of recovery, as evidenced by the measurements at the other wells. He stated that the only apparent explanation is that something happened when the driller attempted to rehabilitate the well. He responded to questions concerning the fact that the well had flowed for seven days after the repair by stating that the delay in flow cutoff made the

likelihood that the driller was responsible more tenuous, but that the fact remained that the aquifer was recovering in the other wells. He stated that he did not know what effect bentonite would have in an uncased hole if it slipped down past the packer, but the fact that Well 5 flowed during the Applicant's pumping and afterward, but ceased flowing after the well driller had worked on it was suspect.

In response to the Objectors' remarks that there has always been a lag time between Well 5 and the other wells, Wayne Wetzel stated that the probable explanation is that the casing in Well 5 does not go down far enough, and as a result the artesian pressure is lost into a sandstone formation on the open bore hole below the casing.

23. Wayne Wetzel estimated the average transmissivity of the Kootenai Formation aquifer in the vicinity of the Applicant's and Objectors' points of diversion to be approximately 8300 gallons per day per foot. (October 9, 1981 Geohydrology Report, pp. 2-3.) He testified that aquifer recovery from pumping is fairly rapid, although projected recovery rates display a somewhat longer lag time when the period of appropriation is extended. Mr. Wetzel testified that 15 days of continuous appropriation at the Applicant's applied for rate of 150 gpm would lead to a period of about 25 days for full recovery. (Testimony at December 1, 1983 hearing).

Mr. Wetzel testified that he had found the aquifer to be very responsive to the Applicant's well, both in drawdown and recovery. In the original tests conducted on Applicant's well,

Well 4 started to draw down about 20 minutes after the Applicant started appropriating, and had begun recovery about 20 minutes after the Applicant's well was shut down. (Testimony at August 20, 1984 hearing.)

Mr. Wetzel stated that he felt the wells had responded more or less as he had indicated they would in his original geohydrology report, that is, that the objectors' wells had experienced some drawdown and lessening of flows. He stated that his projected maximum drawdown had been based on the Applicant pumping at 150 gpm continuously for 21 days while the Objectors made maximum beneficial use of their wells as per the water useage figures supplied by the Objectors. (See October 9, 1981 Geohydrology Report.) However, the Applicant's proposed flow rate had not been met or sustained, and the drawdown actually was closer to the projected actual useage, which suggested that the Objectors' total drawdown would be in the vicinity of 8 or 9 feet. (See March 23, 1982 Supplemental Geohydrology Report, Figure 3.) Mr. Wetzel pointed out the measurements taken at Well 4 show a maximum drawdown of about 7 feet.

Mr. Wetzel stated that Well 5 creates a complicating factor, however. When Well 4 was at its lowest level, the well closest to it, Well 5, was flowing 33 to 40 percent above normal because of the cracked well casing. Mr. Wetzel responded affirmatively to a question as to whether Well 5 would be more likely to have an effect on Well 4 than would the Applicant's well.

Based upon the foregoing proposed Findings of Fact, the Hearing Examiner makes the following:

PROPOSED CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and all the parties hereto, whether present at the hearing or not.

2. Those parties who failed to appear at the hearings in this matter are in default pursuant to Administrative Rule of Montana §36.12.208.

3. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled, therefore the matter was properly before the Hearing Examiner.

4. The Department must issue a permit in an application for new appropriation if the applicant proves by substantial credible evidence:

- (a) there are unappropriated waters in the source of supply:
 - (i) at times when the water can be put to the use proposed by the applicant;
 - (ii) in the amount the applicant seeks to appropriate; and
 - (iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;
- (b) the water rights of a prior appropriator will not be adversely affected;
- (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
- (d) the proposed use of water is a beneficial use;
- (e) 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.

5. The use proposed by the Applicant, irrigation, is a beneficial use of water. MCA 85-2-102(2).

6. The geohydrology information in the record in this matter indicates that there are unappropriated waters in the source of supply at times when the water can be put to the use proposed by the Applicant and in the amount the Applicant seeks to appropriate, and that the amount requested is available throughout the period during which the Applicant seeks to appropriate. (October 9, 1981 Geohydrology Report; March 23, 1982 Supplemental Geohydrology Report; testimony of Wayne Wetzel.) It is clear from the record that the concern is not over the availability of water from the aquifer per se, but rather over the availability of artesian pressure. (See Findings of Fact).

7. 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.

8. The Applicant's proposed means of diversion, construction, and operation of its appropriation works are adequate. It is reasonable and customary to utilize natural artesian pressure where it exists, as the Objectors have been doing and as the Applicant proposes to do.

However, although utilizing available artesian flow is an adequate means of diversion, it is not a protectible one. Montana water use statutes clearly state, "priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such a

the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions". MCA 85-2-401(1).

To hold that an appropriator is entitled to maintenance of artesian pressure against any subsequent appropriators would be to allow a single appropriator or a limited number of appropriators to control an entire aquifer simply to make their own means of diversion easier. Both case law and statutes inveigh against such a result.

At his own point of diversion on a natural water course, each diverter must establish some reasonable means of effectuating his diversion. He is not entitled to command the whole or a substantial flow of the stream merely to facilitate his taking the fraction of the whole flow to which he is entitled. Schodde v. Twin Falls Land & Co., 224 U.S. 107, 92 S. Ct. 470, 56 L.Ed 686. This principle applied to diversion of underflow or underground water means that priority of appropriation does not give a right to an inefficient means of diversion, such as a well which reaches such a shallow depth into the available water supply that a shortage would occur to such senior even though diversion by others did not deplete the stream below where there would be an adequate supply for the senior's lawful demand.

City of Colorado Springs v. Bender, 148 Colo. 458, 366 P. 2d 552(1961) at 555. See also Alamosa-La Jara Water Users Protection Association v. Gould, 674 P.2d 914 (1983); Wayman v. Murray City Corporation, 23 Utah 2d 97, 458 P.2d 861 (1969); Doherty v. Pratt, 34 Nev. 343, 124 P. 574 (1912).

The principle that no appropriator should be allowed to "command the source" simply so that he may have a convenient method of diversion, such as artesian flow, also is consistent with the State of Montana's stated policy of maximizing the beneficial use of water. MCA § 85-2-101(3).

9. In the present matter, the Objectors and their counsel stated repeatedly that they need control of the entire source aquifer so that they can maintain year-round artesian flow for stockwatering uses. (Testimony of Adam Schweitzer and Walter Schweitzer, statements by Ron Smith.) No information in the record suggests that there is a shortage of water in the aquifer. (See Finding of Fact 20.) Rather, the record indicates that the Schweitzers have made management decisions based on their exclusive (until recent years) use of the aquifer, and have chosen to work around the problems created by poor well development techniques and mutual interference between their wells rather than to rectify the situation.

This is obviously a situation where an appropriator wishes to command the entire source of supply in order to have a convenient and inexpensive means of diversion. The Schweitzers are not entitled to maintenance of the artesian flow if they can reasonably exercise their water rights under the changed conditions, nor will they be adversely affected if they can so exercise their water rights. See MCA § 85-2-401(1) and § 85-2-311(b).

10. The record in this matter shows substantial credible evidence that the Objectors will not be adversely affected. It is more likely than not that they will be able to exercise their water rights through utilization of reasonable means of diversion.

Well 1, the Schweitzer house well, apparently has not been adversely affected by the Applicant's appropriation. (See Finding of Fact 15). Well 2, the "barn well", only lost 2 gpm of flow during the Applicant's period of diversion, even though the well was being used for irrigation as well as stockwatering for the first time in 15 years. (See Finding of Fact 16.) Well 3, the Nordell well, did experience problems. However, it is more likely than not that the Applicant's appropriation was not the triggering factor, since the record shows that the problems were also occurring in 1983, when the Applicant was not appropriating. Considering the relative proximity of the various wells, it is likely that the higher overflow rate measured at Well 3 on August 20, 1984 was more a result of Well 5 being controlled than it was of the ceasing of the Applicant's appropriation. (See Finding of Fact 17.)

Well 4, the static water well, had a maximum drawdown of approximately 7 feet. However, the larger portion of this drawdown most likely is attributable to the uncontrolled flow of Well 5, the closest well to Well 4. (See, Finding of Fact 20.) Even disregarding the probable factors involved in the total drawdown, however, it is clear that the Objectors have not experienced changed conditions under which they cannot

reasonably exercise their water rights in Well 4, since they pumped Well 4 for stockwater this summer without apparent problem. (See Finding of Fact 18.)

Well 5 did not suffer an apparent loss of flow during the period of the Applicant's appropriation (see Finding of Fact 19), despite testimony that it is one of the first wells to respond to loss of pressure in the aquifer. (Testimony of Adam Schweitzer, August 20, 1984 hearing.)

The well flow started tapering off approximately two weeks after the Applicant ceased pumping, and completely stopped flowing by the middle of July. However, Wayne Wetzel testified that if Well 5 was not flowing but the Applicant's well was at that time, the drawdown could not be blamed on the Applicant's appropriation for irrigation in June, since the Applicant's well would be the last place to recover. (Testimony of Wayne Wetzel, August 20, 1984 hearing. Mr. Wetzel also indicated that the aquifer was in a state of recovery at the time that Well 5 ceased flowing, and that it was likely that some external factor such as the work done on the well was responsible. (See, Finding of Fact 19.)

It is also apparent from the record in this matter that Well 5 has always been extremely sensitive to mutual interference with other wells from the aquifer. (See Findings of Fact generally.) It did not flow when originally it was drilled, and has had a history of problems since then, including winter freezeup and springtime leakage. It is likely that many of the problems stem from the fact that Well 5 is only partially cased,

thereby allowing the artesian pressure to dissipate along intervening layers of the open bore hole, and from the history of repair work which has been attempted. (See Findings of Fact 10, 19.) The Objectors have had to regulate their other wells in various ways in order to keep Well 5 flowing for stockwater.

The record in this matter indicates that Well 5 has not been adversely affected by the Applicant's appropriation to the extent that the Objectors cannot reasonably exercise their water rights. The record also suggests that, if the Objectors at some future time claim adverse effect to Well 5 to the extent that they cannot reasonably exercise their water rights under the changed condition, Well 5 should be examined carefully on the issue of whether it constitutes an adequate means of diversion.

11. Counsel for the Objectors repeatedly cited the case of Department of Natural Resources and Conservation v. Crumpled Horn as support for the proposition that the Applicant would be strictly liable for any damages incurred by the Objectors as a result of Applicant's appropriation. A review of this and other cases indicates that counsel's argument is misplaced. Courts repeatedly have used a balancing approach, taking into account such factors as the reasonableness of the senior appropriator's means of diversion, the extent of adverse effect, the reasonable "economic reach" of the parties, and the necessity of maximizing beneficial use of the water. City of Colorado Springs v. Bender, supra; Alamosa-La Jara Water Users Protection Association v. Gould, supra; Doherty v. Pratt, supra; Wayman v. Murray City Corporation, supra.

In the Memorandum to Crumpled Horn, presiding Judge W.W. Lessley emphasized the state's policy of maximizing the use of state waters. He also wrote, "...There are limits; prior is not prior in the absolute sense that most inefficient means of diversion will receive absolute autonomy. The word "reasonable" is the benchmark of all water controversies." (May 16, 1978 Memorandum to Crumpled Horn.)

It is true that damages were awarded in certain instances in Crumpled Horn. However, the case is far from a "strict liability" case, since no recovery was allowed in some instances. Finding of Fact 6, for example, concludes "that the Hawley well is more than 30 years old; evidence indicates that wells of this type are depreciated out by this time; she should not recover for pump and fitting and labor for a new well." (May 17, 1978 Interlocutory Findings of Fact and Conclusions of Law.)

12. The flow measurements from the Applicant's well indicate that after an initially higher flow, the flow rate remained at a steady 86 gpm throughout the period of appropriation, rather than the 150 gpm the Applicant had anticipated on the basis of past testing. The Applicant therefore is eligible to appropriate water pursuant to a Certificate of Water Right, as an alternative to exercising the Provisional Permit granted herein.

MCA 85-2-306 states, "Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute."

If the Applicant does choose to terminate this Permit Application and appropriate water pursuant to a Certificate, rather than a Permit, it will be necessary for him to control the initial higher flow so that it does not exceed 100 gallons per minute.

WHEREFORE, based upon the proposed Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, restrictions, conditions and limitations specified below, Application for Beneficial Water Use Permit No. 31441-g41R is hereby granted to Jim McAllister to appropriate 150 gpm up to 13.9 acre-feet per year for flood irrigation on 24 acres of land; 14 acres in the NE $\frac{1}{4}$ of Section 9 and 10 acres in the NW $\frac{1}{4}$ of Section 9, Township 17 North, Range 9 East, Judith Basin County, Montana. The source of supply is ground water, to be diverted by means of artesian flow from a well located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, Township 17 North, Range 9 East, Judith Basin County, Montana. The period of use is April 20 to September 20, inclusive, of each year.

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

A. The water rights evidenced by this Permit are subject to all prior and existing rights, and to any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize appropriations by the Permittee to the detriment of any senior appropriator.

B. Nothing herein shall be construed to affect or reduce the Permittee's liability for damages which may be caused by the exercise of this Permit. Nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by the exercise of this Permit, even if such damage is a necessary and unavoidable consequence of the same.

C. The Permittee shall in no event withdraw or cause to be withdrawn waters from the source of supply in excess of the quantity reasonably required for the purposes provided for herein.

D. The Permittee shall install a flow meter on the pipe leading from the well capable of measuring length of time and amounts of flow.

E. The Permittee shall keep a written record of the flow rate and volume of all waters diverted; including the time of diversion, and shall make these records available to the Department upon request.

DONE this 15th day of June, 1985.

Peggy A. Elting
Peggy A. Elting, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 444 - 6612

CASE # 31441

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the proposed permit, including the legal land descriptions. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (32 S. Ewing, Helena, MT 59620); the exceptions must be filed within 20 days after the proposal is served upon the party. M.C.A. § 2-4-623.

Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed. Any adversely affected party has the right to present briefs and oral arguments before the Water Resources Administrator, but these requests must be made in writing within 20 days after service of the proposal upon the party. M.C.A. § 2-4-621(1).

AFFIDAVIT OF SERVICE
MAILING

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

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on June 19, 1985, she deposited in the United States mail, first class mail, a Proposal for Decision by the Department on the Application by Jim McAllister, Application No. 31441-g41R, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Jim McAllister, Geysler, MT 59447
2. Ronald W. Smith, Smith, & Rice, Attorneys at Law, 312 Third Street, Havre, MT 59501
3. Adam and Kathleen Schweitzer, Geysler, MT 59447
4. Walter Schweitzer, Geysler, MT 59447
5. H.L. Nordell, Box 38, Geysler, MT 59447
6. Wayne Wetzler, Energy Division, DNRC (inter-departmental mail)
7. Sam Rodriguez, Field Manager, Water Rights Bureau Field Office at Lewistown, MT (inter-departmental mail)
8. Peggy A. Elting, Hearings Examiner (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Donna K. Elser

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

On this 19th day of June, 1985, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings 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.

Verdy Loka
Notary Public for the State of Mont. a
Residing at Missoula City, Mont.
My Commission expires 3-1-88

CASE # 31441