EXHIBIT No. 1

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

COPY

* * * * * * * * * * * *

IN THE MATTER OF THE)
APPLICATIONS FOR BENEFICIAL)
WATER USE PERMITS NOS. 31585-) FINAL ORDER
s41o, 36164-g41o, AND 35662-)
g41o BY JOE B. LEE.)

* * * * * * * * * * * *

Exception and objection has been entered to the Proposal for Decision by the Applicant and the Objectors.

The Applicant is correct in pointing out that the undertaking agreed to was to release from storage or waters accruing to the storage structure an amount equal to the difference between the lower and upper weir, where flows at the lower weir are less than those at the upper. The Applicant also argued, pursuant to a proviso sponsored by Objectors, that no action would be taken that impedes, retards or otherwise restrains the water so released. These provisions are incorporated below.

The Applicant further argues that such obligation only encompasses the irrigation season. This limitation already exists in the Proposed Order.

The Applicant argues that diversions for storage should be limited to times of spring snow-melt runoff. This is our understanding of a normal reservoir operation, and as a matter of course, we would envision this practice in the instant case. We will not independently restrict the permit in such a fashion, however, in view of the difficulties in determining what is

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"spring runoff," and in view of the fact that diversions for storage may be possible at other times of the year without an abridgement of senior rights. We note, however, that the permit merely authorizes the storage of up to 100 acre feet per year; it does not authorize the capture of 100 acre feet per year if carry-over exists. In re Krutzfeldt, Dept. Order, 4/82.

The provision requiring a drainage tube, which necessarily must be gated, addresses the Objector's concern for the placement of the trickle tube.

Application No. 36164-g41o

Application for Beneficial Water Use Permits No. 36164-g41o be issued to Joe P. Lee to appropriate 500 gallons a minute up to 200 acre-feet per year for supplemental irrigation of 80 acres more or less located in the N 1/2 of the NW 1/4 of Section 21, Township 25 North, Range 6 West, all in Teton County. Said waters shall be appropriated by means of a well located in the SE 1/4 NW 1/4 NW 1/4 of Section 21, Township 25 North, Range 6 West, all in Teton County. Said waters should not be diverted prior to May 15 of any given year, nor subsequent to October 15, of any given year. The priority date of this right should be September 29, 1981 at 8:53 a.m. The waters involved herein are "surface waters," affecting the rate or direction of surface streams.

Any rights evidenced by this permit are subject to the following express conditions, restrictions, limitations.

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(a) Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of these rights as provided by Montana law. Nothing herein should be construed to authorize the Permittee to divert water to the detriment of any senior appropriator.

(b) The Permittee shall in no event cause to be diverted more water than is reasonably required by the purposes provided for herein.

(c) Nothing herein shall be construed to affect or reduce the Permittees liability for damages that may be caused by the exercise of this permit.

(d) The waters diverted pursuant to the rights evidenced by this permit, by the rights evidenced by Permit No. 31585-s41o, and by the rights evidenced by Permit No. 35862-g41o, and by the rights evidenced by Permit No. 35862-s41o, and by the rights evidenced by Permit No. 35862-g41o shall in no event exceed collectively 1560 acre feet in any given year.

Application No. 35862-g41o

Application No. 35862-g41o is hereby granted to Joe R. Lee to appropriate 5 cubic feet per second up to 1360 acre feet per year for supplemental irrigation of 285.8 acre feet more or less being comprised of 80 acres in the N 1/2 of the NW 1/4 and 69.89 acres in the S 1/2 of the NW 1/4 and 48 acres in the N 1/2 of the SE 1/4 all of Section 21, Township 25 North, Range 6 West, and 88 acres in the S 1/2 of the NW 1/4 of Section 22, Township 25 North, Range 6 West. The points of diversion shall be

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certain drain ditches located in the S 1/2 of the S 1/2 of the NE 1/4 and the N 1/2 of the S 1/2 of the NE 1/4 of Section 20, Township 25 North, Range 6 West, all in Teton County provided that nothing herein should be construed to authorize the Permittee to construct the northern-most drain ditch other than on property he presently owns or controls. The waters provided for herein should not be diverted prior to April 1 of any given year or subsequent to October 1 of any given year. The priority date for this permit shall be September 14, 1981 at 11:18 a.m. The waters involved herein are "surface waters," affecting the rate or direction of flow of surface streams.

The rights provided for herein are subject to the following express conditions, limitations, and restrictions.

(a) Any rights evidenced herein are subject to all prior and existing rights and to any final determination of these rights as provided by Montana law. Nothing herein should be construed to authorize the Permittee to divert water to the detriment of any senior appropriator.

(b) The Permittee shall in no event cause to be diverted from the source of supply more water than is reasonably required for the purpose provided for herein.

(c) 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.

(d) The Permittee shall not divert water from that drainage ditch which directly connects with the surface flow of Ralston Gap unless and until flow at a certain downstream weir is equal

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to or greater than the flow measured at a certain upstream weir, unless and until the waters of Ralston Gap are augmented, all as more fully set forth in Permit No. 31585-s41o.

(e) In no event shall the Permittee divert more than 1560 acre feet per year pursuant to the rights evidenced herein, and the rights evidenced in Permit No. 31585-s41o and those rights evidenced by Permit No. 36164-g41o.

Application No. 31585-s41o

Application for beneficial water use Permit No. 31585-s41o is hereby granted to Joe R. Lee to appropriate up to 100 acre feet per year for supplemental irrigation on 271 acres more or less comprised of 70 acres in the NE 1/4 and 113 acres in the NW 1/4 of Section 21, Township 25 North, Range 6 West, and 88 acres in the NW 1/4 of Section 22, Township 25 North, Range 6 West, all in Teton County. Said water shall be appropriated by means of a dam in the SW 1/4 of the NW 1/4 of Section 21, Township 25 North, Range 6 West, out of the flows of Ralston Gap. The priority date for this permit shall be February 5, 1981, at 3:05 p.m.

Any rights evidenced herein are subject to the following express conditions, limitations, and restrictions.

(a) Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of these rights as provided by Montana law. Nothing herein shall be construed to authorize the Permittee to divert water to the detriment of any senior appropriator.

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(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.

(c) The waters diverted pursuant to the rights evidenced by this Permit, and the rights evidenced by Permit No. 36164-g41o, and the rights evidenced by Permit No. 35862-g41o shall in no event exceed collectively 1560 feet in any given year.

(d) The Permittee shall in no event capture or detain more than 100 acre feet of water in any single year pursuant to the rights evidenced by this permit. For the purposes of this permit a water year shall begin on June 15, and end on the ensuing June 14. Any waters diverted on June 15 or thereafter until June of the following year are a part and parcel of that year's appropriative limit.

(e) The Permittee shall install and maintain a measuring device immediately downstream of the storage structure.

(f) The dam shall be equipped with a trickle tube to bypass the flows of Ralston Gap and a drainage pipe.

(g) The Permittee shall further construct and maintain a weir upstream on Ralston Gap from the land he presently owns or controls such that said weir is capable of measuring the natural surface flow of the south water course that enters the aforesaid land. Said weir need not be situated so as to measure water from either drainage ditch constructed by the Permittee pursuant to Permit No. 35862-g41o. For the purposes herein, this weir is the upstream weir, and is located upstream of the named point of diversion.

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A second weir shall be placed on the natural water channel west of the north-south Harvey Lake Road at a location marked by the parties hereto. Said weir shall be installed and maintained by the objector, Leonard L. Blixrud. For the purposes herein, this weir shall be known as the downstream weir.

At any time in the irrigation season, which shall be conclusively presumed for this purpose to be that period between April 1 and October 1, inclusive, the Permittee shall not divert waters pursuant to this Permit where the flow of water at said lower weir is less than the flow of water at said upper weir, unless and until the flows of Ralston Gap are augmented from water stored pursuant to this permit. Such augmentation shall extend to the difference between the flows at said weirs, and such quantity shall be released immediately downstream of the dam, and the Permittee shall do nothing to impede, retard or otherwise restrict the flow of such waters once released.

Matthew W. Williams
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59620
(406) 449-3712

Gary Fritz, Administrator
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59620
(406) 449-2872

CASE # 36164

AFFIDAVIT OF SERVICE

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

Dorothy Millson, Legal Secretary 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 June 23, 1983, she deposited in the United States mail, "certified return receipt mail", a FINAL ORDER by the Department on the application by JOE R. LEE FOR BENEFICIAL WATER USE PERMITS NOS. 31585-s41o, 36164-g41o, and 35862-g41o, for a Permit to Appropriate Water, addressed to each of the following persons or agencies:

1. Miller Colony, Inc., Box 210 RR 2, Choteau, MT 59422
2. William A. Leys, RR 2, Choteau, MT 59422
3. Stott Ranch, Inc., Choteau, MT 59422
4. Farmer's Co-op Canal Co., Alvin G. Guse, Choteau, MT 59422
5. Leonard Blixrud, P.O. Box 44, Choteau, MT 59422
6. Cloyd Stott, Star Route, Choteau, MT 59422
7. Lloyd Stott, Star Route, Box 9, Choteau, MT 59422
8. Robert L. Woodahl, Attorney at Law, P.O. Box 162, Choteau, MT 59422
9. Joe R. Lee, Box 154, Choteau, MT 59422
10. Ted J. Doney, P.O. Box 752, Helena, MT 59624
11. Greg Curtis, Attorney at Law, Choteau, MT 59422
12. Havre Field Office (inter-department mail)
13. Matt Williams, Hearing Examiner (hand deliver)

Dorothy Millson
Department of Natural Resources

CASE # 36164

EXHIBIT No. A

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

* * * * * * * * * * * * *

IN THE MATTER OF THE APPLICATIONS FOR BENEFICIAL WATER USE PERMITS NOS. 31585-s41o, 36164-g41o, AND 35862-g41o BY JOE R. LEE	)	PROPOSAL FOR DECISION

* * * * * * * * * * * * *

COPY

PRELIMINARY MATTERS

The instant order arises out of the consent of the parties hereto. See generally, MCA 2-4-603(1). The specific terms of the conditions appended to the permits referenced herein are a digest of the specific terms of the agreement reached by the parties or are fashioned out of the substantive law that defines the character and measure of an appropriative right. Not all the terms of the parties agreement are incorporated herein. Rather, those elements of the agreement that are responsive to the issues framed by MCA 85-2-311 are made part hereof. While the parties to this matter save the Department of Natural Resources and Conservation may bind themselves as they will pursuant to agreement, the state acting through the Department of Natural Resources and Conservation has no interest in such agreements except insofar as they relate to the issues posited by the legislature for new water use permits. See generally, MCA 85-2--312(1).

The parties hereto may except to the language employed herein insofar as they believe that it is not in accord with

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their referenced agreement in the time provided for below. The parties may also argue that certain additional terms of the agreement be provided for herein insofar as they believe that such terms or responses to the criteria rererenced above.

Application No. 36164-g41o

As a preliminary matter, the Hearings Examiner for the sake of future administration of this right would find and does find that the waters that will be intercepted by this well if left undiverted would affect the flow of Ralton Gaps. Such waters are therefore not ground waters within the meaning of the Montana Water Use Act. See MCA 85-2-102(8), see also Kuiper v. Lundvall, 187 Colo. 40, 529 P.2d 1328 (1974), cert. den. 421 U.S. 996 (1975).

With this understanding, it is proposed to the Department that Application for Beneficial Water Use Permits No. 36164-g41o be issued to Joe R. Lee to appropriate 500 gallons a minute up to 200 acre-feet per year for supplemental irrigation of 80 acres more or less located in the N 1/2 of the NW 1/4 of Section 21, Township 25 North, Range 6 West, all in Teton County. Said waters shall be appropriated by means of a well located in the SE 1/4 NW 1/4 NW 1/4 of Section 21, Township 25 North, Range 6 West, all in Teton County. Said waters should not be diverted prior to May 15 of any given year, nor subsequent to October 15, of any given year. The priority date of this right should be September 29, 1981 at 8:53 a.m.

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Any rights evidenced by this permit are subject to the following express conditions, restrictions, limitations.

(a) Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of these rights as provided by Montana law. Nothing herein should be construed to authorize the Permittee to divert water to the detriment of any senior appropriator.

(b) The Permittee shall in no event cause to be diverted more water than is reasonably required by the purposes provided for herein.

(c) Nothing herein shall be construed to affect or reduce the Permittee's liability for damages that may be caused by the exercise of this permit.

(d) The waters diverted pursuant to the rights evidenced by this permit by the rights evidenced by Permit No. 31585-s41o, and by the rights evidenced by Permit No. 35862-g41o shall in no event exceed collectively 1560 acre feet in any given year.

Application No. 35862-g41o

Again, the Hearings Examiner would conclude and does conclude that the waters that will be intercepted by the Applicant's proposed drain ditches pursuant to this Application are surface waters within the meaning of the Montana Water Use Act.

Application No. 35862-g41o should be granted to Joe R. Lee to appropriate 5 cubic feet per second up to 1360 acre feet per

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year for supplemental irrigation of 285.8 acre feet more or less being comprised of 80 acres in the N 1/2 of the NW 1/4 and 69.8 acres in the S 1/2 of the NW 1/4 and 48 acres in the N 1/2 of the SE 1/4 all of Section 21, Township 25 North, Range 6 West, and 88 acres in the S 1/2 of the NW 1/4 of Section 22, Township 25 North, Range 6 West. The points of diversion shall be certain drain ditches located in the S 1/2 of the S 1/2 of the NE 1/4 and the N 1/2 of the S 1/2 of the NE 1/4 of Section 20, Towship 25 North, Range 6 West, all in Teton County provided that nothing herein should be construed to authorize the Permittee to construct the northern-most drain ditche other than on property he presently owns or controls. The waters provided for herein should not be diverted prior to April 1 of any given year or subsequent to October 1 of any given year. The priority date for this permit shall be September 14, 1981 at 11:18 a.m.

The rights provided for herein are subject to the following express conditions, limitations, and restrictions.

(a) Any rights evidenced herein are subject to all prior and existing rights and to any final determination of these rights as provided by Montana law. Nothing herein should be construed to authorize the Permittee to divert water to the detriment of any senior appropriator.

(b) The Permittee shall in no event cause to be diverted from the source of supply more water than is reasonably required for the purpose provided for herein.

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(c) 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.

(d) The Permittee shall not divert water from that drainage ditch which directly connects with the surface flow of Ralston Gap unless and until flow at a certain downstream weir is equal to or greater than the flow measured at a certain upstream weir. The downstream and upstream weirs are defined in Permit No. 31585-s41o.

(e) In no event shall the Permittee divert more than 1560 acre feet per year pursuant to the rights evidenced herein, and the rights evidenced in Permit No. 31585-s41o and those rights evidenced by Permit No. 36164-g41o.

Application No. 31585-s41o

It is recommended to the Department that application for beneficial water use Permit No. 31858-s41o be granted to Joe R. Lee to appropriate up to 100 acre feet per year for supplemental irrigation on 271 acres more or less comprised of 70 acres in the NE 1/4 and 113 acres in the NW 1/4 of Section 21, Township 25 North, Range 6 West, and 88 acres in the NW 1/4 of Section 22, Township 25 North, Range 6 West, all in Teton County. Said water shall be appropriated by means of a dam in the SW 1/4 of the NW 1/4 of Section 21, Township 25 North, Range 6 West, out of the flows of Ralston Gap. The priority date for this permit shall be February 5, 1981.

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Any rights evidenced herein are subject to the following express conditions, limitations, and restrictions.

(a) Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of these rights as provided by Montana law. Nothing herein shall be construed to authorize the Permittee to divert water 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.

(c) The waters diverted pursuant to the rights evidenced by this Permit, and the rights evidenced by Permit No. 36164-g41o, and the rights evidenced by Permit No. 35862-g41o shall in no event exceed collectively 1560 feet in any given year.

(d) The Permittee shall in no event capture or detain more than 100 acre feet of water in any single year pursuant to the rights evidenced by this permit. For the purposes of this permit a water year shall begin on June 15, and end on the ensuing June 14. Any waters diverted on June 15 or thereafter until June of the following year are a part and parcel of that year's appropriative limit.

(e) The Permittee shall install and maintain a measuring device immediately downstream of the storage structure.

(f) The dam shall be equipped with a trickle tube to bypass the flows of Ralston Gap and a drainage pipe.

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(g) The Permittee shall further construct and maintain a weir upstream on Ralston Gap from the land he presently owns or controls such that said weir is capable of measuring the natural surface flow of the south water course that enters the aforesaid land. Said weir need not be situated so as to measure water from either drainage ditch constructed by the Permittee pursuant to Permit No. 35862-g41o. For the purposes herein, this weir is the upstream weir, and is located upstream of the named point of diversion.

A second weir shall be placed on the natural water channel west of the north-south Harvey Lake Road at a location marked by the parties hereto. Said weir shall be installed and maintained by the objector, Leonard L. Blixrud. For the purposes herein, this weir shall be known as the downstream weir.

At any time in the irrigation season, which shall be conclusively presumed for this purpose to be that period between April 1 and October 1, inclusive, the Permittee shall not divert waters pursuant to this Permit unless and until the flow of water at said lower weir is equal to or greater than the rate of flow of water at the upper weir. Further, the Permittee shall, if necessary, augment the flows of Ralston Gap from water stored pursuant to this Permit such that the flow at the downstream weir is at all times during the stated period not less than the rate of flow at the upstream weir. This duty to augment flows of Ralston Gap from storage waters exist notwithstanding that said stored waters may have been previosly lawfully stored.

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N O T I C E

This proposal for decision is offered for the review of all parties of record. Objections and/or exceptions must be filed with and received by the Department of Natural Resources and Conservation on or before April 18, 1983.

DONE this 28th day of March, 1983.

Matthew W. Williams

Matthew W. Williams
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59620
(406) 449-3712

CASE #

AFFIDAVIT OF SERVICE

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

Dorothy Millsop, Legal Secretary 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 March 9, 1983, she deposited in the United States mail, "first class mail", a FINAL ORDER by the Department on the application by JOE R. LEE FOR BENEEFICIAL WATER USE PERMITS NOS. 31585-s41o, 36164-g41o, and 35862-g41o, for a Permit to Appropriate Water, addressed to each of the following persons or agencies:

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7. Lloyd Stott, Star Route, Box 9, Choteau, MT 59422
8. Robert L. Woodahl, Attorney at Law, P.O. Box 162, Choteau, MT 59422
9. Joe R. Lee, Box 154, Choteau, MT 59422
10. Ted J. Doney, P.O. Box 752, Helena, MT 5a9624
11. Greg Curtis, Attorney at Law, Choteau, MT 59422
12. Havre Field Office (inter-department mail)
13. Matt Williams, Hearing Examiner (hand deliver)

Dorothy Millsop
Department of Natural Resources

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

On this 7th day of April, 1983, before me, a Notary Public in and for said State, personally appeared Dorothy Millsop, known to me to be the Legal Secretary 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.

Donald O. McIntyre
Notary Public
Residing at Helena, Montana
My Commission expires 12/15/84

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