

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.33983-S410 BY JOHN C. HOYT)

* * * * *

There being no further objections or exceptions to the Proposal for Decision entered in this matter as amended on December 22, 1981, said Proposal is hereby made final and expressly incorporated herein. -

WHEREFORE, the following Final Order is hereby entered in the above-entitled matter.

Subject to the terms, conditions, and limitations described below, Application for Beneficial Water Use Permit No. 33983-s410 is hereby granted to John C. Hoyt to appropriate 67 acre-feet of water from Shaw Creek by an on-stream reservoir to be located in the SE1/4 SW1/4 SE1/4 of Section 21, Township 20 North, Range 8 East, all in Chouteau County. Applicant may use 30 gallons per minute up to 1.5 acre-feet per year of the water so impounded for domestic purposes, up to 4 acre-feet of the water so impounded for stock-watering purposes, and up to 61.5 acre-feet per year for fish and wildlife purposes. The place of such use shall be

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confined to the SE1/4 SW1/4 SE1/4 of Section 21, Township 20 North, Range 8 East, all in Choutcau County. In no event may Applicant divert for storage prior to March 1 of any given year, nor subsequent to July 1 of any given year. Applicant may use the quantity of water reflected herein on a year-round basis for the purposes reflected herein. The priority date for this permit shall be June 1 of 1981 at 10:45 a.m.

This permit is hereby made expressly subject to the following conditions, limitations, and restrictions.

A. Any rights evidenced herein are subject to all prior and existing rights, and any final determination of such rights.

B. The Permittee shall construct the impoundment that is his means of diversions with a slope of four to one on the upstream side and a slope of two to one on the downstream side. Said structure will also be equipped with a pass-through pipe and headgate so as to provide a drainage mechanism and with a trickle tube so as to maintain water level. An "emergency spillway" shall be constructed so as to divert excess waters into an adjoining swale. Appropriate collars shall be provided for all such pipes passing through the earth-filled impoundment.

D. At such time as the Permittee begins diversions for storage in any given year, the amount remaining in storage at such time shall be part and parcel of that year's appropriative limit. At such time that Applicant's dam secures such appropriative limit, inflows must be equivalent to outflows until the time of diversion for storage in the next ensuing year.

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E. Permittee shall in no event cause waters to be diverted from storage for domestic use in excess of that quantity of water reasonably required for this purpose.

F. Permittee shall install and maintain any and all measuring devices required to implement the directives contained herein.

DONE this 18th day of January, 1982.

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

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

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AFFIDAVIT OF SERVICE

Final Order

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 January 20, 1982, he deposited in the United States mail, "certified mail", an Order by the Department on the application by John C. Hoyt, Application No. 33983, for a Permit to Appropriate Water, addressed to each of the following persons or agencies:

1. John C. Hoyt, Box 2807, GF, MT 59403
2. Margaret Keaster, Highwood, 59450
3. Ruth Lehman, Highwood, MT 59450
4. Woodmansey Ranch Co., Ft. 2, Box 20, Highwood, MT 59450
5. Nellie Reynolds, Highwood, MT 59450
6. Earl Davinson, Highwood, MT 59450
- Mrs. Schautt, Highwood, MT 59450
- o. Keith Tokerud, Box 2269, GF, MT 59403
9. Bob Larsen, Havre Field Office, (regular inter-department mail)
10. Matt Williams, Hearing Examiner, DNRC, Helena, (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by *Beverly J. Jones*

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

On this 20th day of January, 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.

John P. [Signature]
Notary Public for the State of Montana

Residing at Helena, MT

My Commission Expires 1/21/84

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. 33983-s41Q BY JOHN C. HOYT)

* * * * *

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 Great Falls, Montana, on October 1, 1981.

STATEMENT OF THE CASE

The application in the instant matter seeks to impound a total of 67 acre-feet of water from Shaw Creek, and to use the aforesaid quantity of water for domestic, livestock, and fish and wildlife purposes continuously throughout each year. The place of use and the point of diversion of these waters are claimed to be located in the SE1/4 SW1/4 SE1/4 of Section 21, Township 20 North, Range 8 East, all in Chouteau County.

The pertinent portions of this application were published for three successive weeks in the River Press, a newspaper of general circulation printed and published in Fort Benton, Montana.

On August 24, 1981, an objection to the aforesaid application was filed with the Department of Natural Resources and Conservation by Margaret E. Keaster, apparently acting as personal representative of the estate of W. Rea Keaster. This

objection claims generally that the amount of water claimed for fish and wildlife purposes is excessive and may interfere with this objector's use of the waters of Highwood Creek for stock watering. Mrs. Keaster appeared personally at the hearing in this matter.

On August 21, 1981, an objection to the granting of this application was filed with the Department of Natural Resources by Ruth Lehman. This objector did not appear either personally or by representative at the hearing in this matter.

On August 11, 1981, an objection to the granting of the above-stated application was filed with the Department on behalf of Woodmansey Ranch Co. This objection alleges generally the impoundment of the waters claimed by the Applicant will adversely affect this objector's downstream use of the water, and that the construction of the dam will create flood hazards to downstream properties. Woodmansey Ranch Co. appeared at the hearing through Kathryn Woodmansey and counsel Keith Tokerud.

An objection to the granting of this application was also filed with the Department on August 28, 1981, by Nellie Reynolds. This objection alleges that the proposed dam would create flood hazards for downstream property and that the waters to be impounded in this structure are already required for downstream irrigation needs. Mrs. Reynolds appeared personally at the hearing in this matter.

A Mrs. Shattu and Mr. Earl Davinson moved to intervene at the outset of the hearing in this matter as objectors to the above-stated application. Both these persons alleged generally that

the dam as proposed would create a flood hazard for downstream properties. By consent, these persons were made parties to this proceeding as objectors, although Mr. Davinson did not testify in this matter.

EXHIBITS

The Applicant offered into the record three exhibits, to-wit:

(A-1 and A-2) Photographs of excavated areas in or about the dam site.

(A-3) A photograph of the fill material removed from the previously referenced excavated area, which fill is planned to be used in the construction of Applicant's dam.

All of Applicant's exhibits were duly received without objection into the record.

Objector, Woodmansey Ranch Co. offered into the record nine

(9) exhibits, to-wit:

(W-1) A letter addressed to a Department employee along with a letter to Mrs. Woodmansey, which letters were prepared and signed by the Applicant herein.

(W-2) A letter prepared and signed by the Applicant herein and addressed to a Department employee in reference to the present application.

(W-3) A copy of a letter addressed to the applicant herein from Thomas-Dean and Hoskins, Engineering Consultants, with reference to the Applicant's proposed dam.

(W-4) Copies of photographs taken of Highwood Creek showing flood damage thereto resulting from the 1964 flood.

(W-5) Copies of photographs depicting damage resulting from the 1953 flood on Highwood Creek.

(W-6, 7 and 8) A series of 11 photographs depicting Mrs. Woodmansey's home before the flood of 1953, and her home as damaged by said waters.

(W-9) Copies of various newspaper articles relating to flood damage in the Highwood Creek area.

All of Objector Woodmansey Ranch Co.'s exhibits were duly received into the record without objection.

The Department offered into the record a single exhibit, to-wit:

(D-1) A memorandum prepared by a Department employee relating the results of that employee's evaluation of the present application, together with a map of the proposed place of use and point of diversion, together with a memorandum prepared by certain engineers setting forth the plans and specifications for the proposed dam.

The Hearing Examiner, after reviewing the evidence submitted herein, and now being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The Department has jurisdiction over the persons herein, whether they have appeared or not.

2. The Applicant intends to impound up to 67 acre-feet of the waters of Shaw Creek by means of an earth-filled dam. This dam will be located in the SE1/4 SW1/4 SE1/4 of Section 21, Township 20 North, Range 8 East, all in Chouteau County.

3. The Applicant intends to use 30 gallons per minute up to 1.5 acre-feet per year of the water so impounded for domestic

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) AMENDED PROPOSAL FOR DECISION
NO. 33983-S410 BY JOHN C. HOYT)

* * * * *

In accordance with the Proposal for Decision entered in this matter, the Applicant herein has submitted additional proof and evidence of the beneficial use of the 61.5 acre-feet of water claimed for fish and wildlife purposes. Objectors Woodmansey Ranch Co., Keaster, and Schutt have submitted memoranda in opposition thereto.

WHEREFORE, the Proposal for Decision previously entered is modified according to the following particulars.

AMENDED FINDING OF FACT

7. The Applicant also intends to impound up to 61.5 acre-feet of water for fish and wildlife purposes. The Applicant intends to stock the pond created by the impoundment referenced herein with fish. The Applicant's intent in this regard is bona fide, and he is not attempting to speculate in the water resource. Moreover, Applicant's use of 61.5 acre-feet of water

for fish and wildlife purposes is a beneficial one. The evidence herein shows that the Applicant in this matter is experienced in constructing fisheries in or about the area, and that the waters claimed herein are required to provide sufficient depth for a viable fishery. The use of such waters would be of material benefit to the Applicant, other persons, and the public generally.

AMENDED CONCLUSIONS OF LAW

10. The Applicant's proposed use of 61.5 acre-feet of water for fish and wildlife purposes is a beneficial one. Such a use would be of material benefit to the Applicant, other persons, and the public generally. See MCA 85-2-102(2) (1979). Moreover, 61.5 acre-feet is a reasonable estimate of the quantity of water required for Applicant's purpose. The evidence herein indicates that such a quantity of water is required to maintain a viable fishery at Applicant's proposed impoundment site. See Woodward v. Perkins, 116 Mont. 46, 147 P. 2d 1016 (1944); State ex rel Crowey v. District Court, 108 Mont. 89, 88 P. 2d 23 (1939).

"Beneficial use" is defined by statute as "a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses." It is thus

clear by legislative mandate that "benefit" is not to be measured alone by economic or monetary gain. That is, the more intangible enjoyments of the water resource may also form the predicate for an appropriation in this state, subject always to the proscription against waste. Moreover, the legislative intent reflected in the water statutes does not allow or provide for any weighting or comparing of the benefits of particular uses. That is, no particular water use is intrinsically more valuable or more beneficial than another, and thus the statutes do not provide for any preferences among the various water uses.

While the Hearings Examiner is not convinced that applicant's proposed fishery will benefit his cattle operation in the manner that applicant foresees, this does not militate against a conclusion of beneficial use. It fairly appears from the record that the waters claimed herein are necessary to provide a sufficient depth in the impoundment so as to maintain sufficient oxygen and food levels for a year-round fishery. The Hearings Examiner knows of no principle of law that requires a prospective appropriator to annually restock his impoundment where sufficient waters are available to produce a self-sustaining fishery.

The calculus used in the beneficial use equation for fish and wildlife purposes cannot, of course, be as exacting as that employed for other uses such as agriculture. In the latter case, the quantity of water claimed can by the use of physical laws be more precisely tailored to the precise purposes of the

particular appropriator. Water use for fish and wildlife must of necessity answer to evidence of more ill-defined parameters. The legislative declaration that fish and wildlife belongs to the class of uses that can be regarded as beneficial cannot be circumvented by requiring proof as to the quantity of water claimed that are not as a practical matter realistic.

The use of 61.5 acre-feet of water is a reasonable estimate of the quantity of water required for Applicant's purposes, and it will not result in the waste of the water resource. Indeed, it may be noted at this juncture that the annual draw on the source of supply to facilitate this use will be only a small fraction of the total 61.5 acre-feet. Once filled, annual draws need only compensate for seepage and evaporative losses extant from the previous year.

The Objector's arguments in opposition to the conclusion reached herein are unavailing. A prospective appropriator in this state is entitled to complete his appropriation so long as the conditions specified in MCA 85-2-311 (1981) are met. The facts in the record indicate that such criteria exist in the present circumstances. Nor does the record justify a conclusion that the Applicant's proposed water use will adversely affect the fishery in Highwood Creek. Applicant's dam will capture only high-flow runoff, thus not interfering with the "base flow" of the source of supply. Applicant's dam will therefore benefit the downstream fishery if it will have any affect at all.

11. Applicant intends to divert the waters of Shaw Creek for storage and subsequent use no earlier than March 1 of any given year and no later than July 1 of any given year. By the evidence, this appears to be the period during which this particular water course would experience its high spring flows.

12. At such time that Applicant begins his diversions for storage in any given year, Applicant will debit the amount remaining in storage at such time to that particular year's appropriative limit. The evidence shows that Applicant's impoundment will have a sufficient capacity to capture all of the waters claimed herein. Thus, after Applicant has secured sufficient water to fill this structure, his particular appropriative claim will have been satisfied.

After such time as the reservoir herein has captured enough waters to satisfy the appropriative limit reflected herein, inflows must be equivalent to outflows throughout the remainder of the year. An appropriator may not fill and refill his storage structure to compensate for seepage and evaporative losses where such practice will result in exceeding the appropriative claim. It is encumbant upon every water user of the state to make allowances for such "carriage losses". Wheat v. Cameron, 64 Mont. 494, 210 P. 761 (1922); MCA 85-2-312(1) (1979), ("The Department may issue a permit for less than the amount of water requested, but in no case may issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the Application.")

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

Subject to the terms, conditions, and limitations described below, Application for Beneficial Water Use Permit No. 33983-s410 is hereby granted to John C. Hoyt to appropriate 67 acre-feet of water from Shaw Creek by an on-stream reservoir to be located in the SE1/4 SW1/4 SE1/4 of Section 21, Township 20 North, Range 8 East, all in Chouteau County. Applicant may use 30 gallons per minute up to 1.5 acre-feet per year of the water so impounded for domestic purposes, up to 4 acre-feet of the water so impounded for stock-watering purposes, and up to 61.5 acre-feet per year for fish and wildlife purposes. The place of such use shall be confined to the SE1/4 SW1/4 SE1/4 of Section 21, Township 20 North, Range 8 East, all in Chouteau County. In no event may Applicant divert for storage prior to March 1 of any given year, nor subsequent to July 1 of any given year. Applicant may use the quantity of water reflected herein on a year-round basis for the purposes reflected herein. The priority date for this permit shall be June 1 of 1981 at 10:45 a.m.

This permit is hereby made expressly subject to the following conditions, limitations, and restrictions.

A. Any rights evidenced herein are subject to all prior and existing rights, and any final determination of such rights

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provided by Montana Law. Nothing herein shall be construed to authorize the Permittee to interfere with the natural flows of Shaw Creek to the detriment of any senior appropriator.

B. The Permittee shall construct the impoundment that is his means of diversions with a slope of four to one on the upstream side and a slope of two to one on the downstream side. Said structure will also be equipped with a pass-through pipe and headgate so as to provide a drainage mechanism and with a trickle tube so as to maintain water level. An "emergency spillway" shall be constructed so as to divert excess waters into an adjoining swale. Appropriate collars shall be provided for all such pipes passing through the earth-filled impoundment.

D. At such time as the Permittee begins diversions for storage in any given year, the amount remaining in storage at such time shall be part and parcel of that year's appropriative limit. At such time that Applicant's dam secures such appropriative limit, inflows must be equivalent to outflows until the time of diversion for storage in the next ensuing year.

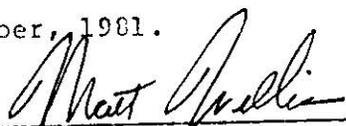
E. Permittee shall in no event cause waters to be diverted from storage for domestic use in excess of that quantity of water reasonably required for this purpose.

F. Permittee shall install and maintain any and all measuring devices required to implement the directives contained herein.

NOTICE

The Proposal for Decision, together with the amendments thereto, is issued for the review and comment of all parties of record. Exceptions and objections shall be filed with and received by the Department on or before January 11, 1981.

DONE this 22nd day of December, 1981.



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

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

* * * * *

IN THE MATTER OF THE APPLICATION) SUPPLEMENTAL PROOF BY
FOR BENEFICIAL WATER USE PERMIT) APPLICANT FOR BENEFICIAL
NO. 33983-s41Q by JOHN C. HOYT) USE OF 61.5 ACRE-FEET OF
WATER FOR FISH, WILDLIFE,
AND RECREATIONAL PURPOSES

* * * * *

PRELIMINARY MATTERS

A hearing was previously had in this matter which hearing was attended by various persons objecting principally to the construction of a dam by applicant on the grounds of dam safety. After hearing the testimony of witnesses on behalf of the applicant and the applicant himself, the hearing examiner for the Department of Natural Resources and Conservation made findings of fact and conclusions of law favoring the construction of the dam as proposed by applicant and the impounding of water for domestic and stock water purposes. In the proposal for decision of said hearing examiner, he suggested that applicant be afforded further time to supplement his proof in regard to the impounding of water for fish and wildlife purposes, being of the opinion that there was a paucity of proof and testimony in this regard. It is as to this aspect of the hearing previously had and principally proposed findings of fact 7 and conclusion of law 10 relating to the use of 61.5 acre-feet of water for fish and wildlife purposes that this supplemental proof is directed.

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APPLICANT'S SUPPLEMENTAL PROOF

Considering the policy of the State of Montana to strongly encourage the storage of water so as to reduce waste and increase its beneficial use, it was the opinion of applicant, apparently erroneous, that the storing of water itself standing alone would be a beneficial use. However, applicant states that he has constructed two other ponds behind dams which are located less than one-quarter of a mile apart and obtain water from the same source. The smaller pond, hereafter referred to as Pond No. 1, was constructed first and has a surface area of approximately 1.5 acres and a maximum depth of approximately 6 feet. Pond No. 2 has a surface area of approximately 6 acres, a maximum depth of 24 feet, and a total water storage capacity of approximately the same as the pond proposed by applicant here.

Before constructing Pond No. 2, applicant consulted with the Department of Fish and Wildlife and various persons who have worked their adult life in the area of raising trout. It was only after consulting at length with experts in this area that applicant constructed Pond No. 2 of the size and depth that he did with the following results.

The search previously done by the applicant was borne out by the results of the differences between Pond No. 1 and Pond No. 2. In Pond No. 1, because of its shallow depth, the water becomes warmer than the water in Pond No. 2 and the pond has become totally choked with weeds and algae to the point where it can no longer be utilized as a fish pond, even though the

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source is cold mountain spring water which runs a good flow of water twelve months a year.

Pond No. 2, on the other hand, produces excellent fish and fishing and because of its greater depth has an ideal amount of bottom growth for storing feed for fish and providing protection for smaller ones. The quality of the fish from Pond No. 2 is superior to the quality of the fish from Pond No. 1. The enjoyment of fishing in Pond No. 2 is far, far greater than that in Pond No. 1. Scores of people have caught fish out of Pond No. 2 as opposed to only a few out of Pond No. 1, even though applicant directs persons desiring to fish to start at Pond No. 1.

The conclusion reached after seven years by applicant was that in order to have an adequate, decent fishery involving very similar conditions to the proposal here, it is necessary to have a body of water of five to eight surface acres in size with a depth in excess of 20 feet and preferably 30 feet at its deepest point in order to provide the quality of water which will produce quality fish and quality fishing.

Since the hearing on this matter, applicant has consulted with Alfred H. Wipperman, Fisheries Manager for the Fish and Game Department, District No. 4 headquarters at Great Falls, who informed your applicant as follows:

1. The fish pond should have a minimum depth of 15 feet for 2/3 of its area;
2. There needs to be some shallow areas for feed sources;
3. The upper 15 feet of water in a pond contains the bulk of the food, however, greater depth is needed for oxygen

and deeper water is needed for better fish.

4. If 10 inch fish are planted, which is the intention of applicant, the recommendation of Mr. Wipperman was that 100-150 fish per surface acre would be all of the fish that would be sustained with proper food and oxygen for growth and conditioning, however, if smaller fish were planted, such as fry, as many as four times that many fish could be planted.
5. A fish pond with a 25 foot maximum depth insures more zone for oxygen while a fish pond with a depth of 25-30 feet is ideal for fish ponds, and the greater depth is not a disadvantage but an advantage for top fish habitat.

PROPOSED USES FOR FISH, WILDLIFE, AND RECREATIONAL PURPOSES

Your applicant will stock the pond with 10 inch trout. The species which will be stocked will be brook trout, Yellowstone cutthroat trout, if available, and if not, rainbow trout.

Your applicant is in the business of raising and merchandising registered black Angus cattle. As your applicant is new in the business and 60 years of age, it is impossible for him to fully develop a quality herd of black Angus and slowly develop a reputation for merchandising the same. Therefore, your applicant has expended a considerable sum of money over the past twelve months in purchasing superior black Angus brood stock and bulls. Being confident of the quality of registered black Angus cattle that he will have to offer for sale, your applicant needs something

"extra" to help him merchandise his registered black Angus offerings, and therefore, elected to construct the proposed dam and fish pond which he is confident will have the dimension needed in order to properly advertise, promote, and sell his black Angus cattle.

Your applicant will invite potential cattle purchasers, not only from across the state of Montana, but other states and countries to catch fish from his pond while viewing his cattle. This will require repeated stocking of 10 inch or larger fish because of the heavy year round use of the pond for fishing purposes. Ice fishing will be one of the major uses to which this pond will be put. In this regard and in connection therewith, it is anticipated that the ice covering will be plowed free of snow from time to time and provide excellent ice skating for members of groups such as 4-H clubs which will be invited from time to time to use this pond for both ice fishing and ice skating.

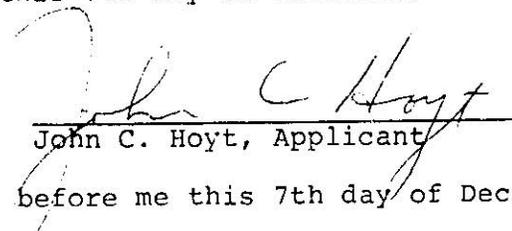
A picnic area will be constructed for use by youth groups and others which will be invited to use this pond for, not only fishing, but swimming, boating, picnicking, and other purposes.

Your applicant will sponsor horseback and packing trips in the summer weather which will end at this pond where the participants can then fish, swim, picnic, and enjoy the beauty thereof.

The only restraints which are foreseen by your applicant will be that imposed because of the fact that the pond will not be bigger, support more fish, and provide a larger area for the purpose for which it will be utilized.

Because of the continuous use for fishing, summer and winter, as well as the other beneficial uses outlined briefly above, your applicant states with certainty that all 61.5 acre-feet of water which applicant proposes to impound for fish and wildlife purposes will be used and utilized in a manner causing no harm to anyone, but beneficial to many.

RESPECTFULLY SUBMITTED this 7th day of December, 1981.



John C. Hoyt, Applicant

SUBSCRIBED AND SWORN to before me this 7th day of December, 1981.

(NOTARIAL SEAL)



Notary Public for the State of Montana
Residing at Great Falls, Montana
My Commission Expires: 3-17-84

RECEIVED

SEP 24 1981

MONTANA D.N.R.C.
HAVRE FIELD OFFICE

SHAW CREEK DAM PROPOSAL
CHOTEAU COUNTY, MONTANA

LOCATION

This proposed dam will be located at a natural dam site located approximately 300 yards south of the old Thomas Ranchstead and approximately 55 yards north of the south boundary line of SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, Township 20 North, Range 8 East, Choteau County, Montana.

Shaw Creek presently runs in a northerly direction near the west steep bank of the proposed impoundment.

DAM SPECIFICATIONS

The dam will be 20 feet across the top. It will be approximately 40 feet above the water level of Shaw Creek at its highest point and average approximately 20 feet in height above the existing ground level.

It will have a 4 to 1 grade on the upstream side in order to minimize washing or erosion by wave action. It will have a 1 $\frac{1}{2}$ to 1 grade on the downstream side.

Just east of the dam is a natural swale which will be further excavated approximately 3 feet and either rocked or sodded for an emergency spillway. It will be approximately 15 feet wide and about 18 inches above the water level of the proposed pond.

The water level will be maintained by a 5 foot diameter ductile iron pipe which comes in twenty foot lengths and which will be banded and also bolted at the joints for extra strength.

In addition there will be a 24 inch flow through ductile iron pipe with a gate on the upstream side which can be operated by hand from a causeway constructed from the dam to a point directly above the upper end of this pipe.

The dam will be keyed into the west bank in a V-shape going into the bank approximately 10 feet and being 20 feet wide at the top and 60 feet wide at the bottom with the "V" being keyed toward the upstream side of the dam.

The fill material for the dam will be obtained from excavating principally from the area south of the east side of the proposed dam.

A large backhoe was utilized to dig eight test pits which disclosed extremely good dam material to depths exceeding 25 feet south of the east side of the dam with loam, mixed clay, streaks of bentonite, and some coarse gravel.

The loam and bentonite material will be used for the core of the dam, the coarser materials for the back side of the dam, and the bulk of the material for the upstream side of the dam.

No more than 2 feet of overburden will be taken from the area south of the west side of the dam for fill material and the bottom of the pond area will be tapered from west to east with more material taken from the bottom as material is taken progressively farther east.

IMPOUNDED WATER

Because of the depth or thickness of excellent materials for construction of a dam, the excavation of this material will

result in a deep lake with a bathtub-like effect and a surface area of approximately six acres.

Because of the severe drop or grade of the terrain at this site and the steep contours of the west bank and east slope, the water will be backed up only approximately 700 feet from the center line of the dam and at a point approximately 450 feet upstream from the center line of the dam the pond will narrow to approximately 150 feet.

SAFETY FEATURES

The undersigned engaged the engineering firm of Thomas, Dean & Hoskins, Inc. of Great Falls, Bozeman and Kalispell, Montana to design a dam at this location which would provide every possible safety precaution in order not to endanger life or property located 300 yards downstream from this dam.

This engineering firm recommended a pass-through drain pipe of 12 inches in diameter. We will construct the dam with a 24 inch pass-through pipe for two reasons:

1. We did not feel that a 12 inch pipe would drain the proposed lake as rapidly as might conceivably be desired; and,
2. With a gate at the upper end a person can crawl from the lower end clear to the gate in the event that an object should get stuck in the drain pipe or any remedial work of any kind might be necessary, whereas, this would not be true in the case of a 12 inch pipe.

The undersigned has consulted not only with the engineering consultants Thomas, Dean & Hoskins, Inc., but with a longtime

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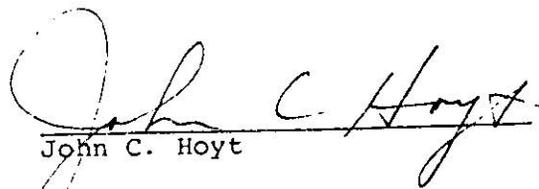
licensed engineer, Virgil R. Chamberlain, and persons who have vast experience in constructing dams of this kind.

The recommendations for a trickle tube or pipe to maintain the water level varied from one with a diameter of 24 inches, recommended by Thomas, Dean & Hoskins, to a maximum of a 36 inch diameter pipe recommended by one of the persons consulted by the undersigned.

In order that the emergency spillway might never be needed, the undersigned opted to use a 60 inch diameter pipe of extra strength in order to maintain the level of the water at a point 5 feet below the top of the dam and 18 inches below the emergency spillway.

The emergency spillway will be located east of the dam so that in the event of a catastrophic-type rain and/or snowmelt from the 2500 acre drainage located above the dam, the emergency spillway would handle all of the water that can presently be handled by Shaw Creek itself and in the event of erosion or washing of the spillway, that this water would spread out before running back into the Shaw Creek drainage without causing any erosion or washing to the dam itself.

Respectfully submitted this 28th day of September,
1981.


John C. Hoyt

purposes. Such waters will be conveyed from the place of storage by means of a pump and pipeline and used in the aforesaid SE1/4 SW1/4 SE1/4 of Section 21, Township 20 North, Range 8 East.

4. The Applicant's intent to use such waters for domestic purposes is bona fide and he is not attempting to speculate in the water resource. The use of 30 gallons a minute up to 1.5 acre-feet per year throughout any given year is a customary and reasonable amount of water for domestic purposes, and such quantity will not result in waste of the water resource.

5. The Applicant also intends to use 4 acre-feet of the waters impounded by the storage structure described herein for the purpose of stock watering. The Applicant's purpose is to provide sufficient water for some 10 to 12 horses and a number of cattle. The amount requested is reasonable for the intended use in light of the evaporative and seepage losses that will necessarily accrue to the waters impounded for this use.

6. The waters claimed by the Applicant herein for domestic and stock watering purposes would be of material benefit to the applicant, and thus such uses of water are beneficial ones.

7. The Applicant also intends to impound up to 61.5 acre-feet for fish and wildlife purposes. The Applicant intends to stock the pond created by the impoundment referenced herein with fish. However, on this record, this intent is speculative, as there is no evidence demonstrating the need for this quantity of water for Applicant's precise purposes. The use of 61.5 acre-feet for fish and wildlife can therefore not be regarded as beneficial under these circumstances. Nor does the record

provide sufficient information for determination of precisely what quantity of water would be reasonable for Applicant's purposes.

8. The Applicant intends to divert waters claimed herein by means of an earth-filled impoundment structure located on Shaw Creek. Such structure will be comprised of loamy and bentonite clay soils. The proposed dam will have a slope of 4 to 1 on the upstream side and 2 to 1 on the downstream side. Said structure will be equipped with a pass-through pipe and headgate so as to provide a drainage mechanism and with a trickle tube so as to maintain water level. An "emergency spillway" will be constructed so as to divert excess waters into an adjoining swale.

9. The Applicant's proposed means of diversion, construction, and operation and his diversion works are adequate for their intended purposes and customary for their intended use. They will not result in the waste of the water resource.

10. The proposed means of diversion would not create a flood hazard for downstream appropriators, as the evidence shows the dam will be equipped with sufficient safeguards to adequately handle any reasonably foreseeable volumes of water in Shaw Creek.

11. There are unappropriated waters available to the Applicant. The Applicant intends to divert the wates required for the above-described uses during high spring flow periods. The evidence demonstrates that there are waters available at such times in excess of the requirements of any other water user.

12. The rights of a prior appropriator will not be adversely affected by Applicant's claims. The evidence demonstrates that no water user on Shaw Creek or connected sources will suffer any deprivation by Applicant's intended uses. In the unlikely event that shortages develop, Applicant's proposed dam has adequate means to by-pass Shaw Creek Flos for the requirements of senior appropriators.

13. Margaret Keaster, Woodmansey Ranch Co., Mrs. Nellie Reynolds, and Mrs. Schatt all own or live on lands downstream from Applicant's proposed point of diversion which may be affected by high water flows in Shaw Creek.

14. The Department of Natural Resources and Conservation has jurisdiction over Applicant's application in this matter.

15. The application in this matter was duly and regularly filed with the Department of Natural Resources on June 1 of 1981 at 10:45 a.m.

16. There are no water use permits or reservations that may be affected by Applicant's proposed use.

CONCLUSIONS OF LAW

1. M.C.A. 85-2-311 (1981 amend.) 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;

(c) Throughout the period in 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, construction and operation of the appropriation works 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 the appropriation of 10,000 acre-feet a year or more and 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.

7. Except as provided in subsection 6, the applicant proves by substantial credible evidence the criteria listed in subsections 1 through 5.

2. The Applicant herein is not seeking an appropriation in excess of 10,000 acre-feet a year or more, and therefore must prove by substantial credible evidence the aforesaid criteria.

3. The rights of a prior appropriator will not be adversely affected by the exercise of the present application. Such rights of a prior appropriator extend to the exercise of a particular water use, and it is in effect admitted on this record that Applicant's proposed diversions during high-flow periods in the spring will not affect such water uses on Shaw Creek or connected sources of supply.

4. There is unappropriated water available for the Applicant pursuant to his application. The high-flow spring runoff carries water in excess of all other apparent uses on Shaw Creek or

connected sources of supply. Therefore, there are surplus waters available for the Applicant's intended uses.

5. The Applicant's proposed means of construction and operation of his diversion works are adequate. Most, if not all, of the testimony introduced at the hearing in this matter related to the issue of the flood hazards that may be generated by Applicant's proposed dam. The Hearing Examiner concludes that "adequacy" of the diversion works does not perforce reach such concerns so as to accord an applicant for a water use permit the duty of producing evidence on the issue of whether his particular impoundment structure would represent a flood hazard.

The ambiguity inherent in the foregoing provision is engendered by the lack of a definitive legislative standard of "adequacy". That is, this particular criterium for the issuance of a new water use permit fails to specify "adequate for what?" The context of the permitting scheme must therefore be looked to in order to flush out the apparent legislative intent. Since those parameters enshroud and describe a particular person's request to initiate an appropriation, the "adequacy standard" must refer to the suitability of the proposed appropriation works for the particular proposed water use.

The adequate means of diversion statutory test therefore merely codifies and encapsulates the common law notion of appropriation to the effect that the means of diversion must be reasonably effective. That is, a person may not "command the whole flow of the stream" merely to extract a smaller portion thereof to use in a beneficial manner. See State ex rel. Crowley

v. District Court, 108 Mont. 89, 88 P.2d 23 (1939); Schodde v. Twin Falls Water Co., 224 U. S. 107 (1912). The "adequacy standard" as delineated in the permitting statute is thus a legislative echo of the traditional law of appropriation's emphasis on the proscription of the waste of the water resource. See generally Allen v. Petrick, 69 Mont. 373, 222 P. 451 (1924).

It is true that many of the factors that describe an adequate means of diversion as delineated above will help assure that any proposed dam will in fact pose no unacceptable flood hazard. Thus, for instance, an impoundment structure that is incapable of capturing and holding flows that regularly occur in the source of supply would generally result in the waste of the water resource as the continuous breaching of the dam would frustrate the beneficial use otherwise proposed for the waters that escape therefrom. Similarly, dams that leak excessive amounts of water may breed a characterization of waste and also simultaneously contribute to wash-outs which raise flood-hazard issues. However, this coincidental alignment of such factors does not make flood safety the litmus test of adequacy. A prospective appropriator is not mandated under the adequacy standard to produce evidence on flood flows of remarkable characters and to demonstrate that his proposed impoundment structure is capable of sustaining them.

This reading of the "adequacy" standard is buttressed by reference to other statutory provisions that speak directly to issues of dam safety. MCA 85-15-101 (1979) et seq., sets forth in detail a tripartite scheme of remedies for downstream

landowners that are subject to flood hazards by upstream dams. While the Department of Natural Resources is involved in one of these remedies, and while the jurisdictional features of that particular remedy appear satisfied by the size of Applicant's proposed dam (See MCA 85-15-103 (1979)), the procedures and specific relief specified therein are at odds with any attempt to use the water use permitting process to achieve the same ends. The specific controls the general legislative expression, MCA 1-3-225, 1-2-102 (1979), and thus the otherwise ambiguous nature of the adequacy standard cannot enshroud additional inquiries into flood safety.

Such a flood safety orientation is also inconsistent with the Floodplain and Flooding Management Act. MCA 76-5-101 (1979) et. seq. Therein the legislature directed the Department of Natural Resources and Conservation to "initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state," MCA 76-5-201 (1979), MCA 76-5-103(17) (1979). Thereafter, land use regulations are to govern development within such boundaries, MCA 76-5-401 (1979), and non-conforming uses or artificial obstructions are to be established by way of permits. MCA 76-5-404 (1979). A dam is by the terms of the Act an artificial obstruction. MCA 76-5-103(1).

In the resolution of the present matter, the Act is important in its emphasis on delegating the permitting authority for artificial obstructions to local government units. MCA 76-5-301 (1979) et. seq. If adequacy of diversion means as used in the

water permit statutes encompasses and countenances flood safety factors, this delegation and legislative intention to accord local government control of such developments would be undermined. In effect, interpreting the adequacy of diversion means to embrace flood safety factors would mandate identical determinations to be made by differing authorities. Such consequences cannot be attributed to the legislature. The primacy of local government controls over such factors is reflected in rules promulgated pursuant to the above-cited Act. In connection with applicants for new water use permits, these rules provide that:

(i) if it appears that a proposed diversion or change in place of diversion may significantly affect flood flows, the Department may require the Applicant to provide additional information and to apply for a permit with the permit issuing authority under Title 76, Chapter 5, MCA, as amended. ARM 36.15.603(2)

While the hearings examiner officially notes that no floodways or floodplains have as yet been established for the source of supply in the present matter, this does not militate against the conclusions drawn herein with respect to the legislative intent as regards the adequacy of the proposed diversion means. It cannot be supposed that the legislature intended "the adequacy of diversion methods" to embrace flood safety measures until floodways have been delineated, and at that event to redelegate its power to determine such questions to local government units pursuant to a separate statutory provision.

It is therefore apparent that an applicant for a new water use permit has no burden of producing evidence to establish the capacity of his diversion works to withstand some prescribed level of flood volumes. This is not to say, however, that all evidence of the flood hazard potential of such impoundments is immaterial and has no place in the water use permitting scheme. Yet another statutory scheme must be addressed. The Montana Environmental Policy Act (MEPA), MCA 75-1-101 et. seq. (1979), mandates that all state agencies consider the environmental effects of their actions and further recognize the right of every person to a healthful environment. See MCA 75-1-103, 65-1-201 (1979). The flood hazard potential of new impoundments obviously reaches such concerns, and thus such evidence must be considered by the Department when propounded to it. MEPA supplements otherwise extant agency authority, MCA 75-1-105 (1979), and while environmental concerns may not be sufficient to deny a permit request in light of the mandatory directive to the Department contained in the subsequently enacted Montana Water Use Act, such concerns may be appropriately addressed through the Department's power to condition and limit applications. See MCA 85-2-312(1) ("The department may require modifications of plans and specifications for the appropriation or related diversion or construction.")

The duty of delineating such environmental affects is not on the Applicant, however. Thus, while dam safety is marginally relevant, it is not a critical element of an applicant's prima facie case. The department may use such evidence actually

produced, however, to assess the environmental effects of the proposed project in light of the substantive directives of MEPA. In reaching a determination thereon, the department is not obviating the requirement of any other permit or authorization, but merely balancing the environmental concerns associated with a particular proposal with substantive directives of its mandate disclosed in the Montana Water Use Act. See generally, Calvert Cliffs Coordinating Comm. v. AEC, 449 F.2d 1109 (D.C. Cir. 1971), cert denied, 404 U.S. 942 (1972).

With this discussion as backdrop, it appears by the evidence that the impoundment proposed by the Applicant herein will safely handle all reasonably foreseeable flood flows of Shaw Creek. The pass-through pipe and trickle tube appear by the evidence to be designed so as to handle by themselves any of the historical flood flows that this region has experienced. The "emergency" spillway proposed by the Applicant is thus truly what its name implies, a device for handling Shaw Creek flows in excess of what appear to have historically occurred. The hearings examiner in no way belittles or fails to appreciate what are obviously the deeply-felt concerns of the objectors to this matter. The decision reached herein is made from the sustaining confines of high-ground Helena, and may represent little succor to those whose homes and lives have already been touched by first-hand evidence of the destructive capacity of floods. However, the record demonstrates that even the complete release of Applicant's claimed waters would necessarily go undetected by downstream landowners in light of the flood flows that would be required to

overcome the impoundment structure proposed by the Applicant. This dam by itself therefore appears by the record to represent little in the way of any flood hazard.

6. The use 1.5 acre-feet per year for applicant's domestic use, including lawn watering, is a beneficial one. MCA 85-2-102(2) (1979). Moreover, the volume claimed is a reasonable estimate of the amount of water required for such purposes. Indeed, the amount requested may not be sufficient in light of the evaporative and seepage losses that will accrue. The limit of an appropriation is measured at the diversion point, and such seepage and evaporative losses are charged to the appropriation. Wheat v. Cameron, 64 Mont. 494, 210 P. 761 (1922). See also In re Meadow Lakes Estates, Dept. Order, 8/25/81. Applicant's proposed use of 4 acre-feet per year for stock watering is also a beneficial use. MCA 85-2-102(2) (1979). The volumetric amount of 4 acre-feet is a reasonable estimate of the amount of water required for Applicant's purposes in regard in light of the evaporative and seepage losses that will accrue to the source of supply. See generally, Woodward v. Perkins, 116 Mont. 46, 147 P.2d 1016 (1944).

7. The proposed place of use and point of diversion for all of applicant's proposed water uses is identical, and will be located in the SE1/4 SW1/4 SE1/4 of Section 21, Township 20 North, Range 8 East, all in Chouteau County.

8. The priority date for the permit to be issued in this matter shall be June 1, 1981, at 10:45 a.m. That is the date and

time at which this application was duly and regularly filed with the Department of Natural Resources. See MCA 85-2-401(2) (1979).

9. The source of supply for the waters claimed herein will be Shaw Creek, a tributary of Highwood Creek.

10. Applicant's proposed use of water for fish and wildlife purposes cannot be said on this record to constitute a beneficial use. It is true that MCA 85-2-102(2) (1979) expressly provides that fish and wildlife are among the classes of uses that may be regarded as beneficial. However, the evidence propounded at the hearing in this matter wholly fails to demonstrate precisely how the quantity of water claimed would benefit "the appropriator, other persons, or the public" MCA 85-2-102(2), nor does the evidence in any way establish that the amount of water claimed is reasonable in view of Applicant's avowed purposes. See Woodward v. Perkins, 116 Mont. 46, 147 P.2d 1016 (1944), MCA 85-2-312(1) (1979).

A brief review of appropriation principles will more clearly demarcate the issue. At early common law, the use of water for the more obviously utilitarian purposes of mining and agriculture often took precedence over the values of the more "in-place" uses of fish and wildlife and recreation. This was in keeping with legislative policies promoting the development and settlement of the arid West. With the adoption of the Montana Water Use Act, the legislature in this state expressly exhumed these neglected uses by explicitly providing that they may form the basis of appropriations. But see generally, Osnes Livestock Co. v. Warren, 103 Mont. 284, 62 P.2d 206 (1936), Quigley v. McIntosh,

88 Mont. 103, 290 P. 266 (1930), Paradise Rainbor v. Fish and Game Comm'n, 148 Mont. 412, 421 P.2d 717 (1966). The legislature did not, however, create a preference for such uses, and therefore purported appropriations for these ends must meet the tests of any other appropriation.

Applicant herein has claimed up to 61.5 acre-feet of water for fish and wildlife purposes, and intends by the evidence to stock the pond represented by the diversion of these waters with fish. Presumably, the impetus of this plan is the recreational derivatives that will accrue thereby. The proposed type of use has thus been sufficiently identified as belonging to that type or class of use that may be regarded as being beneficial.

However, the record herein is devoid of evidence supporting the remaining analytical steps represented by the concept of beneficial use. There is not evidence reflecting that the Applicant's purpose in appropriating this quantity of water is reasonable and would be of benefit to himself, other persons, or the public. "Irrigation" is also described by the statute being among the classes of use that may be regarded as beneficial, but it would require an imaginative set of circumstances to posit the cultivation of the phreatophytic salt cedar as being a reasonable and beneficial purpose. Similarly, there is no evidence indicating that the amount of water claimed is reasonable in light of Applicant's purposes.

The permitting scheme represent in part a legislative direction that all uses of this state's scarce water resources be

beneficial, and that paper records of such uses in reflecting more accurately the actual uses on the stream.

"It is a matter of common knowledge in the several judicial districts of this state where irrigation has been practiced since the early days that extravagant quantities of water were awarded the litigants by the courts....

.....

.....

As a result of erroneous decrees awarding excessive quantities of water much water which should be available to subsequent appropriators has been denied them.....

Allen v. Petrick, 69 Mont. 373, 378, 379, 222 P. 451 (1924)

Allocation of this short supply is based on the traditional common law's abhorrence of waste and speculation in the water resource. See Worden v. Alexander, supra, Allen v. Petrick, supra.

The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses.

Toohey v. Campbell, 24 Mont. 13,17, 60 P. 396 (1900)

"The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application." MCA 85-2-312 (1979). While the appropriator is entitled to the greatest quantity of water he can use without waste, any amount in excess thereof forms no part of an appropriative claim. Sayre v.

Johnson, 33 Mont. 15, 81 P. 389 (1905). Need for water is the talisman of the appropriative claim. Cook v. Hudson, 110 Mont. 263, 103 P.2d 137 (1940), Quigley v. McIntosh, supra. The size of the impoundment is immaterial in this regard, Gwynn v. Philipsburg, 156 Mont. 194 (1970), except insofar as the requirements of constructing a diversion require a reasonable quantity of water, eq. "dead storage", merely to facilitate the intended use. State ex rel. Crowley, supra.

The hearings examiner notes that the actual continuous demand on the source of supply of Applicant's proposed fish and wildlife use will only be a fraction of the 61.5 acre-feet required to initially fill the impoundment. Being a "non-consumptive" use, the actual draw on Shaw Creek would offset only seepage and evaporative losses accruing to pond throughout the year. However, the "beneficial use" requirement allows no exceptions for uses that in and of themselves signal little demand on this state's water resources. The Applicant has failed to show by substantial credible evidence that his proposed use of water for fish and wildlife purposes is a beneficial one.

However, in view of the practical reality that denial of this application at this point may merely sponsor similar applications by this Applicant in the future, the hearings examiner finds it equitable to afford the Applicant further time to supplement his proof in this regard. Interested parties in this regard are the Department and Margaret Keaster acting as personal representative of the estate of W. Rea Keaster. No other party protested the

applying on this ground, nor did their proofs encompass such issues so as to conform their "pleadings" to the evidence.

Moreover, insofar as Applicant elects this procedure, there is no longer any sound reason to refuse Objector Woodmansey Ranch Co.'s request to supplement the record with further evidence of dam safety.

Wherefore, based on these findings of fact and conclusions of law, the following proposed order is hereby issued.

Applicant is afforded five (5) days from receipt of this order to petition this Department to hear further evidence in regard to the beneficial use of 61.5 acre-feet of water for fish and wildlife purposes. Failure to so petition will result in an order being entered in conformity with findings contained herein.

If Applicant elects this remedy, Woodmansey Ranch Co. shall also be afforded an opportunity to supplement the record herein with evidence of dam safety.

If the aforesaid matters are not resolved by the named parties by December 15, a hearing on these issues will be held at such date.

DONE this 19th day of November, 1981



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

AFFIDAVIT OF SERVICE

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

Beverly J. Joens, 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 November 23, 1981, he deposited in the United States mail, "certified mail", an Order by the Department on the application by John C. Hoyt, Application No. 33983, for a Permit to Appropriate Water, addressed to each of the following persons or agencies:

1. John C. Hoyt, Box 2807, Great Falls, MT 59403
2. Margaret Keaster, Highwood, MT 59450
3. Woodmansey Ranch Co., Rt 2, Box 20, Highwood, MT 59450
4. Ruth Lehman, Highwood, MT 59450
5. Nellie Reynolds, Highwood, MT 59450
6. Earl Davinson, Highwood, MT 59450
7. Mrs. Schautt, Highwood, MT 59450
8. Keith Tokerud, Attorney, Box 2269, Great Falls, MT 59403
9. All Field Offices (regular Department mail)
10. Matt Williams, Hearing Examiner, DNRC, Helena, (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

STATE OF MONTANA)
) ss.
County of Lewis & Clark)
by Beverly J. Jones

On this 23 day of November, 1981, 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

Jim P. Coburn
Notary Public for the State of Montana

Residing at Helena, MT

My Commission Expires 1/21/84