Proposed Order

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

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IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) FINAL ORDER
NO. 39438-s40A BY HARRY M. HARMON)

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The above-entitled matter was set for hearing before Peggy A. Elting, Hearing Examiner with the Department of Natural Resources and Conservation. Prior to the December 5, 1983 date of hearing, all parties of record agreed to settlement of this matter through the Water Rights Bureau Field Office in Lewistown, Montana. The parties orally agreed that Beneficial Water Use Permit No. 39438-s40A would be issued as applied for by Applicant Harry M. Harmon, with the addition of the permit conditions specified in this order.

All parties of record were given written notification, dated November 30, 1983, of the proposed issuance of the permit, specifying the permit conditions to which the parties had orally stipulated. The parties were given a time period of 10 days from receipt of the notification in which to request a hearing if they did not agree to the proposed permit conditions.

The time period for filing exceptions to the proposed permit conditions on the above-entitled matter has expired, with no exceptions or requests for hearing filed by any of the parties of

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record. The Department accepts and adopts the proposed permit conditions as set forth in the August 14, 1982, and November 30, 1983, letters from the Lewistown Water Rights Bureau Field Office of the Department of Natural Resources and Conservation to all parties of record.

Therefore, on the basis of all files and records herein, the Department makes the following:

ORDER

The Application for Beneficial Water Use Permit No. 39438-s40A is granted to Harry M. Harmon to appropriate 700 gallons per minute up to 300 acre-feet per year for sprinkler-irrigation purposes from May 1 to October 1, inclusive, of each year. The source of supply shall be the Musselshell River. The point of diversion shall be the NW¼NE¼NW¼ of Section 7, Township 6 North, Range 23 East, M.P.M., in Golden Valley County, Montana. The priority date for this permit shall be August 24, 1981, at 10:24 a.m.

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

1. This permit is subject to all prior and existing rights.
2. This permit is subject to any final determination of existing water rights as provided by Montana Water Law. Nothing herein shall be construed to authorize diversions by the Permittee to the detriment of any senior appropriator.
3. The Permittee shall cease exercising the permitted appropriation once the flow rate in the Musselshell River at

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the U.S. Geological Survey gaging station at Roundup, Montana drops below the following amounts for the months indicated:

May	89.9 cubic feet per second (cfs)
June	140.1 cfs
July	220.9 cfs
August	190.3 cfs
September	92.9 cfs
October	22.1 cfs

4. The flow rates may be adjusted when the adjudication process is completed or if additional information on existing water rights becomes available.

5. The Permittee shall cease diverting water from the Musselshell River when the following two situations occur simultaneously:

(1) When the Musselshell River flow is less than what can be beneficially used by the Delphia-Melstone Project, and

(2) When water is requested and released from Deadman's Basin Reservoir to satisfy the Delphia-Melstone demand.

If the circumstances are such that only one of the above-stated situations occurs, the Permittee may use the water for the purpose specified in the permit as long as the other conditions placed on the permit are met.

6. The Permittee shall install and maintain an adequate flow metering device in order to allow rate and volume of water diverted to be recorded. The Permittee shall keep an up-to-date written record of the flow rate and volume of all waters diverted, including the period of time, and shall make said records available to the Department upon request during

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the irrigation season. In addition, these records shall be submitted annually to the Lewistown Water Rights Bureau Field Office at the end of each irrigation season.

7. The following notice is to be included in Beneficial Water Use Permit No. 39438-s40A when it is issued:

NOTICE:
It is the Permittee's responsibility to determine what the stream flow conditions of the Musselshell River are before diverting water under this permit. The Permittee shall call the Water Rights Bureau Field Office in Lewistown (538-7459) to confirm that an adequate flow is available in the Musselshell River for his diversion. The Permittee shall check the flow rate twice a week (after 10:00 a.m. Tuesday and Friday) or as often as conditions demand (determined by the Water Rights Field Office) during his diversion to ensure that adequate flow is available for his diversion and for existing rights.

8. 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 of Natural Resources and Conservation 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. The Permittee shall adhere diligently to the terms and conditions of the permit. Failure to adhere to the terms and conditions may result in the revocation or modification of this permit (MCA 85-2-314).

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NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 31 day of January, 1984.

Gary Fritz

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

Peggy A. Elting

Peggy A. Elting, Hearing Examiner
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