

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 39578-S411 BY ELMER LAZURE)

FINAL
ORDER

* * * * *

On April 2, 1984, the Department of Natural Resources and Conservation issued a Show Cause Order to Objector Montana Power Company (hereafter, "MPC").

I. Memorandum of Cause by MPC

A. MPC's response to the Show Cause Order also reasserted several of their arguments made in response to the Proposal for Decision in Don Brown. The Department incorporates its response to MPC's arguments numbered 2, 3, 6, 8, 10 as set forth in the Final Order in Don Brown, April 24, 1984.¹

¹ These MPC arguments are:

2. Unappropriated water in the proposed source is non-existent.
3. Property rights will be adversely affected.
6. Evidence shows the Power Company's water rights are presently not being satisfied.
8. The Order changes the statutory burden of proof.
10. All Final Orders issued by the Department are afflicted with errors of law and are otherwise improper, and the Power Company has appealed every Final Order which adversely affects its rights.

MPC's argument number 10 is too vague to be responded to with particularity. MPC suggests the hearing officer look at the docket as evidence that MPC has presented arguments that Don Brown is afflicted with errors of law or otherwise improper. MPC's complaint, however, is still too vague to provide the Department any substantive clue as to the errors MPC claims infect Don Brown.

FINAL ORDER

1. MPC's objections to Beneficial Water Use Permit

Application No. 39578-s41I by Elmer Lazure are hereby declared invalid and are stricken.

2. Subject to the terms, restrictions, conditions, and limitations specified below, Application for Beneficial Water Use Permit No. 39578-s41I is hereby granted to Elmer Lazure to appropriate 20 gallons per minute up to 1.5 acre-feet per year for domestic purposes located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, Township 11 North, Range 2 West, all in Lewis and Clark County, Montana. These waters may be diverted continuously throughout the year as needed. The source of supply shall be the Missouri River at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, Township 11 North, Range 2 West all in Lewis and Clark County, Montana. The priority date of this Permit shall be December 21, 1981, at 9:05 a.m.

- A) This permit is subject to all prior existing water rights in the source of supply. Further; this permit is subject to any final determination of existing water rights, as provided by Montana Law.
- B) The issuance of this permit by the Department shall not reduce the Permittee's liability for damages caused by Permittee's exercise of this permit, nor does the Department in issuing the permit in any way acknowledge liability for damage caused by the Permittee's exercise of this permit.

- C) The Permittee shall diligently adhere to these terms and conditions. Failure to adhere to the terms and conditions may result in the revocation of this Permit.
- D) The Permittee shall in no event cause to be diverted from the source of supply more water than is reasonably required for the purposes described herein. At all times when the water is not reasonably required for these purposes, Permittee shall cause and otherwise allow the waters to remain in the source of supply.

DONE this 1 day of November 1984.



Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 South Ewing, Helena, MT 59620
(406) 444 - 6601

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act, Title 2, Part 4, Chapter 7, by filing a petition for judicial review in the appropriate District Court within (30) days of service hereof.

AFFIDAVIT OF SERVICE

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

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on November 2, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by ELMER LAZURE, Application No. 29578-s411, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Elmer Lazure, 4477 Hart Lane, Helena, MT 59601
2. Montana Power Co., 40 East Broadway, Butte, MT 59701
3. K. Paul Stahl, Attorney, 301 First National Bank Bldg., P.O. Box 1715, Helena, MT 59624 *hand deliver*
4. T.J. Reynolds, Helena Field Office (inter-departmental mail)
5. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by *Donna Elser*

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

On this 2nd day of November, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Ann P. Gilman
Notary Public for the State of Montana
Residing at Helena Montana
My Commission expires 12-1-87