

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. 48448-s41F BY THOMAS R. ORCUTT)
)

* * * * *

The response of the Montana Power Company to the instant show cause order is in substance the same as those involved in numerous similar proceedings. See generally, In re Brown, et al. Our decisions therein control the present disposition.

WHEREFORE, the objection filed on behalf of the Montana Power Company is hereby ordered stricken from the record.

Application for Beneficial Water Use Permit No. 48448-s41F is hereby granted to Thomas R. Orcutt to appropriate 40 gallons per minute up to 8 acre-feet per year for the irrigation of 4 acres more or less comprised of 1 acre in the NE1/4 NE1/4 NW1/4 of Section 12 and 3 acres in the W1/2 NW1/4 NE1/4 of Section 12, all in Township 7 South, Range 2 West. The source of supply shall be Dry Creek, the waters thereof to be diverted at a point in the SW1/4 NW1/4 NE1/4 of Section 12, Township 7 South, Range 2 West, all in Madison County. In no event shall the water provided for herein be diverted prior to April 1 of any given year nor subsequent to October 31 of any given year. The priority date for this permit shall be August 10, 1982, at 3:00 p.m.

This Permit is 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 such 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B. The Permittee shall in no event cause to be withdrawn from the source of supply more water than is reasonably required for the purposes provided for herein.

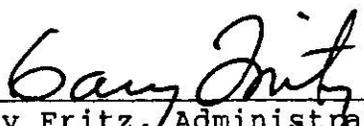
C. Nothing herein shall be construed to affect or otherwise reduce the Permittee's liability for damages which may be caused by the exercise of this permit.

D. The Permittee shall proceed with reasonable diligence in completing the appropriation provided for herein by actually applying the water provided for herein to the named beneficial use.

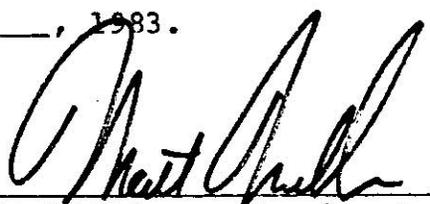
NOTICE

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 24th day of April, 1983.



Gary Fritz, Administrator
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 444-6605



Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 444-6704

Commencing with the Proposal for Decision In re Brown, and continuing through a number of applications where the Montana Power Company presented evidence at hearings held pursuant thereto, this Hearings Examiner has concluded that the scope and extent of this entity's rights to the use of the water resource as indicated by the evidence therein did not warrant denial of the respective applications for new water use permits. Since the instant objection alleges similar matters to those involved in prior hearings, hearings on the factual issues suggested by the present controversy threaten a waste of time and undue time and expense to the parties involved. See generally, MCA 2-4-611(3) (1981); MCA 85-2-309 (1982). The principles of *stare decisis* dictate that Montana Power Company be compelled to make a preliminary showing that its objection to the instant application has merit.

WHEREFORE, the Montana Power Company is hereby directed to show cause why its objection should not be stricken and the instant application approved according to the terms thereof. Said Objector shall file with the Department no later than May 28, 1983, affidavits and/or other documentation demonstrating that the present Applicant is not similarly situated with respect to prior applicants for which permits have been proposed over this Objector's objections; and/or offers of proof as to matters not presented in prior hearings, which matters compel different results herein; and/or argument that the proposed dispositions in such prior matters were afflicted by error of law or were

otherwise improper; and/or any other matter that demonstrates that the present objection states a valid cause for denial or modification of the instant application.

DONE this 5th day of May, 1983.



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

AFFIDAVIT OF SERVICE
ORDER

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

Cheryl L. Wallace, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on May 5, 1983, she deposited in the United States mail, first class mail, an order by the Department on the Application by Thomas R. Orcutt, Application No. 48448-s41F, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Thomas R. Orcutt, Box 711, Ennis, MT 59729
2. The Montana Power Company, 40 East Broadway, Butte, MT 59701
3. K. Paul Stahl, P.O. Box 1715, Helena, MT 59624
4. Matt Williams, Hearing Examiner, (hand deliver)
5. Scott Compton, Bozeman Field Office (inter-department mail)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Cheryl L. Wallace

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

On this 5 day of MAY, 1983, before me, a Notary Public in and for said state, personally appeared Cheryl L. Wallace, 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.

John P. Gilman

Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires 1/21/84