

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. 54694-G410 BY CRUMPLED HORN,)
A MONTANA CORPORATION)

* * * * *

On November 22, 1989, the Department Hearing Examiner submitted a Proposal for Decision in this matter. The Proposal recommended denying the subject Application. The Applicant requested and was granted an extension of time to file exceptions. A timely written exception was received from the Applicant. Objector William Chalmers subsequently filed a written response to the exception.

Having given the exceptions full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the Proposal for Decision, and incorporates them herein by reference.

The Applicant raises both procedural and substantive issues in its exceptions.

The Applicant asserts that § 85-2-309, MCA, requires that a public hearing be held within 60 days from the date set by the Department for the filing of objections. Section 85-2-310, MCA, requires that action on the application by the Department must be completed within 120 days of the last date of publication. The Applicant argues that the Objector's benefitted from a 14-month

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delay between the time the hearing was originally commenced until the subsequent hearing was held. During this time additional statements and affidavits were obtained which were subsequently submitted into the record. Applicant requests that this evidence be stricken because it was offered beyond the time limits as set forth by Montana Law for conducting this hearing.

Time periods specified in statute for Department action on applications are directory rather than jurisdictional. Carey v. Montana Department of Natural Resources and Conservation, Civil Cause No. 43556 (First Judicial District, 1979). There is no statute or administrative rule limiting the time prior to the contested case hearing for gathering evidence by the parties.

Furthermore, there is no basis for the assertion that delay gave unfair advantage to the Objectors. The statutory time period serves as direction to the Department to process applications expediently and is not aimed at limiting the time objectors have to obtain evidence. Applicant also had additional time to prepare its case and ample opportunity prior to the hearing to obtain and examine Objector's evidence through discovery pursuant to Administrative Rule 36.12.215. There is no record of a demand for discovery prior to the hearing. The delay did not cause any unfair advantage to the Objectors and the proceedings were not in error.

The Applicant excepts to Finding of Fact No. 4, in reference to the number of ewes, lambs and rams maintained by Crumpled Horn. Crumpled Horn alleges that there are instead 1,000 ewes,

4,000 lambs, and 37 rams in its confined sheep facility. This exception reflects Leslie Chalmers's testimony at the hearing. However, Item 7 of the Application For Beneficial Water Use Permit signed by the Applicant gives the numbers of ewes, lambs and rams contained in the Hearing Examiner's finding. Therefore, there is evidence in the record to support the Hearing Examiner's finding. Regardless, the exact size of the confined sheep facility does not have a material effect on the relevant findings and conclusions of Hearing Examiner's decision in this matter and Finding of Fact No. 4 will not be modified.

The Applicant contends in the exception that the proposed source of supply (water from the Otness Drains) is distinct and separate from McCormick Coulee water. The water from the Otness Drains eventually flows into McCormick Coulee. The Applicant argues that the Otness drains provide newly developed water - water that was not part of the natural flow of McCormick Coulee when senior appropriators established their rights - therefore, the waters from the Otness drain need not be distributed in accordance with established priorities. The Applicant's position is that the only prior appropriator for the newly developed water is the 110 gpm use of the Beneficial Water Use Permit No. 54693-g410 by Ronald and Lyle Otness. The Applicant claims that William Chalmers and other users of McCormick Coulee water have no standing to object because they are not prior appropriators of the newly developed water of the Otness drain and, since William Chalmers's flow measurements show water in excess of the 110 gpm,

prior appropriators will not be adversely affected.

The Otness drain tile system is owned, developed, and installed by Ronald and Lyle Otness and located wholly upon Otness property. Water is collected by a system of underground perforated pipes, and flows into an open drain ditch. (Proposed Finding of Fact No. 3). Proposed Finding of Fact No. 9 accurately reflects that the Applicant's verbal agreement with Otness was only for the rotational use of water from the drain system. There was no evidence that the drain tile system was intentionally constructed as a means of diversion by the Applicant or in cooperation with the Otness's.

The Applicant cites a number of cases which it says support the conclusion that developed water, once abandoned by its developer, does not become part of the natural flow of the drainage area where it is discharged and may be used by the first person who applies for it. Applicant's Brief, page 5. These cases clearly show that prior appropriators have no right to waters brought into a stream exclusively by the labor and artificial works of another man, for such artificial increments are not part of the natural flow. The developer of that water has exclusive use of it. E.g., Beaverhead Canal Co. v. Dillon Electric Light and Power Co., 34 Mont. 135, 140, 85 P. 880, 882 (1906). But Otness's developed the water not Crumpled Horn. The decisions cited do not address the issue of whether water that leaves the developer's control becomes part of the natural flow of the stream to be distributed in accordance with established

priorities or may it be used by the first appropriator independent of established priorities.

The majority of prior appropriation states ruling on this issue have held that once developed water leaves the developer's control and enters a stream it becomes part of the natural flow subject to existing priorities and no independent appropriations can be made. Coryell v. Robinson, 194 P.2d 342 (Colo. 1948); Cf., Dodge v. Ellensburg Water Co., 729 P.2d 631 (Wash. App. 1986). The incentive for developing water is created by giving the developer exclusive use of that water. No additional incentive is provided by letting others obtain appropriations of developed water released by the developer. To allow independent appropriations would create two separate appropriation regimes on the same stream and make administration of rights difficult. Montana follows the majority view that water that leaves the developer's control becomes part of the natural flow of the stream to be distributed in accordance with established priorities. Therefore, the Hearing Examiner correctly found that only new unappropriated water that had been "developed" by Crumpled Horn could be appropriated by it without first having to satisfy prior appropriators. (Proposed Conclusion of Law No. 5.)

The Applicant claims in the exception that the Applicant's evidence including geohydrologist reports by Dr. Ann Stradley (Applicant's Exhibit 1 and 2) and reports of record in the Otness matter by Brian Harrison and Gary LeCain were overlooked by the Hearing Examiner and shows that Otness has developed new water

that would not have otherwise made its way into McCormick Coulee.

The Applicant asserts in the exception that ample evidence exists in the record of this hearing and the record of Application for Beneficial Water Use Permit No. 54693-g410 by Ronald and Lyle Otness shows that there are unappropriated (developed) waters in the source of supply at the proposed point of diversion. Mont. Code Ann. § 85-2-311(1), (1989).

The Hearing Examiner did agree to take judicial notice of the Otness "matter." The Hearing Examiner correctly found that the facts in Otness are not binding in this proceeding. The Applicant still has the burden to show by substantial credible evidence that the criteria in § 85-2-311(1), MCA, have been met. Even if a reviewing court finds the evidence sufficient to show that the Applicant has a right to the developed water by Otness (see discussion pages 3-5), the Applicant has to show that the water is in fact developed water and is not the same water that historically flowed down McCormick Coulee. The Hearing Examiner did not overlook the testimony of Leslie Chalmers and Ann Stradley with respect to the proposed uses. The tape recorded transcript was not of poor recording quality or unintelligible at any point during the hearing. Proposed Findings of Fact Nos. 7, 10, and 12 reflect consideration by the Hearing Examiner of testimony of Leslie Chalmers, Ann Stradley, and William Chalmers. It is the duty of the Hearing Examiner to weigh and balance the evidence and testimony in making findings of fact. The Hearing Examiner's Findings are reversed only if they are clearly

erroneous. See, Billings v. Billings Firefighters Local No. 521, 200 Mont. 421 (1982). A finding is clearly erroneous if a "review of the record leaves the court with the definite and firm conviction that a mistake has been made". Wage Appeal v. Bd. of Personnel Appeals, 208 Mont. 33 (1984). The judgements made by the Hearing Examiner are well reasoned and supported by the record and the Proposed Findings of Fact Nos. 7, 10, and 12 are not clearly erroneous, and will not be modified or rejected. Mont. Code Ann. § 2-4-612(3)(1989). The Hearing Examiner correctly concludes that Crumpled Horn failed to show that developed water actually exists and is of sufficient quantity for the intended appropriation of the Applicant. (Conclusions of Law Nos. 3, 5, & 6.)

Even if the issue of developed water is set aside, the Applicant has not shown substantial credible evidence that water is available in McCormick Coulee in excess of the existing established water rights as presented by the parties in this proceeding. The existing water rights for the flows of McCormick Coulee are relevant and important to show what water is available for appropriation by the Applicant. The Applicant failed to show what water is available for appropriation by failing to analyze the flows together with the existing established downstream water uses on McCormick Coulee. (Conclusion of Law No. 6.)

Given the above reasons for denying the application, it is not necessary to discuss the remaining arguments by the Applicant in his exception to the remaining criteria in § 85-2-311(1), MCA.

WHEREFORE, based on the foregoing, the record herein, the Department makes the following:

ORDER

The above application is hereby denied.

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 30 days after service of the Final Order.

Date this 7 day of November, 1990.



Laurence Siroky,
Assistant Administrator
Department of Natural
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Water Resources Division
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 7th day of November, 1990 as follows:

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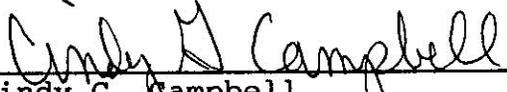
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BB

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. 54694-g410 BY CRUMPLED HORN,)
A MONTANA CORPORATION)

* * * * *

Pursuant to §§ 85-2-121 and 85-2-311(1), MCA, a contested case hearing was held on October 24, 1989, in Choteau, Montana, to determine whether the above application should be granted. The Applicant, Crumpled Horn, was represented by David Chalmers. Charles Joslyn, attorney, represented Objector William Chalmers and Objectors Helen and John Oberfoell. Objectors John Wisse and Kenneth and Elaine Rice (Rices have sold their property to the Pine Tree Livestock, Co.) were not present at the hearing and the Hearing Examiner has received no explanation for their absence.

Bob Larson, Field Manager from the Department's Havre Water Rights Bureau Field Office and Bill Uthman, a Department hydrogeologist, were present at the hearing and were available to testify, but were not called as witnesses by any of the parties.

Applicant's Exhibits 1 through 4 and Objectors' Exhibits 1 through 3 were admitted into evidence during the hearing. The Department file was circulated for review by the parties and having received no objections to its contents, is hereby included in the administrative record.

MOTION TO DISMISS AND THE OTNESS APPLICATION

At the prehearing conference held immediately prior to the hearing, Crumpled Horn moved to dismiss the objections to its

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application based on the Department's decision In the Matter of the Application for Beneficial Water Use Permit No. 54693-g410 by Ronald and Lyle Otness. Crumpled Horn contended that the Department had already determined that there was water available in the source under the Otness decision and, therefore, water was also available to Crumpled Horn.

The Motion to Dismiss was denied because there has not been a final decision in the Otness application. The Hearing Examiner nevertheless agreed to take judicial notice of the Otness matter.

Even if there had been a final decision in the Otness application, it is important to note that the Otness decision would not control Crumpled Horn's application.

In the Proposal for Decision on the Otness application, the Hearing Examiner decided that the application covered only those waters that had been "developed" by a drain tile system installed by Otness. The Hearing Examiner found that 110 gallons per minute (gpm) had been developed and granted Otness rights to that much water.

On November 7, 1989, the Otness application was remanded to the Hearing Examiner for consideration of not just the "developed" groundwater, but all unappropriated water (up to 1,250) produced by the Otness drain tiles. As such, the Hearing Examiner in the Otness application was instructed to consider not only "developed" water, but also groundwater that may have become surface water in McCormick Coulee whether or not the tiles were in place.

Taking judicial notice of the Otness file and application, does not make those facts found in Otness binding in this proceeding. Crumpled Horn still has the burden to show by substantial credible evidence that the criteria in § 85-2-311(1), MCA, have been met.

Collateral estoppel precludes the same parties from relitigating the same issues. Klundt v. Board of Personnel Appeals, ___ Mont. ___, 720 P.2d 1181 (1986); and Gessel v. Jones, 149 Mont. 418, 427 P.2d 295 (1967). Application of this legal principle would be the only way that the findings in the Otness case are binding upon the parties in this proceeding.

Here collateral estoppel does not apply because the parties and issues are not at all the same. Crumpled Horn was not a party to the Otness application and Otness is not a party to this proceeding. Both Otness and Crumpled Horn are seeking water from the same source, but the fact that water is available to Otness from the source does not necessarily make it available to Crumpled Horn. There is no privity between Crumpled Horn and Otness; no legal authority allowing Crumpled Horn to bootstrap onto the Otness application. Otness had to meet the criteria in § 85-2-311, MCA, and so must Crumpled Horn.

As such, the Motion to Dismiss was properly denied.

PROPOSED FINDINGS OF FACT

1. Applicant, Crumpled Horn, is a large sheep ranching corporation, owned and operated by Leslie Chalmers and his family, including his son, David Chalmers, Secretary and

Treasurer of Crumpled Horn and daughter, Ann Stradley, a shareholder in Crumpled Horn.

2. The above application was filed with the Department on April 26, 1984, at 9:30 a.m. Pertinent portions of the application were published in the Choteau Acantha, a newspaper of general circulation in the area of the source, each Thursday in the weeks of July 5, 1984 and July 12, 1984.

3. The application (which is very confusing) states that groundwater is the source of the water. It lists that the "primary" point of diversion is a point in the W $\frac{1}{2}$ of Section 32, Township 25 North, Range 4 West, Teton County. The water for the application is collected by a drain tile system owned, developed, and installed by Ronald and Lyle Otness and located wholly upon Otness property. Water is collected in underground perforated pipes, and flows into an open drain ditch. The open ditch drains into a natural coulee, known as "Chalmers" or "McCormick" Coulee. See Memorandum from Kim Overcast dated June 6, 1984 in the Department file, listed as "Clarification of Application" and hereinafter referred to as the "Clarification".

4. According to the Clarification, the water flows down McCormick Coulee where Crumpled Horn proposes to use the water in the following manner:

(1) A 600 gallon per minute (gpm) pump would be placed in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, Township 25 North, Range 4 East, to pump out of McCormick Coulee and irrigate the SW $\frac{1}{4}$ of Section 27. 80 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27 would be supplementing water filed for by Crumpled Horn under Claim of Existing Water Right No. W167252-410. 80 acres in the

N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27 would be new irrigation. Or, the water from this pump may be used to supply Crumpled Horn's sheep facility which houses as many as 7200 ewes, 25,000 lambs and 240 rams;

(2) An existing dam in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35 would divert the water in McCormick Coulee into an existing 60 acre-foot reservoir; and

(3) A 600 gpm pump from the reservoir at a point in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36 to irrigate 160 in the NW $\frac{1}{4}$ of Section 36. This use would supplement Claim No. W167251-410 for 10 cubic feet per second (cfs) to irrigate the NW $\frac{1}{4}$ of the same Section 36.

5. According to the Clarification, Crumpled Horn may divert 600 gpm at the pump site in Section 27 or 600 gpm from the reservoir in Section 36. The Clarification then states: "[H]owever, at no time will they divert more than a total of 600 gpm". The Application indicates also that the total amount to be appropriated is 600 gpm from 1/1 through 12/31 of each year. The Notice of Publication also states that the total amount of water for appropriation is 600 gpm.

The details as to the total amount of the appropriation are confusing because the amount of water and use listed in the "Copy" of the Application, in the Application, and in the Notices of Hearing suggest that 600 gpm will be used for irrigation and 600 used for stock water. These documents indicate that the total amount for appropriation is 1200 gpm. At the hearing, it was suggested that the total amount would be 1200 gpm. Nevertheless, the proper amount proposed for appropriation is 600 gpm to

be used at different times for different purposes as listed above.

6. From the testimony and arguments at the hearing, it was apparent that Crumpled Horn felt that the application set arbitrary limits on the nature and amount of water sought by Crumpled Horn. According to Leslie Chalmers, Crumpled Horn is basically seeking "all" of the water available to it. Crumpled Horn provided no measurements or figures as to how much "all" was.

David Chalmers claimed the Department imposed an "artificial" limit on the amount of water. Leslie Chalmers stated that water rights were based on the maximum amount available. However, Leslie Chalmers had no idea how much water was flowing from the Otness drain tiles, how much water Otness might use or how much water might be left after Otness used the drainage water.

7. Both Leslie Chalmers and Ann Stradley testified that the only water currently in McCormick Coulee is water from the Otness drainage system. They testified that McCormick Coulee is not a "live" stream, meaning that it does not flow throughout the year, but only during heavy rainfall and snowmelt.

The testimony of Leslie Chalmers and Ann Stradley is not persuasive because, as noted above with respect to the proposed uses and supplemental irrigation, Crumpled Horn has filed Claim No. W167251-410 for 10 cfs with a priority date of March 2, 1957, on "John Chalmers" Coulee (McCormick Coulee). Further, Objector William Chalmers has filed water rights claims on "McCormack

[sic] Coulee" for 2.5 cfs, 4.6 cfs and 12.5 cfs for irrigation. See Claims W036074-410, W36078-410, and W036077-410.

William Chalmers also testified that he recalled his family irrigating from McCormick Coulee since 1949. On cross-examination, Ann Stradley admitted that there is some commingling of Otness drainage waters with other waters from other drainage ditches.

The record therefore supports a finding that there is water in McCormick Coulee in addition to the water from the Otness drains.

8. Crumpled Horn does not own the property or the diversion works for the primary point of diversion, the outlet of the drain tile system. Crumpled Horn does not have a written or verbal agreement with Ronald or Lyle Otness allowing it access or control of the diversion works.

9. Leslie Chalmers testified that he had a verbal agreement with Ronald and Lyle Otness. This "agreement", however, consists only of Chalmers informing Ronald and Lyle Otness that he would file on the water coming from the drain tile system after the Otnesses had filed. When asked what the terms of the agreement were, Leslie Chalmers replied:

That would be most difficult. We discussed the drain and whether they (Otnesses) were getting any water and we looked at the holes and looked at the way tile was being laid. We discussed it in general terms. We said we will file on it, but you fellows have the first filing. Ronald and Lyle, we visited and it was agreeable with them and they could care less as long as they had the

first filing--whether we filed on it or not.
(Tape #1, 2697-2705)

Such testimony does not show that an agreement exists between Crumpled Horn and the Otnesses controlling Crumpled Horn's access to the Otness drains or defining the use of the water coming from the Otness drains.

10. Crumpled Horn presented no measurements as to the flow of water from the drain tile system, in the open drain ditch, or in McCormick Coulee.

11. Objector William Chalmers took some measurements in the NW $\frac{1}{4}$ of Section 35, located upstream of Crumpled Horn's proposed secondary point of diversion in the NW $\frac{1}{4}$ of Section 36. William Chalmers testified that he made the following measurements at the following times:

<u>Date</u>	<u>Amount</u>
October 3, 1988	117 gpm
March 25, 1989	940 gpm
March 30, 1989	585 gpm
April 6, 1989	750 gpm
August of 1989	430 to 585 gpm

12. William Chalmers testified that he did not see an appreciable increase in the flow of McCormick Coulee since the drains were installed. He believed that if the 600 gpm were diverted by Crumpled Horn he would not have sufficient water to irrigate from McCormick Coulee.

PROPOSED CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter and the parties. Section 85-2-309, MCA.

2. The Department must issue a permit if an applicant proves by substantial credible evidence that all of the criteria in § 85-2-311, MCA, have been met. Specifically, § 85-2-311(1)(a), MCA, requires the applicant to show that there are unappropriated waters in the source of supply at the proposed point of diversion:

- (1) at times when the water can be put to the use proposed by the applicant;
- (2) in the amount the applicant seeks to appropriate; and
- (3) throughout the period during which the applicant seeks to appropriate the amount requested is available.

3. Crumpled Horn has failed to show any of the above criteria indicating that there are unappropriated waters coming from the Otness drains. Crumpled Horn contends that it should have "secondary" rights to the water developed by Otness. Crumpled Horn wants to use Otness drainage water whenever Otness is not using it. Crumpled Horn assumes that its burden of proof has been met by relying upon the evidence and proposed Findings of Fact in the Otness matter. As stated in the discussion on the Motion to Dismiss, the findings in the Otness decision are not controlling here.

Crumpled Horn had its own burden and it failed to meet that burden. There was no testimony or evidence as to when, if ever, water would be available to Crumpled Horn. Crumpled Horn

presented no evidence as to the amount of water available for appropriation from the drains. Crumpled Horn presented no flow measurements of the amount of water that flowed from the open drain ditch to McCormick Coulee and the secondary points of diversion.

4. Crumpled Horn seeks "all" of the water from the drains after Otnesses uses the water. See Finding of Fact No. 6. While "all" is a common term used on many old water right filings, it means nothing without water measurements. The Water Use Act simply requires more specificity.

Section 85-2-101(2), MCA, requires the Department to maintain a system of centralized records. Such records are meaningless unless they reflect the actual amount of water appropriated. Section 85-2-312(1), MCA, requires proof of unappropriated waters by substantial credible evidence. Clearly, such a burden cannot be met without accurate measurements. Lastly, § 85-2-312, MCA, states that the Department may not issue a permit for more water than is requested or than can be beneficially used. A permit granting "all" of the water after use by Otness would be so indefinite that it may encompass more water than actually requested or than could be beneficially used.

5. Crumpled Horn must show that water is both legally and physically available for its appropriation. In the Matter of the Application for Beneficial Water Use Permit No. 60662-76G by Wayne and Kathleen Hadley (Final Order, May 31, 1988). Here, water rights claims totaling 29.6 cfs have been filed on

McCormick Coulee. See Finding of Fact No. 7. Measurements from McCormick Coulee show a maximum flow of 940 gpm. See Finding of Fact No. 11. There were no measurements presented as to the amount of water flowing from the drains. Clearly, the water from the drains is neither physically or legally available for appropriation if the water must go to satisfying senior water rights.

Only new unappropriated water that had been "developed" by Crumpled Horn could be appropriated by it without first having to satisfy prior appropriators. Prior appropriators have no right to waters brought into a stream exclusively by the labor and artificial works of another man for such artificial increments are not part of the natural flow. Federal Land Bank v. Morris, 112 Mont. 445, 116 P.2d 1007, 1011 (1941).

Crumpled Horn, however, has not "developed" any new additional water. Crumpled Horn did not install or pay for the installation of the drains; it does not maintain the drains; and it has no control or access to the drainage system. As such, Crumpled Horn may not be considered the developer of the new water and cannot circumvent prior appropriations on McCormick Coulee absent some clear and enforceable agreement with Otness.

6. A prior appropriator has senior rights to the waters that "naturally flow" in the source. Beaverhead Canal Co. v. Dillon Electric Light & Power, 34 Mont. 141 (1906).

Once water is no longer in the control of the original appropriator, it becomes waste or return flows and is subject to appropriation. Rock Creek Ditch and Flume v. Miller, 93 Mont.

248, 17 P. 1074. Waste or return waters that have reached a natural channel commingling with other waters in the channel, lose their character as waste or return waters and become part of water course. Popham v. Holloron, 84 Mont. 442, 275 P. 1099. Such waters in the natural flow may be subject to new appropriation only if water is still available after senior water rights have been satisfied. In the Matter of the Application of Beneficial Water Use Permit No. 064600-s76H by Evans; Perkins v. Kramer, 148 Mont. 355, 423 P.2d 587 (1966); and Beaverhead Canal Co., supra. Therefore, after the water from the Otness drain tiles has been appropriated by Otness, any remainder must be considered waste waters and then part of the natural flow of McCormick Coulee. Senior appropriators have first rights to that natural flow and Crumpled Horn failed to show that there is further new additional water available for appropriation.

Given the above reasons for denying Crumpled Horn's application, it is not necessary to discuss the remaining criteria in § 85-2-311(1), MCA.

ORDER

The above application is hereby denied.

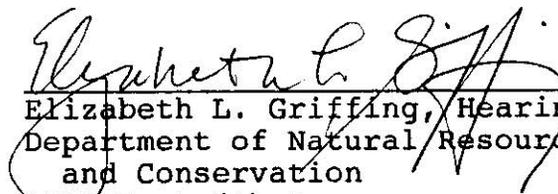
NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the propo-

sal is mailed. Parties may file responses to any exception filed by another party within 20 days after service of the exception. However, no new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 22nd day of November, 1989.


Elizabeth L. Griffing, Hearing Examiner
Department of Natural Resources
and Conservation
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record at their address or addresses this 22nd day of November, 1989, as follows:

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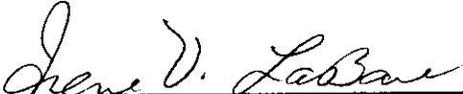
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