

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. 60049-s76H BY BILL AND JANE)
ULM AND CLEO ULM)

* * * * *

The time period for filing exceptions to the Hearing Examiner's Proposal for Decision in this matter has expired. No timely exceptions were received from any party of record. Therefore, having given the matter full consideration, the Department accepts and adopts the Findings of Fact and Conclusions of Law of the Hearing Examiner as contained in the May 29, 1987 Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon these Findings of Fact and Conclusions of Law, and all files and records herein, the Department makes the following:

ORDER

Subject to the terms, conditions, restrictions and limitations specified below, Application for Beneficial Water Use Permit No. 60049-s76H by Bill and Jane Ulm, and Cleo Ulm, is hereby granted to appropriate 18.00 gpm up to 0.43 acre-feet per annum from Canyon Creek, a tributary of the Bitterroot River, as follows: 17 gpm up to 0.33 acre-feet per annum for domestic use and 1.00 gpm up to .10 acre-feet per annum for stockwater. Water may be diverted between

CASE # 60049

January 1 and July 15, inclusive, each year, and between September 15 and December 31, inclusive, each year, by means of a pump located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 6 North, Range 21 West, Ravalli County, Montana, for domestic and stockwater use in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 6 North, Range 21 West, Ravalli County, Montana. The priority date is August 21, 1985 at 3:20 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B. The Permittee shall in no event cause to be withdrawn from the source of supply more water than is reasonably required for the purposes provided for herein.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, even if such damage is a necessary and unavoidable consequence of the same.

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.

E. Permittee shall maintain an adequate flow measuring device at the point of diversion and shall keep a written record of the flow rate at which water is diverted, as well as the date of diversion and the duration of the diversion on that date. Permittee

shall make such records available to the Department upon request.

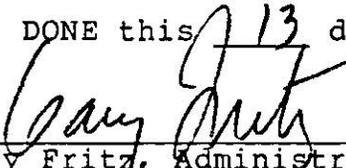
F. Permittee shall install a valve in the outlet line of the pump, near the pump itself, which valve shall be of a type capable of being locked shut. Under no circumstance shall Permittee divert from Canyon Creek from July 16 to September 14, inclusive, in any year.

G. Permittee may install a storage tank of up to 24,000 gallon capacity. However, any water to be stored in excess of 1,000 gallons must be stored by June 15 of the year it is to be used. Permittee may in no event exceed a diversion rate of 18 gpm or exceed an annual diverted volume of 0.43 acre-feet. Applicant must notify the Water Rights Bureau Missoula Field Office of the size of the storage tank upon installation.

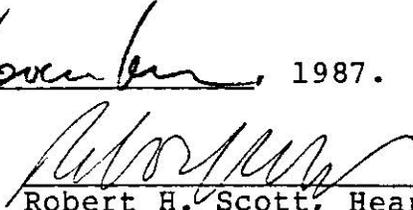
NOTICE

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

DONE this 13 day of November, 1987.



Gary Fritz, Administrator
Department of Natural
Resources and Conservation
1520 E. 6th Avenue
Helena, Montana 59620-2301
(406) 444 - 6605



Robert H. Scott, Hearing Examiner
Department of Natural Resources
and Conservation
1520 E. 6th Avenue
Helena, Montana 59620-2301
(406) 444 - 6625

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was served by mail upon all parties of record at their address or addresses this 16th day of November, 1987, as follows:

Bill & Jane Ulm
Cleo Ulm
PO Box 403
Stevensville, MT 59870

Bill & Jane Ulm
Cleo Ulm
32-750 Date Palm 1179
Cathedral City, CA 92234

Robert R. & Lyn J. McKee
NW 175 Westhills Way
Hamilton, MT 59840

Esther B. Quigley
NW 185 Westhills Way
Hamilton, MT 59840

Mary Sexton & David Carr
125 W. Bridge Rd.
Hamilton, MT 59840

Leslie T. & Tena M. Pribula
NW 189 West Hills Dr.
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Walter M. Smith
37 Ricketts Rd.
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Kelsey C. & Doris H. Milner
NW 75 Ricketts Rd.
Hamilton, MT 59840

Robert F. & Bettye M. Smith
30 Ricketts Rd.
Hamilton, MT 59840

Colin C. & Marily A. Birse
180 Blodgett Camp Rd.
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Norman & Cora Sorenson
NW 353 Blodgett Camp Rd.
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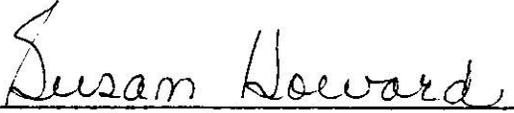
Florence K. & Robert R. Pagenkopf
200 Harbison
Hamilton, MT 59840

Brian & Monica Sutherland
NW 338 Canyon Creek Rd.
Hamilton, MT 59840

Richard Singleton
PO Box 83
Hamilton, MT 59840

Bob & Nadine Mackey
NW 420 Blodgett Camp Rd.
Hamilton, MT 59840

Mike McLane, Manager
Water Rights Bureau Field Office
PO Box 5004
Missoula, MT
(inter-departmental mail)


Susan Howard
Susan Howard
Hearings Reporter

CASE # 60049

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. 60049-s76H BY BILL AND JANE)
ULM AND CLEO ULM)

* * * * *

Pursuant to the Montana Water Use Act, Montana Code Annotated (hereafter, "MCA") Title 85, Chapter 2 (1985), and the Montana Administrative Procedure Act, MCA Title 2, Chapter 4 (1985), a hearing in the above-entitled matter was held on August 27, 1986 in Hamilton, Montana. The hearing was completed on August 27, 1986 and the record was closed.

Appearances

Applicant Bill Ulm appeared pro se.

Applicants Jane Ulm and Cleo Ulm were represented by Bill Ulm.

Objector Bob Mackey appeared pro se.

Objectors Robert R. and Lyn J. McKee (hereafter, "Objector McKee") were represented by Lyn J. McKee.

Objectors Kelsey C. and Doris H. Milner (hereafter, "Objector Milner") each appeared pro se.

Objector Esther B. Quigley appeared pro se.

Objectors Robert F. and Bettye M. Smith (hereafter, "Objector Smith") each appeared pro se.

-- Ronald C. Denn, Canyon Creek Water Commissioner, appeared as a witness for Objector Smith.

CASE # 60049

Objectors Norman and Cora Sorenson (hereafter, "Objector Sorenson") each appeared pro se.

Objectors Brian and Monica Sutherland (hereafter, "Objector Sutherland") each appeared pro se.

Michael P. McLane, Manager of the Missoula Field Office, Water Rights Bureau, Department of Natural Resources and Conservation (hereafter, "Department" or "DNRC"), appeared as staff expert witness.

Summary of the Case

Applicant herein desires to appropriate water from Canyon Creek, a tributary of the Bitterroot River, for year-round stockwater and domestic use. Periodically, Applicant would divert water from Canyon Creek by pump for a sufficient period to fill a storage tank. Water would subsequently be drawn from the tank to supply one household and four horses. The water would not be used for lawn or garden irrigation.

All Objectors hereto allege that there is insufficient unappropriated water in Canyon Creek to supply Applicant, at least during the irrigation season. Objector Smith also alleges that the amount of water asked for is excessive for the stated use.

Exhibits

Applicant submitted no exhibits in support of the Application.

Objector Smith submitted one exhibit for inclusion in the record.

Objector Smith Exhibit 1 consists of one page containing three paragraphs. Paragraph "1" is a typewritten summary of certain decreed rights to water in Canyon Creek. Handwritten paragraphs "2" and "3" summarize bases for objection.

Objector Smith Exhibit 1 was admitted without objection.

Objector Milner submitted one exhibit for inclusion in the record.

Objector Milner Exhibit 1 consists of 3 handwritten pages (legal size). The document is entitled "Basis for objection to Application No. 60049-s76H for Beneficial Water Use Permit (Reference is to 'Criteria for issuance of permit'.)"

Objector Milner Exhibit 1 was admitted without objection.

The Department staff expert witness offered one exhibit for the record.

Department Witness Exhibit 1 is a 9 page document entitled "Field Investigation Project Analysis, Application for Beneficial Water Use Permit # 60049, Bill Ulm et al." by Michael P. McLane.

Department Exhibit 1 was admitted without objection.

No objections were registered by any party to the contents of the Department file.

PROPOSED FINDINGS OF FACT

1. MCA §85-2-302 (1985) provides that, except in the case of certain groundwater and livestock appropriations listed in MCA §85-2-306 (1985), "a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department." This Applicant has not made application for appropriation of waters as described under MCA §85-2-306 (1985). Therefore, MCA §85-2-302 applies in this matter.

2. The Application in this matter was regularly filed with the DNRC on August 21, 1985 at 3:20 p.m.

3. The pertinent facts of the Application were published in the Ravalli Republic, a newspaper of general circulation in the area of the source, on September 25 and October 2, 1985.

4. By this Application, Applicant seeks a Permit to divert from Canyon Creek, a tributary of the Bitterroot River, 17.00 gpm up to 3.00 acre-feet per year for domestic use by two households, and 1.00 gpm up to .10 acre-feet per year for stockwater (four horses); both uses to occur in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 6 North, Range 21 West, Ravalli County, Montana. The point of diversion is to be located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 6 North, Range 21 West, Ravalli County, Montana. Water would be stored in a buried 1,000 gallon storage tank. (Application.)

Diversion can be accomplished by a 1.5 horsepower pump, delivering 18 gpm over a lift of 150 feet (Department Exhibit 1). Water would then be stored in a holding tank of at least a 1,000 gallon capacity for use when required. (Application, testimony of Applicant.)

5. At the hearing, Applicant verbally amended the Application: the intended domestic use is to be for one family instead of two, said family consisting of two people, Bill and Jane Ulm, and their guests. The water would not be used for irrigation of any type, i.e., there would be no garden, lawn, or tree watering. The domestic use is to be strictly household use. (For drinking water, a purifier would be installed.) For this modified use, Applicant requests 300 gallons per day.

6. 300 gallons per day (.33 acre-feet per annum) is within the recommended range of water requirements for a two-person household utilizing water only for domestic purposes (without lawn and garden watering). The amount requested would provide enough water that little or no conservation techniques would be required of the Applicants. (Department Exhibit 1.) The amount requested for stock, .10 acre-feet per annum for four horses, is the amount recommended by DNRC guidelines.

7. The total claimed (in the adjudication process) flow rate historically diverted from Canyon Creek for irrigation purposes is approximately 1,768 miner's inches (44.2 cfs). The total claimed flow rate historically diverted from Canyon Creek for non-irrigation purposes is approximately 612 miner's inches. (Department Records.) The total decreed flow rates on Canyon

Creek for all purposes is 1,291 miner's inches. Even if decreed rights potentially abandoned are excluded, there are still over 1,100 miner's inches of water decreed appropriated from Canyon Creek. (Objector Smith, Exhibit 1.)

8. For most appropriators, the natural flow ¹ of Canyon Creek is not available each year from approximately July 15 through September 15. Rather, there is only sufficient water available in the creek to supply a portion of the first water right throughout the period. (Department Exhibit 1.)

Canyon Creek arises in a shallow box canyon. Because it is of such a character, the canyon supplies the creek with spring water and seepage only to a small extent (testimony of Ronald Denn); the major source of water is apparently runoff. Therefore, the pattern of flow is in the main governed by the amount of recent precipitation and snowmelt. Hence, the flow is low in winter (testimony of Ronald Denn), rises to a large flow during spring runoff and precipitation, rapidly falls off to a very low flow when spring runoff and precipitation ceases, and increases again with the fall rains. (See below, this Finding.)

Though the estimates as to when water becomes generally unavailable given by the Objectors vary, their testimony in addition to that of Ronald Denn confirms that there is generally an annual period of shortage as stated supra (July 15 to September 15). Ronald Denn testified that, on the average, the

¹Stored water ("lake water") is added to the natural flow in the irrigation season. However, such water is released from storage for the exclusive use of its shareholders and is not appropriable by others.

water starts going down in June; July is water short; August is water short; but the flow picks up again in September. Esther Quigley stated that in 1986, she, a third right holder, was shut off in July until the lake water was released. Lyn McKee stated that the water is "pretty good in June" but in July it runs out. Robert Smith suggested shortages exist from July 1 to September 15. Kelsey C. Milner stated that he would not object to this appropriation if not during the "six month irrigation season."

9. In August of 1986, there were approximately 300-400 miner's inches flowing in Canyon Creek. (Objector Smith Exhibit 1, Testimony of Objector Smith.) Of this amount, roughly 100-150 miner's inches was supplied by the natural flow of Canyon Creek. (Testimony of Ronald Denn.) The remainder is "lake water" belonging to the Irrigation District (Objector Smith Exhibit 1), and is available to share owners only. (Objector Milner Exhibit 1.)

10. There are no planned uses or developments of Canyon Creek water for which a Permit has been issued or for which water has been reserved apparent from the face of the record.

11. The suggestion was made at the hearing that if unappropriated water in Canyon Creek is not available during the period from July 15 to September 15, Applicant could still be supplied with water year-round by use of a larger storage facility. (Department Exhibit 1, testimony of Mike McLane.) No objection was raised by Objectors to Applicant's utilizing a storage facility of capacity greater than 1,000 gallons.

PROPOSED CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and over the parties hereto. (Findings of Fact 1, 2.) MCA Title 85, Chapter 2, Part 3 (1985).

2. The Department gave proper notice of the hearing (Finding of Fact 3) and, all substantive and procedural requirements of law or rule having been fulfilled, the matter is properly before the Hearing Examiner.

3. MCA §85-2-311 (1985) provides that the Department shall issue a Permit if the Applicant proves by substantial credible evidence that the following criteria are met:

- (a) there are unappropriated waters in the source of supply:
 - (i) at times when the water can be put to the use proposed by the applicant,
 - (ii) in the amount the applicant seeks to appropriate; and
 - (iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;
- (b) the water rights of a prior appropriator will not be adversely affected;
- (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
- (d) the proposed use of water is a beneficial use;

(e) 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.

4. The proposed use will not interfere with other planned uses or developments for which a Permit has been issued or for which water has been reserved. (Finding of Fact 10.)

5. The record shows that the proposed means of diversion, construction and operation of the appropriation works are adequate. (Finding of Fact 4.)

6. The proposed uses, domestic and stockwater, are beneficial uses. MCA §85-2-102 (1985). The annual volumes requested, .33 acre-feet for domestic use and .10 acre-feet for stock, are reasonable for the uses proposed. (Finding of Fact 6.)

7. There are unappropriated waters available in the amount Applicant seeks to appropriate at times when water can be put to the use proposed by the Applicant throughout the period from January 1 through July 15, inclusive, each year, and throughout the period from September 15 through December 31, inclusive, each year, but not from July 16 to September 15 in any given year.

Although there is a regrettable lack of hard data on the record regarding the mean monthly flows of Canyon Creek, a rough determination can be made as to the existence of unappropriated water in Canyon Creek for given periods of the year. The only

record testimony as to the non-irrigation season (October 15 through April 15) flow in Canyon Creek is that it is low. However, none of the Objectors expressed concern regarding water availability at this time of year and at least one Objector expressly stated he would have no objection to this appropriation during that period. (Finding of Fact 8.) Other Objectors, in delineating periods when they could not obtain water, did not express problems in the non-irrigation months. Further, filed claims for non-irrigation purposes, mostly for stock water, total only about 612 miner's inches (15.31 cfs) or approximately one-fourth of the total claimed flow during the irrigation season. (2,580 miner's inches.) (Finding of Fact 7.) Prior appropriators evidently have no problem obtaining sufficient water during the non-irrigation season for non-irrigation uses and, as the demand on the creek is comparatively low during those months, it is hereby concluded that unappropriated water exists during the non-irrigation season in Canyon Creek.

However, the record also indicates that during irrigation season the demand on Canyon Creek may increase almost four-fold, by up to approximately 1,768 miner's inches. (Finding of Fact 7.) Hence, if the increased demand on Canyon Creek is not met by a comparable increase in flow rate, there are no unappropriated waters available.

The testimony of the Objectors and Ronald Denn and the information contained in Department Exhibit 1 indicate that during the normally wet months of April, May and June, when

demand is low and supply is high due to spring runoff, there is adequate water in Canyon Creek to meet existing demands. However, sometime during July, as the area dries out, demand increases while simultaneously supply rapidly falls off. Thus, by mid-July, there is virtually always a shortage which continues until demand once again begins to decrease and/or supply increases around mid-September. (Finding of Fact 8.) In sum, the general trend of water availability indicates that from mid-July to mid-September there is rarely (if ever) unappropriated water in Canyon Creek. Therefore, any permit granted hereunder can be issued authorizing diversion only between January 1 and July 15, inclusive, each year, and between September 15 and December 31, inclusive, each year.

Of course, there may be exceptionally dry years when existing demand may exceed supply earlier in the year, later in the year, or at an anomalous time of year. However, the issuance of a permit cannot depend on an absolute guarantee by the Applicant that there will never be a period when a prior appropriator will have to request that Applicant cease his appropriation. If such were the case, permits would rarely, if ever, be granted and the entire premise of the doctrine of prior appropriation would be obviated. Rather, the function of the permit process is to prevent appropriation of water in situations where senior appropriators would be burdened with having to make an unreasonable number of "calls" on a permittee in order to obtain their water.

Here, the evidence shows that between July 15 and September 15, the Applicant, who would have the lowest priority date on the source, would be called upon to shut down his appropriation virtually every day. This would place an unreasonable burden on the prior appropriators. However, outside the above-stated time period, it appears that in most years very few calls would have to be made upon the Applicant.

8. Regarding the period from July 15 to September 15, there is no unappropriated water available in the source. Appropriation of already appropriated water during that period would ipso facto work an adverse affect upon prior appropriators.

Outside the above-described period, there is unappropriated water available in the source. Thus, as Objectors have raised no issue of adverse effect other than as relates to the question of unappropriated water, and as Applicant's description of his proposed use shows no general potential for adverse effect during the period, Applicant's burden is fulfilled. (For a recent discussion of burden of proof, See In The Matter of Beneficial Water Use Permit No. 60117-g76L by William C. Houston, Proposal for Decision, April 27, 1987 pp. 19-21.) Therefore, it is hereby concluded that between January 1 and July 15, inclusive, each year, and September 15 and December 31, inclusive, each year, the use herein proposed will not adversely affect the water rights of prior appropriators.

9. Applicant may increase the capacity of his holding tank (storage) hereunder to hold sufficient stored water to provide 300 gallons per day for domestic use and 90 gallons per day for stock water during the two month period in which Applicant may not divert. That is, the capacity of the holding tank may be as great as 24,000 gallons. Applicant must notify the Department Field Office at Missoula of the size tank which will be installed.

Although Applicant had initially planned for only a 1,000 gallon storage facility (Application), the option of utilizing an increased storage capacity, in the event year-round appropriation could not be countenanced, was discussed at the hearing. There was no objection voiced by any Objector at the hearing. (Finding of Fact 11.) Further, as the proposed size of the storage tank was not made part of the public notice to water users (Department file), off-stream storage tank capacity being considered part of conveyance system design, this increase would not have altered the notice. Therefore, all parties hereto and the public are not prejudiced by the change.

However, the Permit must be conditioned so that any water stored in excess of 1,000 gallons is stored during a period of higher flow/lower demand, i.e., by June 15 in any given year. Such condition will prevent Applicant from waiting until July, a period of rapidly decreasing flow in Canyon Creek, to increase his diversion duration in order to fill his storage tank, a situation which carries a significant potential for adversely affecting other appropriators on Canyon Creek. (See Conclusion of Law 7, pp. 10-11.)

CASE #

60049

WHEREFORE, based on the foregoing Proposed Findings of Fact and Proposed Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, conditions, restrictions and limitations specified below, Application for Beneficial Water Use Permit No. 60049-s76H by Bill and Jane Ulm, and Cleo Ulm, is hereby granted to appropriate 18.00 gpm up to 0.43 acre-feet per annum from Canyon Creek, a tributary of the Bitterroot River, as follows: 17 gpm up to 0.33 acre-feet per annum for domestic use and 1.00 gpm up to .10 acre-feet per annum for stockwater. Water may be diverted between January 1 and July 15, inclusive, each year, and between September 15 and December 31, inclusive, each year, by means of a pump located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 6 North, Range 21 West, Ravalli County, Montana, for domestic and stockwater use in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 6 North, Range 21 West, Ravalli County, Montana. The priority date is August 21, 1985 at 3:20 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.

CASE # 60049

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, even if such damage is a necessary and unavoidable consequence of the same.

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.

E. Permittee shall maintain an adequate flow measuring device at the point of diversion and shall keep a written record of the flow rate at which water is diverted, as well as the date of diversion and the duration of the diversion on that date. Permittee shall make such records available to the Department upon request.

F. Permittee shall install a valve in the outlet line of the pump, near the pump itself, which valve shall be of a type capable of being locked shut. Under no circumstance shall Permittee divert from Canyon Creek from July 16 to September 14, inclusive, in any year.

G. Permittee may install a storage tank of up to 24,000 gallon capacity. However, any water to be stored in excess of 1,000 gallons must be stored by June 15 of the year it is to be used. Permittee may in no event exceed a diversion rate of 18

gpm or exceed an annual diverted volume of 0.43 acre-feet. Applicant must notify the Water Rights Bureau Missoula Field Office of the size of the storage tank upon installation.

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the Proposed Order, including the legal land descriptions. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (1520 E. 6th Ave., Helena, MT 59620-2301); the exceptions must be filed within 20 days after the proposal is served upon the party. MCA §2-4-623.

Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed.

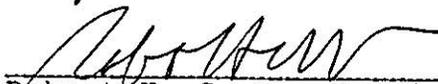
Any adversely affected party has the right to present briefs and oral arguments pertaining to its exceptions before the Water Resources Division Administrator. A request for oral argument must be made in writing and be filed with the Hearing Examiner within 20 days after service of the proposal upon the party. MCA §2-4-621(1). Written requests for an oral argument must specifically set forth the party's exceptions to the proposed decision.

CASE # 60049

Oral arguments held pursuant to such a request normally will be scheduled for the locale where the contested case hearing in this matter was held. However, the party asking for oral argument may request a different location at the time the exception is filed.

Parties who attend oral argument are not entitled to introduce evidence, give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will be limited to discussion of the evidence which already is present in the record. Oral argument will be restricted to those issues which the parties have set forth in their written request for oral argument.

DONE this 29 day of May, 1987.


Robert H. Scott, Hearing Examiner
Department of Natural Resources
and Conservation
1520 E. 6th Avenue
Helena, Montana 59620-2301
(406) 444 - 6625

AFFIDAVIT OF SERVICE
MAILING

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

Sally Martinez, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on June 1, 1987, she deposited in the United States mail, First Class postage prepaid, a Proposal for Decision by the Department of Natural Resources & Conservation (DNRC) on the Application for Beneficial Water Use Permit No. 60049-s76H, by Bill & Jane Ulm and Cleo Ulm, addressed to each of the following persons or agencies:

Bill & Jane Ulm
Cleo Ulm
PO Box 403
Stevensville, MT 59870

Bill & Jane Ulm
Cleo Ulm
32-750 Date Palm 1179
Cathedral City, CA 92234

Robert R. & Lyn J. McKee
NW 175 Westhills Way
Hamilton, MT 59840

Esther B. Quigley
NW 185 Westhills Way
Hamilton, MT 59840

Mary Sexton & David Carr
125 W. Bridge Rd.
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Leslie T. & Tena M. Pribula
NW 189 West Hills Dr.
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Walter M. Smith
37 Ricketts Rd.
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Kelsey C. & Doris H. Milner
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Robert F. & Bettye M. Smith
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180 Blodgett Camp Rd.
Hamilton, MT 59840

Norman & Cora Sorenson
NW 353 Blodgett Camp Rd.
Hamilton, MT 59840

Florence K. & Robert R. Pagenkopf
200 Harbison
Hamilton, MT 59840

Brian & Monica Sutherland
NW 338 Canyon Creek Rd.
Hamilton, MT 59840

Richard Singleton
PO Box 83
Hamilton, MT 59840

Bob & Nadine Mackey
NW 420 Blodgett Camp Rd.
Hamilton, MT 59840

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Sally Martinez

CASE # 60049

Mike McLane, Manager
Water Rights Bureau Field Office
PO Box 5004
Missoula, MT
(inter-departmental mail)

Gary Fritz, Administrator
Water Resources Division
DNRC
1520 E. 6th Ave.
Helena, MT 59620-2301
(hand-issue)

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

On this 1st day of June, 1987, before me, a Notary Public in and for said state, personally appeared Sally Martinez, 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 1-21-1990