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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. 69141-76G BY SILVER EAGLE )  
MINING CO. )

\* \* \* \* \*

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter 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 October 3, 1989 Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Application for Beneficial Water Use Permit No. 69141-76G is hereby granted to Silver Eagle Mining Co. to appropriate five gallons per minute up to one acre-foot of water per year from a .17 acre-foot lined pond for use in mining.

The source of water is rainfall and snowmelt collected in a .17 acre-foot lined pond on Negro Mountain above the Little Blackfoot River. The water shall be collected at a point in the SE¼NE¼NE¼ of Section 1, Township 8 North, Range 7 West, Powell County. The period of appropriation shall be from April 15

**CASE # 69141**

through November 15 of each year and the period of use from May 1 to November 15 of each year. The place of use shall be in the SE¼NE¼NE¼ of Section 1, Township 8 North, Range 7 West, Powell County. The priority date shall be November 21, 1988.

This permit is subject to all prior and existing water rights, and to any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize appropriations by the Permittee to the detriment of any senior appropriator.

Issuance of this permit shall not reduce the Permittee's liability for damages caused by exercise of this permit, nor does the Department, in issuing this permit, acknowledge any liability for damages caused by exercise of this permit, even if such damage is a necessary and unavoidable consequence of the same.

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 30 days after service of the Final Order.

Dated this 6 day of November, 1989.

  
\_\_\_\_\_  
Gary Fritz, Administrator  
Department of Natural  
Resources and Conservation  
Water Resources Division  
1520 East 6th Avenue  
Helena, Montana 59620-2301  
(406) 444-6605

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 2<sup>nd</sup> day of November, 1989, as follows:

Silver Eagle Mining Co.  
P.O. Box 5628  
Helena, MT 59604-5628

Carl E. Clinton  
2300 National  
Helena, MT 59601

Bennie Sinerius  
Golden Anchor Mine  
P.O. Box 492  
Deer Lodge, MT 59722

R.V. Ranch Co.  
P.O. Box 1700  
Helena, MT 59624

Ardis K. Stockton  
342 Custer Avenue  
Billings, MT 59101

Frank R. Tillo and  
Mildred F. Tillo  
1510 Missoula Avenue  
Helena, MT 59601

T.J. Reynolds, Field Manager  
Helena Field Office  
1520 E. 6th Avenue  
Helena, MT 59620

  
\_\_\_\_\_  
Irene V. LaBare  
Legal Secretary

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. 69141-76G BY SILVER EAGLE )  
MINING CO. )

\* \* \* \* \*

Pursuant to §§ 85-2-121 and 85-2-309, MCA, a hearing was held in the above matter on September 7, 1989, at 1:30 p.m. in Helena, Montana, to determine whether the above Application should be granted to Silver Eagle Mining Company (hereinafter Silver Eagle Mining) under the criteria in § 85-2-311(1), MCA.

Applicant was represented by Rhodetta Sloan, Secretary/Treasurer of Silver Eagle Mining.

Bennie Sinerius represented Objector Golden Anchor Mine. James O'Connell represented Objector R.V. Ranch Company. Objector Frank Tillo represented himself, his wife Mildred Tillo, and Carl Clinton. Objector Ardis Stockton did not appear at the hearing.

The Department's file and Applicant's Exhibit 1 were reviewed by all parties and received into evidence without objection.

FINDINGS OF FACT

1. Silver Eagle Mining filed the above Application on August 15, 1988 at 11:43 a.m. Under § 85-2-401, MCA, the priority date is usually set at the time of filing. However, pursuant to § 85-2-302, MCA, and because of a late response to a

**CASE # 69141**

Department letter requesting information, the priority date was changed to November 21, 1988.

2. Applicant proposes to collect rainfall and snowmelt in a .17 acre-foot pond, 50' X 50' X 6', located on Negro Mountain above the Little Blackfoot River. The Applicant, at the Department's suggestion, stated that the source of the water was an unnamed tributary to the Little Blackfoot River.

3. The water would be collected at a point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, Township 8 North, Range 7 West, Powell County, at a flow rate estimated by the Department of 5 gpm up to 1 acre-foot per year. The period of appropriation would be from April 15 through November 15 of each year and used from May 1 to November 15 of each year. The place of use would be in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, Township 8 North, Range 7 West, Powell County.

4. The water would be used for a cyanide heap leaching project. The proposed pond would be lined with Hypalon and water would be pumped from the pond to the process site. This would be a "closed circuit system", capturing rain and snowmelt and losing water through evaporation. No water would be discharged into the Little Blackfoot River.

5. Pertinent portions of the Application were published in the Silver State Post, a newspaper of general circulation in the area of the source, on January 5, 1989. Applicant and Objector Golden Anchor Mine suggested that the notice published in the newspaper did not accurately reflect the proposed project because the notice referred to a "dam".

6. The proposed project is at least 1200' from the Little Blackfoot River. Mrs. Sloan testified, and the Objectors acknowledged, that the collecting of water by the Applicant will not affect the stream flow in the Little Blackfoot River. The amount of water used by the project would be absorbed by the vegetation between the project and the river if it were not impounded by Silver Eagle Mining.

7. Mrs. Sloan testified that the amount of water acquired through rain and snowmelt is adequate for the leaching process proposed by the Applicant. Mr. Sinerius for Objector Golden Anchor Mine conceded that there is plenty of water at the leaching site.

8. Mrs. Sloan testified that she believed Silver Eagle Mining had complied with the state and federal regulations governing health and environmental protections. All of the processed water would be contained in double-lined ponds with leak detection systems. The processing ponds are designed to handle heavy rains or snowmelt described as two 100-year precipitation events. (Testimony of Mrs. Sloan. Applicant's Exhibit #1.)

9. Bennie Sinerius, on behalf of Golden Anchor Mine, had no objection to the application as long as the "dam" proposed was not a dam on the Little Blackfoot River itself.

10. Objector Tillo did not object to the amount of water to be used by the Applicant. Rather, Mr. Tillo was concerned about the possible contamination of the water in the Little Blackfoot

River and wanted some guarantees as to measures taken to prevent contamination.

11. James O'Connell, on behalf of Objector R.V. Ranch Company, was similarly not concerned with the small amount proposed for this Application. He was more concerned about the possibility of Silver Eagle Mining expanding its operation and applying for water from the Little Blackfoot River itself.

#### CONCLUSIONS OF LAW

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

2. While the Notice by Publication in the Silver State Post may have caused confusion by using the word "dam", the notice was sufficient to notify all potential parties of the Silver Eagle Mining project.

3. The Department gave proper notice of the hearing and the matter was properly before the Hearing Examiner.

4. Applicant proved by substantial credible evidence that the applicable criteria in § 85-2-311, MCA, had been met.

5. The testimony of Mrs. Sloan and Mr. Sinerius showed that there are unappropriated waters in the source at times when the water can be put to the proposed use, in the amount the Applicant seeks to appropriate, and during the time the Applicant seeks to appropriate (Finding of Fact #7).

6. The testimony of Mrs. Sloan and the Objectors showed that the Objectors would not be adversely affected by the small

amount of water used in the leaching operation. (Finding of Fact #6.)

With respect to their concerns about contamination, the Objectors did not attempt to show that the precautions taken by Silver Eagle Mining were inadequate. Therefore, the precautions taken by Silver Eagle Mining with respect to possible contamination of the Little Blackfoot River must be considered adequate for the purposes of showing that the Objectors' water rights would not be adversely affected.

7. The proposed means of diversion, i.e., the collection of rain and snowmelt in lined ponds, is adequate for the proposed use. (Findings of Fact #4 and #7.)

8. Mining, by statutory definition, is a beneficial use of water. Section 85-2-102(2), MCA.

9. Because the water would not reach the Little Blackfoot River if it were not impounded and because sufficient environmental precautions have been taken, 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.

#### PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Application for Beneficial Water Use Permit No. 69141-76G is hereby granted to Silver Eagle Mining Co. to appropriate five gallons per minute up to one acre-foot of water per year from a .17 acre-foot lined pond for use in mining.

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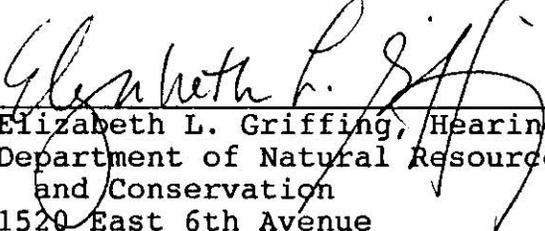
#### NOTICE

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 proposal 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 3<sup>rd</sup> day of October, 1989.

  
Elizabeth L. Griffing, Hearing Examiner  
Department of Natural Resources  
and Conservation  
1520 East 6th Avenue  
Helena, Montana 59620-2301  
(406) 444-6612

CERTIFICATE OF SERVICE

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Irene V. LaBare  
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**CASE # 68141**