

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) NOTICE OF DISMISSAL
77547-g41I BY KENNETH M. DIEHL)

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Pursuant to the provisions of the Montana Water Use Act and the contested case provisions of the Montana Administrative Procedure Act, a hearing in the above-entitled matter was set for 9:30 a.m. Tuesday April 28, 1992, in the Director's Conference Room of the Department of Natural Resources and Conservation (Department), 1520 East Sixth Avenue, Helena, Montana. A Notice of Hearing was sent March 24, 1992, to all parties by certified mail, return receipt requested. The Notice was proper in form and timing. A return receipt was received by the Department's Hearings Unit Legal Secretary indicating that Applicant received the Notice. No communication from Applicant had been received prior to the time of hearing regarding a lack of ability to appear.

At the appointed time, a prehearing conference was convened where it was noted that the Hearing Examiner, the Department's spokesperson, the Department's witness, and all Objectors and their witnesses were present, but that the Applicant was absent. The Hearing Examiner recessed the conference for fifteen minutes to allow time for Applicant to appear. During the recess the premises were canvassed for the Applicant or messages from the

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Applicant.

At 9:45 a.m. the conference was reconvened. Objector Montana Power Company moved the conference go on the record. On the record the absence of the Applicant was again noted. Objector Montana Power Company moved that the Applicant be found in default pursuant to Mont. Admin R. 36.12.208 (1991) on the grounds of his failure to comply with the March 24, 1992, Prehearing Order of the Hearing Examiner and his failure to appear at the hearing. The Motion was granted. The Hearing Examiner further noted that by his absence Applicant had failed to meet his burden of proving this Application met the criteria in Mont. Code Ann. § 85-2-311 (1991) as against the objections. The conference was closed at approximately 10:50 a.m. No hearing was held.

Pursuant to Mont. Admin. R. 36.12.208 (1991), Applicant is in default and the above-entitled Application is dismissed. The file on this Application is remanded to the Department's Water Rights Bureau New Appropriations Processing Unit for such action as is typical of dismissed and terminated Applications.

Dated this 5th day of May, 1992.



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

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Dismissal was duly served upon all parties of record at their address or addresses this 6th day of May, 1992, as follows:

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Paula Wheeler for
Cindy G. Campbell
Hearings Unit Legal Secretary