

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  
89309-s76LJ BY STEVE AND PAULA )  
LAXSON AND 89310-s76LJ BY TOM AND )  
SUSAN COURTNEY )

\* \* \* \* \*

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 August 28, 1995, Proposal for Decision, and incorporates them herein by reference.

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

ORDER

Application for Beneficial Water Use Permit 89309-s76LJ by Steve and Paula Laxson is DENIED.

Application for Beneficial Water Use Permit 89310-s76LJ by Tom and Susan Courtney is DENIED.

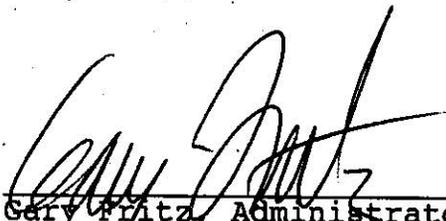
NOTICE

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.

**CASE # 89309**

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this 25 day of October, 1995.

  
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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, first class mail, at their address or addresses this 26<sup>th</sup> day of October, 1995 as follows:

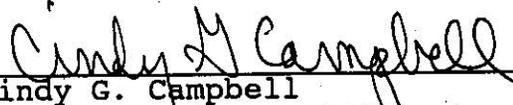
Steve & Paula Laxson  
P.O. Box 1305  
Whitefish, MT 59937-1305

Tom & Susan Courtney  
28792 Calle Posada  
San Juan Capistrano, CA 92675

Chuck Brasen, Manager  
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(via electronic mail)

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Vivian A. Lighthizer,  
Hearing Examiner  
Department of Natural  
Resources & Conservation  
1520 E. 6th Ave.  
Helena, MT 59620-2301

  
Cindy G. Campbell  
Hearings Unit Legal Secretary

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

\* \* \* \* \*

|                                     |          |
|-------------------------------------|----------|
| IN THE MATTER OF THE APPLICATIONS ) | PROPOSAL |
| FOR BENEFICIAL WATER USE PERMIT )   | FOR      |
| 89309-s76LJ BY STEVE AND PAULA )    | DECISION |
| LAXSON AND 89310-S76LJ BY TOM AND ) |          |
| SUSAN COURTNEY )                    |          |

\* \* \* \* \*

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matters on June 27, 1995, in Whitefish, Montana, to determine whether beneficial water use permits should be granted for the above-entitled applications under the criteria set forth in Mont. Code Ann. §§ 85-2-311(1) and (5) (1993).

APPEARANCES

Applicants Steve and Paula Laxson appeared at the hearing by and through Steve Laxson and Applicants Tom and Susan Courtney appeared at the hearing by and through Tom Courtney.

Jay Billmayer, Professional Engineer/Consultant with Billmayer Engineering, appeared at the hearing as a witness for Applicants.

Objectors Leo and Karen Gallis appeared at the hearing *pro se*.

Marc M. Spratt, Consultant with Marc Spratt Consulting Hydrology, appeared at the hearing as a witness for Objectors.

Raye Marie Brown, a previous user of Beaver Creek waters, appeared at the hearing as a witness for Objectors.

**CASE # 89309**

Charles Brasen, Manager of the Kalispell Water Resources Regional Office of the Department of Natural Resources and Conservation (Department), attended the hearing.

EXHIBITS

Applicants offered 11 exhibits for the record. All were accepted without objection.

Applicants' Exhibit 1 is a black and white aerial photograph, 13.25 inches high by 21 inches wide. This photograph was taken in 1933 and shows the S $\frac{1}{2}$  of Section 19, Township 30 North, Range 22 West, Flathead County, Montana.<sup>1</sup> Beaver Creek has been traced in blue on both the photograph and the onionskin overlay. Beaver Creek has been manipulated since this photograph and no longer flows in the same channel in some places.

Applicants' Exhibit 2 is a color aerial photograph, 14.63 inches high by 21.13 inches wide. This photograph was taken in 1992 and shows the S $\frac{1}{2}$  of Sections 19 and 20. The photograph has been enhanced to clearly show Beaver Creek, the Laxson pond, the Courtney pond, and an existing pond. The Gallis property is shown at the east side of the photograph just below the junction of the roads. This map has two onionskin overlays. The first overlay shows the property boundaries (each lot is approximately 20 acres) and the second depicts Beaver Creek and Applicants' ponds with the intake and outlet locations of each pond.

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<sup>1</sup>Unless otherwise stated, all land descriptions in this Proposal are located in Township 30 North, Range 22 West, Flathead County, Montana.

Applicants' Exhibit 3 is a piece of foamboard approximately 21.75 inches wide and 23.88 inches high which has enlarged plans of the applications affixed to it. It shows Beaver Creek, in blue, flowing down through the properties, the pond sites, with the inlets and outlets, also in blue, and the proposed irrigation lines in red. There are six photographs affixed to the foamboard, each labeled with an explanation of the content of the photograph.

Applicants' Exhibit 4 is a three-page letter to the Department from Billmayer Engineering dated March 3, 1995. The first page of this letter states that if Courtney's inflow pipe is 6.0 inches in diameter and is installed at a slope of 1.0 inch in 75 feet, the flow capacity of the pipe would be 59.25 gallons per minute. If Laxson's inflow pipe is 6.0 inches in diameter and is installed at a slope of 25.0 inches in 700.0 feet, the flow capacity of the pipe would be 99.25 gallons per minute. The second page is the worksheet for the Courtney pond and the third page is the worksheet for the Laxson pond.

Applicants' Exhibit 5 is a letter from Thomas, Dean and Hoskins Inc., Engineering Consultants, to William Brooks stating Beaver Creek had been measured on December 17, 1991, and was flowing at a rate of 385 gallons per minute.

Applicants' Exhibit 6 is a copy of a Notice and Statement proposing a condition which would require the installation of a permanent diversion shut-off device to satisfy existing water

rights. This Notice was signed by Tom Courtney on June 1, 1995, agreeing to the condition.

Applicants' Exhibit 7 is 13 pages which were submitted with Application for Beneficial Water Use Permit 83784-s76LJ by Objectors. Page one is a copy of Objectors' Permit to Appropriate Water 83784-s76LJ. The following six pages are copies of Application for Beneficial Water Use Permit 83784-s76LJ. Pages eight and nine are copies of an affidavit by Leo D. Gallis. Page ten is an affidavit by Noreen Sorenson supporting the statement by Mr. Gallis in his affidavit. Page 11 is a copy of the letter from Thomas, Dean and Hoskins Inc. to William Brooks dated December 20, 1991. Page 12 is a photocopy of two photographs. Page 13 is a copy of a map submitted with Gallis application.

Applicants' Exhibit 8 is a copy of a private artificial lake or pond license issued to Tom Courtney on January 5, 1995.

Applicants' Exhibit 9 consists of three pages. The first page is a plotted curve for Beaver Creek which shows the creek to be flowing at a rate of 1220 gallons per minute on June 27, 1995. Pages two and three show the rating table for the Courtney driveway culvert.

Applicants' Exhibit 10 consists of three pages. The first page is a plotted curve for Beaver Creek which shows the creek to be flowing at a rate of 478 gallons per minute on August 12, 1993. Pages two and three show the rating table for the Courtney driveway culvert.

Applicants' Exhibit 11 consists of three pages. The first page shows a picture, certain specifications, and commentary on the Red Top Canal Gate, Model C-10. Page two shows parts of the canal gate and the different types of frames available. Page 3 demonstrates that the Waterman Model CK-10 is identical to Waterman Model C-10 with minor exceptions and that all parts may be interchanged.

Objector offered seven exhibits for the record. All were accepted without objection except Exhibits 2, 3, and 6.

Objectors' Exhibit 1 is a copy of a photograph of a headgate and a 1.25 inch hose at Objectors' point of diversion taken August 31, 1994. This exhibit measures 8.5 inches by 5.5 inches.

Objectors' Exhibit 2 is an affidavit dated June 26, 1995, by Noreen and Arnold Sorenson attesting to certain facts concerning their residence and water use in the Beaver Creek area and to their beliefs concerning Objectors' water rights. Applicants objected to this exhibit on the basis that affiants were not available for cross-examination. The objection is sustained and the exhibit is excluded. The Montana Administrative Procedure Act requires that "any party shall have the right to cross-examinations required for a full and true disclosure of the facts, including the right to cross-examine the author of any document prepared . . . for the use of the agency and offered in evidence." Mont. Code Ann. § 2-4-612(5) (1993). Accepting this affidavit would deny Applicants' right of cross-examination. Moreover, the affidavit, if admitted, would be worthy of little,

if any, weight because there is nothing in the record to establish affiants' qualifications to make statements about the effect of Applicants' water use on Objectors' water rights.

Objectors' Exhibit 3 is an affidavit dated June 26, 1995, by Julie and Gregory Walhus attesting to certain facts and beliefs concerning Beaver Creek. Applicants objected to this exhibit on the basis that affiants were not available for cross-examination. For the reasons stated above at Objectors' Exhibit 2, the affidavit is excluded.

Objectors' Exhibit 4 is an affidavit dated September 23, 1992, by Arnold Sorenson attesting to his knowledge of Beaver Creek water use by Objectors.

Objectors' Exhibit 5 is an affidavit dated September 23, 1992, by Noreen Sorenson attesting to her knowledge of Beaver Creek water usage by Objectors.

Objectors' Exhibit 6 consists of two pages. The first page is entitled "1995 Water Depth and Flow Rate Taken on 36" Dia. culvert on Gallis Property" and lists the depth in the culvert on certain days. The second page is entitled "Rating Table for Circular Channel" and demonstrates how the depth measurements were calculated into imperial gallons per minute. Applicants objected to this exhibit on the basis that the measurements were calculated into imperial gallons and the culvert may not be the best location to take measurements, since the two culverts, Applicants' and Objectors', are separated by only 10 to 20 feet. There are some errors and misleading information in this exhibit;

however, imperial gallons per minute can be converted to U.S. gallons per minute and the information is useful as water availability information. Therefore, the objection is overruled and the exhibit accepted into the record.

Objectors' Exhibit 7 is a bound report prepared by Marc Spratt Consulting Hydrology entitled *Objection to Laxson/Courtney Beaver Creek Applications for Beneficial Water Use*.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following:

#### FINDINGS OF FACT

1. Application for Beneficial Water Use Permit 89309-s76LJ in the name of Steve and Paula Laxson and signed by Steve Laxson was filed with the Department on April 29, 1994, at 8:22 a.m. Application 89310-s76LJ in the name of and signed by Tom and Susan Courtney was filed with the Department on April 29, 1994, at 8:24 a.m. (Department file.)

2. Pertinent portions of the applications were published in the *Daily Inter Lake*, a newspaper of general circulation in the area of the source, on October 5, 1994. Additionally the Department served notice by first-class mail on individuals and public agencies which the Department determined might be interested in or affected by the proposed appropriation. One timely objection was received by the Department for each application and Applicants were notified of the objection by a

letter from the Department dated November 29, 1994. (Department file.)

3. Steve and Paula Laxson, for Application 89309-s76LJ, seek to appropriate the waters of Beaver Creek at a rate of 99.25 gallons per minute up to 16.71 acre-feet per year for irrigation; up to 143.25 acre-feet per year for fish and wildlife; and .13 acre-foot per year for stock. The proposed total appropriation is 99.25 gallons per minute up to 160.09 acre-feet per year. The proposed period of use is from January 1 through December 31, inclusive of each year, for fish and wildlife; from April 1 through October 31, inclusive of each year, for irrigation; and from January 1 through December 31, inclusive of each year, for stock. The proposed means of diversion is a pipeline beginning at a point in Government Lot 3, generally located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. The proposed place of use for fish and wildlife is Government Lot 3, generally located in the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. The proposed place of use for irrigation is 0.65 acres in Government Lot 3, generally located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , 6.57 acres in Government Lot 2, generally located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and 3.10 acres in Government Lot 3, generally located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , all in Section 19. The proposed place of use for stock is Government Lot 3, generally located in the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and Government Lot 2, generally located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19. Water would be piped to an offstream reservoir, with a capacity of 6.00 acre-feet, located in Government Lot 3, generally located in the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19.

4. In Application 89310-s76LJ, Tom and Susan Courtney propose to appropriate the waters of Beaver Creek at a rate of 65.50 gallons per minute up to 9.15 acre-feet per year for irrigation; up to 96.37 acre-feet per year for fish and wildlife; and up to .13 acre-foot per year for stock. The proposed total appropriation is 65.50 gallons per minute up to 105.65 acre-feet per year. The proposed period of use is from January 1 through December 31, inclusive of each year, for fish and wildlife; from April 1 through October 1, inclusive of each year, for irrigation; and from January 1 through December 31, inclusive of each year, for stock. The proposed means of diversion is a pipeline beginning at a point in NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. The proposed place of use for fish and wildlife is the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. The proposed place of use for irrigation is 4.5 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , 1.97 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and 0.49 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. The place of use for stock is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. Water would be piped to an offstream reservoir, with a capacity of 7.4 acre-feet, located in NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19.

5. Applicants have proven by a preponderance of evidence they have a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. Applicants Courtney own the proposed place of use for their project and the place of use for the Laxson proposed place of use. Applicants Laxson have

possessory interest as a lessee of the proposed place of use.

(Department file and testimony of Steve Laxson and Tom Courtney.)

6. Applicants have proven by a preponderance of evidence their proposed means of diversion, construction, and operation of the diversion works are adequate. For the Laxson project, a six-inch gravity flow, screened PVC pipe would be installed at the point of diversion on Beaver Creek to direct the water to the proposed fish and wildlife pond. The pipe would have a slope of 25 inches in 100 feet which would limit the intake to 99.25 gallons per minute. A shutoff device would be placed on the pipe at the creek to limit the flow or completely shut off the flow when the stream is called by a senior user. From the pond, water would be pumped to a stock tank for the horses. The stock tank would be located away from the creek banks. An automatic shutoff installed on the pipe to the stock tank would activate when the tank is full. A screened open ditch to return the water to the creek would be constructed from the northeast end of the pond. Irrigation water would be piped from the pond to the place of use for sprinkler irrigation on 10.32 acres. The size of the pipe and pump for the irrigation would be determined by the engineer. The preliminary design for this project was drafted by a professional engineer. The final design would be drafted by and constructed under his supervision.

For the Courtney project, a six-inch gravity flow, screened PVC pipe would be installed at the point of diversion on Beaver Creek to direct the water to the proposed fish and wildlife pond.

The pipe would have a slope of one inch in 75 feet which would limit the intake to 59.25 gallons per minute. A shutoff device would be placed on the pipe at the creek to limit the flow or completely shut off the flow when the stream is called by a senior user. From the pond, water would be pumped to a stock tank for the horses. The stock tank would be located away from the creek banks. An automatic shutoff installed on the pipe to the stock tank would activate when the tank is full. A screened open ditch to return the water to the creek would be constructed from the northeast end of the pond. Irrigation water would be piped from the pond to the place of use for sprinkler irrigation on 6.96 acres. The size of the pipe and pump for the irrigation would be determined by the engineer if a permit is issued. The preliminary design for this project was drafted by a professional engineer. The final design would be drafted by and constructed under his supervision. (Department file, Applicants' Exhibits 3 and 4, and testimony of Tom Courtney, Steve Laxson, and Jay Billmayer.)

7. It has not been proven by a preponderance of evidence there are unappropriated waters in the source of supply at the proposed point of diversion at times when the water can be put to the uses proposed and that the amount of water sought to be appropriated is reasonably available during the period in which Applicants seek to appropriate. Applicants' consultant measured the flow of Beaver Creek to be 487 gallons per minute on August 12, 1993, and again on June 27, 1995, when the flow rate was

1,220 gallons per minute at a culvert where Beaver Creek flows under the road, more specifically approximately on the half section line between the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19. Leo Gallis measured the depth of water in his culvert which is approximately 10 to 20 feet downstream of the culvert Applicants were measuring, on 16 occasions from May 1 to June 26, 1995. Those measurements were entered in a computer program which translated the water depth measurements into imperial gallons per minute. The imperial gallons per minute have been converted into U.S. gallons per minute as follows: On May 1, the flow of Beaver Creek was 351 gallons per minute; May 21, 273 gallons per minute; May 23, 204 gallons per minute; May 31, 142 gallons per minute; June 4, 142 gallons per minute; June 5, 204 gallons per minute; June 15, 351 gallons per minute; June 16, 276 gallons per minute; June 19, 351 gallons per minute; and June 20, 2,930 gallons per minute. The remaining measurements far exceed the amount that would be needed for both Applicants and Objectors. Marc Spratt measured the flow of the creek at Objectors' culvert on June 24, 1995, with a sag tape and a pygmy flow meter. On that occasion, the flow rate was 1,101.33 gallons per minute. On December 17, 1991, Fred A. Phillips of Thomas, Dean and Hoskins Inc. measured the flow of Beaver Creek at 385 gallons per minute at a point in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. Only on May 31 and June 4, 1995, was the flow not sufficient to provide water for both Applicants and Objectors. However, none of the foregoing measurements were taken at Applicants' points of diversion. They were taken

approximately three-quarters of a mile downstream from the Courtney point of diversion and a little more than three-quarters of a mile downstream from the Laxson proposed point of diversion. There is at least one other tributary that adds to the flow of Beaver Creek between Applicants' points of diversion and the locations of the measurements. Therefore, this information does not indicate there is unappropriated water in the source of supply at the proposed point of diversion at times when the water can be put to the use proposed or that the amount of water sought to be appropriated is reasonably available during the period in which Applicants seek to appropriate. (Applicants' Exhibits 2, 3 and 7 and Objectors' Exhibits 6 and 7, Department file and records, and testimony of Jay Billmayer, Leo Gallis, and Marc Spratt.)

8. Applicants have proven by a preponderance of evidence the water rights of a prior appropriator would not be adversely affected. If a permit is granted for these projects, the plans would include installation of a permanent shutoff device so that in the event of exceptionally low water periods where any existing water right would be adversely affected, upon legitimate "call" on the stream, Applicants would shut off their diversions to prevent any adverse impact to senior water rights owners. Having to "call" a stream is not an adverse effect. The appropriative system by its very nature contemplates the source of supply is less than the rights on a stream. That is the foundation for the rule of which an appropriator is to forego

exercise of its rights in those times of shortage. "First in time, first in right" would never operate if no call was ever made. (Applicants' Exhibit 11 and testimony of Tom Courtney and Jay Billmayer.)

9. Applicants have proven by a preponderance of evidence the proposed uses, fish and wildlife, stock, and irrigation are beneficial uses. The water would be used by both Applicants Laxson and Courtney to irrigate fruit trees, gardens, lawns, and pasture for the horses. The water would also be used for the fish and wildlife ponds as flow-through water to keep the ponds properly oxygenated for the fish.<sup>1</sup> Applicants would benefit from the irrigation of the fruit trees and gardens through the production of food. Applicants would benefit from the irrigation of the horse pastures by producing food for the horses which provide recreation for Applicants. The water used for lawn irrigation would benefit Applicants by maintaining the value of the properties and keeping a green area around the buildings to aid in fire prevention. Water flowing through the fish ponds provides recreation, fishing and swimming, for Applicants.

(Department file and testimony of Tom Courtney and Steve Laxson.)  
Mont. Code Ann. § 85-2-102(2)(a) (1993).

10. Applicants have proven by a preponderance of evidence the proposed use would not interfere unreasonably with other

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<sup>1</sup>The ponds filled with water as they were dug. Both Applicants have certificates of water rights for ground water development for their respective ponds.

planned uses or developments for which a permit has been issued or for which water has been reserved. There are no pending projects on this source for which permits have been issued or for which water has been reserved. (Department file and testimony of Jay Billmayer.)

11. Applicants are not required to prove no adverse effect to water quality or the ability of a discharge permit holder to satisfy effluent limitations. No objections relative to water quality were filed against this application nor were there any objections relative to the ability of a discharge permit holder to satisfy effluent limitations of his permit. (Department file.)

Based upon the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all substantive procedural requirements of law or rule have been fulfilled; therefore, the matter was properly before the Hearing Examiner. See Findings of Fact 1 and 2.

2. Applicants have not met all the criteria for issuance of beneficial water use permits. See Finding of Fact 7. Mont. Code Ann. § 85-2-311 (1993).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Application for Beneficial Water Use Permit 89309-s76LJ by Steve and Paula Laxson is DENIED.

Application for Beneficial Water Use Permit 89310-s76LJ by Tom and Susan Courtney is 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 proposal is mailed. Parties may file responses to any exception filed by another party. The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. 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 28<sup>th</sup> day of August, 1995.

  
Vivian A. Lighthizer,  
Hearing Examiner  
Department of Natural Resources  
and Conservation  
1520 East 6th Avenue  
Helena, Montana 59620-2301  
(406) 444-6615

MEMORANDUM

In denying the permit at this point, the Hearing Examiner does not purport to have determined that the proposed appropriation could not be granted, given sufficient evidence of unappropriated waters.

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, first class mail, at their address or addresses this 29<sup>th</sup> day of August, 1995, as follows:

Steve and Paula Laxson  
P.O. Box 1305  
Whitefish, MT 59937-1305

Tom and Susan Courtney  
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Whitefish, MT 59937-8321

Leo and Karen Gallis  
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Charles F. Brasen, Manager  
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(via electronic mail)

  
Cindy G. Campbell  
Hearings Unit Legal Secretary