

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

\* \* \* \* \*

IN THE MATTER OF THE )  
APPLICATION FOR CHANGE OF ) FINAL  
APPROPRIATION WATER RIGHT ) ORDER  
42M-G(M)103698-00 BY RICHLAND )  
COUNTY CONSERVATION DISTRICT )

RECEIVED  
MAR 18 1999

\* \* \* \* \*

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. The Department did notice one erroneous date in Finding of Fact 2 of the Proposal for Decision. The date of publication of the notice in the *Sidney Herald Leader* was April 15, 1998, not April 19 as stated. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation accepts and adopts the Findings of Fact, as corrected, and Conclusions of Law as contained the February 5, 1999, Proposal for Decision, and incorporates them by reference.

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

**ORDER**

Subject to the terms, conditions, restrictions, and limitations listed below, Application for Change of Appropriation Water Right 42M-G(M)103698-00 is granted to Richland County Conservation District to change the point of diversion to the

Final Order  
App. 42M-G(M)103698 by  
Richland County Conservation District

SE¼SE¼SE¼ of Section 11, Township 21 North, Range 58 East, Richland County, Montana. The authorized change of place of use is to 153 acres in Section 11, 363 acres in Section 12, and 421 acres in Section 13, all in Township 21 North, Range 56 East; 5 acres in SW¼ of Section 4, 1 acre in the SE¼ of Section 5, 55 acres in the E½ of Section 8, 331 acres in Section 9, 516 acres in Section 10, 368 acres in Section 11, 366 acres in Section 12, 144 acres in the S½ of Section 13, 119 acres in the NW¼ of Section 14, 217 acres in Section 15, 516 acres in Section 17, 257 acres in Section 18, 516 acres in Section 20, 426 acres in Section 21, 143 acres in Section 22, 143 acres in Section 23, 526 acres in Section 24, 129 acres in the W½ of 27, 273 acres in Section 28, 258 acres in the N½ of Section 29, 129 in the NE¼ of Section 30, and 308 acres in Section 33, all in Township 21 North, Range 57 East; 233 acres in Section 3, 372 acres in Section 4, 206 acres in the E½ of Section 5, 14 acres in the SW¼ of Section 7, 201 acres in Section 9, 229 acres in Section 17, 129 acres in Section 18, 437 acres in Section 19, and 118 acres in the S½ of Section 20, all Township 21 North, Range 58 East; 80 acres in the SW¼ of Section 14, 129 acres in the S½ of Section 15, 180 acres in the S½ of Section 22, 98 acres in the W½ of Section 23, 153 acres in Section 25, 338 acres in Section 26, and 468 acres in Section 27, all in Township 22 North, Range 57 East; and 205 acres in the E½ Section 6, 258 acres in 7, 315 acres in Section 8, 317 acres in Section 17, 147 acres in Section

18, 85 acres in the SE¼ of Section 32, and 516 acres in Section 33, all in Township 22 North, Range 58 East, for a total of 11,965 acres, all in Richland County, Montana.

A. \*\* PUMP AND SCREENING REQUIREMENTS

Appropriator shall withdraw its water through floating turbine pumps. The pumps shall be screened in accordance with the Stipulation for Conditions signed January 27, 1999, by Applicant and Montana Department of Fish, Wildlife & Parks.

B. \*\* SCREEN MONITORING AND MAINTENANCE REQUIREMENTS

Appropriator will monitor, maintain, and repair the screens and the self-cleaning mechanisms to ensure the screens remain intact, are functioning properly, and are free of debris. This is to be accomplished by a monitoring, maintenance, and repair program on a schedule agreed to by Appropriator and Montana Department of Fish, Wildlife & Parks as necessary to ensure the continued integrity of the screening. Appropriator shall submit annual reports of the monitoring, maintenance, and repair of the screens to the Department of Natural Resources and Conservation. The monitoring, maintenance, and repair program may be done by Appropriator or by an independent contractor employed by Appropriator. Appropriator and Montana Department of Fish, Wildlife & Parks will review and adjust the monitoring, maintenance, and repair program as necessary to ensure the continuing integrity of the screening is maintained.

C. \*\* WATER MEASUREMENT RECORDS REQUIRED

The appropriator shall install a Department approved in-line flow meter at a point in the delivery line approved by the Department to record the flow rate and volume of water diverted. Water must not be diverted until the required measuring device is in place and operating. On a form provided by the Department, the appropriator shall keep monthly written records of the flow rate and volume measurements and shall submit the records by November 30 of each year and upon request at other times during the year. Failure to submit records may be cause for revocation or modification of a permit or change. The records must be submitted to the Water Resources Regional Office. Contact the regional office listed below to obtain their current address.

GLASGOW PH: 406-228-2561 FAX: 406-228-8706

The appropriator shall maintain the measuring device so it always operates properly and measures flow rate accurately.

D. \*\* WATER QUALITY PROTECTION PLAN REQUIREMENT

Appropriator shall, in cooperation with the Richland County Conservation District, Department of Environmental Quality, and the Department of Natural Resources and Conservation, develop a water quality protection plan for Fox Creek, Crane Creek, and Sears Creek, which includes implementation of Agricultural Best Management Practices to minimize non-point source pollution through land and irrigation water management practices.

E. \*\* WARNING SIGNS FOR DIVERSION

Appropriator shall install signs along the Yellowstone River both above and below the diversion to warn boaters of these hazards.

F. \*\* WETLAND MITIGATION MEASURES

Appropriator shall consult with the Natural Resource Conservation Service and, if required, the Army Corps of Engineers to implement mitigation measures to protect the wetlands.

G. \*\* LIABILITY WAIVER:

The issuance of this right by the Department shall not reduce the appropriator's liability for damages caused by the appropriator's exercise of this right. Nor does the Department in issuing the right in any way acknowledge liability for damage caused by the appropriator's exercise of this right.

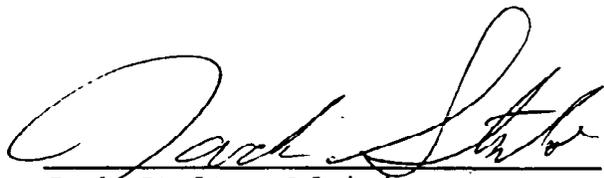
**NOTICE**

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.

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 12<sup>th</sup> day of March, 1999.



Jack Stults, Administrator  
Water Resources Division  
Department of Natural Resources  
and Conservation  
P.O. Box 201601  
Helena, MT 59620-1601  
(406) 444-6605

**CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of the Final Order was served upon all parties listed below on this 17<sup>th</sup> day of March, 1999.

RICHLAND COUNTY  
CONSERVATION DISTRICT  
HCA 89 BOX 5165A  
SIDNEY MT 59270

WILMER & JOY BUXBAUM  
RODNEY BUXBAUM  
HC 57 BOX 4073  
SIDNEY MT 59720

GARY AMESTOY  
230 MEADOW DR  
HELENA MT 59601

JOHN TUBBS, CHIEF  
RESOURCE DEVELOPMENT  
BUREAU  
DEPARTMENT OF NATURAL  
RESOURCES & CONSERVATION  
1625 11TH AVE  
PO BOX 201601  
HELENA MT 59620-1601

JACQUE W BEST  
302 WEST MAIN  
SIDNEY MT 59270

DEPARTMENT OF FISH,  
WILDLIFE & PARKS  
ATTN: BOB LANE  
1420 E 6TH AVE  
HELENA MT 59620

LARRY DOLAN, HYDROLOGIST  
WATER RESOURCES DIVISION  
DEPARTMENT OF NATURAL  
RESOURCES & CONSERVATION  
PO BOX 201601  
HELENA MT 50620-1601

DUANE CLAYPOOL  
DEPARTMENT OF NATURAL  
RESOURCES & CONSERVATION  
CONSERVATION & RESOURCE  
DEVELOPMENT DIVISION  
PO BOX 276  
MILES CITY MT 59301-0276

NANCY ANDERSEN, CHIEF  
WATER RIGHTS BUREAU  
DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION  
PO BOX 201601  
HELENA MT 59620-1601

BOB LARSON, MANAGER  
GLASGOW AND HAVRE WATER  
RESOURCES REGIONAL OFFICE  
PO BOX 1828  
HAVRE MT 59501-1828

GLASGOW WATER RESOURCES  
REGIONAL OFFICE  
PO BOX 1269  
GLASGOW MT 59230-1269

  
\_\_\_\_\_  
Mandi Shulund  
Hearings Assistant

RECEIVED  
MAY 10 1999

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

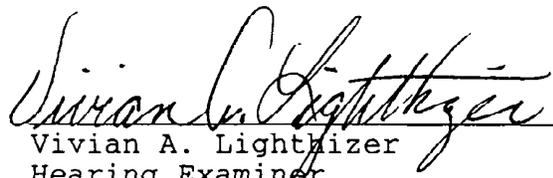
\* \* \* \* \*

IN THE MATTER OF THE	)	
APPLICATION FOR CHANGE OF	)	NOTICE
APPROPRIATION WATER RIGHT	)	OF
42M-G(M)103698-00 BY RICHLAND	)	ERRATA
COUNTY CONSERVATION DISTRICT	)	

\* \* \* \* \*

While preparing the Authorization to Change Appropriation Water Right 42M-G(M)103698-00 granted to Richland County Conservation District, an error was discovered in the number of acres to be irrigated in Section 15, Township 21 North, Range 57 East. It should be 271 acres instead of 217. Please replace page 2 of your copy of the Final Order and page 6 of your copy of the Proposal for Decision.

Dated this \_\_\_\_\_ day of May, 1999.

  
 Vivian A. Lightizer  
 Hearing Examiner  
 Water Resources Division  
 Department of Natural Resources  
 and Conservation  
 P.O. Box 201601  
 Helena, MT 59620-1601

Notice of Errata  
App. 42M-G(M)103698 by  
Richland County Conservation District

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the Notice of Errata was served upon all parties listed below this \_\_\_\_day of May, 1999.

RICHLAND COUNTY  
CONSERVATION DISTRICT  
HCA 89 BOX 5165A  
SIDNEY MT 59270

GARY AMESTOY  
230 MEADOW DR  
HELENA MT 59601

JACQUE W BEST  
302 WEST MAIN  
SIDNEY MT 59270

DEPARTMENT OF FISH,  
WILDLIFE & PARKS  
ATTN: BOB LANE  
1420 E 6TH AVE  
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RODNEY BUXBAUM  
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PO BOX 1828  
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GLASGOW WATER RESOURCES  
REGIONAL OFFICE  
PO BOX 1269  
GLASGOW MT 59230-1269

  
Mandi Shulund  
Hearings Assistant

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

RECEIVED  
FEB 08 1999

\* \* \* \* \*

IN THE MATTER OF THE	)	
APPLICATION FOR CHANGE OF	)	PROPOSAL
APPROPRIATION WATER RIGHT	)	FOR
42M-G(M)103698-00 BY RICHLAND	)	DECISION
COUNTY CONSERVATION DISTRICT	)	

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\* \* \* \* \*

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 matter on January 28, 1999, in Sidney, Montana, to determine whether an authorization to change a water right should be granted to Richland County Conservation District (Applicant) for the above application under the criteria set forth in Mont. Code Ann. §§ 85-2-402(2)(4) and (5) and 85-2-316(4) and (12) (1997).

APPEARANCES

Richland County Conservation District (Applicant) appeared at the hearing and deferred to West Crane Sprinkler Irrigation Project (West Crane) as proponent for the project. West Crane appeared at the hearing by and through counsel, Jacque W. Best. Gary Amestoy, Amestoy and Associates, LLC, and Brian Milne,

Proposal for Decision  
App. 42M-G(M)103698 by  
Richland County Conservation District

f.

Professional Engineer with Interstate Engineering, Inc. (Interstate), appeared at the hearing and testified for West Crane.

Bob Larson, Manager of the Glasgow and Havre Water Resources Regional Offices of the Department of Natural Resources and Conservation (Department) and Ron Miller, Water Resources Specialist with the Glasgow Water Resources Regional Office, were called to testify by the Hearing Examiner.

Objectors Wilmer, Joy, and Rodney Buxbaum appeared at the hearing and presented testimony.

**PRELIMINARY MATTERS**

The water right sought to be changed is a reserved water right granted to the Richland County Conservation District. West Crane Sprinkler Irrigation Project is a limited liability company which has applied to the Richland County Conservation District to use 132.50 cubic feet per second up to 23,930 acre-feet of its reserved water right from the Yellowstone River. When Richland County Conservation District receives a request to use the reserved water on places of use outside the places of use set forth in the reservation process, it must file an application to

change a water right with the Department and meet the requirements set forth in Mont. Code Ann. §§ 85-2-402 and 85-2-316(4) (1997). Since the Richland County Conservation District is not the entity which would use the water, the entity, in this case, West Crane, presented the case for meeting the change criteria. "Richland County Conservation District", "West Crane", and "Applicant" are used interchangeably throughout this Proposal.

**EXHIBITS**

Applicant presented four exhibits for the record. All were accepted without objection. Objectors offered no exhibits for the record.

Applicant's Exhibit 1 is the Stipulation for Conditions and Withdrawal of Objection by Montana Department of Fish, Wildlife & Parks.

Applicant's Exhibit 2 is a copy of a portion of a USGS topographical map mounted on a piece of foam board approximately 14 inches by 13.5 inches. Applicant's proposed point of diversion and Objectors' points of diversion were indicated by red dots.

Applicant's Exhibit 3 is a copy of a aerial photograph greatly enlarged and mounted on a two feet by three feet foam board. This photograph was taken by Interstate.

Applicant's Exhibit 4 is an aerial photograph taken by Interstate. It shows the slough area which connects with the side channel that provides water to Objectors Buxbaum's pumps. This photograph clearly shows the migration of the Yellowstone River over the years.

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

FINDINGS OF FACT

1. Application for Change of Appropriation Water Right 42M-G(M)103698-00 in the name of Richland County Conservation District and signed by Walter Buxbaum was received in the Department's Glasgow Water Resources Regional Office on September 1, 1998, at 10:38 a.m. (Department file.)

2. Pertinent portions of the application were published in the *Sidney Herald Leader*, a newspaper of general circulation in the area of the source on April 19, 1998. 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 change. Two objections to the proposed change were received by the Department. One from Wilmer and Rodney Buxbaum and the other from Montana Department of Fish, Wildlife & Parks. On January 27, 1999, Objector Montana Fish, Wildlife & Parks withdrew its objection upon stipulation with Applicant. (Department file and Applicant's Exhibit 1.)

3. There are more than 50 different species of fish in the lower Yellowstone River. One species, the Pallid Sturgeon, is listed as Endangered. Four species, the Paddlefish, Shortnose Gar, Sturgeon Chub, and Sicklefin Chub are listed as Species of Special Concern and nine species are listed as gamefish species. To prevent impingement or entrainment of fish, fish larvae, and fish eggs, Applicant has stipulated with the Montana Department of Fish, Wildlife & Parks to screen its pumps". (Applicant's Exhibit 1).

4. Applicant seeks to change the point of diversion and places of use of 42M-M009945, a reserved water right for use of

the Yellowstone River water granted to Applicant by the Board of Natural Resources and Conservation on December 15, 1978, at 4:15 p.m.

The proposed change in point of diversion is to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, Township 21 North, Range 58 East, Richland County, Montana. The proposed change of place of use is to 153 acres in Section 11, 363 acres in Section 12, and 421 acres in Section 13, all in Township 21 North, Range 56 East; 5 acres in SW $\frac{1}{4}$  of Section 4, 1 acre in the SE $\frac{1}{4}$  of Section 5, 55 acres in the E $\frac{1}{2}$  of Section 8, 331 acres in Section 9, 516 acres in Section 10, 368 acres in Section 11, 366 acres in Section 12, 144 acres in the S $\frac{1}{2}$  of Section 13, 119 acres in the NW $\frac{1}{4}$  of Section 14, 217 acres in Section 15, 516 acres in Section 17, 257 acres in Section 18, 516 acres in Section 20, 426 acres in Section 21, 143 acres in Section 22, 143 acres in Section 23, 526 acres in Section 24, 129 acres in the W $\frac{1}{2}$  of 27, 273 acres in Section 28, 258 acres in the N $\frac{1}{2}$  of Section 29, 129 in the NE $\frac{1}{4}$  of Section 30, and 308 acres in Section 33, all in Township 21 North, Range 57 East; 233 acres in acres in Section 3, 372 acres in Section 4, 206 acres in the E $\frac{1}{2}$  of Section 5, 14 acres in the

SW¼ of Section 7, 201 acres in Section 9, 229 acres in Section 17, 129 acres in Section 18, 437 acres in Section 19, and 118 acres in the S½ of Section 20, all Township 21 North, Range 58 East; 80 acres in the SW¼ of Section 14, 129 acres in the S½ of Section 15, 180 acres in the S½ of Section 22, 98 acres in the W½ of Section 23, 153 acres in Section 25, 338 acres in Section 26, and 468 acres in Section 27, all in Township 22 North, Range 57 East; and 205 acres in the E½ Section 6, 258 acres in 7, 315 acres in Section 8, 317 acres in Section 17, 147 acres in Section 18, 85 acres in the SE¼ of Section 32, and 516 acres in Section 33, all in Township 22 North, Range 58 East, for a total of 11965 acres, all in Richland County, Montana. (Department file.)

5. The Richland County Conservation District's reservation requires under conditions imposed by the Board of Natural Resources and Conservation that adequate measuring devices approved by the Department shall be installed during construction on all reservation diversion, impoundment, conveyance, and delivery facilities. The water diverted, impounded, conveyed and returned shall be measured and recorded on a regular basis throughout the life of the project. Such records shall be

submitted by the reservant to the Department upon request.  
(Order of BNRC establishing water reservations for the  
Yellowstone River, paragraph 49)

6. Since this application is to change the place of use for  
a diversion that results in 4,000 or more acre-feet a year and  
5.5 or more cubic feet per second of water being consumed and it  
is a reserved right, Applicant must prove by clear and convincing  
evidence the criteria in Mont. Code Ann. § 85-2-402(2), and (4)  
(1997) are met. Mont. Code Ann. §§ 85-2-402(5) (1997).

7. Since Applicants are also proposing to change a water  
reservation, Applicant must also establish the purpose, need, and  
amount of water necessary for the change of reservation, and that  
the change of reservation is in the public interest. Mont. Code  
Ann. § 85-2-316(4) &(12). Applicant has established that the  
water applied for is necessary for sugar beet irrigation on the  
project property and that the project is in the public interest.

8. Applicant has provided clear and convincing evidence the  
proposed change in appropriation right would not adversely affect  
the use of the existing water rights of other persons or other  
perfected or planned uses or developments for which a permit or

certificate has been issued or for which a state water reservation has been issued.

West Crane requested Interstate to evaluate the current situation of Objectors Buxbaum regarding their two pump stations, evaluate the effects on the water level the proposed project would have on the Yellowstone River, and provide a report of the findings. The information gathered and analyzed by Interstate indicates the West Crane project would not adversely affect the water rights of the Buxbaums or other prior rights. Objectors Buxbaum would still have the volume of Yellowstone River water flow past their property to meet their quantity needs. The natural migration of the river is causing the side channels where Objectors Buxbaum's access points are located to have reduced capacity. Due to the natural changes in the Yellowstone River, Objectors Buxbaum's points of diversion may need to be moved or Buxbaums may need to install a pump in the Yellowstone River to pump water into the side channel regardless of whether the West Crane intake is constructed.

The amount of water withdrawn by West Crane would not adversely impact the existing water rights of the Buxbaums.

Based on Yellowstone River information obtained by Interstate, if West Crane removed the maximum of 145 cubic feet per second for irrigation from the Yellowstone River, the elevation of the river would not decrease the normal flow of the river by more than 0.091 feet or 1.1 inches. This indicates there would be no adverse effect to any prior water rights.

Objectors Buxbaum contend they would be adversely affected if the water level in the Yellowstone River dropped even one inch. No evidence was provided to support this contention. The available evidence indicates any jeopardy the Buxbaums' diversion works may experience is the result of natural changes in the shape and course of the Yellowstone River.

Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the lowering of a water level in a water course, if the prior appropriator can reasonably exercise the water right under the changed conditions. Mont. Code Ann. § 85-2-402(1). Here, Objectors Buxbaum can reasonably exercise their water right by installing a pump on the mainstem of the Yellowstone River to supply water to the side channel or they

could extend their ditch or install a pipeline to a pump site on the Yellowstone River. (Department file and testimony of Brian Milne and Rodney, Wilmer, and Joy Buxbaum.)

9. Applicant's have proven by clear and convincing evidence the proposed means of diversion, construction, and operation of the appropriation works are adequate.

The proposed means of diversion is 14 floating turbine pumps. Nine pumps would be powered by nine 200 horsepower electric motors, four pumps would be powered by four 100 horsepower electric motors, and one pump would be powered by a 60 horsepower electric motor. The pumps would be screened to prevent impingement or entrainment of fish, fish larvae, and fish eggs. The screening would be a fine mesh constructed of 22-gauge wire cloth woven to 8 meshes per inch or an equivalent, resulting in a screen opening size of 2.5 millimeters or 0.1 inches. The screens would be equipped with self-cleaning mechanisms.

The proposed delivery works are a manifold pipe system which would connect directly to a 60-inch diameter mainline pipe. This pipe would connect to subsequent mainline pipe ranging from 12 inches to 60 inches in diameter. Submainlines ranging from six-

inch to 12-inch diameter would carry water from the mainline to the center pivot sprinkler systems. Booster pumps would be located at various stations in the pipeline system. Water would be applied through 101 low pressure, high efficiency center pivot sprinklers of varying length. All pivots would be equipped with drop tubes and spray nozzles. (Department file and Applicant's Exhibit 1.)

10. Applicant has proven by clear and convincing evidence the proposed use of water, irrigation, is a beneficial use. Irrigation is a beneficial use of water. Mont. Code Ann. § 85-2-102(2)(a) (1997). The amount of water requested, two acre-feet per acre, is reasonable for the crops customarily grown, the climatic area, and the method of irrigation. Therefore, the amounts are not wasteful and constitute a beneficial use. (Department file and testimony of Bob Larson and Ron Miller.)

11. Applicant has proven by clear and convincing evidence it has a possessory interest, or the written consent of the person with the possessory interest, in the proposed places of use. West Crane Sprinkler Irrigation Project LLC is a limited liability company organized on July 23, 1998. Individual members

of the company have possessory interest in the proposed places of use and by becoming a member of West Crane, establish Applicant has consent of the persons with possessory interest in the proposed places of use. (Department file.)

12. 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.)

13. Applicant has proven by clear and convincing evidence the criteria in Mont. Code Ann. § 85-2-402(4) have been met and the proposed change is a reasonable use.

This proposal would not adversely affect the demands on the State water supply or projected demands for water for future beneficial purposes. The water sought to be changed has not been available for general appropriation since 1978 when the Yellowstone River reservations were granted by the Board of Natural Resources and Conservation. Only those entities granted the use of the water by the Richland County Conservation District could appropriate the reserved water.

The benefit to Applicant and the State derived from the

proposed change is an increase in the viability of agricultural operations in the area which would assist in retaining population in the project area. The project would indirectly generate more jobs in the area which would stimulate the economy. (Department file.)

The proposed change would not affect the quantity and quality of water for existing uses in the source of supply. As stated above, the water sought to be changed has not been available for general appropriation since 1978, thus the proposed change would not reduce the quantity of unappropriated water. The proposed means of irrigation, sprinkler, creates little or no runoff, if operated correctly. It is unlikely that substantial return flow would ever reach the Yellowstone River. Therefore, little or no pollutants from return flows would enter the Yellowstone River to cause an adverse effect on the quality of water.

Salinity values of the Yellowstone River water are low enough that several years of irrigation would probably be required before salinity would impact the soils. Precipitation, dormant season, and preplant irrigations, singly or in

combinations, may be sufficient to replenish deep soil moisture and leach accumulated salts out of the root zone. Thus, there would most likely be no effect on private property rights by the creation of or contribution to saline seep.

There is no source of low quality water near the proposed project to make the use of that water feasible nor is it feasible to use low quality water for irrigation as suggested by Mont. Code Ann. § 85-2-402(4)(b)(iv). Also there is a concern that were low quality water to be used in the proposed project the potential to impact the water quality of Fox Creek and Crane Creek could increase. (Department file.)

An Environmental Assessment performed by the Department tends to show irrigation return flows from West Crane could affect the quantity and quality of water in the Fox Creek, Crane Creek, and Sears Creek drainages. Fox Creek and Crane Creek are listed on the Montana 303(d) list of water bodies in need of total maximum daily load development. Crane Creek flows into Gartside Reservoir, a popular local recreation area with good water quality. It is expected with proper operation of the irrigation systems, the runoff and return flows will be little or

nothing. Nevertheless, West Crane must work with the Richland County Conservation District, Department of Environmental Quality and the Department to develop a water quality protection plan that includes implementation of Agricultural Best Management Practices. Mont. Code Ann. § 85-2-402(b)(iii) (1997).

(Department file.)

Project pumps and bank stabilization measures would present hazards to boaters on the Yellowstone River. Signs should be placed along the river both above and below the diversion to warn boaters of these hazards.

Wetlands could be affected by the proposed project. Applicant must consult the Natural Resource Conservation Service and perhaps, the Army Corps of Engineers to determine wetlands mitigation measures which must be implemented.

Based on the foregoing Findings of Fact and 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, 2 and 4. Mont. Code Ann. § 85-2-402 (1997).

2. Applicant has met all the criteria for issuance of an Authorization to Change. See Findings of Fact 3, and 5 through 13. Mont. Code Ann. § 85-2-402 (1997).

3. Applicant has established the criteria for changing Richland Conservation District's water reservation. See Finding of Fact 7.

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

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations listed below, Authorization to Change 42M-G(M)<sup>R</sup>103698-00 is granted to Richland County Conservation District to change the point of diversion and place of use as follows:

The authorized change in point of diversion is the SE~~1~~/~~4~~SE~~1~~/~~4~~SE~~1~~/~~4~~ of Section 11, Township 21 North, Range 58 East, Richland County, Montana. The authorized change of places of use is 153 acres in Section 11, 363 acres in Section 12, and 421 acres in Section 13, all in Township 21 North, Range 56 East; 5 acres in SW~~1~~/~~4~~ of

Section 4, 1 acre in the SE¼ of Section 5, 55 acres in the E½ of Section 8, 331 acres in Section 9, 516 acres in Section 10, 368 acres in Section 11, 366 acres in Section 12, 144 acres in the S½ of Section 13, 119 acres in the NW¼ of Section 14, 217 acres in Section 15, 516 acres in Section 17, 257 acres in Section 18, 516 acres in Section 20, 426 acres in Section 21, 143 acres in Section 22, 143 acres in Section 23, 526 acres in Section 24, 129 acres in the W½ of 27, 273 acres in Section 28, 258 acres in the N½ of Section 29, 129 in the NE¼ of Section 30, and 308 acres in Section 33, all in Township 21 North, Range 57 East; 233 acres in acres in Section 3, 372 acres in Section 4, 206 acres in the E½ of Section 5, 14 acres in the SW¼ of Section 7, 201 acres in Section 9, 229 acres in Section 17, 129 acres in Section 18, 437 acres in Section 19, and 118 acres in the S½ of Section 20, all Township 21 North, Range 58 East; 80 acres in the SW¼ of Section 14, 129 acres in the S½ of Section 15, 180 acres in the S½ of Section 22, 98 acres in the W½ of Section 23, 153 acres in Section 25, 338 acres in Section 26, and 468 acres in Section 27, all in Township 22 North, Range 57 East; and 205 acres in the E½ Section 6, 258 acres in 7, 315 acres in Section 8, 317 acres in

Section 17, 147 acres in Section 18, 85 acres in the SE¼ of Section 32, and 516 acres in Section 33, all in Township 22 North, Range 58 East, for a total of 11965 acres, all in Richland County, Montana.

A. \*\* PUMP AND SCREENING REQUIREMENTS

Appropriator shall withdraw its water through floating turbine pumps. The pumps shall be screened in accordance with the Stipulation for Conditions signed January 27, 1999 by Applicant and Department of Fish, Wildlife, and Parks.

B. \*\* SCREEN MONITORING AND MAINTENANCE REQUIREMENTS

Appropriator will monitor, maintain, and repair the screens and the self-cleaning mechanisms to ensure the screens remain intact, are functioning properly, and are free of debris. This is to be accomplished by a monitoring, maintenance, and repair program on a schedule agreed to by Appropriator and Montana Department of Fish, Wildlife & Parks as necessary to ensure the continued integrity of the screening. Appropriator shall submit annual reports of the monitoring, maintenance, and repair of the screens to the Department of Natural Resources and Conservation. The monitoring, maintenance, and repair program may be done by

Appropriator or by an independent contractor employed by Appropriator. Appropriator and Montana Department of Fish, Wildlife & Parks will review and adjust the monitoring, maintenance, and repair program as necessary to ensure the continuing integrity of the screening is maintained.

C. **\*\* WATER MEASUREMENT RECORDS REQUIRED:**

The appropriator shall install a Department approved in-line flow meter at a point in the delivery line approved by the department to record the flow rate and volume of water diverted. Water must not be diverted until the required measuring device is in place and operating. On a form provided by the Department, the appropriator shall keep monthly written records of the flow rate and volume measurements and shall submit the records by November 30 of each year and upon request at other times during the year. Failure to submit records may be cause for revocation or modification of a permit or change. The records must be submitted to the Water Resources Regional Office. Contact the regional office listed below to obtain their current address.

GLASGOW PH: 406-228-2561 FAX: 406-228-8706

The appropriator shall maintain the measuring device so it always

operates properly and measures flow rate accurately.

D. \*\* WATER QUALITY PROTECTION PLAN REQUIREMENT

Appropriator shall, in cooperation with the Richland County Conservation District, Department of Environmental Quality, and the Department of Natural Resources and Conservation, develop a water quality protection plan for Fox Creek, Crane Creek, and Sears Creek, which includes implementation of Agricultural Best Management Practices to minimize non-point source pollution through land and irrigation water management practices.

E. \*\* WARNING SIGNS FOR DIVERSION

Appropriator shall install signs along the Yellowstone River both above and below the diversion to warn boaters of these hazards.

F. \*\* WETLAND MITIGATION MEASURES Appropriator shall

consult with the Natural Resource Conservation Service and, if required, the Army Corps of Engineers to implement mitigation measures to protect the wetlands.

G. \*\* LIABILITY WAIVER:

The issuance of this right by the Department shall not reduce the appropriator's liability for damages caused by the appropriator's exercise of this right. Nor does the Department in issuing the

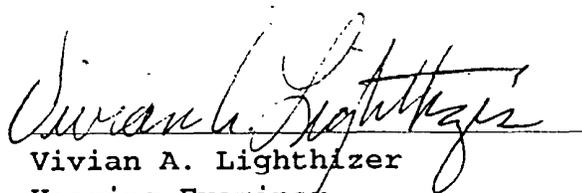
right in any way acknowledge liability for damage caused by the appropriator's exercise of this right.

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. Exceptions must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities upon which the party relies, and specific citations to the record. Vague assertions as to what the record shows or does not show without citation to the precise portion of the record will be accorded little attention. Any exception containing obscene, lewd, profane, or abusive language shall be returned to the sender. 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.

Dated this 5<sup>th</sup> day of February, 1999.



Vivian A. Lighthizer  
Hearing Examiner  
Water Rights Bureau  
Department of Natural  
Resources and Conservation  
PO Box 201601  
Helena, MT 59620-1601

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the Proposal for Decision was served on all parties this 5<sup>th</sup> day of February, 1999.

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CONSERVATION DISTRICT  
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230 MEADOW DR  
HELENA MT 59601

JACQUE W BEST  
302 WEST MAIN  
SIDNEY MT 59270

DEPARTMENT OF FISH,  
WILDLIFE & PARKS  
ATTN: BOB LANE  
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HELENA MT 59620

WILMER & JOY BUXBAUM  
RODNEY BUXBAUM  
HC 57 BOX 4073  
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Mandi Shulund  
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