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

* * * * * * * *

IN THE MATTER OF THE APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 73396-s76H BY RONALD AND JANET TRULOCK AND NO. 76041-g76H BY RONALD TRULOCK, AND APPLICATION FOR CHANGE OF APPROPRIATION WATER RIGHT NO. G(W)123885-76H BY RONALD E. AND JANET J. TRULOCK	FINAL ORDER

* * * * * * * *

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 September 18, 1991, Proposal for Decision, and incorporates them herein by reference.

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

ORDER

I. Subject to the terms, conditions, restrictions, and limitations set forth below, **Authorization to Change Appropriation Water Right No. G(W)123885-76H by Ronald E. and Janet J. Trulock is granted** to change the point of diversion of Statement of Claim No. W123885-76H to the NE¼SE¼SW¼ of said Section 9, Township 5 North, Range 20 West and to add that point of diversion to Exempt Water Right No. E073327-76H which is for 6.048 acre-feet of stock water per year. The places of use for

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the irrigation are 34 acres in the SE¼SW¼, 23 acres in the SW¼SE¼ and 10 acres in the SW¼NE¼SW¼ of said Section 9. The places of use for the exempt stock water right are the undeveloped spring located in the SE¼NE¼SW¼ and the new sump pump site located in the NE¼SE¼SW¼, both in said Section 9. The period of use for the irrigation is from April 1 to October 31, inclusive of each year. The period of use for the stock water use is from January 1 through December 31, inclusive of each year.

1. This Authorization is subject to all prior existing water rights in the source of supply. Further, this Authorization is subject to any final determination of existing water rights as provided by Montana law.

2. The approval of this change is not to be construed as recognition by the Department of the water rights involved. All rights are subject to possible modification under the proceedings pursuant to Title 85, Chapter 2, Part 2, MCA, and § 85-2-404, MCA.

3. The change in point of diversion granted by this Authorization is subject to the authority of court appointed water commissioners, if and when appointed, to admeasure and distribute to the parties using water in the source of supply the water to which they are entitled. The Appropriator shall pay his proportionate share of the fees and compensation and expenses, as fixed by the district court, incurred in the distribution of waters granted in this Authorization to Change.

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4. The Appropriator shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records to the Department upon request. This condition is being applied to this change until quantification/verification occurs.

II. Subject to the terms, conditions, restrictions, and limitations set forth below, **Application for Beneficial Water Use Permit No. 73396-s76H by Ronald and Janet Trulock is granted** to appropriate up to one cfs not to exceed 724 acre-feet of water from an unnamed tributary of the Bitterroot River at a point in the SW¼SE¼NW¼ of Section 9 for nonconsumptive use in an on-stream flow-through fish pond with a capacity of 3.6 acre-feet located in the SW¼SE¼NW¼ of Section 9. The period of use and diversion is from January 1 through December 31, inclusive of each year.

1. This Permit is subject to all prior existing water rights in the source of supply. Further, this Permit is subject to any final determination of existing water rights as provided by Montana law.

2. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation, a Water Right Transfer Certificate, Form 608, pursuant to § 85-2-424, MCA.

3. The Permittees shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records to the Department upon request. This condition is being applied to this Permit until

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quantification through permit verification occurs.

4. This Permit is subject to the installation of an adequate drainage device to satisfy existing water rights.

5. The Permittees shall install two measuring devices; one on the inflow of the pond and one on the outflow. The Permittees shall confer with personnel of Missoula Water Resources Regional Office before selection and installation of said measuring devices. Further, the Permittees must bypass stream flows through the pond significantly undiminished in quantity, quality, and timing.

6. If, at any time after this Permit is issued, a written complaint is received by the Department alleging that diverting from this source is adversely affecting a prior water right, the Department may make a field investigation of the project. If, during the field investigation, the Department finds sufficient evidence supporting the allegation, it may conduct a hearing in the matter allowing the Permittee to show cause why the Permit should not be modified or revoked. The Department may then modify or revoke the Permit to protect existing rights or allow the permit to continue unchanged if the hearing officer determines that no existing water rights are being adversely affected.

III. Subject to the terms, conditions, restrictions, and limitations set forth below, **Application for Beneficial Water Use Permit No. 76041-g76H is granted** to appropriate up to one cfs not to exceed 724 acre-feet of water per year of groundwater at a

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point in the SE¼NE¼SW¼ of Section 9, Township 5 North, Range 20 West, for a nonconsumptive off-stream flow-through fish pond. The period of use and diversion is from January 1 through December 31.

1. This Permit is subject to all prior existing water rights in the source of supply. Further, this Permit is subject to any final determination of existing water rights as provided by Montana law.

2. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation, a Water Right Transfer Certificate, Form 608, pursuant to § 85-2-424, MCA.

3. The Permittee shall install two measuring devices; one on the pond outflow and one on the pond inflow. Further, the Permittee shall pass diverted flows through the pond substantially undiminished in quantity, quality, and timing.

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.

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Dated this 18th day of October, 1991.

Lawrence Siroky for
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 18th day of October, 1991 as follows:

Ronald and Janet Trulock
856 N. Shoshone Loop
Hamilton, MT 59840

G. Robert and Joan Johnson
324 Grantsdale Rd.
Hamilton, MT 59840

Jerry W. and Susan B. Wolf
620 Fish Hatchery Rd.
Hamilton, MT 59840

Joel and Nancy Bender
633 Fish Hatchery Rd.
Hamilton, MT 59840

William D. and Mary B. Foley
SE 521 Foley Lane
Hamilton, MT 59840

Orrin D. and Norma J. Hill
700 Fish Hatchery Rd.
Hamilton, MT 59840

Sharon M. Buchheister,
Executrix of Cassie Davis
Estate
3429 Tourmaline Drive
Carson City, NV 89701

David W. and Susan E. France
458 Grant Lane
Hamilton, MT 59840

Bernie A. & Elizabeth F. Swift
236 Rose Lane
Hamilton, MT 59840

Muriel W. George, ET AL
493 Grant Lane
Hamilton, MT 59840

Daly Ditches Irrigation Dist.
ATTN: Thomas P. Holling
534 Tammany Lane
Hamilton, MT 59840

Michael P. McLane, Manager
Missoula Water Resources
Regional Office
P.O. Box 5004
Missoula, MT 59806

Harvey R. & Margaret A. Sharp
266 Rose Lane
Hamilton, MT 59840

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Donna M. and Michael J. Owen
656 Fish Hatchery Road
Hamilton, MT 59840

Alfred B. Newman
538 Fish Hatchery Road
Hamilton, MT 59840

Lee Yelin
Land & Water Consulting
P.O. Box 8254
Missoula, MT 59807

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

Cindy G. Campbell
Hearings Unit Legal Secretary

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

* * * * * * * * * * *

IN THE MATTER OF THE APPLICATIONS) FOR BENEFICIAL WATER USE PERMIT) NO. 73396-s76H BY RONALD AND) JANET TRULOCK AND NO. 76041-g76H BY) RONALD TRULOCK, AND APPLICATION FOR) CHANGE OF APPROPRIATION WATER RIGHT) NO. G(W)123885-76H BY RONALD E. AND) JANET J. TRULOCK)	PROPOSAL FOR DECISION

* * * * * * * * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was convened in the above-entitled matter on August 5, 1991, in Missoula, Montana.

Applicants Ronald E. and Janet J. Trulock appeared at the hearing pro se.

Alfred Newman, Objector to Application No. G(W)123885-76H, appeared at the hearing pro se.

Daly Ditches Irrigation Company, Objector to Application No. 73396-s76H, appeared at the hearing by and through Susie Birse.

Lee Yelin, Water Right Specialist with Land and Water Consulting, appeared at the hearing as an interested person.

Michael P. McLane, Manager of the Missoula Water Resources Regional Office of the Department of Natural Resources and Conservation (Department), appeared at the hearing.

Objectors Bernie A. and Elizabeth F. Swift (Objectors to Applications No. 76041-g76H and 73396-s76H), Susan and David France (Objectors to Application No. G(W)123885-76H), Alfred B. Newman (Objector to Application No. G(W)123885-76H), Sharon M.

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Buchheister, executrix of Cassie Davis estate, Nancy and Joel Bender, William and Mary Foley, Orrin D. and Norma Hill, G. Robert and Joan Johnson, Muriel W. George, Harvey and Margaret Sharp, and Daly Ditches Irrigation District (all Objectors to Application No. 73396-s76H) have withdrawn their objections and signed consent statements.

Objectors Jerry W. and Susan B. Wolf and Donna M. and Michael J. Owen did not appear at the hearing and had not made previous arrangements with the Hearing Examiner; therefore, in accordance with ARM 36.12.208, they are in default and their objections are dismissed.

EXHIBITS

Applicants' Exhibit 1 is a copy of an ASCS photo which has been enhanced to show the old point of diversion and the new point of diversion, Application No. G(W)123885-76H; the proposed pond, Application No. 76041-g76H; the existing pond and its bypass, Application No. 73396-g76H; the location of two springs; and the location of the fish hatchery. This exhibit was accepted into the record without objection. The Hearing Examiner after returning to Helena highlighted certain features in yellow to make them easier to identify.

The Department's files were made available for review by all parties who had no objection to any part of them; therefore, the Department's files are accepted into the record in their entirety.

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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

Application No. G(W)123885-76H

1. Section 85-2-402(1), MCA, states, in relevant part, "An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature." The requirement of legislative approval does not apply in this matter.

2. On July 27, 1989, the Applicants filed an Application for Change of Appropriation Water Right to change a portion of and to add a point of diversion to Statement of Claim No. W123885-76H. On July 27, 1989, an Amendment to Statement of Claim No. W123885-76H was filed. The Amendment claims two points of diversion which are both in the NE¼SE¼SW¼, of Section 9, Township 5 North, Range 20 West, in Ravalli County.[1]

The proposed point of diversion would appropriate 600 gpm up to 335 acre-feet of water per year for irrigation. A seven to ten horsepower pump would be used to pump this water into a delivery line to a sprinkler system. In addition to changing the point of diversion to the NE¼SE¼SW¼ of said Section 9, this

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[1]Unless otherwise specified, all land descriptions in this Proposal are located in Township 5 North, Range 20 West, Ravalli County.

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Application is to make the point of diversion located in the SE¼NE¼SW¼ of said Section 9 and all places of use claimed in Exempt Water Right No. E073327-76H for 6.048 acre-feet of stock water a matter of the Department's record. The places of use for the exempt stock water right are the undeveloped spring located in the SE¼NE¼SW¼ and the new sump pump site located in the NE¼SE¼SW¼, both in Section 9.

Although the Application indicates in Item 4 A that the purpose of this Application is to add point of diversion, Item 8 states that the change "simply removes a point of diversion" and Applicants testified at the hearing that the old point of diversion is no longer in use. The additional point of diversion discussed is that the new point of diversion will be an additional point of diversion for Exempt Water Right No. E073327-76H. (Testimony of Applicants and Department file.)

3. Pertinent portions of the Application were published in the Ravalli Republic on December 20, 1989.

4. Amended Statement of Claim No. W123885-76H claims two cubic feet per second (cfs) up to 335 acre-feet of water per year for irrigation on 67 acres. The source is an unnamed spring. The claimed places of use are 34 acres in the SE¼SW¼, 23 acres in the SW¼SE¼ and 10 acres in the SW¼NE¼SW¼ of said Section 9. The period of use claimed is from January 1 through December 31, inclusive of each year. (Department file.)

5. The new sump pump site is located at the head of a drain system which was installed in the late 1950's by a previous owner

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to drain the land in the SE¼SW¼ and SW¼SE¼ of Section 9 so it could be farmed. This is the same source of water diverted by the old pump site. (Testimony of Applicant.)

6. Applicants own the property where the point of diversion and places of use are located. (Testimony of Applicants.)

7. There are no other water users between the old point of diversion and the new point of diversion. (Testimony of Applicants and Applicants' Exhibit 1.)

8. The Applicants do not propose to appropriate additional water by virtue of this proposed change. (Testimony of Applicants.)

9. Objector Alfred B. Newman withdrew his objection to Application with the stipulation that the Applicants would not irrigate from November 1 through March 30. The Applicants stipulated to this agreement. (Department file.)

10. There are no planned uses or developments for which a permit has been issued or for which water has been reserved that may be adversely affected by the proposed change. (Testimony of Lee Yelin.)

<u>Application No. 73396-s76H</u>

1. Section 85-2-302, MCA, states in relevant part, "Except as otherwise provided in (1) through (3) of 85-2-306, 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."

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2. Applicants filed the above-entitled Application with the Department on January 11, 1990.

3. Pertinent portions of the Application were published in the Ravalli Republic on May 23, 1990.

4. The Applicants propose to appropriate one cfs up to 724 acre-feet of water from an unnamed tributary of the Bitterroot River at a point in the SW¼SE¼NW¼ of Section 9 for an on-stream flow-through fish pond with a capacity of 3.6 acre-feet to be located in the SW¼SE¼NW¼ of Section 9. The proposed use is nonconsumptive. The proposed period of use and diversion is from January 1 through December 31, inclusive of each year. (Testimony of Applicants and Department file.)

5. Applicants own the proposed place of use. (Testimony of Applicants.)

6. There are no planned uses or developments for which permits have been granted or for which water has been reserved that may be adversely affected by the water use proposed in this Application. (Testimony of Lee Yelin and Department records.)

7. The water table in the area of the pond is extremely high. The pond would be dug into the water table. The pond would also use effluent water from an existing pond. Water for the pond would also be supplied from a drain ditch installed to drain land to make it productive. (Testimony of Applicants and Lee Yelin.)

8. In the late 1950's a previous owner installed a wooden drain system to drain the land in the SE¼SW¼ and SW¼SE¼ of

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Section 9 so it could be farmed. Any drained water that is not diverted by the pump for Application No. G(W)124885-76H flows into an open drain ditch which begins at a point in the NE¼SE¼SW¼ of Section 9. This ditch then discharges into the stream channel of an unnamed tributary of the Bitterroot River in which the water flows in a northwesterly direction to an existing pond where it could be used or bypassed to continue in the stream channel until it reaches the proposed pond site. (Testimony of Applicants and Lee Yelin.)

9. The effluent from the existing pond located in the SE¼NE¼SW¼ of Section 9 flows at a rate of approximately one cfs in the winter. (Testimony of Applicants.)

10. The proposed means of diversion is a concrete dam/diversion structure similar to the structure successfully used on the existing pond to control the amount of water entering the pond and to bypass any excess water. The pond will be excavated and equipped with a drainage device which consists of a half-cut corrugated metal pipe to which a smaller 12 inch diameter corrugated metal pipe is attached. The larger half-cut corrugated metal pipe is fitted with frame work to allow the use of flash boards with which to regulate the flow of water. The drainage device will be at the bottom of the pond. The proposed bypass ditch route would be around the pond on the northeast edge which would route the water back to the stream channel. (Testimony of Lee Yelin, Department file and photographs in Application No. 76041-g76H.)

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11. Measurements would be taken regularly of the water inflow and outflow of the pond. (Testimony of Applicants.)

Application No. 76041-g76H

1. Section 85-2-302, MCA, states in relevant part, "Except as otherwise provided in (1) through (3) of 85-2-306, 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."

2. Applicant filed the above-entitled Application with the Department on October 19, 1990.

3. Pertinent portions of the Application were published in the Ravalli Republic on February 27, 1991.

4. The Applicant proposes to appropriate one cfs up to 724 acre-feet of water per year of groundwater at a point in the SE¼NE¼SW¼ of Section 9 for an off-stream flow-through fish pond. The proposed use is nonconsumptive. The proposed period of use and diversion is from January 1 through December 31. The proposed means of diversion is a concrete dam/diversion structure which allows water to flow into the pond or to be diverted around the pond and join the effluent of the pond to continue downstream. (Testimony of Applicant and Department file.)

5. The water, provided by the wooden drains discussed above in Finding of Fact 8 of Application No. 73396-s76H, flows into the drain ditch then into the stream channel where it is joined by water which has flowed from Bubbler Spring located in the SE¼NE¼SW¼ of Section 9. The water then flows in a northwesterly

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direction to the existing pond where it could be used or bypassed to continue in the stream channel. (Testimony of Applicant and Applicant's Exhibit 1.)

6. The pond, diversion structure, and outlet structure have been in use for approximately 30 years. The previous owner did not file a Statement of Claim for this pond during the existing right filing period of 1979 to 1982. The instant Application is to obtain a water right for this pond. (Testimony of Applicant and Department file.)

7. The outlet structure is a three-sided concrete structure equipped with flash boards. This structure regulates the level of the pond which can be almost completely drained. The 12 inch outlet pipe exits the pond at the bottom. (Testimony of Applicant and Department file.)

8. There are no planned uses or developments for which permits have been granted or for which water has been reserved that may be adversely affected by the water use proposed in this Application. (Testimony of Lee Yelin and Department records.)

9. Applicant owns the proposed place of use. (Testimony of Applicant.)

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

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CONCLUSIONS OF LAW

Application No. G(W)123885-76H

1. The Department has jurisdiction over the subject matter herein and over the parties hereto. Title 85, chapter 2, part 3, MCA.

2. 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.

3. The Department must issue an Authorization to Change Appropriation Water Right if the Applicant proves by substantial credible evidence that the following criteria, set forth in § 85-2-402(2), MCA, are met:

> (a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.
>
> (b) Except for a lease authorization pursuant to (85-2-436) that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.
>
> (c) The proposed use of water is a beneficial use.
>
> (d) The applicant has 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.

4. The proposed use of water, irrigation, is a beneficial use of water. See § 85-2-102(2), MCA.

5. Applicants have provided substantial credible evidence that the water rights of other persons or other planned uses or

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developments for which a permit has been issued or for which water has been reserved will not be adversely affected. See Findings of Fact 4, 5, 7, and 10.

6. The proposed means of diversion, construction, and operation of the appropriation works are adequate. See Finding of Fact 2 and 8.

7. Applicants have a possessory interest in the property where the water is to be put to beneficial use. See Finding of Fact 6.

8. The Department has the authority to impose conditions, limitations, and restrictions upon an Authorization to Change. The Authorization must be issued with conditions. See Finding of Fact 9 and § 85-2-402(7), MCA.

Application No. 73396-s76H

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

2. The Department has jurisdiction over the subject matter herein, and all the parties hereto.

3. The Department must issue a Beneficial Water Use Permit if the Applicant proves by substantial credible evidence that the following criteria set forth in § 85-2-311(1) and (4), MCA, are met:

> (a) there are unappropriated waters in the source of supply at the proposed point of diversion:

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(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) during the period in which the applicant seeks to appropriate, the amount requested is reasonably 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; and

(f) the applicant has 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.

. . .

(4) To meet the substantial credible evidence standard in this section, the applicant shall submit independent hydrologic or other evidence, including water supply data, field reports, and other information developed by the department, the U.S. geological survey, or the U.S. soil conservation service and other specific field studies, demonstrating that the criteria are met.

4. The proposed use, a fish pond, is a beneficial use. See § 85-2-102(a), MCA.

5. The Applicants have possessory interest in the property where the water is to be put to beneficial use. See Finding of Fact 5.

6. The water rights of a prior appropriator will not be adversely affected. See Finding of Fact 4.

7. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been

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issued or for which water has been reserved. See Finding of Fact 6.

8. Applicant has proved by substantial credible evidence the availability of unappropriated water in the source of supply at the proposed point of diversion in the amount requested and that during the proposed period of diversion the amount requested is reasonably available. See Findings of Fact 7, 8, and 9.

9. The proposed means of diversion, construction, and operation of the appropriations works are adequate. See Finding of Fact 10 and 11.

Application No. 76041-g76H

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

2. The Department has jurisdiction over the subject matter herein, and all the parties hereto.

3. The Department must issue a Beneficial Water Use Permit if the Applicant proves by substantial credible evidence that the following criteria set forth in § 85-2-311(1) and (4), MCA, are met:

> (a) there are unappropriated waters in the source of supply at the proposed point of diversion:
>
> (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

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(iii) during the period in which the applicant seeks to appropriate, the amount requested is reasonably 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; and

(f) the applicant has 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.

. . .

(4) To meet the substantial credible evidence standard in this section, the applicant shall submit independent hydrologic or other evidence, including water supply data, field reports, and other information developed by the department, the U.S. geological survey, or the U.S. soil conservation service and other specific field studies, demonstrating that the criteria are met.

4. The proposed use, a fish pond, is a beneficial use of water. See § 85-2-102(a), MCA.

5. Applicant has proved by substantial credible evidence the availability of unappropriated water in the source of supply at the proposed point of diversion in the amount requested and that during the proposed period of diversion the amount requested is reasonably available. See Findings of Fact 5 and 6.

6. The water rights of a prior appropriator will not be adversely affected. See Finding of Fact 4.

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7. The proposed means of diversion, construction, and operation of the appropriation works are adequate. See Findings of Fact 6 and 7.

8. 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. See Finding of Fact 8.

9. The Applicant has possessory interest in the property where the water is to be put to beneficial use. See Finding of Fact 9.

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

PROPOSED ORDER

I. Subject to the terms, conditions, restrictions, and limitations set forth below, **Authorization to Change Appropriation Water Right No. G(W)123885-76H by Ronald E. and Janet J. Trulock is granted** to change the point of diversion of Statement of Claim No. W123885-76H to the NE¼SE¼SW¼ of said Section 9, Township 5 North, Range 20 West and to add that point of diversion to Exempt Water Right No. E073327-76H which is for 6.048 acre-feet of stock water per year. The places of use for the irrigation are 34 acres in the SE¼SW¼, 23 acres in the SW¼SE¼ and 10 acres in the SW¼NE¼SW¼ of said Section 9. The places of use for the exempt stock water right are the undeveloped spring located in the SE¼NE¼SW¼ and the new sump pump site located in the NE¼SE¼SW¼, both in said Section 9. The period of use for the

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irrigation is from April 1 to October 31, inclusive of each year. The period of use for the stock water use is from January 1 through December 31, inclusive of each year.

1. This Authorization is subject to all prior existing water rights in the source of supply. Further, this Authorization is subject to any final determination of existing water rights as provided by Montana law.

2. The approval of this change is not to be construed as recognition by the Department of the water rights involved. All rights are subject to possible modification under the proceedings pursuant to Title 85, Chapter 2, Part 2, MCA, and § 85-2-404, MCA.

3. The change in point of diversion granted by this Authorization is subject to the authority of court appointed water commissioners, if and when appointed, to admeasure and distribute to the parties using water in the source of supply the water to which they are entitled. The Appropriator shall pay his proportionate share of the fees and compensation and expenses, as fixed by the district court, incurred in the distribution of waters granted in this Authorization to Change.

4. The Appropriator shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records to the Department upon request. This condition is being applied to this change until quantification/verification occurs.

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II. Subject to the terms, conditions, restrictions, and limitations set forth below, **Application for Beneficial Water Use Permit No. 73396-s76H by Ronald and Janet Trulock is granted** to appropriate up to one cfs not to exceed 724 acre-feet of water from an unnamed tributary of the Bitterroot River at a point in the SW¼SE¼NW¼ of Section 9 for nonconsumptive use in an on-stream flow-through fish pond with a capacity of 3.6 acre-feet located in the SW¼SE¼NW¼ of Section 9. The period of use and diversion is from January 1 through December 31, inclusive of each year.

1. This Permit is subject to all prior existing water rights in the source of supply. Further, this Permit is subject to any final determination of existing water rights as provided by Montana law.

2. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation, a Water Right Transfer Certificate, Form 608, pursuant to § 85-2-424, MCA.

3. The Permittees shall keep a written record of the flow rate and volume of all waters diverted, including the period of time, and shall submit said records to the Department upon request. This condition is being applied to this Permit until quantification through permit verification occurs.

4. This Permit is subject to the installation of an adequate drainage device to satisfy existing water rights.

5. The Permittees shall install two measuring devices; one on the inflow of the pond and one on the outflow. The Permittees

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shall confer with personnel of Missoula Water Resources Regional Office before selection and installation of said measuring devices. Further, the Permittees must bypass stream flows through the pond significantly undiminished in quantity, quality, and timing.

6. If, at any time after this Permit is issued, a written complaint is received by the Department alleging that diverting from this source is adversely affecting a prior water right, the Department may make a field investigation of the project. If, during the field investigation, the Department finds sufficient evidence supporting the allegation, it may conduct a hearing in the matter allowing the Permittee to show cause why the Permit should not be modified or revoked. The Department may then modify or revoke the Permit to protect existing rights or allow the permit to continue unchanged if the hearing officer determines that no existing water rights are being adversely affected.

III. Subject to the terms, conditions, restrictions, and limitations set forth below, **Application for Beneficial Water Use Permit No. 76041-g76H is granted** to appropriate up to one cfs not to exceed 724 acre-feet of water per year of groundwater at a point in the SE¼NE¼SW¼ of Section 9, Township 5 North, Range 20 West, for a nonconsumptive off-stream flow-through fish pond. The period of use and diversion is from January 1 through December 31.

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1. This Permit is subject to all prior existing water rights in the source of supply. Further, this Permit is subject to any final determination of existing water rights as provided by Montana law.

2. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation, a Water Right Transfer Certificate, Form 608, pursuant to § 85-2-424, MCA.

3. The Permittee shall install two measuring devices; one on the pond outflow and one on the pond inflow. Further, the Permittee shall pass diverted flows through the pond substantially undiminished in quantity, quality, and timing.

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.

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Dated this 18th day of September, 1991.

Vivian A. Lighthizer,
Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620
(406) 444-6625

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 at their address or addresses this 18th day of September, 1991 as follows:

Ronald and Janet Trulock
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Hamilton, MT 59840

G. Robert and Joan Johnson
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Hamilton, MT 59840

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Hamilton, MT 59840

Joel and Nancy Bender
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Michael P. McLane, Manager
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Cindy G. Campbell
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