

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

IN THE MATTER OF APPLICATION TO)
CHANGE APPROPRIATION WATER RIGHT) FINAL ORDER
41I-143072 BY DANIEL B. AND TERRY)
M. SMELKO)

The Proposal for Decision (Proposal) in this matter was entered on July 29, 2002. Applicant Daniel B. Smelko filed a timely exception to the Proposal, as did Objector William Gehring, the latter also requesting an oral argument. An oral argument was held in Helena on November 25, 2002, with both parties participating *pro se*.

The Applicant's oral argument echoed his written exception. Applicant felt that the flow rate of the right he applied to move downstream should not have been reduced to account for stream channel conveyance losses. Applicant asserted that this issue had not been raised by the department prior to the hearing, and that the basis for quantifying the reduction was not scientific. Furthermore, Applicant did not feel that he should have to burden the expense of doing a scientific study to determine if channel conveyance losses really occurred and to accurately quantify such losses. Therefore, Applicant's exception requested that he be allowed to divert the full amount of the right he had acquired at the new downstream points of diversion.

Objector Gehring argued the hearings officer erred in concluding that the change authorization would not result in adverse effect. He believes that the channel loss will be greater than that estimated by department staff, because the estimate was based on a comparison with Seven Mile Creek, which he believes has a very different hydrology than Silver Creek. In addition, he is concerned that the stored water above the new points of diversion will not make it downstream to him. He felt that the historic water rights were not adequately researched. Objector Gehring also felt that Applicant failed to make call for their well water as an alternative source for irrigating this ground, and that this would have been a better source of water.

The Department has reviewed the record in consideration of the exceptions and oral argument received. The Department believes that there is substantial evidence in the record to support the Hearing Examiner's findings.

APPROVED BY: [Signature]

The Department also agrees with the Hearing Examiner's application of the law to the facts as reflected in the Conclusions of Law.

With respect to the Applicants' exception, the record shows that there was a request from the department requesting that the issue of channel gains or losses be addressed in some detail. (Page 2 of October 31, 2001 letter from Water Resources Specialist Kathy Arndt to Applicants). Applicants failed to provide any substantive response to this request, so the department was left to its own available information to estimate channel losses. Accounting for these losses is important in protecting other parties from adverse effects.

Objector's exceptions are not persuasive. The Proposal attempts to prevent or mitigate any adverse effects to Objector Gehring and other water right holders. The estimate of channel losses are the best information available to the Department, and Objector retains the right to make call for his storage and natural flow water rights. An index of all water rights on Silver Creek was provided by the Applicant and reviewed by the department. The issue of Applicants' ability to make call for their well water is irrelevant to this application.

THEREFORE, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law and incorporates them by reference.

Based on the record in this matter, the Department makes the following:

ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Authorization to Change Appropriation Water Right 41I-14307200 is hereby **GRANTED** to Daniel B. and Terry M. Smelko to change water right Claim Nos. 41I-14307200, 41I-14307300, and 41I-14307400.

The added point of diversion for the water purchased is a point in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ in Section 14, Township 11 North, Range 4 West, Lewis and Clark County, Montana. The changed place of use is 13.8 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ in Section 14, Township 11 North, Range 4 West, Lewis and Clark County, Montana. The amount of water to be changed to the added point of diversion is 190 gpm up to 38.1 acre-feet. Acreage to be

removed from irrigation in Tract B are 12.8 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$, and 1 acre in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, Township 11 North, Range 4 West, Lewis and Clark County, Montana.

- A. This authorization is limited to the amount of the historic use recognized by the department in this proceeding as subject to change, and will thereafter not exceed that amount. If the historic use is reduced under adjudication proceedings pursuant to Title 85, Chapter 2, Part 2, MCA, this authorization will be limited to a lesser amount.
- B. The 254 gallons per minute flow rate purchased by this appropriator must be left instream at the historic point of diversion.
- C. The appropriator shall install a water use measuring device approved by the regional manager at a point designated by the regional office to allow the flow rate and volume of water diverted to be recorded. 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 a written monthly record of the flow rate and volume of all water diverted including the period of time, and shall submit the records by November 30th of each year. The regional manager may also request measurement records at other times during the year. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be sent to the Helena Water Resources Regional Office, PO Box 201601, Helena, MT 59620-1601 PH: 406.449.0944, Fax: 406.442.9315.
- The appropriator shall maintain the measuring device so it always operates properly and measures flow rate accurately.
- D. The Appropriator must record the daily hours of pumping and flow rate pumped for the first full irrigation season of use. These written records must be submitted by November 30th of that year to the Helena Water Resources Regional Office, PO Box 201601, Helena, MT 59620-1601.
- E. These changed water rights are associated to Permit No. 41I-01782600. They have the same point of diversion.

F. These changed water rights are associated to Claim Nos. 41I-00000400, 41I-21436900. They have overlapping places of use. The combined appropriation for the 13.8 acres shall not exceed 38.1 acre-feet from all water rights.

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 this 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 ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape or the oral proceedings to the district court.

Dated this 24th day of December, 2002.

R. Curtis Martin

Curt Martin, Chief
Water Rights Bureau
Department of Natural Resources
and Conservation
PO Box 201601
Helena, MT 59620-1601

CERTIFICATE OF SERVICE

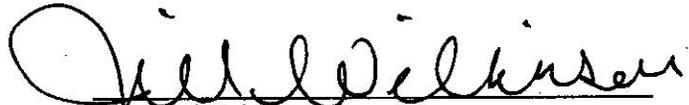
This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 26th day of December, 2002:

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

IN THE MATTER OF APPLICATION TO CHANGE)
APPROPRIATION WATER RIGHT 41I-143072 BY)
DANIEL B. AND TERRY M. SMELKO)

PROPOSAL
FOR
DECISION

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, and after notice required by Mont. Code Ann. §85-2-307, a hearing was held on June 19, 2002, in Helena, Montana, to determine whether an authorization to change appropriation water right Claim Nos. 41I-14307200, 41I-14307300, and 41I-14307400 should be issued to the Applicant for the above-entitled application under the criteria set forth in Mont. Code Ann. § 85-2-402(2).

APPEARANCES

Applicant appeared at the hearing by and through counsel Harley R. Harris. Dan Smelko, Co-Applicant, and David M. Schmidt, Water Right Solutions, Inc. testified for the Applicant. Objector John Lyndes appeared at the hearing by and through counsel, Iris H. Basta. Mr. John Lyndes testified in his own behalf. Objector William Gehring appeared and testified in his own behalf.

EXHIBITS

Both Applicant and Objectors offered exhibits for the record. The exhibits are admitted into the record to the extent noted below.

Applicant offered eight exhibits for the record. The Hearing Examiner accepted and admitted into evidence Applicant's Exhibits 2-8, and 12. Applicant offered no other exhibits.

Applicant's Exhibit 2 is ten pages of water right abstract information and a one page map.

Applicant's Exhibit 3 is a two page presentation of Silver Creek water rights sorted by priority date.

Applicant's Exhibit 4 is a copy of a Water Resources Survey map.

Applicant's Exhibit 5 consists of two maps.

Applicant's Exhibit 6 is two pages of water right information and two pages of an Orsborne Method worksheet.

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Applicant's Exhibit 7 is eight pages of information regarding Water Use Permit No. 17826-s411.

Applicant's Exhibit 8 is three pages containing three photographs.

Applicant's Exhibit 12 is a ten page curriculum vitae of Mr. Schmidt.

Objector Lyndes offered one exhibit for the record. The Hearing Examiner accepted and admitted into evidence Objector Lyndes' Exhibit J11.

Objector's Exhibit J11 is a one page copy of an aerial photo of a portion of Silver Creek.

PRELIMINARY MATTERS

The pending Verified Motion To File Witness and Exhibit List Out of Time was granted in a brief pre-hearing conference.

After the public notice of the application and prior to the hearing Applicant reduced the water volume to be changed by the application and deleted one of the proposed points of diversion. The single proposed additional point of diversion is one of those described in the application and public notice. The Hearing Examiner finds that existing water users and parties are not prejudiced by the reduction in volume or elimination of one of the proposed points of diversion, and re-notice is not required for the amendments.

The Hearing Examiner took administrative notice of a four page memo from Jim Beck dated December 26, 2001 regarding a change application for water right Claim 41I-14307300 that is found in the Department water right records.

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

General

1. Application for Change of Appropriation Water Right 41I-14307200 in the name of and signed by Daniel B. and Terry M. Smelko was filed with the Department on November 13, 2000 at 12:30 PM.

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2. The Environmental Assessment (EA) prepared by the Department for this application was reviewed and is included in the record of this proceeding.

3. Applicant has purchased water rights used for direct flow irrigation of 12.8 acres in the N~~W~~NE~~W~~, and 1 acre in the SE~~W~~NE~~W~~NW~~W~~ all in Section 7, Township 11 North, Range 4 West, Lewis and Clark County, Montana. Applicant purchased 254 gallons per minute (gpm) up to 67.98 acre-feet per annum. (Department file, testimony of Dan Smelko, David Schmidt)

4. Applicant seeks to change the point of diversion of the water purchased to a point in the SW~~W~~SE~~W~~SW~~W~~ in Section 14, Township 11 North, Range 4 West, Lewis and Clark County, Montana. The Applicant stated that he wishes to move the point of diversion to his existing permitted point of diversion and that this point of diversion is the furthest downstream of the two points of diversion shown on the public notice. The downstream land description is SE~~W~~SE~~W~~SW~~W~~ of Section 14, Township 11 North, Range 4 West. The Department verified point of diversion for Permit 411-017826 in the SW~~W~~SE~~W~~SW~~W~~ of Section 14, Township 11 North, Range 4 West. This is the upstream point of diversion of the two shown on the public notice, not the downstream land description. The Applicant demonstrated a good understanding what he wanted to do, but had a lesser understanding of the actual land descriptions. The upper point of diversion is the proposed added point of diversion in this matter. (Department file, testimony of Dan Smelko)

5. Applicant seeks to change the place of use to 13.8 acres in the SE~~W~~SW~~W~~ in Section 14, Township 11 North, Range 4 West, Lewis and Clark County, Montana. The amount of water to be changed is 254 gpm up to 38.1 acre-feet. Acreage to be removed from irrigation are 12.8 acres in the N~~W~~NE~~W~~, and 1 acre in the SE~~W~~NE~~W~~NW~~W~~ of Section 7, Township 11 North, Range 4 West, Lewis and Clark County, Montana.

Adverse Effect

6. Applicant will use an existing pump site at the proposed point of diversion to divert water from Silver Creek. A weir will be used to back up water so it flows to the existing diversion site. The pump can

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be shut off and the weir adjusted so water will flow to downstream seniors in the event of a valid call for water from a downstream appropriator. Department records do not show any senior water rights on Silver Creek downstream of Applicant. (Department file, testimony of Dan Smelko, David Schmidt)

7. The historical water rights being changed are now owned by multiple parties. The rights are being allocated according to the percentage of the land purchased that was historically irrigated. Applicant purchased the rights appurtenant to the "Tract B" portion of the claimed water right which historically had 13.8 irrigated acres. These appropriators are now involved in educational discussions regarding the subdivision of the water rights and what that entails. The discussions serve to inform the current owners of their portion of the claimed water right. This information and education serves to prevent diversion at the historical rate and volume from the original point of diversion after any changes are approved. (Department file, testimony of David Schmidt)

8. The rights being changed have been decreed priority dates and flow rates in the ongoing statewide water adjudication. The rights being changed have been used an undetermined number of times in recent years. Applicant has knowledge of irrigation pivots installed by a predecessor in the late 1970's; but, Applicant has no knowledge of how often they were used. Objector Lyndes knows the pivots were used at least one time. Mr. Schmidt has pictures of an irrigation ditch used by predecessors to irrigate lands at the historic place of use. Mr. Schmidt has knowledge and experience with flood irrigation techniques. Mr. Schmidt can recognize whether lands were irrigated by a ditch or not. Mr. Schmidt testified he believes the ditch at the historic place of use was used for irrigation of the historic place of use. Objector Lyndes believes resumption of the use of these rights after years of non use will adversely affect his irrigation use from Silver Creek. No evidence of abandonment beyond personal belief was presented to establish the rights were abandoned. (Testimony of Dan Smelko, David Schmidt, John Lyndes)

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9. The Department estimated streamloss between the historic and proposed point of diversion based upon a site visit and the experience of department staff in these matters. The estimate takes into account stream channel sections where no return flows are likely to exist. The Department estimates channel losses between the historic and proposed points of diversion at \pm 60 gpm. That is, 254 gpm at the historic point of diversion will supply 190 gpm at the proposed point of diversion after channel losses. Neither Applicant nor Objectors had a different estimate of channel losses between the points of diversion. (Department file, testimony of David Schmidt, Jim Beck)

10. Objectors raised the concern that there may be springs adding water to Silver Creek that would make more water available for Applicant at the proposed downstream point of diversion. The Department saw no springs during its investigation. (Testimony of Bill Gehring, Jim Beck)

11. Objectors raised the concern that there would be evaporation from the source between the old and proposed points of diversion. Evaporation between these points is not significant. (Testimony of David Schmidt, Jim Beck, Bill Gehring)

12. Applicant can install a weir or inline flow meter if needed to measure the amount of water diverted at the proposed point of diversion to show the amount diverted is equal to or less than the amount requested at the added point of diversion. (Testimony of Dan Smelko, David Schmidt)

Adequacy of Appropriation Works

13. Applicant has used the proposed diversion works for diversion of a permitted water right and found it adequate for that appropriation. The pump at the proposed point of diversion will be sized to divert the amount of water changed. (Department file, testimony of Dan Smelko, David Schmidt)

Beneficial Use

14. The Department must analyze the volume of water proposed for change to assure the changed volume is a reasonable amount necessary to accomplish the proposed use without waste. This analysis must be

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done on proposed changes as well as permit applications. The Department believes 38.1 acre-feet per annum is a reasonable volume of water to irrigate the 13.8 acres based on Natural Resources And Conservation (NRCS) guidelines for consumptive needs of the crop and the field efficiency. Applicant agreed that 38.1 acre-feet would be sufficient volume to irrigate the new place of use using sprinklers. (Testimony of David Schmidt, Jim Beck)

15. The Department must analyze the flow rate of water proposed for change to assure the flow rate is a reasonable amount necessary to accomplish the use without waste. This analysis must be done on proposed changes as well as permit applications. The Department noted that a continuous flow rate of 93 gpm will supply the crop needs without waste and that higher rates applied continuously may waste water on the proposed place of use because the crop needs are met at 93 gpm. The Department does not have the applicant's proposed pumping schedule. The department did not voice concern about the flow rate being changed because the soil at the place of use has a high permeability and can accept water at higher rates. The Department states that such permeability should allow nearly any wheel line or hand line to operate without causing runoff. Thus, if the water is diverted less than continuously, the flow rate needed to provide crop needs without waste could be higher. Irrigation management scheme is a matter of choice of the appropriator, and aside from its not being wasteful, has not been determined in this case. (Testimony of Jim Beck, David Schmidt)

16. Applicant has additional irrigation rights to supply water to the irrigated place of use. (Department file, testimony of Dan Smelko)

Possessory Interest

17. Applicant has proven 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. (Department file)

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Water Quality Issues

18. No valid 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

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 has jurisdiction to approve a change in appropriation right if the appropriator proves the criteria in Mont. Code Ann. § 85-2-402.
2. The Department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence the proposed change in appropriation right will 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; except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction and operation of the appropriation works are adequate; the proposed use of water is a beneficial use; except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, 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; if the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant; and, if raised in a valid objection, the water quality of a prior appropriator will not be adversely affected; and the ability of a discharge permit holder to satisfy effluent limitations of a permit will not be adversely affected. Mont. Code Ann. §§ 85-2-402 (2) (a) through (g).

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3. The Applicant has proven by a preponderance of evidence that the use of 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 will not be adversely affected when the stream channel losses between the historic and proposed points of diversion are deducted from the amount that can be withdrawn at the new point of division and the rate and volume diverted at the proposed point of diversion are measured. Issues of abandonment, inclusion in a Water Court decree, and lack of objections to a water right in a Water Court decree are all matters that require supporting evidence to prove a use exists (or does not exist) that can be changed in a Department proceeding. Here, Applicant has provided evidence of prior use, albeit minimal use, in the late 1970's. Although significant time has elapsed, it does not appear the rights have been abandoned. Mont. Code Ann. § 85-2-402(2)(a). See Finding of Fact Nos. 6, 7, 8, 9, 10, 11, 12.

4. The Applicant has proven by a preponderance of evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. Mont. Code Ann. § 85-2-402(2)(b). See Finding of Fact No. 13.

5. The Applicant has proven by a preponderance of evidence that the quantity of water proposed to be used is the reasonable amount necessary for the proposed irrigation use. The Applicant has reduced the volume to what the Department believes is needed to successfully irrigate the proposed place of use without waste. The Applicant must report the flow rate and hours pumped each day to assure water is not wasted. Mont. Code Ann. § 85-2-402(2)(c). See Finding of Fact No. 14.

6. The Applicant has proven by a preponderance of evidence the proposed use of water is a beneficial use of water as proposed in the change. However, the water applied to the proposed place of use from multiple rights must not exceed that which can be beneficially used at the proposed place of use; and the volume changed must be limited to 38.1 acre-feet for irrigation purposes. Mont. Code Ann. § 85-2-402(2)(c). See Finding of Fact Nos. 14, 15, 16.

7. The Applicant has proven by a preponderance of evidence a possessory interest in the property where water is to be put to

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beneficial use. Mont. Code Ann. § 85-2-402(2)(d). See, Finding of Fact No. 17.

8. The application does not involve salvaged water. Mont. Code Ann. § 85-2-402(2)(e). See Finding of Fact No. 4.

9. No objection was raised as to the issue of water quality of a prior appropriator being adversely affected, or as to the ability of a discharge permit holder to satisfy effluent limitation of a permit. Mont. Code Ann. § 85-2-402(2)(f), (g). See, Finding of Fact No. 18.

10. The Department may issue an authorization to change a water right subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria for authorization to change a water right. Mont. Code Ann. § 85-2-402(8).

11. The Department cannot grant an authorization to change a water right unless the Applicant proves all of the Mont. Code Ann. § 85-2-402(2)(a) through (g) criteria by a preponderance of the evidence. Applicant has met, or there are conditions which can satisfy, the criteria for issuance of an authorization to change an appropriation water right. See Conclusion of Law Nos. 3, 4, 5, 6, 7 above. Mont. Code Ann. §§ 85-2-402 (2), (8).

WHEREFORE, 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 specified below, Authorization to Change Appropriation Water Right 411-14307200 is hereby GRANTED to Daniel B. and Terry M. Smelko to change water right Claim Nos. 411-14307200, 411- 14307300, and 411-14307400.

The added point of diversion for the water purchased is a point in the SW¹/₄SE¹/₄SW¹/₄ in Section 14, Township 11 North, Range 4 West, Lewis and Clark County, Montana. The changed place of use is 13.8 acres in the SE¹/₄SW¹/₄ in Section 11, Township 11 North, Range 4 West, Lewis and Clark County, Montana. The amount of water to be changed to the added point of diversion is 190 gpm up to 38.1 acre-feet. Acreage to be removed from irrigation in Tract B are 12.8 acres in the N¹/₂SW¹/₄, and 1

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acre in the SE¹/₄NE¹/₄NW¹/₄ of Section 7, Township 11 North, Range 4 West, Lewis and Clark County, Montana.

A. This authorization is limited to the amount of the historic use recognized by the department in this proceeding as subject to change, and will thereafter not exceed that amount. If the historic use is reduced under adjudication proceedings pursuant to Title 85, Chapter 2, Part 2, MCA, this authorization will be limited to a lesser amount.

B. The 254 gallons per minute flow rate purchased by this appropriator must be left instream at the historic point of diversion.

C. The appropriator shall install a water use measuring device approved by the regional manager at a point designated by the regional office to allow the flow rate and volume of water diverted to be recorded. 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 a written monthly record of the flow rate and volume of all water diverted including the period of time, and shall submit the records by November 30th of each year. The regional manager may also request measurement records at other times during the year. Failure to submit reports may be cause for revocation or modification of a permit or change. The records must be sent to the Helena Water Resources Regional Office, 21 N. Last Chance Gulch, PO Box 201601, Helena, MT 59620-1601 PH: 406.449.0944, Fax: 406.442.9315.

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

D. The Appropriator must record the daily hours of pumping and flow rate pumped for the first full irrigation season of use. These written records must be submitted by November 30th of that year to the Helena Water Resources Regional Office, 21 N. Last Chance Gulch, PO Box 201601, Helena, MT 59620-1601.

E. These changed water rights are associated to Permit No. 41I-01782600. They have the same point of diversion.

F. These changed water rights are associated to Claim Nos. 41I-00000400, 41I-21436900. They have overlapping places of use. The combined appropriation for the 13.8 acres shall not exceed 38.1 acre-feet from all water rights.

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NOTICE

This Proposal for Decision 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 and a supporting brief with the Hearing Examiner and request oral argument. Exceptions and briefs, and requests for oral argument must be filed with the Department by August 19, 2002, or postmarked by the same date, and copies mailed by that same date to all parties.

Parties may file responses and response briefs to any exception filed by another party. The responses and response briefs must be filed with the Department by September, 9, 2002, or postmarked by the same date, and copies must be mailed by that same date to all parties. No new evidence will be considered.

No final decision shall be made until after the expiration of the above time periods, and due consideration of timely oral argument requests, exceptions, responses, and briefs.

Dated this 29th day of July, 2002.



Charles F Brasen
Hearings Officer
Water Resources Division
Department of Natural Resources
and Conservation
PO Box 201601
Helena, Montana 59620-1601

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CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the Proposal For Decision was served upon all parties listed below by First Class United States Mail on this 30 day of

July, 2002.

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