



FILE



PROVISIONAL PERMIT



***41K ***



32304



00

Box Bar Code _____

File Bar Code _____

Date/Initials _____

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1520 EAST SIXTH AVENUE HELENA, MONTANA 59620



Permit to Appropriate Water

THIS PROVISIONAL PERMIT TO APPROPRIATE WATER IS HEREBY ISSUED TO:

BEVERLY & EVERETT HOLUM
6 OPEN BUCKLE
BOX 173
SUN RIVER MT 59483

UPON FINDING THAT THE REQUIREMENTS OF SECTION 85-2-311 MCA
HAVE BEEN MET.

PERMIT NUMBER: 32304-S41K

PRIORITY DATE: MARCH 03, 1981 AT 2:00 P.M.

SOURCE: UNNAMED TRIBUTARY OF MILL COULEE CREEK

INITIAL FLOW RATE: 40.00 GPM

INITIAL VOLUME: 10.40 ACRE FEET PER YEAR

DIVERSION POINT: SWSESE SEC. 22 TWP. 21N RGE. 01W CASCADE CO

PERIOD OF APPROPRIATION: APR 15 - OCT 31

USE: 40.00 GPM UP TO 10.40 AC-FT (APR 15 - OCT 31)
FOR NEW SPRINKLER IRRIGATION ON 5.00 ACRES

PLACE OF USE: S2S2SE SEC. 22 TWP. 21N RGE. 01W CASCADE CO
FOR NEW SPRINKLER IRRIGATION ON 5.00 ACRES

DIVERSION MEANS: PUMP

**** PRIOR RIGHTS:**

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.

~~FAILURE TO COMPLY WITH ANY TERMS AND CONDITIONS HEREIN MAY RESULT IN
THE LOSS OF THE WATER RIGHT GRANTED BY THIS PERMIT.~~

**** TRANSFER OF OWNERSHIP:**

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 SECTION 85-2-424, MCA.

Rodney Morrison
WITNESS

Ronald J Guse
ADMINISTRATIVE ASST: RONALD J GUSE

DATE: APRIL 10, 1989 WATER RIGHTS BUREAU, WATER RESOURCES DIVISION

NOTICE

Montana is presently going through a general stream adjudication to identify in final decrees existing water rights in the state. A final decree has not been issued for your basin. Therefore, your water use permit is provisional, which means it is subject to final court determination of existing senior (prior) water rights in your basin.

Depending upon the judicial determination of the scope of the existing water rights of Montana Power Company and U.S. Bureau of Reclamation;

- a) the Department may require you to cease diversion in order to protect more senior water rights;
- b) you may be required by the United States to purchase water from storage at Canyon Ferry, if available (if you do not already have a Bureau water service contract); or
- c) the Department may take other administrative action pursuant to Mont. Code Ann. Sections 85-2-313 and 85-2-314 (1987) to reduce, modify or revoke your permit to avoid adverse affect on the existing rights of MPC and the Bureau during part or all of your intended period of use.

If you have any questions concerning this notice, feel free to call the Department of Natural Resources and Conservation at 406-444-6610 for further information and explanation.

MISSOURI BASIN PERMITS VOIDED

By Judgement dated May 10, 1988 Judge Gordon Bennett Voided all of the permits affected by his Don Brown Decision in the Upper Missouri Basin. The permits were reissued according to the MPC-BOR-DNRC agreement.

Those projects which were completed and had Notices of Completion (617) filed were not required to refile a Form 617. The new permits did not contain the notice of completion requirement language.

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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

THE MONTANA POWER COMPANY,
a Montana corporation, and THE
UNITED STATES OF AMERICA,

Petitioners,

v.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION,

Respondent.

and

JACK CREEK RANCH TRUST THROUGH
RICHARD K. WEBEL, TRUSTEE; DON L.
BROWN; CLIMBING ARROW RANCH, INC.;
ANDERSON RANCH; FLYING CLOUD
RANCH; L. S. JAMES; THOMAS R.
ORCUTT; BEAVERHEAD PARTNERSHIP;
ROBERT G. MARTIN; GORDON E. LANE;
JEFFERSON RIVER ACRES; McCULLOUGH
RANCHES, INC.; ALFRED WOODS AND
RUTH C. WOODS; LAURENCE MAGNANT;
JOSEPH ROBBIE; RAYMOND M. HANKE;
GARY V. KIRBERG; CLIFFORD Y. AND
OLGA L. NIXON; ALVIN AXT; KELLY
HALL; DAVID R. BROWN AND RALPH G.
BROWN; LEONARD F. DORAN; GRAVELEY

Cause No. 50612

(Consolidated Nos.
50611-50667 and
50672-50706)

JUDGMENT

RECEIVED 10 PM 3:13

CLARA GILFATH

1 LD RANCH; ROBERT E. THOMPSON;)
ROBERT L. SITZ; JENNIE JOHNSON)
2 AND GREG SAKS; PHILLIP VERWOLF;)
YOLANDA BLAKELY; BYRON W. PECK;)
3 JUNE B. HENSLEY; LOUIS D. AND)
PATRICK D. O'BRIEN; A. B. AND)
4 VENICE LINFORD; MAURICE KLABUNDE;)
NEIL LYNCH; ALEX H. WAGENFEHR;)
5 PETE TOCCI & SONS, INC.; ROBERT)
GILTRAP; JOHN H. TINJUM; FORREST)
6 E. HILL; DONALD A. AND JOY D.)
FOGLE; IRA W. SLINGSBY; EDWIN P.)
7 HAHN; JESSIE S. FELSHEIM; LARRY W.)
AND JUDY E. WILCOX; MYLES D. AND)
8 CAPI E. HUPKA; CHARLES V.)
KAMMERMAN; E. LYNN JOHNSTONE; JOHN)
9 AND MARY ANN SINERIUS; JOHN)
MICHAEL MORNINGSTAR; ENERGY QUEST)
10 LTD.; HOLLY CREEK WATER USERS)
ASSOCIATION; LEONARD H. SORENSON)
11 AND BEULAH HAGERMAN; SUSAN CAMERON)
AND ALAN BROADWAY; AVALINE C.)
12 HAINES; ARNE MARVIN SAND, JR. AND)
SHIRLEY T. SAND; KENNETH EGGERS;)
13 VOEGELES, INC.,- d/b/a RIVERDALE)
RANCH;-EVERETT CARLSON; RICHARD F.)
14 GALLAGHER; LILLY ALSAKER AND)
PATRICIA L. CRONIN; JOSEPH J. AND)
15 PATRICIA D. LEWIS; N. J. CAMPEAU;)
LAVERN BARNES AND/OR RONALD HINES;)
16 CENTENNIAL LIVESTOCK CORPORATION;)
RICHARD DAHLEN; WAYNE L. AND/OR)
17 EILEEN R. WARING; GEORGE MORRIS,)
JR. & SONS; BILL E. LARSON;)
18 THEODORE J. AND JEANNE L. TURNER;)
SHIRLEY R. SHOQUIST; MIKE EAGEN;)
19 JOHN L. AND SHIRLEY E. WILLS;)
LARRY E. HOLUM; MORRELL TRIBBY;)
20 DENNY AND DENNIS C. PILLING;)
VERNON L. AND KARYL J. WILLIAMS;)
21 CHARLES AND JUDITH ASTRIN; CITY)
OF HELENA; CHARLES AND JULIA)
22 COCANDUGHER; GENE R. AND/OR)
JUDY R. COLLINS; EVERETT F. AND)
23 RUTH D. BUMGARNER; DALE GRAVES AND)
GLENN GLADFELDER; LAWRENCE W. AND)
24 THERESA C. TRUCHOT; CLARICE P.)
HOLTZ; MICHAEL SECHENA; EDGAR A.)
25 BROWN; JACOB F. MITCHELL; OARYL)

1 AND RITA BERTELSEN; JAROMIR J.)
DAN; JAMES R. GIST; LOUISE R.)
2 GALT; A. W. ALLRED; JACK AND ANNE)
GANNON; CHESLEY AND MARCIA P.)
3 CLARK; DONALD E. KOSENA; INDIAN)
CREEK DEVELOPMENT, INC.; HOWARD)
4 ANSON; DIEHL COMPANY; EDWIN C. AND)
JANET B. GEMAR; KENNETH W.)
5 MIKESELL; MIKE A. AND BETTY L.)
KREZELOK; CHRISTOPHER W. AND)
6 BARBARA PARKENING; JOAN M.)
STANFIELD; STEVE AND CORAL LOWRY;)
7 ORVILLE HOOVER; ROBERT W. LINDSEY;)
ROY L. AND BARBARA E. CURTIS; CODY)
8 AND PAM HOUSTON; SAM McCORMACK;)
CITY OF GREAT FALLS; S. E. AND)
9 DOROTHY A. WILLIAMSON; EDGAR S.)
AND VIRGINIA G. TINGLEY; A. ED)
10 MAIERLE; RAYMOND AND WINIFRED M.)
KRATZER; TOM McCALLISTER, JACK)
11 GREGOIRE, JR., JACK GREGOIRE, SR.,)
AND BILL GREGOIRE; BERNARD C. AND)
12 LEOTA J. SCHERMELE; ELGAN T. AND)
VERA E. CORRIGAN; DIANE K.)
13 McGURRAN; JERRY L. AND/OR PHYLLIS)
L. NEIFFER; JOHN WAY; JAMES A.)
14 BLOOMDAHL; HENRY T. AND/OR MARY)
C. O'REILLY; ELMER LAZURE; DANIEL)
15 AND JACQUELIN RICE; RONALD E.)
TOWERY; MARK REARDON; JAMES AND)
16 JACQUELINE J. CANFIELD; R. C.)
EKLUND; VERN L. FAUTH; RALPH E.)
17 AND DOROTHY N. NEBEL; BURTON K.)
GIBSON AND JAMES M. SCHULTZ; JAMES)
18 A. JOHNSON; REARDEN RANCH, INC.;)
RICHARD AND CONNIE H. MATSKO;)
19 THOMAS W. MADDOX; REX W. TANBERG,)
JR.; JOHN W. AND ELIZABETH A.)
20 DEVINE; RALPH T. AND CORA J.)
BRACKETT; ALBERT C. BERGER; JAMES)
21 D. AND ELIZABETH K. REMSH; EDWARD)
R. GOODAU AND WILLIAM A. VIK;)
22 WILLIAM AND CELIA DUNCAN; JOSEPH)
S. TROPILA; ALBERT L. AND FRANCES)
23 W. LAWSON; DAPHANA J. JONES;)
AUSTIN J. AND MARLEEN GANYAW;)
24 FRANKLIN SLIFKA; NORMAN C. AND)
CHAROLETTE J. HICKS; MAX AND JOAN)
25 KETTLEHUT; ARTHUR C. AND BEATRICE)

1 A. RICHBURG; CHESTER C. CLELAND;)
2 ROCK, INC.; LESTER R. SLONAKER;)
3 UNITED STATES DEPARTMENT OF)
4 INTERIOR, BUREAU OF LAND MANAGE-)
5 MENT; WENDEL S. KENNY; ROBERT E.)
6 AND PATRICIA E. MATOON; WILLIAM)
7 P. AND DOROTHY H. McDONALD; EDWARD)
8 F. ABBOTT; LYLE B. RICHARDS;)
9 HAMILTON C. PIERCE; KENNETH C. AND)
10 MOYNE A. SMALL; O'HAIRE, INC.;)
11 HARLAN A. AND IRENE M. LEE; HILDE)
12 CONSTRUCTION CO., INC.; TED R. AND)
13 CREE M. HANNA, JR.; FRANK)
14 CUNNINGHAM AND DAVID SOUTH; SEYLER)
15 RANCH, INC.; KENNETH R. AND LEONE)
16 E. WALTER; BIG SKY OF MONTANA,)
17 INC.; LEONARD H. LAMBOTT; MICHAEL)
18 D. AND DENISE L. PEARCE; and)
19 BENJAMIN S. DONLAN, THOMAS H.)
20 BOONE, TRUSTEE, DELOS E. ROBBINS;)
21 SCOTT A. AND JEAN F. WARDEN;)
22 RICHARD F. KRAWIEC AND PATRICIA A.)
23 SIMMONS; EDWIN J. WALKER; JANE)
24 O. NELSON,)

14 Respondents and
Interested Parties,

15 and

16 BUREAU OF RECLAMATION, UNITED)
17 STATES DEPARTMENT OF THE INTERIOR;)
18 CLIFFORD W. OBRECHT ESTATE;)
19 CHESTNUT VALLEY IRRIGATION)
20 DISTRICT: GEORGE AND OLIVE WOLFE;)
21 BELOTE FARMS; BUTTE CHAPTER OF)
22 TROUT UNLIMITED; JEFFERSON CANAL)
23 COMPANY; FISH CREEK IRRIGATION)
24 DITCH COMPANY; and MONTANA)
25 DEPARTMENT OF FISH, WILDLIFE AND)
PARKS;)

22 Respondents and
23 Interested Parties,

24 This action came before the court for hearing on May
25

1 5, 1988, in accordance with the motions for summary
2 judgment of the Montana Power Company, the United States
3 of America, and the Town of West Yellowstone. The issues
4 were heard, a decision was rendered, and

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
6 Motions for Summary Judgment filed by the Montana Power
7 Company and the United States of America are GRANTED. The
8 motion for Summary Judgment filed by the Town of West
9 Yellowstone is DENIED. The final orders of the Department
10 of Natural Resources and Conservation which granted
11 beneficial water use permits to the Respondents are
12 REVERSED and the beneficial water use permits granted to
13 the Respondents are declared VOID as being based upon the
14 determination of water rights without the authority of law
15 or substantial credible evidence, and not being in
16 conformity with the authorizing statute.

17 DATED this 10TH day of May, 1988.

18
19 GORDON R. BENNETT

20 DISTRICT COURT JUDGE

21
22 2021X

23 (Copies of the Court's Memorandum and Order entered herein this
24 day may be obtained from the Clerk of this Court upon payment
25 of copying costs).

P12/87

RECEIVED

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

JAN 12 1988

1520 E. 6TH AVE.

HELENA, MT 59620-2301

MONT. DEPT. of NATURAL
RESOURCES & CONSERVATION

UPPER MISSOURI RIVER BASIN QUESTIONNAIRE

Please check No. 1 or No.2 below, sign, date and return
this questionnaire in the enclosed envelope.



1. I request my original application be issued according
to your letter of December 3, 1987.



2. I hereby withdraw my original application and request
it be terminated.

Beverly Holum
Signature

File

1-2-88
Date

41K P032304-00

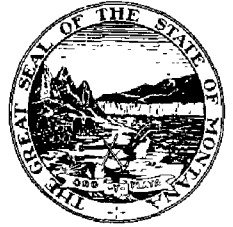
HOLUM
NO 6 OPEN BUCKLE
SUN RIVER

BEVERLY

MT 59483

Just got home from out
of state or would have mailed
this in earlier. Thank you

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
32 SOUTH EWING HELENA, MONTANA 59620



Permit to Appropriate Water

THIS PROVISIONAL PERMIT TO APPROPRIATE WATER IS HEREBY ISSUED TO:

BEVERLY S EVERETT HOLUM
NO 6 OPEN BUCKLE
SUN RIVER MT 59483

UPON FINDING THAT THE REQUIREMENTS OF SECTION 85-2-311 MCA
HAVE BEEN MET.

PERMIT NUMBER: 32304-S41K

PRIORITY DATE: MARCH 03, 1981 AT 2:00 P.M.

SOURCE: UNNAMED TRIBUTARY OF MILL COULEE CREEK

TOTAL AMOUNT: 40.00 GPM UP TO 10.40 AC-FT PER ANNUM

DIVERSION POINT: SWSSE SEC. 22 TWP. 21N RGE. 01W CASCADE CO

PERIOD OF APPROPRIATION: APR 15 - OCT 31

USE: 40.00 GPM UP TO 10.40 AC-FT (APR 15 - OCT 31)
FOR NEW SPRINKLER IRRIGATION ON 5.00 ACRES

PLACE OF USE: S2S2SE SEC. 22 TWP. 21N RGE. 01W CASCADE CO
FOR NEW SPRINKLER IRRIGATION ON 5.00 ACRES

DIVERSION MEANS: PUMP

**** REQUIREMENTS FOR PERMIT HOLDER:**
THE DEADLINE FOR COMPLETION OF THIS PERMIT, AND FILING OF THE NOTICE
OF COMPLETION OF PERMITTED WATER DEVELOPMENT (FORM 617) SHALL BE
NOVEMBER 30, 1986, VERIFYING THAT THE APPROPRIATION OF WATER HAS BEEN
COMPLETED AS PERMITTED.

**** PRIOR RIGHTS:**
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.

**FAILURE TO COMPLY WITH ANY TERMS AND CONDITIONS HEREIN MAY RESULT IN
THE LOSS OF THE WATER RIGHT GRANTED BY THIS PERMIT.**

**** TRANSFER OF OWNERSHIP:**
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 SECTION 85-2-424, MCA.

WITNESS

ADMINISTRATIVE ASST: RONALD J GUSE

DATE: MARCH 18, 1986 WATER RIGHTS BUREAU, WATER RESOURCES DIVISION

STATE OF MONTANA

DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

APPLICATION FOR BENEFICIAL WATER USE PERMIT

41K

Note: Use one application for each source of supply or separate development. Check all appropriate boxes and fill in each blank line. If the question is not applicable in your case, enter NA (not applicable). If more space is necessary, attach additional sheets.

(Please type or print in ink)

1. Name of Applicant <u>LARRY E. HOLUM EVERETT & BEVERLY HOLUM</u>	
Mailing Address <u>No. 6 OPEN BUCKLE</u>	
City or Town <u>SUN RIVER</u>	State <u>MT.</u> Zip <u>59483</u>
Home Phone <u>264-5248 HOME</u>	Other Phone <u>438-3761 (Cons. Forum)</u>
<u>453-1721 NEW NUMBER</u> <u>NO LONGER WORKING THERE</u>	
2. Source of water supply <u>UNNAMED TRIBUTARY OF MILL CREEK CREEK</u>	
a tributary of <u>SUN RIVER</u> <u>264-5272</u>	
(stream name, if well, so indicate) <u>EVERETT & BEVERLY</u>	
3. (a) Point of diversion:	
<u>SW 1/4 SE 1/4 SE 1/4</u> Section <u>22</u> , Township <u>21^N</u> S, Range <u>1^E</u> W, <u>CASCADE</u> County	
Additional points of diversion, if any:	
<u> </u> <u>1/4</u> <u> </u> <u>1/4</u> <u> </u> <u>1/4</u> Section <u> </u> , Township <u> </u> S, Range <u> </u> W, <u> </u> County	
<u> </u> <u>1/4</u> <u> </u> <u>1/4</u> <u> </u> <u>1/4</u> Section <u> </u> , Township <u> </u> S, Range <u> </u> W, <u> </u> County	
(b) If water is not consumed, it will be discharged back into the same source:	
Yes ☒ ; No ☐ . If no , explain and give the complete land description at the point of discharge. <u> </u>	
<u> </u> <u>1/4</u> <u> </u> <u>1/4</u> <u> </u> <u>1/4</u> Section <u> </u> , Township <u> </u> S, Range <u> </u> W, <u> </u> County	
4. Description of water development:	
(a) Diverting works. Enclose all pertinent engineering data available. If not available, describe the horsepower rating of the pump and capacity in gallons per minute, size of ditches, flumes, dikes or other. <u>5 H.P. PUMP -</u>	
<u>2 INCH HOSE OUTPUT ADAPTED DOWN TO 1 1/2" TO 1"</u>	
<u>LINES - RAINBIRD SPRINKLERS - 10</u>	
NA (b) Reservoir (if applicable).	
1. Project will be an enlargement of an existing reservoir.	
Yes ☐ ; No ☐ . (If yes , complete both 3 and 4 below.)	
2. Project will be a new reservoir.	
Yes ☐ ; No ☐ . (If yes , enter NA in 3 below, and complete 4.)	
3. Capacity of existing (old) reservoir when constructed: <u> </u> acre-feet.	
4. Capacity of new (proposed) reservoir: <u> </u> acre-feet.	
NA (c) Well Depth: <u> </u> feet (if applicable).	
NA (d) Project will be a developed spring: Yes ☐ ; No ☐ .	

5. Proposed Construction:

- (a) Desired starting date COMPLETE; anticipated completion date _____
 (b) Estimated construction cost \$ 700

6. Amount of water, use to which it will be applied, and period of use:

Example:

7.5 ^{cfs} gpm up to 5.35 (acre-feet) for IRRIGATION (use) from April 15 (month-day) to October 15 (month-day) inclusive.
40 ^{cfs} gpm up to 10.4 (acre-feet) for SHELTER BELT LAWN (use) from April 15 (month-day) to Oct. 31 (month-day) inclusive.
 (Amount) (acre-feet) (use) (month-day) (month-day)
 (Amount) (acre-feet) (use) (month-day) (month-day) inclusive.
 (Amount) (acre-feet) (use) (month-day) (month-day) inclusive.
 Total amount requested: 40 ^{cfs} gpm up to 10.4 (acre-feet) per year.

7. Description of proposed beneficial water uses:

(a) Irrigation (if applicable).

1. Method of irrigation: Flood ☐ ; Sprinkler ☒ . If Flood, explain: _____
 2. Project will involve new irrigated land: Yes ☒ ; No ☐ .
 3. Project will involve supplemental water to existing irrigation: Yes ☐ ; No ☒ .
 4. Project will involve both new irrigated land and supplemental water to existing irrigation: Yes ☐ ; No ☒ . If yes, the acreage must be entered on separate lines in the Table below, and identified on the map in Item 9, page 3.
 5. Acreage by-land description: (Enter the number of acres to be irrigated in the appropriate quarter-section.)

Example:								Check Appropriate Block	
Sec.	Twp.	Rge.	NE¼	NW¼	SW¼	SE¼	Totals	New	Supplemental
7	18N.	20E	35		140	118	293	✓	

								Check Appropriate Block	
Sec.	Twp.	Rge.	NE¼	NW¼	SW¼	SE¼	Totals	New	Supplemental
22	21N	1W				5	5	✓	

Total number of acres to be irrigated → 5

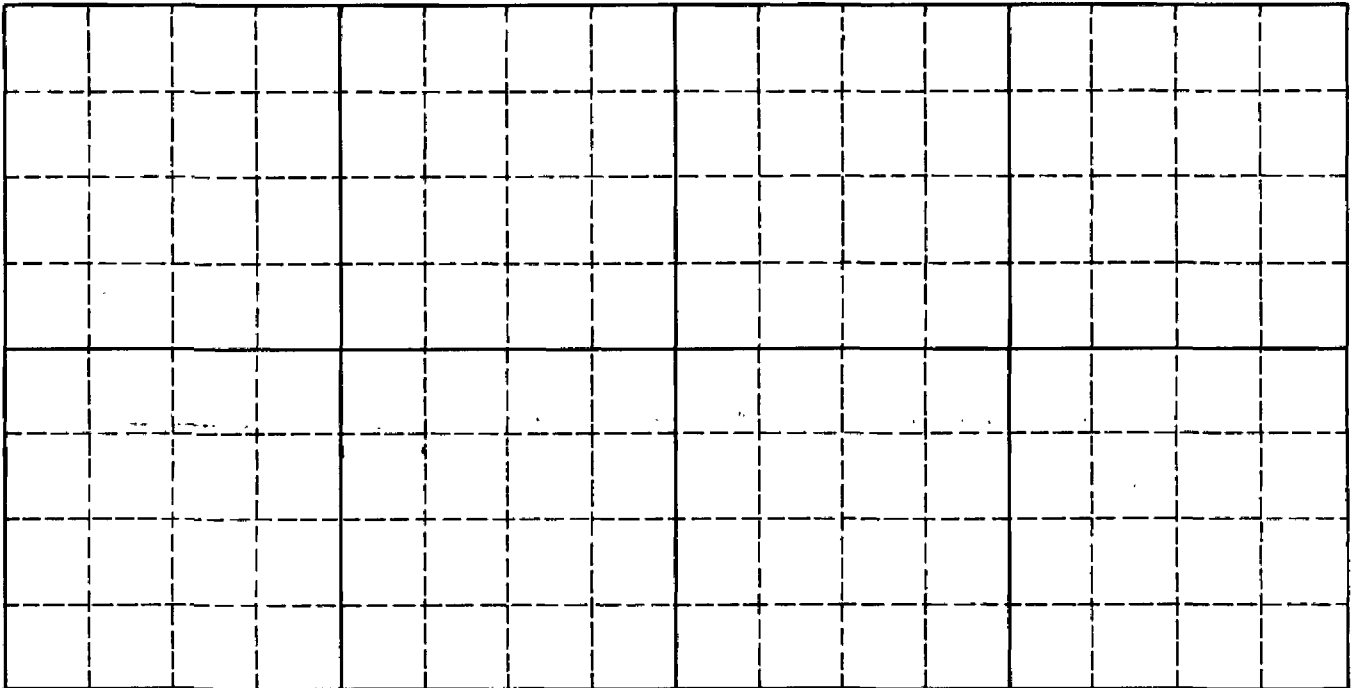
(b) Non-irrigation use: (if applicable)

1. Place of use of the water will be the same as location given in Item 3(a), page 1.
 Yes ☐ ; No ☐ . If no, give the location: _____ % _____ % _____ % Section _____,
 Township _____ N S, Range _____ E W, _____ County.
 2. Estimate the maximum number and type of livestock to be watered: _____
 Are there other locations where the same livestock are watered? Yes ☐ ; No ☐ .
 3. Name of municipality to be served: _____
 4. Number of families to be supplied: _____
 5. If water will be used for other purposes, describe: _____

8. Ownership:

- (a) Property owner at the point of diversion: SAME
- (b) Property owner at the place of use: SAME
- (c) If either (a) or (b) above are other than the applicant, describe the arrangement enabling the applicant to make this filing: _____
- _____
- _____

9. Map of proposed water development: Indicate clearly the point of diversion, place of use, and section, township, and range numbers. Show pertinent information concerning the development, such as dams, canals, ditches, pipelines, wells, etc. Use the largest, most convenient scale possible. If the map shown below is not adequate to describe your development, attach additional sheets.



10. Remarks: _____

11. THE APPLICANT CERTIFIES THAT THE STATEMENTS APPEARING HEREIN ARE TO THE BEST OF HIS KNOWLEDGE TRUE AND CORRECT.

Jeff E. Holm

(Signature)

(Date)

3/3/81

(Signature)

(Date)

(Signature)

(Date)

Signature of applicant(s) must be exactly as in Item 1, page 1. If more than one applicant is shown, all must sign.

DEPARTMENT ENDORSEMENTS

(This section is not to be filled in by Applicant)

Check When Completed

ACTION TAKEN

1. Received *by mail* over counter in Department's office by J. Gregory
2. Date Received (priority): Day 3; Month MARCH; Year 1981; Time 2:00 PM
3. Recorded in; Book _____; Page _____; By _____
4. Preliminary check by _____; Amt. of fee received \$ 10.00 CR.# 60219
Transmittal No. 06-034-01-04 Remarks _____
5. Application indexed by _____; Platted by _____
6. Application examined by _____; Type of Permit _____
7. Application returned for completion on _____; or corrected by office on _____
Date to be returned by Applicant _____
8. Corrected Application resubmitted to Department's office on _____
9. Priority of Application (*see No. 2 above*) brought down to _____
Reason: _____
10. Application approved for advertisement by _____
11. Notice of Publication prepared by _____; Proofed by _____
Date _____
12. Publication Proof Sheet proofed by _____; Date _____
13. Publication dates: From _____ To _____
14. Notice published in _____
15. Notice to water users prepared by _____; Proofed by _____
Date _____
16. Date Notice mailed to water users _____; Public agency with reserved waters _____
Others (*specify*) _____
17. Protests filed by _____
18. Date notice of hearing sent to Applicant _____; Objector(s) _____
19. Hearing held by _____; Place _____
Date _____
20. Date *Statement of Opinion* and notice of possible hearing sent _____
Sent by _____
21. Application field checked by _____; Date _____
22. Application recommended for (*approval or denial*) by _____
23. Application microfilmed by _____; Date _____
Roll No. _____ (*Microfilm after Item 22 only*)

REMARKS

(For Department Use Only)

PUBLIC NOTICE

NOTICE TO WATER USERS
(PURSUANT TO SECTION 85-2-307, MCA)

NOTICE IS HEREBY GIVEN THAT THE FOLLOWING APPLICATION HAS BEEN
SUBMITTED FOR PERMIT TO APPROPRIATE WATER IN THE STATE OF MONTANA:

APPLICATION NO. 32304-S41K

LARRY E HOLUM
NO 6 OPEN BUCKLE
SUN RIVER MT 59483

SOURCE: UNNAMED TRIBUTARY OF MILL COULEE CREEK

DATE FILED: 3/03/1981

TOTAL AMOUNT: 40.00 GPM UP TO 10.40 AC-FT PER ANNUM

DIVERSION POINT: SWSESE SEC. 22 TWP. 21N RGE. 01W CASCADE CO

PERIOD OF APPROPRIATION: 04/15-10/31

USE: 40.00 GPM UP TO 10.40 AC-FT (04/15-10/31)
FOR NEW SPRINKLER IRRIGATION ON 5.00 ACRES

PLACE OF USE: S2S² SE SEC. 22 TWP. 21N RGE. 01W CASCADE CO
FOR NEW SPRINKLER IRRIGATION ON 5.00 ACRES

DIVERSION MEANS: PUMP

REMARKS: IF ISSUED, THE PERMIT WILL BE SUBJECT TO PRIOR EXISTING WATER RIGHTS.

OBJECTIONS TO THE ISSUANCE OF A PERMIT UNDER THIS APPLICATION, WITH
REASONS THEREFOR, MUST BE FILED WITH THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION, NATURAL RESOURCES BUILDING, 32 SOUTH EWING, HELENA, MT 59620,
ON OR BEFORE JUNE 17, 1981. OBJECTION TO APPLICATION (FORM 611) IS
AVAILABLE AT THE OFFICE OF THE COUNTY CLERK AND RECORDER, OR FROM THIS
DEPARTMENT UPON REQUEST.

ASSISTANCE OR QUESTIONS REGARDING THIS APPLICATION SHOULD BE DIRECTED
TO THE LOCAL OFFICE: LEWISTOWN AREA OFFICE SUPV
613 NE MAIN ST. PO BOX 438
LEWISTOWN, MT 59457 PH: 538-7459

PUBLISHED IN: GREAT FALLS TRIBUNE
ON 04/29/81, 05/06/81 AND 05/13/81

COUNTY



Sun River Project
(Fort Shaw Division)

Sun River Project
(Greenfields Division)

Sun River Valley Ditch Co.

Private Irrigation

- GREENFIELDS SOUTH LATERAL

— SUN RIVER VALLEY DITCH
— DRACUTT JUNCTION
— G.N.R.R

- Sun River

Larry Allen

T. 21 N.—R. 1 W

INVOICE

GREAT FALLS TRIBUNE

BOX 2468

PHONE 406-761-6666

PROOFED AND PAID

GREAT FALLS, MONTANA 59403

NAME MT Dept Natural Resources
32 South Ewing
Helena, Montana 59601

DATE 5-13-81
#1592

GREAT FALLS TRIBUNE PRINTING

449-3634

DATE			DESCRIPTION	AMOUNT	
			PUBLIC NOTICE APPL. #32304		
4	29	81	3 folio @ 3.60	\$10	80
5	6	81	3 folio @ 2.40	7	20
5	13	81	3 folio @ 2.40	7	20
				\$25	20

AFFIDAVIT AND CERTIFICATION OF PUBLICATION

STATE OF MONTANA

COUNTY OF: CASCADE (SS)

CYNTHIA A. TRUNKLE, being duly sworn, deposes and says: that he is
CREDIT CLERK of the Great Falls Tribune, a newspaper of
 general circulation, printed and published at Great Falls, Montana, and the
 notice hereunto attached (32304), was printed and published in said
 newspaper for a period of 3 successive weeks, in the regular and entire issue of
 every number of the paper during the period of time of publication, on the following
 dates, to-wit: 4-20-81, 5-06-81, 5-13-81.

And, I hereby certify that I have read Sec. 18-7-201 to 18-7-205, MCA, and subsequent
 revisions, and declare that the price or rate charged the State of Montana for the publication
 for which claim is made in the amount of \$ 25.20, is not in excess of the minimum
 rate charged any other advertiser for publication or advertisement.

I further certify that this claim is correct and just in all respects, and that payment
 or credit has not been received.

Subscribed and sworn to before me this Cynthia A. Trunkle
14th day of May, 19 81

(Notarial Seal)

David J. Lucas
 NOTARY PUBLIC for the State of Montana, Residing at
Great Falls, MT
 My Commission expires 9/6/82

(PASTE PROOF HERE)

NOTE TO PUBLISHER: For billing to any State of Mo
 is be on a word count of 100 words or any fra
 (i.e., 299 words = 3 folio, 301 words = 4 folio, etc.) . . . with heading, dates or
 publication, signature and title included in word count.)

NOTICE TO WATER USERS
 (Pursuant to Section 85-2-307, MCA)
 Notice is hereby given that the following ap-
 plication has been submitted for permit to ap-
 propriate water in the State of Montana: Ap-
 plication No. 32304-S41K.
 Larry E. Holm, No. 6 Open Buckle, Sun
 River, MT 59483.
 Source: Unnamed tributary of Mill Coulee
 Creek.
 Date Filed: 3/03/1981.
 Total Amount: 40.00 GPM up to 10.40 AC-FT
 per annum.
 Diversion Point: SWSESE Sec. 22 Twp. 21N
 Rge. 01W, Cascade Co.
 Period of Appropriation: 04/15-10/31.
 Use: 40.00 GPM up to 10.40 AC-FT (04/15-
 10/31) for new sprinkler irrigation on 5.00
 acres.
 Place of Use: SE Sec. 22 Twp. 21N Rge. 01W,
 Cascade Co. for new sprinkler irrigation on
 5.00 acres.
 Diversion Means: Pump.
 Remarks: If issued, the permit will be sub-
 ject to prior existing water rights.
 Objections to the issuance of a permit under
 this application, with reasons therefor, must be
 filed with the Department of Natural Re-
 sources and Conservation, Natural Resources
 Building, 32 South Ewing, Helena, MT 59620, on
 or before June 17, 1981. Objection to applica-
 tion (Form 611) is available at the office of the
 County Clerk and Recorder, or from this
 Department upon request.
 Assistance or questions regarding this Ap-
 plication should be directed to the local office:
 Lewistown Area Office Supv., 613 NE Main St.,
 P.O. Box 438, Lewistown, MT 59457. PH: 538-
 7489.

4/29, 5/6/13.

AFFIDAVIT OF SERVICE

STATE OF MONTANA)
COUNTY OF LEWIS AND CLARK) ss.

Pat Bloomquist, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That, pursuant to the requirements of Section 89-881, R.C.M. 1947,

on May 8, 1981, she deposited in the United States mail, "certified mail," a notice of receipt by the department of an application for a permit to appropriate water, addressed to each of the following persons or agencies:

*Larry E. Holum, No. 6, Open Buckle, Sun River, MT 59483 (applicant)
Lloyd V. Christensen, etal, % H. Poulsen, Box 1376, Great Falls, MT 59403
Paye M. Eckart, 1408 11 A ST SW, Great Falls, MT 59404
Frank S. Anderson, etal, 3801 5 AV S, Great Falls, MT 59405
Alvin N. Christensen, etal, % H. Poulsen, Box 1376, Great Falls, MT 59403
✓ State Lands, % Wilbur Erbe, Capitol Station, Helena, MT 59620
John J. and A. Prissly Zeller, Vaughn, MT 59487
Randall and Helena I. Swanberg, 314 Montana Bldg., Great Falls, MT 59401
Lewis Construction Co., Box 2669, Great Falls, MT 59403
Alexander D. Purvis, etal, Box 25, Vaughn, MT 59487
Dept. of Fish, Wildlife and Parks, 1420 E. 6th Ave. Helena, MT 59601
Bureau of Reclamation, Attn: Code 450, P.O. Box 2553, Billings, MT 59103
Montana Power Co., Attn: Jim Walsh, Atty., 40 E. Broadway, Butte, MT 59701
Lewistown Field Office, Water Rights Bureau, P.O. Box 438, Lewistown, MT 59457

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Pat Bloomquist

STATE OF MONTANA)
County of Lewis & Clark) ss.

On this 8th day of May, 1981, before me, a

Notary Public in and for said State, personally appeared Pat Bloomquist,

known to me to be the Clerk-Typist of the Department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Jim P. Gibson

Notary Public for the State of Montana

NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires January 21, 1984

My commission expires _____

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
WATER RESOURCES DIVISION



TED SCHWINDEN, GOVERNOR

32 SOUTH EWING

STATE OF MONTANA

(406) 444-6601 ADMINISTRATOR
(406) 444-6646 ENGINEERING BUREAU
(406) 444-6668 WATER DEVELOPMENT BUREAU
(406) 444-6601 WATER MANAGEMENT BUREAU
(406) 444-6610 WATER RIGHTS BUREAU

HELENA, MONTANA 59620

January 10, 1985

Larry E. Holum
No. 6 Open Buckle
Sun River, MT 59483

RE: Correction of Typographical Error

The following is a correction of a typographical error on an Order issued on your Application for Beneficial Water Use Permit No. 32304-s41K. Due to the cost of mailing, a separate, corrected document will not be issued.

Page 1, paragraph 1, line 1 should read as follows:

"On April 24, 1984, the Department of Natural Resources and"

Please file this correction with your appropriate papers, and apply such correction to the respective case.

Thank you in advance for your consideration and patience.

Sincerely,

A handwritten signature in cursive script that reads "Teresa McLaughlin".

Teresa McLaughlin
Processing Unit Supervisor
Water Rights Bureau

TM/pm

c: Montana Power Company
K. Paul Stahl

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF LEWIS AND CLARK

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) CERTIFICATE OF TRANSMITTAL
NO. 32304-S41K BY LARRY E. HOLUM)
CAUSE NO. _____

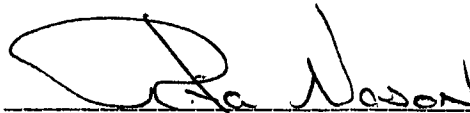
* * * * *

STATE OF MONTANA)
)ss.
County of Lewis and Clark)

I, Rita Nason, Acting Processing Unit Supervisor, Department
of Natural Resources and Conservation, do hereby certify that I
transmitted a certified copy of the entire record of the
following proceeding to the District Court of the First Judicial
District of the State of Montana, in and for the County of Lewis
and Clark, on January 10th, 1985, pursuant to §2-4-702(4),
MCA:

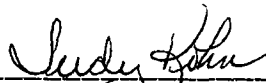
IN THE MATTER OF THE APPLICATION FOR BENEFICIAL
WATER USE PERMIT NO. 32304-S41K BY LARRY E. HOLUM.

DATED this 10th day of January, 1985.



Acting Processing Unit Supervisor
Department of Natural Resources and
Conservation

SUBSCRIBED AND SWORN to before me this 10th day of
January, 1985.



Notary Public for the State of Montana
Residing at Montana City, Montana
My Commission expires March 1, 1985

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF LEWIS AND CLARK

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 32304-S41K BY LARRY E. HOLUM)

CERTIFICATE OF RECORD

CAUSE NO. _____

* * * * *

STATE OF MONTANA)
County of Lewis and Clark) ss.

I, Rita Nason, Acting Processing Unit Supervisor, Department of Natural Resources and Conservation, do hereby certify as follows:

1. The record of the proceeding entitled In the Matter of the Application for Beneficial Water Use Permit No. 32304-S41K BY LARRY E. HOLUM is kept under my custody and control.

2. The record of the above-styled proceeding consists of the following:

Application for Beneficial Water Use Permit; Public Notice, Notice to Water Users; Affidavit of Service for Notice to Water Users; Newspaper Certification of Publication; Objections to Application; Order to Show Cause; Response(s) to Show Cause Order; Order.

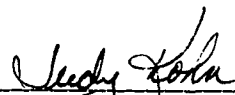
3. The above-described record is a true and accurate copy of the original record in this proceeding.

DATED this 10th day of January, 1985.



Acting Processing Unit Supervisor
Department of Natural Resources and
Conservation

SUBSCRIBED AND SWORN to before me this 10th day of January, 1985.



Notary Public for the State of Montana
Residing at Montana City, Montana
My Commission expires March 1, 1985

FORM 600 CHECK LIST

32304

Application No.

S

S/G

41K

Basin

3-3-1981

Received Date

FEE CHECK:

Fee Required 10.00 Fee Received 10.00 Transmittal No. 06-034-01-04Refund Made ☐ Yes, Amount _____ Date _____

FORM CHECK LIST:

	OK	NOK	REMARKS
1.	☒		
2.	☒		
3.	☒		
4.	☒		
5.	☒		
6.	☒		
7.	☒		
8.	☒		
9.	☒		
10.	☒		
11.	☒		
12.	☒		
13.	☒		
14.	☒		

DEFICIENT/RETURNED:

Certified No. _____ 30 Day Deadline (up to 6 mo.) _____

Application Corrected _____ Priority Date Changed ☐ Yes, _____
(date) (date)

PROCESSING CHECK:

YES NO

- | | | |
|-------------------------------------|-------------------------------------|--|
| ☒ | ☐ | 1. Supplemental map (Quad, Aerial or GLO). |
| ☐ | ☒ | 2. Field investigation needed: _____ (date). |
| ☐ | ☒ | 3. Irrigation Requirements Worksheet. |
| ☐ | ☒ | 4. Copy of Supplemental Water Right(s) enclosed. |
| ☒ | ☐ | 5. Environmental Assessment enclosed. |
| ☐ | ☒ | 6. PER/EIS needed, 90 day deadline _____. |
| ☒ | ☐ | 7. Affected Ownership map and list _____. |
| ☒ | ☐ | 8. Affidavit of Certification and Publication. |
| ☐ | ☒ | 9. Affidavit of Service enclosed. |
| ☐ | ☒ | 10. Waive Notice checklist. |
| ☐ | ☒ | 11. 612 in file. |
| ☐ | ☒ | 12. 612 due from applicant by: _____ (date). |
| ☒ | ☐ | 13. Code sheet enclosed. |

ACTION NEEDED -- HELENA:

- | | |
|-------------------------------------|---|
| ☐ | 1. Process refund (claim payment enclosed). |
| ☐ | 2. Review for PER/EIS _____ (Bur. Chief, Prog. Mgr., etc.). |
| ☐ | 3. Review by Water Sciences Bureau _____. |
| ☒ | 4. Run Affidavit of Service per ownership list. |
| ☐ | 5. Prepare Groundwater Ownership. |
| ☐ | 6. Publish per enclosed affidavit. |
| ☐ | 7. Set objection period; ☐ two weeks, other _____. |
| ☐ | 8. Issue Permit (notice waived). |
| ☐ | 9. Use completion due date _____. |

REMARKS/TERMS OR CONDITIONS RECOMMENDED: _____

ANALYST'S SIGNATURE _____ DATE: _____

FORM 600 ENVIRONMENTAL ASSESSMENT CHECKLIST

1. Will the diversion be for more than 15 cfs or 10,000 acre feet?
Yes _____ No ☒
2. If the permit is granted will future diversions from the water source likely be precluded?
Yes _____ No ☒
3. Is there evidence of controversy regarding the proposed diversion (other than that involving rights of prior appropriator)?
Yes _____ No ☒
4. Is the point of diversion, conveyance or place of use near a special use area (e.g., wild, scenic or recreational river, wilderness area, wildlife management area, recreational site)?
Yes _____ No ☒
5. Is the diversion of water from a blue ribbon stream or water source with a similarly important fishery resource?
Yes _____ No ☒
6. Will the diversion, conveyance or place of use be on or near an important area for terrestrial wildlife (e.g., nesting site, winter range)?
Yes _____ No ☒
7. Is saline seep a present or projected problem in the vicinity of the place of use?
Yes _____ No ☒
8. Will the proposed diversion require a substantial expenditure of funds in order to put it to beneficial use?
Yes _____ No ☒
9. Are there any known sites of historic or prehistoric importance near the proposed diversion, conveyance or place of use?
Yes _____ No ☒
10. Are there any present land uses that would be limited or precluded if the proposed diversion is put to beneficial use?
Yes _____ No ☒

In consideration of the above responses, particularly those in the affirmative, note any environmental, social or economic impacts which may be attributed to issuance of the permit.

Recommendation concerning the preparation of a PER or EIS.

Yes _____ (PER) No ☒

Yes _____ (EIS)

Uncertain, request further review by _____

Reviewer

O. Allan Kuder

Date _____

June 22, 1981

Larry E. Holum
No. 6 Open Buckle
Sun River, Montana 59483

Dear Mr. Holum:

This is in reference to your Application No. 32304-s41K to appropriate certain waters from an unnamed tributary of Mill Coulee Creek as indicated in the enclosed public notice.

The deadline for filing objections to your application has expired and we have received two (2) objections. Enclosed is a copy of each for your records. Please examine the objections and respond in writing within seven (7) days of receipt of this letter providing comments or facts indicating that the objectors would not be adversely affected. If a suitable solution cannot be reached, a hearing on the objections may be necessary.

Please submit your comments or facts to Sam Rodriguez, Lewistown Area Office Supervisor, 613 N E Main Street, P.O. Box 438, Lewistown, Montana 59457. Your application has been forwarded to this office to evaluate and process the objections.

Sincerely,



Rita Nason
Water Rights Analyst
Water Rights Bureau

RN:jf
Enclosures (3)

Thomas L. Judge, Governor

MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

MEMBERS OF THE BOARD - CHAIRMAN CECIL WEEDING, J VIOLA HERAK, DAVID G DRUM,
DR WILSON F CLARK, DR ROY E HUFFMAN, WILLIAM H BERTSCHE, CHARLES L HASH

DNRC
Ted J. Doney, Director

April 21, 1981

LEGAL NOTICE DEPARTMENT
GREAT FALLS TRIBUNE
PO BOX 2468
GREAT FALLS, MT 59403

To The Editor

Re: Application(s) for Beneficial Water Use Permit and/or Authorization(s)
to Change Appropriation Water Right *for verif. of pub. see file 32298.*
File No. **32298, 32304, and 32306.**
Notice of Application by Publication

You are authorized to publish the enclosed notice(s) once each week for
three consecutive weeks as required by law. Publish on Wednesdays,
weeks of **04/29/81, 05/06/81, and 05/13/81.**

Forward to this Department the notarized certification and affidavit of
proof of publication within 30 days after the final date of publication. Your
statement for cost of publication should be submitted in triplicate. Please
attach the affidavit to your bill and send to this department for payment.

If you have any questions, let us know.

Sincerely,

Scott Frickel

Appropriations Section
Water Rights Bureau

Enclosure

NOTICE: IT IS IMPORTANT THAT THE ENCLOSED NOTICE(S) BE ADVERTISED ON THE
DATES SPECIFIED. IF THE NOTICE(S) CANNOT BE PUBLISHED ON THE DATES
INDICATED, PLEASE CALL ME AT 449-3634 IMMEDIATELY.

WATER RESOURCES DIVISION
ORRIN FERRIS, ADMINISTRATOR

(406) 449-2872

COOPLAIN MANAGEMENT
(406) 449-2864

ENGINEERING
(406) 449-2864

WATER PLANNING
(406) 449-2872

TECHNICAL SERVICES
(406) 449-2872

WATER RIGHTS
(406) 449-3634

WEATHER MODIFICATION (HI-PLEX)
(406) 449-2872

32 SOUTH EWING, HELENA, MONTANA 59601

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
WATER RESOURCES DIVISION



THOMAS L. JUDGE, GOV. RNOR

32 SOUTH EWING

STATE OF MONTANA

(406) 449-2872

HELENA, MONTANA 59601

April 21, 1981

Larry E. Holum
No. 6 Open Buckle
Sun River, MT 59483

Dear Applicant:

Enclosed is a copy of the Notice to Water Users which will be published in the newspaper(s) indicated at the bottom of the Public Notice.

If the notice is not published on the dates indicated or errors appear in the publication, please call the Citizens' Advocate Office, TOLL FREE 1-800-332-2272.

Please leave your name, water application number, and telephone number with the Citizens' Advocate. A staff member of the Water Rights Bureau will return your call.

Sincerely,

A handwritten signature in cursive script, reading "Susan McLaughlin".

Appropriations Section
Water Rights Bureau

TM:pb
Enclosure

PUBLIC NOTICE CODING FORM

1 2 **41K** 6 **S** 7 **32304** 13 15 **01**
BASIN S.G. NUMBER EXT. NO. REC. NO.
NAME: 17 **T** 18 **HOLLM** **LARRY** **E**
LAST FIRST INIT. CORP. NAME (CONT.)

ADDRESS: 62 **NO. 6 OPEN BUCKLE**
92
2 **SUN RIVER**
CITY

24 **MT** 26 **59483**
STATE ZIP

SOURCE: WELL ☐ RESERVOIR ☐ UNNAMED TRIBUTARY ☒
34 **ATLL COULEE CREEK**
STREAM NAME

PRIORITY DATE: 67 **1400** 71 **03** 73 **03** 75 **1981** TOTAL VOLUME: 79 **1040** TOTAL RATE: 88 **4000** 95 **G** TOTAL ACRES: 96 **500**
TIME MO DAY YEAR

— POINT OF DIVERSION —

103 **SWSESE** 111 **22** 113 **21N** 116 **01W** 119 **CS** 121 124
QUARTER SECTIONS SECTION TWP. RGE. CTY. LOT BLOCK

3 2 7
SUBD. CODE SUBDIVISION NAME

USE	PERIOD OF USE	LOT	BLOCK	QUARTER SECTIONS	SECTION	TWP.	RGE.	CTY.	POU = POD	VOLUME	RATE	ACRES
59 NS	61 04151031	69 	72 	75 SE2221N01WCS	93 	94 1040	103 4000	110 G	111 500			
4 2 	4 	12 	15 	18 	36 	37 	46 	53 	54 			
61 	63 	71 	74 	77 	95 	96 	105 	112 	113 			
5 2 	4 	12 	15 	18 	36 	37 	46 	53 	54 			
61 	63 	71 	74 	77 	95 	96 	105 	112 	113 			

RESERVOIR: Capacity of existing reservoir 8 2 new reservoir 9 off stream reservoir 16 ☐

DIVERSION MEANS: 17 **PM** PERIOD OF DIVERSION: 19 **04151031**, 27

REMARKS: 35 37
CODE TEXT
2
56

FIELD OFFICE: 110 **6** PUBLISHED IN: 8 2 **4** on 5 **042981**, 11 **050681**, and 17 **051381**

OBJECTION BY: 111 **06** 113 **17** 115 **81** 2nd PAPER: 23 on 26 , 32 , and 38

NUMBER OF NOTICES TO BE GENERATED: 117 **03** 3rd PAPER: 44 on 47 , 53 , and 59

Dear Sirs:

Would you please change

the gpm from 15 to 40, on
our application for Beneficial Water Use permit
Thank you,

Kathy Holum



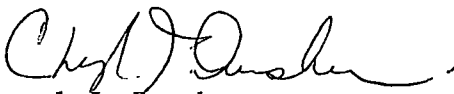
July 1, 1985

State of Montana
Attn: Allan Kuser
613 N.E. Main Street
Lewistown , MT 59457

Dear Mr. Kuser:

Everett & Beverly Holum are purchasing the property from their son Larry Holum, who is purchasing the property from James Gist on a Contract for Deed with the Village Bank.

Sincerely,


Cheryl J. Dunshee
Real Estate Officer

CJD/bb

RECEIVED

JUL 2 1985

MONTANA D.N.R.C.
LEWISTOWN FIELD OFFICE

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
WATER RIGHTS BUREAU



TED SCHWINDEN, GOVERNOR

613 N E MAIN STREET
P.O. BOX 438

STATE OF MONTANA

(406) 538-7459

LEWISTOWN, MONTANA 59457

June 19, 1985

Everett & Beverly Holum
No. 6 Open Buckle
Sun River, MT 59483

Dear Mr. & Mrs. Holum:

When I visited your place on Wednesday, June 12th, to look over your lawn irrigation and pump site, you told me that you were purchasing your property from your son Larry. Would you please send me a statment to that effect? We will then be able to issue the permit in your name.

Please respond at your earliest convenience. Thank you.

Sincerely,

Allan Kuser
Water Rights Specialist
Lewistown Water Rights Bureau

AK/mjm
Enclosure

MEMORANDUM

TO: File No. 32304 by Larry Holum
New Owners: Everett & Beverly Holum
No. 6 Open Buckle
Sun River, MT 59483

FROM: Allan Kuser

DATE: June 19, 1985

RE: Field Investigation of the above referenced application by Allan Kuser and Gene Gibson

On Wednesday, June 19, 1985, Gene and I met Everett & Beverly Holum at their residence. The Holums informed me that they had purchased the property from their son Larry.

The irrigation system is already installed and operable. They have installed a 2 hp electric motor with a 2" intake and outlet. Shortly after the pipe leaves the pump it has been reduced to 1 1/2".

The Holums depend on the creek for stock water and to be able to irrigate their lawn and wind break. The Holums stated that generally there is enough water in the creek to meet their needs. However, occasionally an upstream appropriator with claimed water rights will divert almost the entire stream. At the time of our visit and for almost 2 weeks prior to it, the stream was not flowing enough water for the Holums to use. They said this had happened last year until the 22nd of June. After that there was more than an adequate supply of water. They were currently hauling water from Great Falls for their stock.

The proposed use by the applicant constitutes a beneficial use of water as required by the Montana Water Use Act. In addition, the means of diversion, construction, and operation of the appropriation works is adequate. According to the applicants there is more than enough water in the source of supply, most of the year, to meet their needs.

**THERE IS A
PHOTO OR
PHOTOS
ASSOCIATED
WITH THIS
WATER RIGHT.**

**PLEASE
REQUEST THE
FILE TO SEE
PHOTOS**

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. 32304-s41K BY LARRY E. HOLUM)

ORDER

* * * * *

On April 2, 1984, the Department of Natural Resources and Conservation issued a Show Cause Order to Objectors Montana Power Company (hereafter, "MPC").

I. Memorandum of Cause by MPC

A. MPC's response to the Show Cause Order also reasserted several of their arguments made in response to the Proposal for Decision in Don Brown. The Department incorporates its response to MPC's arguments numbered 2, 3, 6, 8, 10 as set forth in the Final Order in Don Brown, April 24, 1984.¹

¹ These MPC arguments are:

2. Unappropriated water in the proposed source is non-existent.
3. Property rights will be adversely affected.
6. Evidence shows the Power Company's water rights are presently not being satisfied.
8. The Order changes the statutory burden of proof.
10. All Final Orders issued by the Department are afflicted with errors of law and are otherwise improper, and the Power Company has appealed every Final Order which adversely affects its rights.

MPC's argument number 10 is too vague to be responded to with particularity. MPC suggests the hearing officer look at the docket as evidence that MPC has presented arguments that Don Brown is afflicted with errors of law or otherwise improper. MPC's complaint, however, is still too vague to provide the Department any substantive clue as to the errors MPC claims infect Don Brown.

B. MPC's most fundamental objection is that the Show Cause Orders are beyond the DNRC authority. This is incorrect. The Department will first address this issue, settling the arguments numbered 1 and 11 raised by MPC.²

(1) Statutory Authority

Among the duties mandated to be carried out by the Department by broad legislative delegation of authority is MCA § 85-2-112(1), (2).

"The Department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, subject to the powers and duties of the Supreme Court under 3-7-204;.

(emphasis added)

(2) prescribe procedures, forms, and requirements for applications, permits, certificates...and proceedings under this chapter...". (emphasis added)

The only limiting language refers to MCA § 3-7-204. That section refers to the supervision by the Montana Supreme Court of the "activities of the water judge, water masters, and associated personnel in implementing this Chapter and Title 85, Chapter 2, Part 2..." Additionally, the statute provides for the Supreme Court to pay the expenses of the water court and staff. Clearly, MCA § 3-7-204 has no bearing on Departmental authority to administer the new appropriations program.

² These MPC objections are:

1. The Department has acted beyond its authority.
11. The Order is a denial of due process and equal protection guaranteed by both the federal and state constitutions.

With regard to enforcement and administration of the Water Use Act, Chapter 2, there is no limiting statutory provision. The Department must act, in furtherance of the Act's policies and according to its own procedural guidelines under the authority of the statutes and limited only by applicable Board Rules.

The Board has adopted, effective April 27, 1984, procedural rules for water right contested case hearing.³ Thus, currently, the guiding statutory and regulatory authority is the Water Use Act, the Administrative Procedures Act, and the Board Rules. MCA Title 85, Chapter 2; MCA § 85-2-121; MCA § 2-4-601 et seq.; Administrative Rules of Montana (hereafter, "ARM") Chapter 12, Subchapter 2.

The Department having been expressly delegated the duty to enforce and administer the Water Use Act, Chapter 2, the pertinent provisions thereof frame the question of administrative authority herein. The Water Use Act (hereafter, the "Act") specifies as one of its purposes, the implementation of a constitutional mandate. MCA § 85-2-101(2).⁴

³ The result reached herein would be the same under the previously effective Attorney General Model Rules 8-21, governing contested cases. Administrative Rules of Montana §§ 1.3.211-1.3.225.

⁴ § 85-2-101(2) provides: "A purpose of this chapter is to implement Article IX, section 3 (4) of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation, and future beneficial use and development of Montana's water for the state and its citizens and for the continued development and completion of the comprehensive state water plan."

The specific portions of the Act involved herein are found in Part 3 of the Act. Therein, with certain irrelevant exceptions, a person's right to appropriate water is limited to being obtained through compliance with the procedures for applying for and receiving a permit from the Department.

After July, 1973, a person may not appropriate water except as provided in this chapter. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

MCA § 85-2-301 (1983). Those procedures deemed essential for proper administration and enforcement of the constitutional mandate are specifically detailed in the Act. See, e.g.: evidentiary provision in § 85-2-121 MCA (1983); notice requirements of MCA § 85-2-307; hearing requirements of MCA § 85-2-309 (1983). Similarly, those substantive criteria intended to limit and define delegated departmental duties are explicit. MCA § 85-2-311, MCA § 85-2-402.⁵

Otherwise, of course, it is established that the Act did not change the substantive rules and policies of Montana Water Law, but merely gave the Department authority to administer the collection of rights and responsibilities commonly called "water law" similarly to previous water right administration by District

⁵ Hence, the constitutional requirement of meaningful standards to guide agencies in exercising their delegated authorities is clearly met. ART. III § 1, Mont. Const. See, discussion below. MONT. CONST. art. 3 § 1.

Court. Castillo v. Kunneman, 39 St. Rep. 460, 642 P.2d 1019 (1982). Where the legislature intended to change previous substantive law, or to clarify it, the substantive features of long-time common law were incorporated into the Act. See, §§ 85-2-102(1)(2), 85-2-311, 85-2-402 MCA (1983). Otherwise, the only differences between pre-Act law, and post-Act law, other than those expressly codified in the Act, would be those arising from the difference in the nature of an administrative proceeding, and a proceeding in a District Court. (See, Interlocutory Order, Beaverhead Partnership, re: Burden of Proof, for an example of shifting burden of proof necessarily concomitant to the procedural differences between a District Court action and an administrative proceeding.)

The Act prescribes certain mandatory procedures the Department must follow in applying the substantive determinations required in granting, denying, or conditioning applications for permits and change authorizations. MCA §§ 85-2-307, 85-2-309, 85-2-310, 85-2-402. To impose additional procedural requisites upon the Department would be contrary to the well-known maxim "expressio unius est exclusio alterius". That is, where procedural specifics are imposed on certain Department actions, and excluded in other grants of power, it is assumed that those provisions were intentionally excluded. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P.2d 330 (1936).

The Department's authority to strike the instant objection without hearing arises by necessary implication from these statutes, and the general laws defining and circumscribing the powers and duties of the Department. See, State ex rel. Dragstedt v. State Board of Education, supra.

Determination of whether the MPC objections are valid has been expressly delegated to the administrative discretion of the Department. Where an objection is deemed invalid, the Department has no duty to hold a hearing thereon, and, further, the determination of the validity of the objection is solely within the agency's discretion. "If the department determines that an objection to an application for a permit states a valid objection to the issuance of the permit, it shall hold a public hearing on the objection...". MCA § 85-2-309.

The only statutory limitation to guide the agency's discretion in determining an objection's validity is the legislative standard for minimum contents of objections.⁶

The objection must state the name and address of the objector and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation, that the proposed use of water is not a beneficial use, or that the proposed use will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved. MCA § 85-2-308.

Interpretation of § 85-2-308 MCA (1983) must be consistent with § 1-2-106 MCA (1983):

⁶ Further, the objection, to be timely, must be filed within the time limit specified by the Department in the public and individual notice on the application. MCA § 85-2-308.

Words and phrases used in the statutes of Montana are construed according to the content and the approved usage of the language, but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law...are to be construed according to such peculiar and appropriate meaning or definition (emphasis added).

Because the common law of the state has given full dimension to the bare-boned water use statutes, the statutory terms have acquired such an appropriate meaning, e.g.: "beneficial use", Power v. Switzer, 21 Mont. 523, 55 P. 32 (1898); Atchison v. Peterson, supra; Allen v. Petrick, 69 Mont. 373, 222 P. 451 (1924); Toohey v. Campbell, 24 Mont. 13, 60 P. 396 (1900), appropriative "intent"; Featherman v. Hennessey, 42 Mont. 535, 115 P. 983 (1911); Bailey v. Tintinger, 45 Mont. 154, 122 P. 575 (1912); St. Onge v. Blakely, 76 Mont. 1, 245 P. 532 (1926); Toohey v. Campbell, supra; "adverse affect"; Quigley v. McIntosh, 110 Mont. 495, 103 P.2d 1067 (1940); unappropriated waters; Carey v. Department of Natural Resources and Conservation, _____ St. Rep. _____ (1984); Rock Creek Ditch & Flume Co. v. Miller, 93 Mont. 248, 17 P.2d 1074, 89 ALR 200 (1933); Ide v. United States, 263 U.S. 497 (1924).

Hence, in determining the validity of objections, the Department must apply the common law and statutory law of the Act. Application of that law shows that MPC's objections are not valid. See, Don Brown, Final Order.

Whether the facts on an objection tend to show any of the required criteria is a mixed question of fact and law. The facts necessary to allege such a tendency are frequently complicated

and technical matters within the Department's expertise, involving determination of the source of supply for the proposed use, quantification of water in that source, quantities of the objector's water rights and the quantity and nature of the depletive effects of the proposed use. The legal issues involve whether the objector has stated a legally protectible interest by virtue of the facts alleged in the objection. Clearly these issues fall within the reasoning set forth in Burke v. South Phillips County Co-operative State Grazing District, 135 Mont. 209, 339 P.2d 491 (1959):

Where the question involved is within the jurisdiction of an administrative tribunal which demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of trained officers to determine technical and intricate matters of fact, and where a uniformity of ruling is essential to comply with the state's policy and the purposes of the regulatory statute on review by the court of such decisions by such authorities, the courts will require only so far as to see whether or not the action complained of is within the statute and not arbitrary or capricious. At 218.

In summary, the Department must act in furtherance of the policy of the Montana Water Use Act in administering and enforcing the Act. § 85-2-101 MCA (1983). That policy, when read in conjunction with the remainder of the Act and the one hundred year old case law interpreting prior (but similar) statutes, clearly defines the substantive water law and policies to be applied by the Department in administering the Act. Procedurally, the Department is, of course, limited only by the Montana Administrative Procedures Act, and applicable provision

of the Montana and United States Constitutions. The Department's actions are proper according to all of these applicable substantive and procedural limitations.

Given the Department's specific authority to determine the validity of objections, and the exhaustive analysis of Don Brown, it is clearly within Departmental authority to strike MPC objections, using whatever fair procedures the Department deems appropriate to the case.

(2) Constitutional Authority

Having demonstrated the clear statutory authority for dismissing MPC's objections without hearing, the only remaining roadblock would be if this delegated authority were unconstitutional. It is not. The legislative authority to so delegate stems from a direct constitutional mandate that, "The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records". MONT. CONST. art. 9, § 3, paragraph (4).

The issue is whether the legislature has broached the Montana Constitution's fundamental structure of a tripartite government by delegating unbridled discretion to an agency, i.e., whether the agency is delegated fundamentally legislative functions.

The power of the government of this state is divided into three distinct branches - legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted. MONT. CONST. art. 3, § 1.

Of course, the analysis begins with the fundamental notion that an act is presumed constitutional, prima facie. State v. Stark, 100 Mont. 365, 52 P.2d 890 (1935). The test for proper legislative delegation of authority to an administrative agency was set out in Bacus v. Lake County, 138 Mont. 69, 354 P.2d 1056 (1960); Douglas v. Judge, 174 Mont. 32, 568 P.2d 530 (1977); and recently affirmed as controlling in T. & W. Chevrolet v. Darvial, 39 St. Rep. 112 (1982). The Court stated in Bacus:

...When the legislature confers authority upon an administrative agency it must lay down the policy or reasons behind the statute and also prescribe standards and guides for the grant of power which has been made to the administrative agency. The rule has been stated as follows:

'The law making power may not be granted to an administrative body to be exercised under the guise of administrative discretion. Accordingly, in delegating powers of an administrative body with respect to the administration of statutes, the legislature must ordinarily prescribe a policy, standard, or rule for their guidance and must not vest them with an arbitrary and uncontrolled discretion with regard thereto, and a statute or ordinance which is deficient in this regard is invalid....'.

...In the case of Chicago, M. & St. P.R. Co. v. Board of R.R. Com'rs, 76 Mont. 305, 314, 315, 247 P.162, 164 this court has stated:

'We think the correct rule as deduced from the better authorities is that if an act but authorizes the administrative office or board to carry out the definitely expressed will of the Legislature, although procedural directions and the things to be done all specified only in general terms, it is not vulnerable to the criticism that it carries a delegation of legislative power.' This rule has been approved in Northern Pacific R. Co. v. Bennett, 83 Mont. 483, 272 P. 987; Barbour v. State Board of Education, 92 Mont. 321, 13 P.2d 225; State ex rel. City of Missoula v. Holmes, 100 Mont. 256, 47 P.2d 624, 100 A.L.R. 581; State v. Andre, 101 Mont. 366, 54 P.2d 566; State ex rel. Stewart v. District Court, 103 Mont. 487, 63 P.2d 141; and Thompson v. Tobacco

Root Co-op State Grazing District, 121 Mont. 445, 193 P.2d 811. See also State v. Johnson, 75 Mont. 240, 243 P. 1073. At 78 (citations omitted), 80.

The Water Use Act falls into the category described above, wherein the legislature has delegated to the Department authority to carry out the definitely expressed will of the legislature. Although the procedural directions are expressed in only general terms when such is the case, the agency is free to use its discretion procedurally. State v. Stark, supra.

In T & W Chevrolet, supra, the court applied the test of Bacus and Douglas, and found that a statute and administrative regulations thereunder designed to curb "unfair or deceptive acts or practices in the conduct of any trade or practice..." was not so vague as to be an unconstitutionally prohibited delegation of authority to the Montana Department of Commerce, the Federal Trade Commission or the Federal Courts. In doing so, the court pointed out that the nature of the practices sought to be prohibited demanded the use of general language, but that the well developed case law, amassed over 30 years, had sufficiently given shape and definition to the terms of the act so as to vest the general terms with the requisite meaning for the agency to appropriately administer the act.

The T & W Chevrolet case summarized the holdings in Douglas and Bacus as holding that, "...a legislature must prescribe with reasonable clarity the limits of power delegated to an administrative agency". At 1369. In citing to a Washington case, the T & W court quoted the following language:

...The language of the amended federal act...has been with us since 1938. The federal courts have amassed an abundance of law giving shape and definition to the words and phrases challenged by respondent. Now, more than 30 years after the Supreme Court said that the phrase 'unfair methods of competition' does not admit to 'precise definition', we can say that phrase, and the amended language has a meaning well settled in federal trade regulation law... The phrases 'unfair methods of competition' and unfair or deceptive acts or practices have a sufficiently well established meaning in common law and federal trade law, by which we are guided, to meet any constitutional challenge of vagueness. At 1370.

Further, the Court pointed out:

When reviewing the constitutionality of a given law, it is important to keep in mind the basic premise, well recognized in Montana, that the constitutionality of a legislative enactment is prima facie presumed, and every intendment in its favor will be made unless its unconstitutionality appears beyond a reasonable doubt. T & W Chevrolet, at 1370.

In the instant case, the vast bibliography of Montana Water Law more than sufficiently defines the terms used in the Water Use Act so that the Department may readily ascertain the specific and plain language thereof, and administer the same in accordance with the legislative intent. Hence, the Department has no doubt that the authority it has been delegated by the Act is fully within the legislature's constitutional authority to delegate, was properly delegated, and has been properly exercised herein. Having applied the well articulated Montana law to the allegations of MPC, the Department determined that the objections were not valid, and under the clear terms of the Water Use Act,

MCA § 85-2-309, no hearing thereon is necessary.⁷

MPC's due process argument is without merit. MPC was given more than ample opportunity to state a valid objection, and simply failed to do so. The Department has afforded MPC far more procedural protection than is constitutionally necessary, under both the state and federal constitutions. The Department made clear why MPC's objection is not valid, having provided MPC specific basis to respond to in the show cause order.

MPC, instead, has merely repeated vague shot-gun arguments alleging that the Department does not have the authority expressly delegated to it by § 85-2-309 MCA (1983).

The fair notice and meaningful opportunity to respond requirements of due process have been met several times over. See, Abrams v. Feaver, 41 St. Rep. 1588, 685 P.2d 378 (1984); Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983 (1972).

MPC's equal protection allegation is similarly frivolous. To accede to MPC's demands would in fact be setting MPC above the law, denying other objectors equal protection by immunizing MPC from the requirements the class of all other objectors must meet; stating a valid objection in order for the right to a hearing to

⁷ Contrast this situation with Douglas v. Judge, 174 Mont. 32, 568 P.2d 530 (1977), where the court found that a delegation of authority to loan state money based on an unbridled agency determination of a project being "worthwhile" was an unconstitutional delegation of authority. There, the substantive issues had not been so long subject to common law definition as to have already been shaped and defined prior to the statutory enactment.

arise. See, e.g.: Application for Water User Permit No. 53972 by David A. & Linda J. Seed, Application for Beneficial Water Use Permit No. 47841-g76M by John A. March, Jr..

C. MPC alleges that the Department has an independent duty to ascertain the viability of each application, regardless of whether the Department's duty to hold a hearing arises. See, MPC issue No. 4. The Department agrees and has fulfilled that duty in the instant case.

The allegation that, "The Power company and the Department have oftentimes learned of deficiencies of an application during a hearing" has no bearing herein.

D. MPC further objects to the various Departmental functions performed in carrying out the Water Use Act. See, MPC issue No. 5. The roles played by various Department offices and employees are reasonable and necessary to administer the Act. Further, the roles of Departmental staff experts, hearing examiner, and final decision makers are contemplated by the Administrative Procedure Act. See, MCA § 2-4-611; 2-4-614(1)(f); 2-4-621.

E. The fact that the precedent relied on by the Department has not been affirmed by a court is of no consequence. See, MPC Issue No. 7. Until that Departmental action is overruled, it remains a valid guideline for the Department in assuring agency actions are reasonable in treating similarly situated applications consistently.

F. The Show Cause Order neither changes the statutory burden of proof nor deprives MPC of any of its water rights. See, MPC issue No. 8. MPC has not been burdened with any standard of

proof, but merely has been required to do what all objectors must do in order for the right to a hearing to arise - state a valid objection. MPC has been given ample opportunity to submit a valid objection to the Department. It has failed to do so. Hence, the right to participate in a contested case hearing as a party-objector does not arise. § 85-2-309 MCA (1983).

G. The fact that MPC alleges it seeks to protect its ability to generate power for its customers is not germane. See, MPC issue No. 9. MPC's rights and power generation capacity are being protected by the Department already. It simply cannot expand those rights by insinuating the size of its customer base somehow insulates it from the minimum duty of all objectors - to state a valid objection. Every objector and applicant before the Department seeks to protect beneficial uses of water for the benefit of the individual appropriator, customers thereof, or the general public. Where the legislature intends the Department to include economic benefits in the permitting procedure, it expressly so states. See, § 85-2-311(2)(a)(B) MCA (1983). The Permit in issue herein is not subject to that statutory language.

WHEREFORE, based on the foregoing and on the records on file with the Department, the Department hereby issues the following:

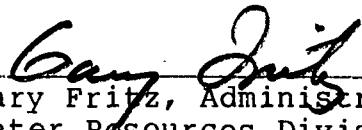
ORDER

1. MPC's objections to Application No. 32304-s41K by Larry E. Holum are hereby declared invalid and are stricken.

2. The Department notes that the Applicant remains responsible for proving, by substantial credible evidence, that the statutory criteria for the use applied for herein are met. Therefore, the Department will contact the Applicant to discuss submission of further information and possible modifications to the Permit Application.

3. If the Department determines that denial or modification of the Application is necessary, the Applicant may obtain a hearing by filing a request therefor within 30 days of Departmental notification on the decision.

DONE this 1 day of November 1984.



Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 South Ewing, Helena, MT 59620
(406) 444 - 6601

AFFIDAVIT OF SERVICE

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on November 7, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by Larry Holum, Application No. 32304-s41K, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Larry Holum, No. 6 Open Buckle, Sun River, MT 59483
2. Montana Power Co., 40 East Broadway, Butte, MT 59701
3. K. Paul Stahl, Attorney, 301 First National Bank Bldg., P.O. Box 1715, Helena, MT 59624 Hand Delivered
4. Sam Rodriguez, Lewistown Field Office (inter-departmental mail)
5. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Donna Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 7th day of November, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

John P. Gilman
Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires 12/1/87

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

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) ORDER TO SHOW CAUSE
NO. 32304-s41K BY LARRY HOLUM)

* * * * *

The objection filed with the Department of Natural Resources and Conservation by the Montana Power Company to the above-named application is identical in language to a number of objections previously filed by this entity with respect to similar applications. These objections all claim generally that there is a lack of unappropriated water available for the applicants' purposes, and that diversions made pursuant to these applicants' plans would result in adverse affect to the water rights claimed by the Montana Power Company. See MCA 85-2-311(1a) and (1b).

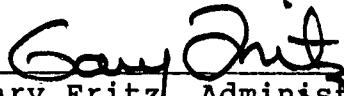
No claim is made either expressly or by implication in the present objection that the Applicant's proposed use is not a beneficial one, or that the Applicant's proposed means of diversion are not adequate for his purposes. See MCA 85-2-311(1d) and (1c). Nor has the Department in its own behalf indicated any concerns for the existence of these statutory criteria for a new water use permit. See generally, MCA 85-2-310(2).

Commencing with the Proposal for Decision In re Brown, and continuing through a number of applications where the Montana Power Company presented evidence at hearings held pursuant thereto, the Department of Natural Resources and Conservation has concluded that the scope and extent of Montana Power Company's rights to the use of the water resource as indicated by the evidence therein did not warrant denial of the respective applications for new water use permits. Since the instant objection alleges similar matters to those involved in prior hearings, hearings on the factual issues suggested by the present controversy threaten a waste of time and undue time and expense to the parties involved. See generally, MCA 2-4-611(3) (1981); MCA 85-2-309 (1982). The principles of stare decisis dictate that Montana Power Company be compelled to make a preliminary showing that its objection to the instant application has merit.

WHEREFORE, the Montana Power Company is hereby directed to show cause why its objection should not be stricken and the instant application approved according to the terms thereof. Said Objector shall file with the Department within 20 days of the service of this Order, affidavits and/or other documentation demonstrating that the present Applicant is not similarly situated with respect to prior applicants for whom permits have been proposed over this Objector's objections; and/or offers of proof as to matters not presented in prior hearings, which matters compel different results herein; and/or argument that the proposed dispositions in such prior matters were afflicted by error of law

or were otherwise improper; and/or any other matter that demonstrates that the present objection states a valid cause for denial or modification of the instant application.

DONE this 24th day of April, 1984.



Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 South Ewing, Helena, MT 59620
(406) 444 - 6605

AFFIDAVIT OF SERVICE
ORDER TO SHOW CAUSE

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on April 24, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by Larry Holum, Application No. 32304-s41K, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Larry Holum, No. 6 Open Buckle, Sun River, MT 59483
2. Montana Power Co., 40 East Broadway, Butte, MT 59701
3. K. Paul Stahl, Attorney, 301 First National Bank Bldg., P.O. Box 1715, Helena, MT 59624 *(hand deliver)*
4. Sam Rodriguez, Lewistown Field Office (inter-departmental mail)
5. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Donna K. Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 24th day of April, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Judy Kohn
Notary Public for the State of Montana
Residing at Montana City, Montana
My Commission expires 3-1-85



GENERAL OFFICES 40 EAST BROADWAY, BUTTE, MONTANA 59701 • TELEPHONE 406/723-5421

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ROBERT P. GANNON

JAMES F. WALSH

MARY CRUMBAKER - SMITH

R. BLAIR STRONG

MICHAEL E. ZIMMERMAN

RECEIVED

MAY 21 1981

MONT. DEPT. OF NATURAL
RESOURCES & CONSERVATION

May 19, 1981

Water Rights Bureau
Department of Natural Resources
and Conservation
32 South Ewing
Helena, MT 59601

RE: Objection to Water Right Application No. 32304-S41k
by Larry E. Holum, No. 6 Open Buckle, Sun River, MT 59483

Enclosed is the objection (Form No. 611) of The Montana Power Company to Application No. 32304-S41k to appropriate water from an unnamed tributary of Mill Coulee Creek in Cascade County, Montana. As the objection indicates, Montana Power requests that the Application be denied for the reason that the proposed use would adversely affect the prior water rights of The Montana Power Company and other senior appropriators.

The Montana Power Company represents that it has various water rights, principally for hydroelectric generation, which, because of their nature, affect and are or may be affected by any appropriation of water in the entire Missouri River watershed above The Montana Power Company's Morony Dam near Great Falls, Montana. These water rights include, but are not necessarily limited to, both use rights connected with the operation of The Montana Power Company generating facilities and certain reservoir storage rights on the Missouri River.

An excellent discussion of The Montana Power Company's water rights on the Missouri is contained in the case of Montana Power Co. v. Broadwater-Missouri Water Users' Ass'n., 50 F.Supp. 4 (D.C. Mont. 1942), 139 F.2d 998 (9th Cir. 1944).

A short summary of the history surrounding the Broadwater case is quite pertinent here. Prior to 1938, The Montana Power Company built seven power plants on the Missouri, three with fairly large reservoirs behind them. These power plants are Canyon Ferry, Hauser Lake, Holter, Black Eagle, Rainbow, Ryan and Morony. (In addition, another Montana Power Company plant, Cochrane Dam, was completed in 1958.) The three with fairly large reservoirs are Canyon Ferry (conveyed by The Montana Power Company to the U.S. Government in 1949), Holter and Hauser. Montana Power also has two storage reservoirs on the Madison River.

In June of 1938, the State Water Conservation Board of the State of Montana filed a Notice of Appropriation of 400 cubic feet of water per second for all the irrigation of 21,000 acres in Broadwater County, above all seven of the Company's power plants. The Board then proceeded to build the Broadwater diversion dam and a canal system.

The Company then sought an injunction in Federal District Court to restrain the Water Board, its members and the Broadwater-Missouri Water Users' Association from diverting water above the Company's power dams and plants in amounts that would interfere with Montana Power's storage and use rights connected with the operation of the power plants. After an extended hearing before a Special Master, the Federal District Court approved and adopted the Master's report and decided the case in favor of The Montana Power Company. In effect, the Court held that in most years the Company, subject to prior rights, was entitled to use all of the flow of the Missouri at its various power plants except in the months of high runoff, usually April, May and June, but at times in late March and early July.

The case was appealed to the United States Circuit Court of Appeals for the Ninth Circuit, where it was reversed and ordered dismissed as to the State Water Board and its members. The Ninth Circuit Court held that the Board was an arm of the State and the District Court had no jurisdiction over it. However, it is submitted that there should be no question concerning the soundness and propriety of the Special Master's report and the trial court's findings that The Montana Power Company, subject to the rights of prior appropriators, is entitled to the normal full flow of the Missouri to satisfy its storage and use rights. Only during the spring runoff is there free, or appropriable, water in the river above any of The Montana Power Company's plants.

Although the Ninth Circuit Court of Appeals held that the Federal District Court did not have jurisdiction to enjoin an agency of the State of Montana from taking water The Montana Power Company had appropriated, the ruling did not apply to individuals, corporations or irrigation districts attempting to develop irrigation. They were confined to diversions mainly in April, May and June.

In constructing Canyon Ferry Reservoir after The Montana Power Company conveyed its interest in the Canyon Ferry site to the U. S. Government, the United States acquired a right to sufficient water from the spring flood flow, to fill the reservoir every year in which there is sufficient water to do so. Flood flows in excess of those required for this reservoir filling are still subject to appropriation.

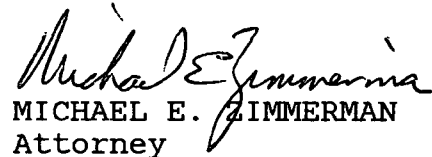
Water Rights Bureau
May 19, 1981
Page 3

It is Montana Power Company's understanding that individuals, corporations, irrigation districts, the State or any other entity can purchase water out of Canyon Ferry storage from the Bureau of Reclamation of the United States Government and that, if this is done, the Bureau of Reclamation will still be able to release water from storage at Canyon Ferry in sufficient quantities to protect The Montana Power Company's and other senior appropriators' water rights. The water stored in Canyon Ferry Reservoir is available for purchase by either downstream or upstream users.

If the present application were granted, the Department of Natural Resources and Conservation would be authorizing a water right for water presently appropriated and beneficially used. It is incumbent upon the Department under Montana law to protect existing water rights.

The Montana Power Company requests that the Department of Natural Resources and Conservation deny this application upon the ground that the prior water rights of The Montana Power Company and other senior appropriators effectively eliminate the possibility that there is sufficient unappropriated water available for the proposed use expressed in the application.

Very truly yours,


MICHAEL E. ZIMMERMAN
Attorney

MEZ/slw

Enclosure

The 1973 Montana Water Use Act provides that upon receipt of a proper Application for Beneficial Water Use Permit, Application for Change of Appropriation Water Right, Application to Sever or Sell Appropriation Water Right, or Application for Reservation of Water, the department (Department of Natural Resources and Conservation) shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application. ANY OBJECTION TO AN APPLICATION MUST BE FILED BY THE DATE SPECIFIED BY THE DEPARTMENT, AS SET FORTH IN THE NOTICE.

Hearings: If the department determines that an objection to an application states a valid objection, it shall hold a public hearing on the objection within sixty (60) days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector.

COMPLETE THE FORM AS FOLLOWS:

- a) State the type of application you are objecting to: (Application for Beneficial Water Use Permit, Application for Change of Appropriation Water Right, Application to Sever or Sell Appropriation Water Right, or Application for Reservation of Water).
- b) Give the name of the Applicant.
- c) Give the application number.
- d) Give the intent of the applicant: (to appropriate; change; sever or sell; or reserve water).
- e) Give the source of water supply.
- f) State the county in which the point of diversion or place of use is located.
- g) State the name of the Objector.
- h) Provide the county name in which the Objector resides.
- i) Give the Objectors full name.
- j) Give the Objectors complete mailing address.
- k) The Objector must state facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights, or interests of the objector would be adversely affected by the proposed application, or the objector may state any other objections to the proposed appropriation, change, sale, severance, or reservation he considers pertinent. (Additional sheets may be attached to this form for further explanation of the objection.
- l) State whether the application should be denied or modified.
- m) Date and sign the form.

Send the completed form to the following address:

Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau
32 South Ewing
Helena, Montana 59601

STATE OF MONTANA
Department of Natural Resources and Conservation

OBJECTION TO APPLICATION

(Please Type or Print in Ink)

RECEIVED

MAY 21 1981

MONT. DEPT. OF NATURAL
RESOURCES & CONSERVATION

a) IN THE MATTER OF APPLICATION _____)

_____ for beneficial use permit _____)

_____)

b) FILED BY Larry E. Holum _____)

OBJECTION OF

c) APPLICATION NO. 32304-S41K _____)d) TO appropriate _____ WATER)g) The Montana Power Company _____e) FROM unnamed tributary of Mill Coulee Creekf) IN Cascade _____ COUNTY, MONTANA)

* * * * *

STATE OF MONTANA _____)

_____)

h) COUNTY OF Silver Bow _____)i) Comes now The Montana Power Company _____j) Whose complete mailing address is 40 East Broadway _____Butte, Montana 59701 _____k) and objects to the approval of the above-numbered application of the following grounds,
to wit:

The proposed appropriation is from an unnamed tributary of Mill Coulee
Creek and upstream from the Black Eagle, Rainbow, Ryan, Cochrane and
Morony Dams and reservoir impoundments and there is insufficient
unappropriated water available for the proposed use without adversely
affecting the downstream water rights of The Montana Power Company and
other senior appropriators.

l) WHEREFORE, Objector prays that the application indicated above be denied.

(denied or modified, as the case may be)

m) Dated May 19, 1981(objector) MICHAEL E. ZIMMERMAN


Larry Adam

ASSELSTINE AND CRUIKSHANK
ATTORNEYS AND COUNSELORS AT LAW
318 STRAIN BUILDING
P. O. BOX 1567
GREAT FALLS, MONTANA 59403

June 18, 1981

BRETT C ASSELSTINE
CHARLES M CRUIKSHANK, III
(ADMITTED TO PRACTICE IN
MONTANA AND WASHINGTON)

TELEPHONE
(406) 727-5666

Department of Natural Resources
and Conservation
State of Montana
32 South Ewing
Helena, MT 59601

Re: Estate, Russell C. Hubbard
File #80-062

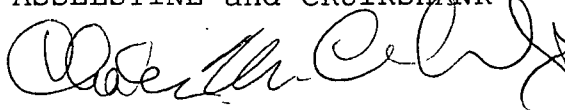
Gentlemen:

32304-541K

Enclosed please find form No. 611, Objection to Application,
signed by Faye M. Eckart, the personal representative of
the above estate.

Very truly yours,

ASSELSTINE and CRUIKSHANK


Charles M. Cruikshank, III.

pem

enc.

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. 32304-s41K BY LARRY HOLUM.)
_____)

RECEIVED

MAY 14 1984

MONTANA DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

* * * * *

MEMORANDUM OF CAUSE

* * *

COMES NOW The Montana Power Company [hereinafter The Power Company], by and through its counsel of record, and submits this Memorandum of Cause.

FACTS

Larry Holum filed an application for a permit to appropriate water. Notice of the application was published. In response thereto and as provided by Section 85-2-308, MCA, The Power Company filed an objection to the application. The Power Company's objection satisfied all statutory and regulatory criteria. The Administrator of the Water Resources Division of the Department of Natural Resources and Conservation [hereinafter Department], Gary Fritz [hereinafter Administrator], issued an order directing The Power Company to show why its objection should not be stricken and the application "approved according to the terms thereof."

ARGUMENT

1. The Department has acted beyond its authority.

The Power Company initially contends that the authority to strike objections without hearing has no statutory or regulatory foundation.

2. Unappropriated water in the proposed source is nonexistent. The Power Company reasserts that there are no unappropriated waters in the proposed source. Both within the hearing process itself and otherwise, The Power Company has presented to the Department evidence of its prima facie water rights which, but for a period of three to four months every year, are not being satisfied.

3. Property rights will be adversely affected. The Power Company reasserts that its property rights and interests would be adversely affected if the above application for water were granted without conditions as to time periods and without enforcement procedures. The Power Company reincorporates all evidence presented at any and all prior hearings or in any other context relative to applications for new water and applications for changes in points of diversion and place of use.

4. The Department has a statutory duty to ascertain that each application meets statutory criteria. The Department has a statutory duty to do more than process applications when considering a proposed use or a proposed means of diversion as set forth in an application. In

many hearings prior to this order, in particular application No. 11493-s41G, Jefferson River Acres, and application No. 15211-s41G, Gordon E. Lane, the applicants' proposed uses and proposed means of diversion were shown to be inadequate by the applicants' own testimony, or the requests for water were found to be beyond the applicants' needs.

The Power Company has no statutory duty to investigate before a hearing by interrogatories or otherwise each application so as to prove it to be inadequate. However, the Department does have a statutory duty to determine the viability of each application, even if no hearing occurs. The Department has not fulfilled that duty. Additionally, the burden of proof is on the applicant to prove the criteria for issuance of a permit found in Section 85-2-311, MCA. The Department must verify that each application fulfills these various criteria, even if a hearing is not held. The Power Company and the Department have oftentimes learned of deficiencies of an application during a hearing.

5. The Department acts as both an advocate and as a decision maker. During the application process, the Department acts as both an adversary to an objector and subsequently as the judge in a quasi-judicial hearing. The attempt by the Department to separate the roles is confusing and inadequate at best. While the immediate

effect of the Department's failure to protect prior appropriators through hearing as provided by statute is not readily apparent, in subsequent years this abdication of duty will cause tenfold the amount of ill will toward the State and will result in the filing of numerous causes of action, the occurrence of attorneys' fees, and other expenses. If the Department would satisfy the requirements of law, properly conduct hearings in contested cases, and protect prior appropriators at the present time, much controversy could be avoided.

6. Evidence shows The Power Company's water rights are presently not being satisfied. The Power Company has presented an objection to the above application. The Power Company has at numerous hearings presented evidence as to its water rights. Those water rights, which prior to 1973 were filed according to statute and which have been refiled with the Department pursuant to changes in the law, are prima facie evidence of The Power Company's right to beneficially use water. This evidence stands unchallenged. The Power Company has stated in numerous hearings that its right to beneficially use water is not being satisfied but for three or four months out of every year. New appropriations will only cause further adverse effect upon these prior rights, a fact the Department fails to acknowledge in its attempts to put all water to beneficial use, notwithstanding the adverse effect on prior appropriators.

7. The precedent relied upon by the Department has not been affirmed by any court. The order issued in the above application refers to the In re Brown Proposal for Decision. An order has finally issued. The Power Company intends to appeal that order. No court of competent jurisdiction has upheld the order. Depriving The Power Company of its substantial statutory right to use water to generate electricity for over 200,000 consumers by predicated any order on unsupported precedent is beyond the scope and intent of the statutes and will ultimately adversely affect the consumers.

8. The order changes the statutory burden of proof. The Administrator has concluded, based on evidence presented at prior hearings, that the scope and extent of The Power Company's rights do not warrant a denial of any application for new water use permits. The statutes governing contested administrative cases require a hearing at which evidence is to be presented before any denial or granting of an application. The statutes do not require an objector to present evidence prior to a hearing on an application, but, rather, at a hearing. No statutory authority or administrative rule grants the Administrator the power to demand or direct any party to show cause by affidavit or other evidence why an objection should not be stricken before a hearing is held. Such an order changes the statutory burden of proof. The statutes set forth the various duties of applicants, objectors, and the

Department. The Department is without authority to ignore those duties, and such denial is an abrogation of the clear meaning of the statutes and discriminates against objectors.

9. The Power Company seeks to protect its ability to generate electricity for over 200,000 customers. The order states that hearings on factual issues are a waste of time and expense to the parties involved. The Power Company states for the record that what it seeks to protect in these hearings is its ability to generate electricity for over 200,000 customers. The Power Company has already spent considerable time and money attempting to protect these rights before the Department.

10. All final orders issued by the Department are afflicted with errors of law and are otherwise improper, and The Power Company has appealed every final order which adversely affects its rights. The order suggests that The Power Company present arguments that the proposed dispositions and prior hearings relied on by the Department for this order were afflicted by error of law or were otherwise improper. The hearing officer only need look at the district court docket or the Department's own files as evidence that The Power Company has appealed every final decision issued by the Department which adversely affects The Power Company's rights. The Power Company has had no opportunity to argue that the In re Brown Proposal for Decision is afflicted by error of law and is otherwise

improper. It will have that opportunity presently, because the final order has issued. But for this record, The Power Company asserts that the hearing officer in the In re Brown proceeding went far beyond any power he had to determine water rights. The Proposal for Decision is replete with such error. So is the final order.

11. The order is a denial of due process and equal protection guaranteed by both the federal and state constitutions. The Department is without statutory authority to strike objections of one objector or of one class of objectors. Requiring The Power Company to show cause in all hearings in which it has filed objections without requiring other objectors similarly situated to do the same is a denial of equal protection under the laws. Further, no statute or regulatory rule sets forth the procedure being followed by the Department. The Power Company in particular and the public in general are without notice of this procedure. Without such notice, The Power Company has been deprived of due process. Notwithstanding the lack of notice, the procedure being followed by the Department denies The Power Company due process as set forth in those statutes which allow objectors the opportunity to protect their prior rights through the hearing process. The right to a hearing is the very basis of due process, and the Department's action denies that.

12. Until In re Brown is judicially affirmed, reliance on it denies The Power Company any remedy in this matter. The Department issued this order to show cause. The order relied on by the Department to support its position was issued the same day. The Power Company and other objectors still have 10 days in which to appeal the precedential matter to district court. The process of relying on an order which has not been judicially affirmed denies The Power Company any substantial remedy. Until such time as the final order has been affirmed by the Montana Supreme Court, the Department should not rely upon such order, because in the event the Department's decision is overturned, the Department would then have to strip all applicants of their temporary permits. Additionally, during that time period, The Power Company will be deprived of some of its ability to generate electricity for its consumers, which will not only affect The Power Company, but will also affect almost every citizen in Montana.

Accordingly, The Power Company requests that a hearing be held in this matter as provided by law.

Dated this 14th day of May, 1984.

GOUGH, SHANAHAN, JOHNSON & WATERMAN



K. Paul Stahl
Attorneys for The Montana Power Company
301 First National Bank Building
P.O. Box 1715
Helena, MT 59624

2167K

Certified Letter No. 704 846

January 5, 1982

Charles M. Cruikshank, III
Attorney and Counselor at Law
P.O. Box 1567
Great Falls, MT 59403

Dear Mr. Cruikshank:

Subject: Objection filed on behalf of Faye M. Eckart, Personal Representative for Estate of Russell Hubbard.

This is to request information regarding the water rights of the objector and its uses. Enclosed for your convenience is a copy of the objection as filed. Please complete items 4 and 5 of the objection form. Along with the required information regarding the water rights of the objector we also need information and/or evidence regarding the statement of item 3; "No unappropriated waters in the proposed source and proposed means of appropriation are inadequate."

Please submit the above required information or reasons why this information cannot be provided, within 10 days after receipt of this letter. If we do not hear from you within this time we will consider this objection invalid due to the lack of information, in which case we will continue processing the application.

If you have any questions concerning the above information please call me at 538-7459.

Sincerely,

Sam Rodriguez
Supervisor
Lewistown Area Office

SR/va

RECEIVED

Application No. 32304-541K
For Department Use

JUN 19 1981

OBJECTION TO APPLICATION

NOTE:

This objection must be received by the Department on or before the deadline specified in the public notice.
 (Please type or print in ink. If more space is needed, attach additional sheets.)

1. Name of individual(s) or organization filing this objection:

Name Jay M. Eckart, Pers Rep for Estate of Russell Hubbard
 Address 1408-11 A St. S.W.
 City Helena State MT Zip 59404 Phone 453-9487

2. Application being objected to: Application No. 32304-541K

Name of applicant _____

Source of withdrawal (name of river, stream, reservoir, well, etc.) _____

3. State the basis of your objection. Indicate the facts tending to show that there are no unappropriated waters in the proposed source, and/or that the proposed means of appropriation are inadequate, and/or that the property, rights or interests of the objectors would be adversely affected by the proposed appropriation and/or state any other objections to the proposed appropriation you consider pertinent (Section 85-2-308, M.C.A.).

NOTE: The Department shall, according to Section 85-2-311, M.C.A., issue a permit if there are unappropriated waters in the source of supply, at times when the water can be put to the use proposed by the applicant, in the amount the applicant seeks to appropriate, throughout the period during which the applicant seeks to appropriate, if the rights of the prior appropriators will not be adversely affected, if the proposed means of diversion or construction are adequate; if the proposed use of water is a beneficial use; if 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 if an applicant for an appropriation of 10,000 acre-feet per year or more or 15 cubic feet per second or more proves by clear and convincing evidence that the rights of prior appropriators will not be adversely affected.

I feel that it would detract and decrease
the value of our property No unappropriated waters in the
 proposed source and proposed means of appropriation are inadequate.

4. If the objection concerns possible effects on your water right(s), complete the following: (attach additional sheets if necessary)

a. Basis of your water right(s):

- ☐ Filed Appropriation: County _____ Book _____ Page _____
- ☐ Decreed Right: Case No. _____ Person to whom decreed _____
- ☐ Use Right: _____
Date of First Use _____
- ☐ Permit: _____
Number _____
- ☐ Certificate: _____
Number _____

Attach photocopies of any pertinent documents as evidence of your water right(s).

b. Your source of water: _____

Point(s) of diversion: _____ (Name of river stream well spring etc.)

_____ 1/4 _____ 1/4 _____ 1/4 Section _____ Township _____ N S Range _____ E W
 _____ 1/4 _____ 1/4 _____ 1/4 Section _____ Township _____ N S Range _____ E W

Is (are) your point(s) of diversion upstream or downstream from the applicant's proposed point of diversion?
☐ Upstream ☐ Downstream

Describe your type and means of diversion. Include, if applicable, horse-power rating and capacity in gallons per minute of pump, height and storage capacity of dams, size and capacity of headgates, size of canals, ditches, etc.

☐ **Domestic:** _____, _____ cfs gpm up to _____
No of households (rate) M.I. (acre-feet/year)

From _____ to _____, inclusive
(month-day) (month-day)

☐ **Stock:** _____, _____ cfs gpm up to _____
No and type (rate) M.I. (acre-feet/year)

From _____ to _____, inclusive
(month-day) (month-day)

☐ **Other:** _____
(Describe Industrial, municipal etc)

_____ cfs gpm up to _____
(rate) M.I. (acre-feet/year)

From _____ to _____, inclusive
(month-day) (month-day)

☐ Irrigation: _____ cfs
(rate) _____ gpm up to _____
M.I. (acre feet/year)

From _____ to _____, inclusive
(month day) (month-day)

EXAMPLE:								
Sec.	Twp.	Rge.	NE ¼	NW ¼	SW ¼	SE ¼	Totals	Crop(s)
10	18N	3E			15	4	19	alfalfa

Method of Irrigation: Sprinkler Waterspread Graded Border

 Contour Ditch Other, specify _____

[illegible]

SIGNATURE OF OBJECTOR(S) Jay M Eckart, Pers. Rep for Estate of DATE 6-16-81
Russell C. Hubbard

Name (type or print) _____ Phone _____
Street or Box No. _____
City _____ State _____ Zip _____

449-3634

^NDNRC

Memorandum

DNRC

To: Sam R. From: Judy Kohn Date: 3-22-82

Sam, here is the Larry Holm app. I discussed with you. There were objections from MPC & Faye Eckart, Personal Rep. for Estate of Russell Hubbard. Please clarify these. Is permit to be issued with standard conditions or were these ever settled? You can return to me for further processing.

Tuesday, one objector Faye M. Eckart, did not reply to my letter of 1-5-1982, therefore we are no longer considering his objection. The second objector, MPC, has not been contacted yet. Please give to Terri for whatever she does with these applications made Missouri & Tributaries.
Thank Sam

RECEIVED

MAR 23 1982

MONTANA D.N.R.C.
LEWISTOWN FIELD OFFICE

Thanks!

Judy

GOUGH, SHANAHAN, JOHNSON & WATERMAN
ATTORNEYS AT LAW
301 FIRST NATIONAL BANK BUILDING
P. O. BOX 1715
HELENA, MONTANA 59624

NEWELL GOUGH, JR.
WARD A. SHANAHAN
CORDELL JOHNSON
RONALD F. WATERMAN
JOSEPH P. MAZUREK
DANIEL C. MURPHY
VIRGINIA A. KNIGHT
JOCK O. ANDERSON
K. PAUL STAHL
ALAN L. JOSCELYN

TAYLOR B. WEIR (1883-1962)
EDWIN S. BOOTH (1907-1976)

Telephone (406) 442-8560
Telecopier (406) 442-8675

March 10, 1982

RECEIVED

MAR 10 1982

MONT. DEPT. OF NATURAL
RESOURCES & CONSERVATION

Department of Natural
Resources and Conservation
32 South Ewing
Helena, MT 59601

RE: Water Right Application No. 32304-s41K by Larry E. PP 2-9-82
Holum; Our File 67000-028.125

Gentlemen:

Please be advised this office has been retained to
represent The Montana Power Company in the above-entitled
matter.

We would appreciate your entering us as counsel of
record and notifying us of all matters and orders
pertaining to this case entered hereafter.

Sincerely,

GOUGH, SHANAHAN, JOHNSON & WATERMAN

K Paul Stahl

K. Paul Stahl

/lb

cc: Mr. Michael E. Zimmerman

0356K

OWNERSHIP

Application No. _____ County Cascade

Applicants name(s) Larry E. Holm

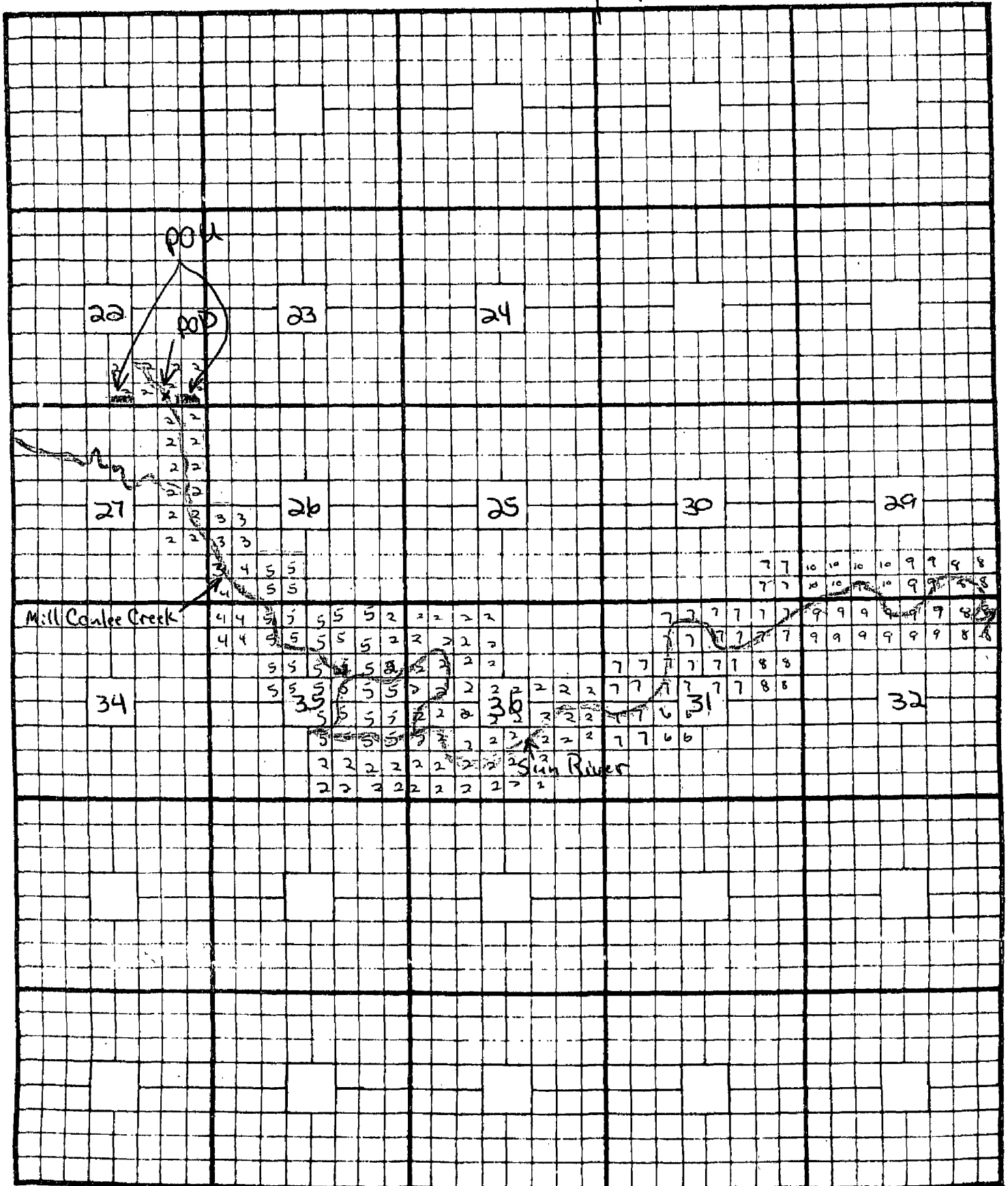
Decree Yes (No)

Indian Reservation Yes (No)

Irrigation District Yes (No)

Formation or source UT to Mill Coulee Creek

Land description of P.O.D. SW SE SE Sect 22 T-21N R-1W
 1W | 1E



Analyst Thomas E. Zuelke Dated 3/9/81

LAND OWNER (Name & Address)	Sec.	TWSP.	Rge.	SHORT LEGAL
1. Larry E. Holm No. 6 Open Buckle Sun River, MT 59483 (Applicant)				9. Lewis Construction Co. Box 2669 Great Falls, MT 59403
2. Lloyd V. Christensen Etal % H. Paulsen, Box 1376 Great Falls, MT 59403				10. Alexander D. Pueris etal Box 25 Vaughn, MT 59487
3. Faye M. Eckart 1408 11th A ST SW Great Falls, MT 59404				Standard People
4. Frank S. Anderson etal 3801 S AV S Great Falls, MT 59405				
5. Alvin N. Christensen, etal % H. Paulsen, Box 1376 Great Falls, MT 59403				
6. State Lands % Wilbur Erbe Capitol Station Helena, MT 59620				
7. John L. & A. Prissy Zeller Vaughn, MT 59487				
8. Randall & Helen L. Swanberg 314 Montana Bldg Great Falls, MT 59401				

REMARKS

REFERENCE _____

OWNERSHIP OBTAINED BY: _____

DATE _____

NOTICE OF COMPLETION OF PERMITTED WATER DEVELOPMENT

This notice must be filed by the permit holder on the completed water development pursuant to Section 85-2-312, MCA.

The deadline for completion of this PERMIT NO. 32304-S41K (CS) and the filing of this Notice of Completion of Permitted Water Development is NOVEMBER 30, 1986.

RECEIVED

MAY 12 1986

MONTANA D.N.R.C.
LEWISTOWN FIELD OFFICE

(I)(We) Beverly A Holm Permit Holder
Address Open Buckle #6 Box 173
City Sun River State Idt. Zip 59483
Home Phone 1-264-5272 Other Phone _____

attest that the water development has been completed and water put to beneficial use in accordance with the terms and conditions of the Permit.

If the development was not completed as permitted, give details of the appropriation as actually developed.

Signature: Beverly A Holm Date: 5-9-1986
Permittee

Signature: _____ Date: _____
Permittee

Subscribed and sworn before me, this 9th day May, 1986

Marianne L. Lancel
Notary Public for the State of Montana

Residing at Great Falls MT

My Commission expires 10-21-87

FILMED

Send completed form to:

MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

1520 EAST SIXTH AVENUE

HELENA, MONTANA 59620

444-6610

DNRC

NO FILING FEE REQUIRED

SR

c 9-8-86 ddd

PERMITTED DATA	VERIFY	OR	OR	FINDINGS	CERT
NAME: BEVERLY & EVERETT HOLUM					
NO 6 OPEN BUCKLE					
SUN RIVER MT 59483					
PRIORITY DATE: MARCH 03, 1981 AT 2:00 P.M.					
SOURCE: UNNAMED TRIBUTARY OF MILL COULEE CREEK					
TOTAL AMOUNT: 40.00 GPM UP TO 10.40 AC-FT					
DIVERSION POINT: SWSSE SEC. 22 TWP. 21N RGE. 01W CS CO.					
PERIOD OF APPROX: 04/15-10/31					
USE: 40.00 GPM UP TO 10.40 AF (04/15-10/31)					
FOR NEW SPRINKLER IRRIGATION ON 5.00 ACRES					
PLACE OF USE: S2S2SE SEC. 22 TWP. 21N RGE. 01W CS CO.					
FOR NEW SPRINKLER IRRIGATION ON 5.00 ACRES					
DIVERSION MEANS: PUMP					
CONDITIONS:					

PERMIT NUMBER: 41K P032304-00

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

DATE....09/11/86

WATER RIGHTS BUREAU

PAGE.....2

PERMIT VERIFICATION FORM

TO BE COMPLETED BY VERIFIER:

ADDITIONAL COMPUTER DATA: WELL: DEPTH- STATIC LEVEL- WELL YIELD- CASING SIZE- PUMP SIZE-

RESERVOIR: DAM HEIGHT- SURFACE ACRES- STOCK: ANML UNITS- DOMESTIC: HOUSES- IRRIGATION: TYPE-

☐ CHECK IF PERMIT IS SUPPLEMENTAL TO ANY OTHER WATER RIGHT(S). IF SO, LIST THE RIGHT TYPE AND NUMBER TO WHICH IT IS SUPPLEMENTAL.

MICROFILM RECOMMENDATIONS: ☐ (RE)MICROFILM ALL DOCUMENTS IN FILE, OR ☐ (RE)MICROFILM ONLY THE FOLLOWING DOCUMENTS:

ATTACHMENTS: (SPECIFY ADDENDUMS, REPORTS, MAPS, ETC.)

VERIFIER'S SIGNATURE: DATE:

TO BE COMPLETED BY PERMITEE:

PERMITEE (CHECK ONE): ☐ I AGREE WITH ALL OF THE ABOVE FINDINGS OF THE VERIFIER.
☐ I DO NOT AGREE WITH ALL OF THE ABOVE FINDINGS OF THE VERIFIER, AND HEREBY SPECIFY THOSE ITEMS OF DISAGREEMENT

PERMITEE (CHECK ONE): I ☐ DO NOT ☐ DO REQUEST A HEARING ON THE SPECIFIC ITEM(S) OF DISAGREEMENT LISTED ABOVE.

PERMITEE'S SIGNATURE: DATE:

(ONLY ONE PERMITEE NEED SIGN)

TO BE COMPLETED BY AREA OFFICE SUPERVISOR:

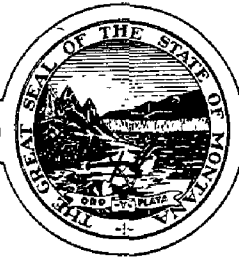
CHECK THE PROPER BOX OR SPECIFY THE PROCESSING ACTION NEEDED ON THE PERMIT:

- ☐ ISSUE CERTIFICATE OF WATER RIGHT AS PERMITTED (NO CHANGES NEEDED).
☐ ISSUE CERTIFICATE OF WATER RIGHT WITH VERIFIED CHANGES (SEE LAST COLUMN ON VERIFICATION FORM).
☐ PERMIT MODIFICATION HEARING NECESSARY.
☐ DO NOT ISSUE A CERTIFICATE. PERMIT IS ABANDONED OR NOT COMPLETE (REVOKE THE PERMIT).
☐ OTHER (SPECIFY)

AREA OFFICE SUPERVISOR'S SIGNATURE: DATE:

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
LEWISTOWN WATER RESOURCES REGIONAL OFFICE

P032304-41K



MARCRACICOT
GOVERNOR

613 NE MAIN STREET #E

STATE OF MONTANA

(406) 538-7459
FAX (406) 538-7089

LEWISTOWN, MONTANA 59457-2020

August 18, 1997

Beverly and Everett Holum
PO Box 93
Sun River, MT 59483

RE:Holum/Youngren Water Right Transfer Certificate

Dear Mr. and Mrs. Holum:

You may recall a letter I wrote to you June 5, 1997, (copy enclosed). This letter notified you that in order to complete the processing of the above transfer certificate further information and additional filing fees were needed. As of this date, no response has been received.

As stated in the letter, our policy is that if no response is received within 60 days after owner contact the transfer form will be deemed unprocessable and returned. No owner updates will be made and no fees refunded. A new transfer form with the deficiencies corrected will need to be filed with the appropriate fee.

A copy of the June 5, 1997, letter was sent to Youngrens at the Sun River address, but it was returned. I tried sending it to Fort Shaw, but that was returned also.

If you have questions, please call (406) 538-7459 or write to Water Resources Regional Office, 613 NE Main Suite E, Lewistown, MT 59457.

Sincerely,

A handwritten signature in cursive script that reads "Gayle Phillips".

Gayle Phillips
Program Assistant II
Lewistown Water Resources Office

Enclosures

P032304-41K

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
LEWISTOWN WATER RESOURCES REGIONAL OFFICE



MARCRACICOT
GOVERNOR

613 NE MAIN STREET #E

STATE OF MONTANA

(406) 538-7459
FAX (406) 538-7089

June 5, 1997

LEWISTOWN, MONTANA 59457-2020

Beverly and Everett Holum
PO Box 93
Sun River, MT 59483

RE: Holum/Youngren Water Right Transfer Certificate

Dear Mr. and Mrs. Holum:

In order to complete the processing of the above Water Right Transfer Certificate the following concerns need to be addressed:

Item 1: According to our records there is also a water right under the name of Larry and Kathy Holum (C032314-41K) which is for a well in this same general area. Enclosed is a copy of this certificate of water right. Should this water right be transferred to Youngren's also? If it is, you will need to supply copies of the recorded deeds, etc. which show the chain of title from Larry and Kathy Holum to yourselves.

Since water right permit no. P032304-41K is under both your names we will need copies of the recorded documents which show the transfer of title from Everett Holum to Beverly A. Holum, Larry E. Holum, and Wendy Lee Holum.

Presently the fee for a water right transfer involving one water right is \$25.00. Each additional water right requires another \$5.00. You will need to submit an extra \$15.00, or \$20.00, if it is determined that C032314-41K should also be transferred. Make your check payable to the Department of Natural Resources and Conservation, and return to this office.

Please respond as soon as possible. A failure to respond within 60 days of the date of this letter will result in this transfer being deemed unprocessable and will be returned to you. If you have any questions please give me a call at (406) 538-7459.

Sincerely,

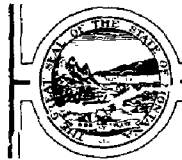
Gayle Phillips
Gayle Phillips

Program Assistant II
Lewistown Water Resources Office

Enclosure
cc: John and Robin Youngren

"AN EQUAL OPPORTUNITY EMPLOYER"

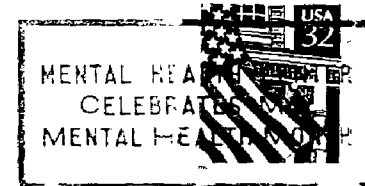
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DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
WATER RESOURCES REGIONAL OFFICE

STATE OF MONTANA

613 NE MAIN STREET #E
LEWISTOWN, MONTANA 59457-2020



P032304-41K

John C. and Robin L. Youngren

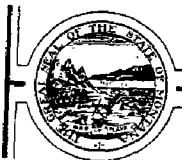
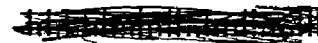
~~82 Open Buckle~~

~~Sun River, MT 59483~~

Try Fort Shaw
59443

~~Vaughn, MT 59487~~

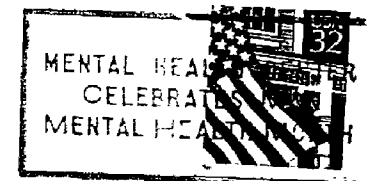
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- ☐ No such number
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- ☒ Attempted - Not known



DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
WATER RESOURCES REGIONAL OFFICE

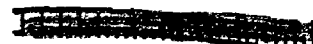
STATE OF MONTANA

613 NE MAIN STREET #E
LEWISTOWN, MONTANA 59457-2020



- ☒ Moved, left no address
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- ☐ Moved, not forwardable
- ☒ Attempted - Not known

John C. and Robin L. Youngren
Fort Shaw, MT 59443



P032304-41K

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