

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
CLARK FORK RIVER ABOVE THE BLACKFOOT RIVER BASIN (76G)

IN THE MATTER OF THE ADJUDICATION OF)
THE EXISTING RIGHTS TO THE USE OF ALL)
THE WATER, BOTH SURFACE AND UNDERGROUND)
WITHIN THE CLARK FORK RIVER DRAINAGE)
AREA ABOVE THE BLACKFOOT RIVER, INCLUD-)
ING ALL TRIBUTARIES OF THE CLARK FORK)
RIVER ABOVE THE BLACKFOOT RIVER IN DEER)
LODGE, GRANITE, LEWIS AND CLARK,)
MISSOULA, POWELL AND SILVER BOW)
COUNTIES, MONTANA.)

CASE NO. 76G-548

76G 92217-00

76G 92218-00

76G 92219-00

FILED

MAY 22 2006

Montana Water Court

CLAIMANT: Geraldine Horvath and Pete Horvath

OBJECTOR: Montana Department of Fish, Wildlife and Parks

ON MOTION BY THE WATER COURT

MASTER'S REPORT

PROCEDURAL HISTORY

Water right claims 76G 92217-00 (irrigation) and 76G 92218-00 (stock) were filed by Geraldine Horvath and Pete E. Horvath as multiple uses of the same historical "use" right from Warm Springs Creek. Horvaths also filed claim 76G 92219-00 (stock) as a "use" right from Twin Lakes Creek. All three filings were received by the Montana

Department of Natural Resources and Conservation (DNRC) on May 3, 1982, thereby making them type "A" late claims. See Section 85-2-221 (3), MCA. Although these filings were accepted by the DNRC, they were not accompanied by the required \$40.00 per claim filing fee. The Horvaths were notified of this fee in a letter sent to them on July 30, 1982, but did not respond.

All three claims appeared in the Temporary Preliminary Decree for this Basin, issued on May 17, 1985, with remarks noting the failure to pay the \$40.00 filing fee and remarks noting their status as late claims. Claim 76G 92217-00 received a late claim objection from the Montana Department of Fish, Wildlife and Parks (DFWP) and a Notice of Intent to appear filed by Kirby S. Christian and Calvin T. Christian. This Notice was withdrawn in response to the Order setting a comment period on the Motion to Reinstate these three claims. Kirby S. Christian and Calvin T. Christian have not participated in proceedings on this motion.

Over the next ten years, the DNRC sent several notices to the Horvaths requesting a total payment of \$120.00 for the three claims. Horvaths failed to respond to any of these requests. Finally, on February 23, 1996, the Water Master assigned to Basin 76G by the Montana Water Court, issued an Order setting a May 1, 1996 deadline for payment of the fees. When the Horvaths again failed to respond, a Show Cause Hearing was set for September 25, 1996, at the Water Court. Horvaths failed to appear at this Hearing. A Master's Report recommended termination of all three claims for failure to

pay the filing fees was issued on October 21, 1996. This report was Adopted by the Water Court on November 15, 1996, and all three claims were dismissed.

On April 19, 2005, Mark E. Horvath contacted the Montana Water Court and was informed that all three claims had been dismissed. On April 25, 2005, Mr. Horvath filed a letter with the Court stating that he was the successor to Pete and Geraldine Horvath. He requested assistance in his attempts to reinstate all three claims. In response to this letter, the Court issued an Order of Reference sending the claims back to the Master for further proceedings. On July 6, 2005, the Master issued an Order consolidating the claims into case 76G-548 and setting a response deadline. The Order indicates that the April 25, 2005, Horvath letter would be viewed as a Motion to Reinstate these claims and that any party with objections to the claims could now respond to the Motion. On August 15, 2005, the DFWP filed a response opposing the Motion. Following a Hearing on December 1, 2005, the Master agreed to issue a report addressing not only this motion but also the appropriate criteria for review of any motion to reinstate a water right claim.

MEMORANDUM

Mark Horvath's letter of April 25, 2005 was a request for information on the process for reinstating claims. By accepting the letter as a Motion to Reinstate, the Water Court was attempting to expedite the process. At the same time, the DFWP viewed this Court action as a willingness to reinstate a terminated claim with little or no supporting documentation or defined criteria. Aside from the merits of Mr. Horvath's "Motion", the DFWP is correct that motions to reinstate terminated claims must be held to specific

criteria. Any party filing this type of motion must know what is required both factually and procedurally, before the Water Court will review their motion. Therefore, this standard of review must be established before the specific situation presented by the Horvath Motion can be addressed.

Motions to reinstate a terminated water right claim or an ownership interest in a water right claim are not common in this adjudication. However, they do occur. In most cases, they are the result of the failure of a party to file a Water Right Ownership Update with the DNRC. On occasion, a party is defaulted for failure to comply with a Order issued by a Water Judge or Master, and is eventually subject to a Default Judgement terminating the claim or that party's interest in the claim. There have been circumstances where these parties, or their successors, have requested that the default judgement be set aside. Case 76G-548 falls into this category.

In Case 76HF-61, the Water Court addressed a situation that is factually similar to this case. The DeSmet Foundation purchased property from the Bakers that was part of the claimed place of use for a water right claim. However, DeSmet Foundation did not file a Water Right Ownership Update. On August 11, 2000, the Chief Water Judge issued an Order dismissing the Barker interest in the claim as a default judgement. On January 22, 2001, the DeSmet Foundation filed a motion to reinstate the claim. In this Motion, DeSmet argued that Jerome Borkoski d/b/a/ DeSmet Foundation was the principal care giver to his wife who suffered from terminal cancer and that his own health was poor and required regular dialysis treatment. DeSmet argued that these

conditions prevented Mr. Borkoski from attending to his affairs as he should have and resulted in his failure to transfer the water right into his name and to defend that interest. See Order Granting Motion to Set Aside Default and Reinstate Interest in Water Right Claim issued March 6, 2002.

In Case 76HF-61, the Water Court, citing *State ex rel. Department of Environmental Quality v. Robinson* (1998), 290 Mont. 137, 143, 962 P.2d 1212 and Rules 55(c) and 60(b)(1) and (6), M.R.Civ.P., provided the standard of review for setting aside a default judgement:

Rule 55 (c) An entry of default may be set aside “for good cause shown.” To establish “good cause,” the defendant must show that (1) he proceeded with diligence to set aside the default, (2) his neglect was excusable, (3) the judgment will be injurious to the defendant if allowed to stand, and (4) he has a meritorious defense to the plaintiff’s cause of action.

Rule 60(b)(1) and (6) The court may set aside a default judgment based upon mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief.

The same standard of review applies to case 76G-548. (1) The moving party must first establish good cause to address the default under Rule 55(c), and (2) then meet the more stringent requirement for default judgements under Rule 60(b)(1) and (6):

In applying this standard, the Supreme Court has found that good cause under Rule 55(c), M.R.Civ.P., should be applied more flexibly and leniently than the excusable neglect standard under Rule 60(b), M.R.Civ.P. *Cribb v. Matlock Communications, Inc.* (1989), 236 Mont. 27, 768 P.2d 337, 33. See also *Sun Mountain Sports v. Gore* 2004, 2004 MT 56, 320 Mont. 196, 85 P.3d 1286. In addition, the Montana Supreme Court

and the Water Court have expressed a clear preference for deciding litigated cases on the merits, and stated that judgements by default are not favored. *Id.*

Additional requirements may be applied by the Water Court where the facts of a case warrant them. For example, the payment of filing fees, late claim fees, or court costs can be required before the claim in question is reinstated. In addition, reinstatement of a claim will revive any Objection, Counter-objection, Notice of Intent to Appear, Intervention under Rule 24 (b) M.R.Civ.P. or issue remark that was unresolved at the time the claim was dismissed. These Objections, Counter-objections, Notices of Intent to Appear, Interventions, and issue remarks will be addressed, as necessary, in any further proceedings on the claim. If that claim is a late claim, the claimant will be responsible for court costs for those proceedings. See Section 85-2-225 (3)(b), MCA.

Another factor in these situations is the nature of judgements issued by the Water Court as part of ongoing proceedings in this adjudication. In most court proceedings, a judgment is the final determination of the rights of the parties in an action or proceeding. As used in the Montana Rules of Civil Procedure, this includes a decree and any order from which an appeal lies. Rule 54(a), M.R.Civ.P. Until a final decree is entered for a Basin or Subbasin, the Orders of the Water Court are interlocutory in nature, no entry of final judgment has taken place and no final decree has been issued for these water right claims. See generally *Matter of Sage Creek Drainage Area* (1988), 234 Mont. 243, 763 P.2d 644. Therefore, Water Court Orders, such as the Order dismissing the Horvath claims, are less than a final judgment. As the Water Court stated in 76HF-61, to some

extent, it is still an interlocutory order and the Court has plenary power to revise such orders when it is consonant with justice to do so. *Smith v. Foss* (1978), 177 Mont. 443, 447, 582 P.2d 329; citing 7 Moore's Federal Practice, Para. 60.-20, p. 242.

The final consideration for a Motion to Reinstate a claim is the appropriate notice. Given the interlocutory nature of the Order Dismissing the claims, it does not appear to be necessary to place a notice requirement on the movant beyond those parties that have shown an interest in the claim at issue. Therefore, notice of the motion must be provided to any party who filed an Objection, Counter-objection, Notice of Intent to Appear or Intervention on the claim. Because there has typically been no Basin-wide notice that the claim was dismissed, unless there has been an enforcement action implemented for the source, there is no reason to give Basin-wide notice that the claimant is requesting that the claim be reinstated.

Based on previous decisions by the Water Court and the Montana Rules of Civil Procedure, the following procedure should apply to a Motion to Reinstate a water right claim in this adjudication:

1. The party must file a Motion to Reinstate the claim. The Motion must be accompanied by a Brief and appropriate supporting documents.
2. Notice of the Motion must be provided to all parties who filed an Objection, Counter-objection, Notice of Intent to Appear, or Intervention on the claim.
3. In order to prevail on a Motion to Reinstate a Water Right Claim, the moving party must meet the criteria found in Rules 55(c) and 60(b)(1) or (6), M.R.Civ.P.
4. Additional conditions, such as payment of any delinquent filing or

processing fee, may be imposed as deemed appropriate by the Court.

5. Reinstatement of a claim will reinstate any Objection, Counter-objection, Notice of Intent to Appear, or Intervention filed on the claim. It will also revive all unresolved issue remarks that appeared on the claim.

FINDINGS OF FACT

1. Water right claims 76G 92217-00, 76G 92218-00, and 76G 92219-00 were dismissed by the Montana Water Court for the failure of the record claimants Geraldine Horvath and Pete E. Horvath to pay the mandatory \$40.00 per claim filing fee. On April 25, 2005, Mark E. Horvath filed a letter with the Court stating that he was the successor to Pete and Geraldine Horvath and requesting that the claims be reinstated. This request was opposed by the Montana Department of Fish, Wildlife and Parks (DFWP).

2. This initial filing by Mark E. Horvath was a request for assistance in the process of reinstating a dismissed water right claim. It did not meet the requirements for a Motion to Reinstatement a water right claim and should not have been accepted by the Master as a Motion to Reinstatement claims 76G 92217-00, 76G 92218-00, and 76G 92219-00. The deficiencies in this filing and in the Water Court review were identified in the opposing brief filed by the DFWP. The reply brief filed by Mark E. Horvath on October 4, 2005, did provide the documentation necessary to support the Motion. Based on this record, the merits of the Motion to Reinstatement claims 76G 92217-00, 76G 92218-00, and 76G 92219-00 can be reviewed by the Master.

3. According to information provided by Mark E. Horvath, the current record owners of claims 76G 92217-00, 76G 92218-00, and 76G 92219-00, Pete E. Horvath

and Geraldine Horvath both suffered from disabilities that interfered with their ability to conduct business. The three Statements of Claim for these water rights were completed by Paul Horvath on behalf of Pete and Geraldine Horvath and mailed to the DNRC.

There has never been any direct communication between Pete and Geraldine Horvath and anyone representing the DNRC or the Water Court. Pete Horvath suffered from physical disabilities that prevented him from conducting his own affairs. It appears that he relied to a considerable extent upon his wife Geraldine Horvath. Unfortunately, Geraldine was manic-depressive and minimally able to conduct the affairs of the couple. She apparently ignored most correspondence and routinely failed to pay bills unless they were discovered by her children.

4. Pete and Geraldine Horvath began receiving notice that they owed \$120.00 in fees on their water right claims in 1982. They never responded to these notices. In 1990, the property associated with these claims was sold to Mark E. Horvath. However, the water rights were never transferred into Mark's name. As a result, Mark did not receive individual notice of proceedings that resulted in the termination of all three claims. Mark E. Horvath only became aware that the claims had been terminated when he decided to investigate the situation with the rights in 2005. Until that time, he had no idea that the claims had not transferred as part of the land sale or that the claims had been dismissed for the failure to pay the filing fees. Upon discovering the termination of the claims, he initiated these proceedings.

5. Mark E. Horvath is asserting that these claims should be reinstated under

Rule 60 (b) (1) M.R.Civ.P. for excusable neglect. He argues that the failure to pay the required fees is excusable on his parents' part because they were not capable of conducting their affairs in any meaningful way, and, in the case of Geraldine, incapable of comprehending the results of her conduct. At the same time, Mark Horvath's conduct is also a factor in this proceeding. He acquired the property in 1990 from parents that he was aware were minimally capable of conducting their business affairs. He states in his affidavit that he was aware that his parents filed water rights in 1982, but he did not investigate the situation with their water right claims until 2005, some fifteen years after he acquired the property. When he did become aware that the claims had been dismissed, he took immediate steps to address the situation.

6. The DFWP response to the Motion to Reinstate Claims was filed on August 15, 2005. In this filing, the DFWP points out significant problems with Horvath's initial filing, including a lack of documentation showing that Mark E. Horvath is the current property owner or that Pete and Geraldine Horvath suffered from any debilitating medical conditions. The response also asserts that the Motion was not filed within the 60 day time period allowed by Rule 60(b) and is therefore not timely. As noted above, the deficiencies in the support for the Motion were corrected by Mark Horvath in his October 3, 2005 reply brief. He also addressed the 60 day filing requirement and noted that this requirement applies when the defendant was personally served. Mark Horvath was not served with the Order Dismissing these claims.

7. On November 8, 2005, the DFWP filed a second response in the form of a

Motion to Vacate Hearing. (The Master had set a hearing on the Motion to Reinstate Claims for November 17, 2005.) In this filing, the DFWP again asserted that the lack of clear criteria for this type of motion made it difficult for the parties to proceed. DFWP raised several procedural and policy issues including: the apparent willingness of the Court to proceed with little or no supporting documentation; the lack of a notice policy for this type of motion; the lack of a policy on fee payments prior to reinstating a claim; and the apparent special treatment of a *pro se* claimant. The DFWP again requested that the Master issue a Master's Report establishing the procedural requirements for this type of motion or in the alternative stay proceedings in this case until the adjudication rules pending before the Montana Supreme Court can be amended to include these procedural requirements.

CONCLUSIONS OF LAW

I

The Montana Water Court has exclusive jurisdiction to interpret and determine all existing water rights. *Mildenberger v. Galbraith*, (1991), 249 Mont. 161, 166, 815 P.2d 130. An "existing water right" is defined as "a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law." Section 85-2-102(10), MCA.

II

In *Sun Mountain Sports v. Gore*, (2004), 2004 MT 56, 320 Mont. 196, 85 P.3d

1286, the Montana Supreme Court discusses the application of the four part good cause test to set aside defaults when dealing with *pro se* litigants. The Court notes that it has set aside default judgements where *pro se* litigants have misunderstood communications from attorneys or made errors that would not typically have been made by counsel. *Sun Mountain Sports* at P19, 202. Conversely, the Court has not found excusable neglect where a “defendant willingly slumbered on his rights and ignored the judicial machinery established by law.” *Sun Mountain Sports* at P21, 202. citing *Morris v. Frank Transportation Co.* (1979), 184 Mont. 74, 76, 601 P.2d 698, 699. In this case, Mark Horvath did not obtain counsel until proceedings on his Motion to Reinstate claims were underway. Prior to that time, he did not ignore the judicial machinery, he was unaware that judicial process had taken place. Even though he was the real party in interest by 1996 when the claim were dismissed, he was not the record owner in the DNRC database and therefore did not receive notice of proceedings. Despite the fact that it was another nine years before Mark Horvath investigated this situation, it cannot be said that his conduct was uncommonly slow or different from a significant number of other water right claimants, or that this time lapse caused prejudice to any other party. Recent efforts by the DNRC to collect a water right users fee show that a significant number of water right users have not kept a current ownership record or paid any attention to various proceedings on their water right claims. While not condoned, it is nonetheless an unfortunate fact of life in this general adjudication. Given the available resources in 1996, the Water Court did not attempt to confirm Pete and Geraldine Horvath’s

ownership of the place of use claimed for these water rights. Part of the current process in this type of proceeding would include a review of the Montana Cadastral Survey to determine current land ownership. The Supreme Court has indicated that the fact that a party is not represented can be a factor in reviewing a motion to set aside a default judgement. In applying that factor to this case, it does not appear that reinstating the claims shows a special privilege to Mr. Horvath.

III

Although these claims have been dismissed for nearly ten years, their condition has gone unnoticed by virtually everyone involved in the adjudication. All three claims appeared in the Temporary Preliminary Decree for this Basin, but only claim 76G 92217-00 received an objection from the DFWP and a NIA from Cal and Kirby Christian. No other party took any interest in the claims or disputed their validity. Also, none of the claims that appear in the Temporary Preliminary Decree are enforceable until they have been through the objection process and referred to the appropriate district court for enforcement. Until that occurs, all of the claims that appeared in a Basin or Subbasin Decree are simply a compilation of the water rights that will eventually be enforced. Pending enforcement, water users proceed under existing law. Given these factors, there has been no apparent prejudice to any party due to the amount of time that has passed since the claims were dismissed and the Motion to Reinstate was filed. Of the two parties that did receive notice that the claims were dismissed and that a Motion to Reinstate had been filed, only the DFWP chose to stay involved. That involvement has

been based more on a desire that the system be consistent and predictable, and less on a concern over the particular facts presented in this case.

IV

Given the interlocutory nature of the Order dismissing the Horvath claims and the clear preference for deciding any case on the merits, it appears that Mark Horvath has made the necessary showing of good cause required by Rule 55 (c) M.R.Civ.P.

(a.) Mark Horvath proceeded with diligence to set aside the judgement. The original defaulting parties, Pete and Geraldine Horvath never addressed the termination of the claims and therefore never proceeded with diligence. Mark Horvath, as their successor, acted diligently when he became aware of the problem. Although there is a fifteen year time period between his purchase of the property until he discovered that the claims were dismissed, his conduct shows a typical lack of understanding of the State's system rather than a lack of attention to his property rights. (b.) Horvaths' neglect is excusable. Given their disabilities, Pete and Geraldine Horvaths' neglect is excusable. They were not capable of running their own affairs. Although Mark Horvath purchased the property in 1990, it appears that this purchase was an accommodation to help his parents. It was not until the situation with his parents had resolved itself that he began to actively manage the property. While the water rights transferred to Mark as part of the conveyance of the property, See Section 85-2-403, MCA, a Water Right Ownership Update was not filed with the DNRC at the time of the conveyance. As a result, he did not receive notice that Pete and Geraldine were in default or that a default judgement was entered against them.

When he became aware of the judgement he took steps to address the situation. (c.) The judgment will be injurious to Mark Horvath if allowed to stand. If this judgement is allowed to stand, Mark Horvath will lose the right to irrigate his property and to water stock from his ditch system. This clearly causes injury to him and his ability to use the property. (d.) Mark Horvath has meritorious water right claims. All three claims in this case were examined by the DNRC and were confirmed as historical water rights. There were no issue remarks placed on any of the claims except for the late claim remarks. Under Section 85-2-227, MCA, it is presumed that the claims are valid. A meritorious claim in this context simply means a prima facie showing of a valid water right. The claims are still subject to the adjudication process.

V

Based on the record before the Master, Mark E. Horvath has made a sufficient showing of excusable neglect and other reasons justifying relief as required by Rule 60 (b)(1) and (6) M.R.Civ.P to set aside the November 15, 1996 Order terminating claims 76G 92217-00, 76G 92218-00, and 76G 92219-00. Clearly, the neglect of Pete and Geraldine Horvath is excusable as the unfortunate result of physical and mental frailty. Mark Horvath's neglect, if it can be typified as such, is that it took him several years to discover and attempt to address the default judgement. During that period of time, he received no notice from the State that the claims had been dismissed. In fact, the only parties with any notice of the dismissal were the DFWP and Calvin and Kirby Christian. Given the State's system where one document, typically the deed of conveyance,

transfers ownership of the water right, and a second completely independent document is used to change the ownership record in the State's water right ownership database, this type of notice problem is inevitable. In addition, because these rights are part of a decree that has yet to be enforced, there will be no prejudice to any other water users caused by reinstating the three claims at this time. Finally, the basis for the termination of the claims has nothing to do with the validity of the water rights involved. Claims 76G 92217-00, 76G 92218-00, and 76G 92219-00, were terminated because two elderly claimants failed to pay a fee required by the State of Montana. Given the clear preference for deciding cases on the merits, it is appropriate to reinstate the claims with certain conditions.

RECOMMENDATIONS

1. Claims 76G 92217-00, 76G 92218-00, and 76G 92219-00 should be reinstated with the following conditions:
 - a. Claimant Mark E. Horvath must file a Water Right Ownership Update transferring the claims into his name.
 - b. Claimant Mark E. Horvath must pay the \$40.00 filing fee for all three claims.
 - c. Claimant Mark E. Horvath must pay the \$150.00 late claim fee for irrigation claim 76G 92217-00. Because claims 76G 92218-00 and 76G 92219-00 appear to be voluntarily filed exempt rights, the DNRC has not required this fee for this type of claim.
 - d. Claimant Mark E. Horvath must pay for the cost of court proceedings on his Motion to Reinstate Claims as calculated by the Montana Water Court.

- e. The late claim issue remarks that appeared on all three claims should be replaced with the current late claim information remarks that apply to that specific type of claim:

76G 92217-00	Type "A" irrigation late claim
76G 92218-00	Late filed exempt right
76G 92219-00	Late filed exempt right

DATED this 22 day of May, 2006.



Douglas Ritter
Senior Water Master

CERTIFICATE OF SERVICE

I, Denise Blankenship, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above **MASTER'S REPORT** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.


Pete E. and Geraldine Horvath
HC W Valley
Anaconda MT 59711

Mark E. Hovath
8416 MT Hwy 1W
Anaconda MT 59711

David M. McLean, Attorney
McLean & McLean, PLLP
PO Box 220
Anaconda MT 59711

G. Steven Brown, Attorney
1313 Eleventh Avenue
Helena MT 59601

DATED this 22nd day of May, 2006.



Denise Blankenship
Deputy Clerk of Court

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK RIVER ABOVE BLACKFOOT RIVER
BASIN 76G**

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76G 92217-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Late Claim: A

Owners: GERALDINE HORVATH
HC W VALLEY
ANACONDA, MT 59711

PETE E HORVATH
HC W VALLEY
ANACONDA, MT 59711

Priority Date: JUNE 10, 1866

Enforceable Priority Date: JUNE 10, 1866

CLAIM FILED LATE 5/3/1982 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS.

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 15.00 GPM

Volume: 10.41 AC-FT

Climatic Area: 5 - LOW

Maximum Acres: 25.00

Source: WARM SPRINGS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSE	19	5N	12W	DEER LODGE

Diversion Means: DIKE

Period of Use: APRIL 1 TO SEPTEMBER 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	17.50		S2S2SE	19	5N	12W	DEER LODGE
2	7.50		N2S2NE	30	5N	12W	DEER LODGE

Total: 25.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

92217-00 92218-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK RIVER ABOVE BLACKFOOT RIVER
BASIN 76G
IMPORTANT NOTICE**

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76G 92218-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GERALDINE HORVATH
HC W VALLEY
ANACONDA, MT 59711

PETE E HORVATH
HC W VALLEY
ANACONDA, MT 59711

Priority Date: JUNE 10, 1866

Enforceable Priority Date: JUNE 10, 1866

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source: WARM SPRINGS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2	NESW	19	5N 12W	DEER LODGE
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SW	SE	19	5N 12W	DEER LODGE
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SW	SE	SE	19 5N 12W	DEER LODGE
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		SE	SE	SE	19 5N 12W	DEER LODGE
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		NENENE		30	5N 12W	DEER LODGE
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2NESW	19	5N	12W	DEER LODGE
2			SWSE	19	5N	12W	DEER LODGE
3			SWSESE	19	5N	12W	DEER LODGE
4			SESESE	19	5N	12W	DEER LODGE
5			NENENE	30	5N	12W	DEER LODGE

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

92217-00 92218-00

THE FOLLOWING POTENTIAL ISSUES WERE IDENTIFIED DURING CLAIMS EXAMINATION OR DURING PREVIOUS WATER COURT PROCEEDINGS. THESE ISSUES MAY REMAIN UNRESOLVED IF NO OBJECTIONS ARE FILED DURING THE NEXT OBJECTION PERIOD.

CLAIM FILED 05/03/1982 . THIS CLAIM APPEARS TO BE AN EXEMPT RIGHT VOLUNTARILY FILED UNDER SECTION 85-2-222 MONTANA CODE ANNOTATED.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK RIVER ABOVE BLACKFOOT RIVER
BASIN 76G
IMPORTANT NOTICE**

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76G 92219-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GERALDINE HORVATH
HC W VALLEY
ANACONDA, MT 59711

PETE E HORVATH
HC W VALLEY
ANACONDA, MT 59711

Priority Date: JUNE 10, 1866

Enforceable Priority Date: JUNE 10, 1866

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source: TWIN LAKES CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	19	5N	12W	DEER LODGE
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWSESW	19	5N	12W	DEER LODGE
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWNESW	19	5N	12W	DEER LODGE
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESWSW	19	5N	12W	DEER LODGE
2			NWSESW	19	5N	12W	DEER LODGE
3			SWNESW	19	5N	12W	DEER LODGE

Remarks:

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