

Montana Water Court
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FILED

DEC 12 2012

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BIG HOLE RIVER BASIN (41D)

CLAIMANT: Griffin Allen and Joann Allen;
Lovell Family Trust;
Peter C. Kamperschroer

OBJECTOR: Lovell Family Trust;
United States of America (USDA Forest Service)

COUNTEROBJECTOR: Peter C Kamperschroer

NOTICE OF INTENT TO APPEAR: Peter C Kamperschroer

INTERVENOR: United States of America (USDA Forest Service)

CASE 41D-117

41D 93099-00

41D 93100-00

41D 93101-00

41D 93816-00

41D 93823-00

41D 93824-00

41D 93825-00

41D 93826-00

41D 93828-00

41D 93829-00

41D 182379-00

Unconsolidated Claims

41D 93820-00

41D 93821-00

41D 93830-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court on the above stamped date. Please carefully review this Report.

If you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations; or if there are errors in the Report, you may file a written objection to the Report within **10 days** from the above stamped date. (Rule 23, Water Right Adjudication Rules.) If you file an objection, you must also mail a copy of the objection to all the other parties on the Service List found at the end of the Master's Report. The original objection and a certificate of mailing to the parties on the Service List must be filed with the Water Court. If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTERS REPORT

FINDINGS OF FACT

Procedural Background

1. This case involves eleven claims, eight of which are co-owned by Griffin Allen and Joann Allen (Allen) and Lovell Family Trust (Lovell). Some claims are also owned or co-owned by Peter Kamperschroer.
2. The United States (USDA Forest Service) objected to claim 41D 93823-00, which is owned by Allen and Lovell. Mr. Kamperschroer filed a counterobjection to 41D 93824-00, and a notice of intent to appear on claim 41D 93823-00. All claims in this case show Montana Department of Natural Resources (DNRC) issue remarks. The United States filed a motion to intervene on claims 41D 93309-00, 41D 93100-00, and 41D 93101-00, which was granted on March 17, 2011.
3. Claim 41D 93823-00 is for irrigation water from Swamp Creek with a priority date of May 1, 1908 and 320.00 acres irrigated. The United States asserts that the decreed right upon which claim 41D 93823-00 is based is for a different source (Spring Creek) than claimed (Swamp Creek), and a different location to the west of Wise River. The United States contends that the claim is invalid, or that claimants must establish the historical basis of the right to establish priority date and all other elements of the claim. The United States also asserts that the place of use for claim 41D 93823-00 should be reduced to 170 acres.
4. The United States asserts that claims 41D 93099-00, 41D 93100-00, and 41D 93101-00 claim a 1912 priority date based on a notice of appropriation, but are not included in the 1923 decree for Wise River and its tributaries. (Case No. 2627). The United States contends that if the water rights were in use in 1923, they would have been included in the decree. The United States contends that the claims are either invalid, or the claimant must prove all elements of the claims.

5. The United States also questions whether stock and domestic use currently exist from Swamp Creek as claimed for claims 41D 93100-00 and 41D 93101-00, and if so, whether the stock and domestic uses are year-round.

6. Claimants Lovell and Allen oppose the United States' contentions, and further assert that the place of use for claim 41D 93099-00 should be increased from 40.00 acres to approximately 113 acres. Claimants contend that the water rights involved with claims 41D 93099-00, 41D 93100-00 and 41D 93101-00 could not have been included in the 1923 decree because they were owned by the United States during that time, and the District Court would not have had jurisdiction over the claims. Claimants also request an implied claim from 41D 93823-00 for 3.75 CFS with a priority date of 1953, in order to recognize the historical use of high water.

7. Mr. Kamperschroer filed amendments to claims 41D 93816-00, 41D 93830-00, 41D 93821-00, 41D 93820-00, 41D 93829-00, and 41D 93828-00 on April 15, 2011. Claims 41D 93830-00, 41D 93821-00, 41D 93820-00 are supplemental with claims in this case, and were then consolidated into this case. All of these claims were amended to reduce the acreage, and these amendments are adopted and reflected in the abstracts attached to this report.

8. On May 12, 2011, DNRC Water Resource Specialist Myles VanHemelryck filed a memorandum indicating that many of the issue remarks remained unresolved, but that issue remarks on claims 41D 93101-00, 41D 93826-00, and 41D 93829-00 were resolved.

9. On December 5, 2011, Peter Kamperschroer filed a motion for stay of claims 41D 182379-00, 41D 93824-00, 41D 93825-00, and 41D 93828-00 pending resolution of cases 41D-117A and 41D-119. The motion was granted. Master's Reports in cases 41D-117A and 41D-119 are being issued concurrently with this case, so the stay is now lifted and the issues with those claims are addressed below.

10. A hearing was held on the remaining claims of Allen and Lovell on February 24, 2012 at the Beaverhead County Courthouse in Dillon, Montana. Jody Miller (United

States - USDA Forest Service) and W.G. Gilbert III (Lovell Family Trust and Griffin and Joann Allen) appeared and presented witnesses and exhibits. Yvette LeFrentz (counsel for Peter C. Kamperschroer) observed the proceedings. Post-hearing briefs were filed, the United States filed a motion to strike certain documents that were attached to claimant's posthearing brief. The final brief was filed May 30, 2012.

Hearing

11. Jed Simon is the Water Rights Team Leader for United States Forest Service regional office. He holds a Bachelor's degree in forestry and Master's in geography from the University of Montana, with additional training in water law, BLM classes in water rights, DNRC workshops, and on the job training. He has been the hydrologist for USFS for the district on project proposals for much of his career. His resume was admitted as Exhibit G-1, and he was admitted as an expert witness. He made the following determinations based upon his field visit to claimants' property, and review of documents in the case and admitted at hearing.

Mr. Simon performed a field visit to the Swamp Creek Ridge property, which is depicted on Exhibit G-2. This exhibit is a map prepared by USFS staff Thor Burbock using the 2009 forest map. The map shows national forest and private ownership, unnamed streams, tributaries and roads. When up on the Swamp Creek Ridge, he went to the point of diversion and up through the national forest land. He stated that he did not follow the ditch onto Mr. Lovell's land.

He visited the point of diversion located in the SWNESW of Section 10, and using a global positioning system (GPS) device, he determined that the legal description is accurate and it is located on national forest lands. He stated that there is a rock and tarp diversion that shunts water into the ditch, but there is no headgate. He stated that the ditch looked to be freshly maintained, about 5 feet wide, 1 foot deep. He stated that the Lovells and Allens do not have authorization from the national forest for the use of this ditch. Mr. Simon does not think that water could be diverted into the ditch in the winter,

due to the elevation the water would freeze much of the time. He stated that April to October or November seems to be reasonable period of use for claims using this diversion site.

Exhibit G-3 is a 1955 aerial photo from DNRC, with polygons and numbers created by Jed Simon. This exhibit shows property boundaries owned by Lovell, then showed what Mr. Simon believes is not irrigated, and calculations of the acreage for each parcel. The red polygon on the exhibit, to the east side of property line, is property that is owned by USFS. Mr. Simon stated that this property is irrigated, but USFS doesn't irrigate it (3.25 acres). Mr. Simon found 39.53 acres total, and this total is a subset of the 42.8 acres.

Exhibit G-4 is an aerial photo dated 9/18/79 from DNRC, with cadastral boundaries added (by USFS staff Thor Burbock) to show Lovell's property lots one and two. Mr. Simon stated that the photo shows there were no irrigated acres on the property in 1979.

Mr. Simon stated that he did not see any sign of domestic use on his site visit. He explained that he did not talk to Mr. Lovell about Swamp Creek domestic use, but Mr. Lovell did not show him any domestic use on the field visit. Mr. Simon stated that there is a well that was drilled in 2001.

Regarding claim 41D 93101-00, Mr. Simon stated that he did not see any evidence of recent stock use. He stated that the area is natural pasture, but he did not see signs of animals such as hoof damage or chewed grass. The USFS permits grazing in this area, and has water rights of its own. On the Quartz Hill allotment, Mr. Zucker has the lease, and the Lovells did not have a permit to graze near Swamp Creek.

Mr. Simon stated that claims 41D 93100-00, 41D 93101-00, and 41D 93099-00 are multiple uses of each other. The land was designated as the Swamp Creek Administrative Site, and was reserved as national forest in 1906. It was withdrawn from mineral entry in 1908. In 1937, Mr. Potts received it from the Forest Service when there

was an exchange of land. Exhibit G-5 is a GLO survey, which shows other ditches, but not claimant's ditches. Mr. Gilbert objected to this exhibit, and the objection was overruled.

Claim 41D 93823-00 claims water from Swamp Creek for 1.5 CFS. The historical basis for the claim was the 1923 decree, with water from Spring Creek, identified in the 1923 decree as 90 acres in the center of section 4. Mr. Simon stated that Spring Creek is not the same as Swamp Creek, and he believes that the place of use is not the same as the notice as in the decree, but is located on the other side of the creek. Spring Creek is not identified on any other maps in this area. The 1982 statement of claim for this water right states that the source is Spring Creek, and it was later amended to Swamp Creek.

Exhibit G-6 was an email from Myles VanHemelryck to USFS staff Michelle Miewald. This exhibit was not admitted, because it appeared to be an effort by Mr. VanHemelryck to facilitate settlement between the parties.

Exhibit G-8 is a map of irrigated acres for claim 41D 93823-00, overlaid on an aerial photograph. The label on the map indicates 170 acres irrigated, which is the area that Mr. Simon found to be irrigated. Mr. Simon did not know what month the photograph was taken.

12. Donald H. Jones is a neighbor to the Allen property. He is a rancher who has lived in this area all his life. He stated that his family has operated his ranch for over 100 years, and that the operation produces cow/calf pairs, sheep, oats, barley and mostly hay. He irrigates 800-900 acres. He stated that he was born in 1932, and was ten years old when he began helping with irrigation on the ranch. He stated that he has lived in his current house on the ranch since he was married in 1960.

He stated that he is familiar with Allen's property on Swamp Creek Ridge and their other property on the river bottom. He has visited the Swamp Creek Ridge property since perhaps the late 1930s. The house he was raised in is right across the yard. He stated that from his house, he can see the irrigated land on Swamp Creek Ridge. The

areas he discussed seeing irrigated were depicted on Exhibits G-2 and G-4. On the Exhibit G-4 aerial photo, he pointed to the center of the exhibit to state what was irrigated and green, and circled the area he saw irrigated with an orange marker, although stated that he cannot see the entire property from his house. He recalled that “it’s always been green over there”, and there hasn’t been times that it wasn’t irrigated. He indicated that as a rancher he is familiar with and aware of his neighbor’s irrigation. He stated that he hasn’t been to the point of diversion for the Allen property, but he has seen the ditches.

Mr. Jones stated that the land at the river bottom is irrigated also, and has been irrigated as long as he can remember. He stated that they used to hay long ago, but it is mostly pastured. He stated that the land is rocky, but has been irrigated. His property is right across the river, and cattle get mixed crossing the river. Has been over there getting his cattle back and taking stray cattle back, has seen the property “a lot.” He indicated that most of the property on the upper ridge was timber, and that it takes awhile to get to where it can produce. He also explained that it is not very productive soil in the Wise River area and it is rocky. The property close to the river is subirrigated in a sense when you irrigate above it. He indicated that in this area, you don’t have grass if you don’t irrigate.

He explained that in the spring, everyone gets the water turned on, and the properties are mostly flood irrigated. He stated that you have to change water all the time. He stated that most of the diversion is close to the decreed rights, because that is what the ditches will handle, on his side of the river, and he doesn’t think it’s different on the other side. He stated that you irrigate what your ditch can take.

13. Dean Stanchfield is a rancher born in 1940. His family began ranching in the area in 1878 or earlier. His operation produces cow/calf pairs and hay crops. He irrigates approximately 960 acres of hay, and he lives next to Donald Jones. He has water rights for 800 inches from Wise River, plus other water rights. He stated that he was born at his current location, and has lived there all his life.

He stated that he is familiar with Allen/Lovell property, that he worked for Mr. Allen, and that Fred Lovell is a friend. He stated that has known Dana Miller and Donald Jones all his life. He first went to the land on top of Swamp Creek Ridge in first grade, in 1946. He remembered going there when Thorsons were taking care of the place, and he stated that he played with their son. He stated that the land at that time was irrigated, there were meadows and gophers up there, and there was a ditch they would play in although it was too cold to swim. He stated that the ditch was up onto the meadow ground. There was fairly heavy forest and timber, and the ditch was old at that time. He indicated that cattle and horses were up there at different times, and the property had been hayed at different times. As a child, he visited the ditch in Section 10, in the Swamp Creek Ridge area, by walking up or riding horses. As a little kid, he would just go to the Thorsons' house. He reviewed Exhibit G-2, and explained that the house sat down below, and there are still houses there. The old ranger station was there with a lookout, and there was a road from the house up to the ridge. Sometimes he went up the creek and came along the ditch.

The next family to own the place after Thorsons was the Touchstones, and he played with their children. He indicated that this family lived there through 8th grade. After that, there were sometimes outsiders, and Mr. Stanchfield couldn't remember all of them.

Regarding the DNRC issue remarks stating that there was no irrigation in 1979, Mr. Stanchfield stated that he had pastured cattle from Billy Johnson in Deer Lodge around that time, and Boyd Burrows had been irrigating up there. He stated that his family was leasing that ground at that time, and the property was irrigated at that time. He indicated that all of the meadow ground up there was irrigated.

Regarding the property on the river bottom, Mr. Stanchfield indicated that he hunted gophers and played on that ground during lunch breaks from school. He stated that the ground in that area is ridged and rocky, and all down the ridges are ditches, not

contoured. He indicated that from the ditch to the river, all the property in this area was irrigated.

He indicated that Wise River is used to irrigate the river bottom property, along with some Swamp Creek water. He indicated that historically, during high water, there is a lot more water on Lovell's place than is decreed. Early in the year, there would be water running down the road, which he noticed when going to school. Mr. Stanchfield indicated that Mr. Lovell is doing a better job irrigating than many of the previous owners. Sometimes in the past the Lovell/Allen place has been taken care of very well, especially when people would hay, but when the place was used for pasture it was not always taken care of very well. Mr. Stanchfield stated that he is not aware of any Spring Creek in this area. There are springs on the national forest lands in the gulch, and a swamp up there, but it is not on Lovell's ground.

Mr. Stanchfield stated that he was last in the Swamp Creek Ridge area a few months ago. He stated that the diversion has changed to a certain extent, and he couldn't say it was exactly in the same place. There is now a road to the headgate, historically there was not a road. There is a headgate now, which is new this year. When he was in the area as a child, the headgate was old and dilapidated. He reviewed current pictures of the headgate, and stated that it did not look like the same headgate that was there in the past. He confirmed that there is only one diversion on Swamp Creek in this area.

14. Dana Miller lives in Dewey, Montana, 5 miles from Wise River. He is a retired miner, and also a pilot. He was born in Butte, Montana in 1938. His grandfather moved to Wise River from Wisdom in 1925, and conducted a ranching business and owned a hotel and bar. Mr. Miller's father mainly ranched.

He stated that he is familiar with the Swamp Creek Ridge property, and referred to it as the Touchstone property. Mr. Miller's father bought it from Harry Bennett in 1940. Mr. Miller moved there in 1940, and lived there until 1945. Mr. Miller's uncle (Thorson) leased it from his dad until 1948 when it was sold to Jim Touchstone. His folks hayed the

place, and he went up with his dad as a child, and the ditch was old at that time. He didn't personally irrigate up there, but went with his dad. The forest in that area is heavy. Mr. Miller irrigated on the Husted-Stanchfield place personally, on the other side of town.

Mr. Miller stated that the headgate on the Thorson place was heavy plank. Mr. Miller last saw the headgate in 1953, and at that time it looked the same as before.

Regarding the lower ground by the river bottom, Mr. Miller's grandfather also owned this parcel, referred to as the Burdick place. Below Swamp Creek, as he was growing up, Mr. Miller observed activities on that land. Going to school, he saw haying and feeding of cattle on it. The school is 1/4 mile from that property. Cattle was wintered there. There was good deer hunting on Mammoth Gulch, and Mr. Miller would cross the Lovell/Allen property to get there.

At that time, the lower meadow was not the best hay meadow, but it was hayed. He knows where the ditch is, but he never personally irrigated it so is not as familiar with how it was irrigated. Regarding the 1979 issue remark, Mr. Miller stated that a person can see the lower property from many places in the valley. The property was always green, so something was making it green. Mr. Miller would fly up on his days off and fly over the area, and he does not ever recall it not being irrigated. Mr. Miller flew in the area between 1983 and last year. During the high water in the spring, all users fill their ditches full. When high water drops, there isn't enough to fill the water rights.

15. Fred Lovell lives on what has been referred to as the Touchstone place, and is there for about 4 months total over the year. The Allens are friends and partners in the real estate. Mr. Lovell bought the property in 1993. He first came to Wise River area fishing in 1989. He had no familiarity with the property prior to 1993. When he bought the property, on the creek bottom there was a forest service cabin, barn and homestead cabin. On the other parcel, there was a stone foundation which neighbors said was an old house. Mr. Lovell stated that the foundation is still there.

The Upper (Touchstone) land is located mostly in section 10. Mr. Lovell stated that there are about 113 acres in that parcel, and it is irrigated using Swamp Creek. Mr. Lovell also owns the bottom ground to the west and north, which totals around 356 acres. This area runs between the river and the mountain range. Mr. Lovell thought he irrigated 50 acres in section 10. There is a document in claim file, an objection form from Mr. Lovell signed in 2007, which states that he believes 35 acres were historically irrigated. Mr. Lovell states that he knows more about the property now than he did 6 months ago, or in 2007, and he believes the correct number is 50 acres.

Exhibit 1 is the patent for the Touchstone property. This water right is based on a filing also admitted as Exhibit G-7. Exhibit 2 is the notice of appropriation. Exhibit 3 is an aerial photograph of the Touchstone place. Mr. Lovell drew the yellow line, which shows what Mr. Lovell thinks he irrigates now. This document was sent to Myles VanHemelryck with an acreage calculation of the area within. Mr. Lovell stated that he takes the water he can during high water, but never dewater the creek. There is a headgate there, a wooden structure there that was built last year, and Mr. Lovell conceded that he has no authorization from USFS for that. The tarp dam was there for a very long time. There are no diversions between that and the upper diversion.

Regarding domestic use on the upper diversion, Mr. Lovell stated that there is a fire setup system, with a pump below his house on Swamp Creek, by the barn. This system was put in 10 years ago, and there was no diversion there before.

Regarding the lower ground, Mr. Lovell stated that he has irrigated this area himself, but he has someone who helps out. He pastures the land, and owns 5 cows. Mr. Lovell leases the lower ground to Lee Kirkpatrick. Mr. Kirkpatrick has leased the ground since prior to Mr. Lovell's ownership, and Mr. Kirkpatrick also runs cattle on the Touchstone (upper) property. Stock is placed on the upper ground for 28 days in two rotations, once in the spring, and then again later on. Mr. Lovell has not had stock there in the winter himself.

On the lower ground, Mr. Lovell thinks there is about 250 acres irrigated for the pasture. Exhibit 4 shows the lower ground. The red color designates ground irrigated by Swamp Creek, and the other is irrigated by Wise River. Mr. Lovell thinks the red area is around 175 or 180 acres. There are some lands further south irrigated with Wise River water and water rights not in this case. Mr. Lovell stated that it would not be possible to get a good crop without taking the high water.

Regarding water right 41D 93823-00, Mr. Lovell states that this water right is for Swamp Creek, and not Spring Creek, because there is no Spring Creek in this area.

16. Nils "Swede" Troedsson was called by the claimants as a rebuttal witness. Mr. Troedsson has lived in Dillon since 1965. He is an adjunct professor at UM - Dillon, teaching courses in mapping and GPS work. Claimants' attorney uses Mr. Troedsson's GPS equipment for mapping for his clients. Mr. Troedsson was a forester in the Swan Valley, then with USFS, at Caldwell and then the Beaverhead National Forest. He retired in 1994. He has been teaching for 13 years at college.

Exhibit G-5 is a GLO map. The block at the bottom described when the survey took place, with August 2, 1906 as the baseline. The GLO survey in Montana started in 1867, southwest of Willow Creek by Three Forks. The survey was done by government surveyors or contracted private surveyors. Their job was to identify the sections. The subdivision of sections was contracted to local surveyors.

The GLO surveyors were to document significant topographic features that they encountered as they surveyed the section lines, such as ditches, roads, and streams. They were documented in notes and are on file at the General Land Office. They are also on file at BLM offices and the national forest had them on microfilm, but a lot of that information is now located in Billings. The survey system is administered by BLM, and it is available on microfilm at BLM offices.

Mr. Troedsson got the surveyor's notes for section 10. These notes are presented in Exhibit 5. This exhibit received objections from the United States, and the objections

are overruled. Mr. Troedsson states that the manual instructions for a GLO survey direct the surveyors to notate significant features that they cross while running the section lines. Mr. Troedsson discussed, step by step, the notes on Exhibit 5 related to Exhibit G-5. Mr. Troedsson stated that he has not looked at the contract for this survey, but he has looked at the manual of instructions for the survey of public lands. Mr. Troedsson stated that he did not look at survey notes beyond what is in Exhibit 5, and he did not see the original handwritten notes from the surveyors. He did not look at the surveys of interior lines, and he stated that those would be on record at the county courthouse. Mr. Troedsson indicated that the surveyor would have walked the section lines, and not the lot lines, and implied that the surveyor thus would not have encountered the ditch in Section 10.

General Findings of Fact

17. The United States asserts that the decreed right upon which claim 41D 93823-00 is based is for a different source (Spring Creek) than claimed (Swamp Creek), and a different location to the west of Wise River. Claim 41D 93823-00 claims water from Swamp Creek for 1.5 CFS. The historical basis for the claim was the 1923 decree, with 90 acres in the center of section 4, irrigated with water from Spring Creek. Jed Simon stated that Spring Creek is not the same as Swamp Creek, and he believes that the place of use is not the same as the notice as in the decree, but is located on the other side of the creek. Spring Creek is not identified on any other maps in this area.

The 1982 statement of claim for this water right states that the source is Spring Creek. The statement of claim was filed by Van Cleef-Montana Company, an Ohio General Partnership. A copy of the 1923 decree is attached to the claim form, with parts of the 1908 Pyle right highlighted, and DNRC written in pencil next to that paragraph. The map attached to the statement of claim shows two parcels, H.E.S. No. 223A for 135 acres in section three, slightly overlapping the section line to section 4, and a second parcel H.E.S. No. 46, for 160 acres at the intersection between sections 3, 4, 9, and 10. The point of diversion is shown near the section line between 9 and 10. On August 17,

1990, DNRC changed the source of the claim to Swamp Creek as a result of claims examination. DNRC also contacted the claimant (Twin River Ranch Association at that time) to discuss several issues, and as a result of that discussion claimant filed an amendment on September 12, 1991, including an amendment reflecting the source as Swamp Creek. The claim was re-examined by DNRC in 1998. At that time, a different DNRC examiner placed the following issue remark on claim 41D 93823-00:

THE CLAIMED SOURCE MAY BE QUESTIONABLE. THE SOURCE DESCRIBED IN CASE NO. 2627, BEAVERHEAD COUNTY, IS INCONSISTENT WITH THE SOURCE AT THE CLAIMED POINT OF DIVERSION.

It does not appear that any further claimant contact occurred at that time. Dean Stanchfield stated that he is not aware of any Spring Creek in this area. Mr. Stanchfield stated that there are springs on the national forest lands in the gulch, and a swamp up there, but it is not on Lovell's ground. Mr. Lovell stated that this water right is for Swamp Creek, and not Spring Creek, because there is no Spring Creek in this area.

The amendment prior to the issuance of the decree is entitled to prima facie status. According to the uncontroverted testimony of Donald Jones, the point of diversion and place of use for this claim has been in its current location since at least the late 1930s. No evidence was presented regarding irrigation in the center of section 4. Even if it was moved from its original location, this was not prohibited prior to 1973. The source for claim 41D 93823-00 should remain Swamp Creek.

18. The United States also asserts that the place of use for claim 41D 93823-00 should be reduced to 170 acres. Exhibit G-8 is a map of irrigated acres for claim 41D 93823-00, overlaid on an aerial photograph. The label on the map indicates 170 acres irrigated, which is the area that Mr. Simon found to be irrigated. Mr. Simon did not know what month the photograph was taken.

The original statement of claim was for 295.90 acres, which was then crossed out

with 430 acres written on the form by DNRC, and an addendum prepared by DNRC delineating the parcels in the place of use. As stated above, the map attached to the statement of claim shows two parcels, one for 135 acres, and another for 160 acres, totaling 295 acres. During claims examination in 1990, DNRC verified 295.50 acres on the September 18, 1979 aerial photo, and 225.25 acres on the 1955 aerial photo. DNRC then met with claimant (Twin River Ranch Association) in 1991, and the claimant amended the acreage to 320.00 acres. DNRC prepared an examination worksheet on September 11, 1991 finding 320.00 acres on the 1979 aerial photo. During re-examination in 1998, DNRC found 190 acres on the September 18, 1979 aerial photo, and 187 acres irrigated on the 1955 aerial photo. It does not appear that the claimant was contacted at that time. In 2006, DNRC refined the place of use legal description using the GLO map.

Claim 41D 93823-00 then appeared in the 41D basin decree with two issue remarks regarding acreage:

USDA AERIAL PHOTOGRAPH NO(S).879-136, DATED 9/19/79, APPEARS TO INDICATE 190.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

AERIAL PHOTOGRAPH NO(S). CXM-4P-118, DATED 7/19/1955, APPEARS TO INDICATE 187.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

The statement of claim, as amended in 1991, is prima facie proof of its contents. The issue remarks are weighed against the claim, and the objector had the burden of proof to overcome the prima facie claim.

Reviewing the exhibits, all documents in the claim file, and the testimony, it appears that the 1998 DNRC examination on the 1979 aerial photo (totaling 190 acres) is the most accurate reflection of the historically irrigated place of use, and omits areas which are uphill from the ditch. A map of these acres is attached.

19. Claimants also request an implied claim from 41D 93823-00 for 3.75 CFS with a priority date of 1953, in order to recognize the historical use of high water.

Donald Jones indicated that most of the diversion in the area is close to the decreed rights, because that is what the ditches will handle, on his side of the river, and he doesn't think it's different on the other side. He stated that you irrigate what your ditch can take. Mr. Stanchfield stated that historically, during high water, there is a lot more water on Lovell's place than is decreed. Early in the year, there would be water running down the road, which he noticed when going to school. Dana Miller stated that during the high water in the spring, all users fill their ditches full. When high water drops, there isn't enough to fill the water rights.

60 miner's inches was claimed as the flow rate on the claim form for 41D 93823-00. Claimants filed an objection to the claim, with a narrative describing the objection. Part of claimant's objection indicated a request for an implied claim. During preparation of the objection list for Basin 41D, Senior Water Master Kathryn Lambert reviewed all objection forms received in order to determine which elements should appear on the objection list. Claimants assert that Kathryn Lambert's handwritten notes on the objection form, stating "all elements, other: implied claim may be needed see attachment KL 10/4/07", indicate that the implied claim should be granted.

Kathryn Lambert's notes on claimant's objection form are simply a summary of the claimant's objection for the objection list, and are not in any way a determination that an implied claim should be generated.

Implied claims, as provided for in Rule 35 W.R.C.E.R., are used to separate multiple claims from the single statement of claim filing. The need for an implied claim can be identified through the settlement process or as a result of a hearing. An implied claim should not be an expansion of a water right or an attempt to circumvent claim filing requirements under Sections 85-2-221 and 85-2-224, MCA. *Eliasson Ranch Co. v. Rodeghiero*, Case 40A-115, (MT Water Court Order Amending and Adopting Master's

Report Jun. 28, 2004). The overstatement of an element on a statement of claim, is the most common indicator supporting the need for an implied claim. *Eliasson* at 4-5.

The claim form and attachments, and testimony presented at hearing, are insufficient to overcome the prima facie claim for 41D 93823-00 on this issue. The requested implied claim should not be granted.

20. The United States asserts that claims 41D 93099-00, 41D 93100-00, and 41D 93101-00 claim a 1912 priority date based on a notice of appropriation, but are not included in the 1923 decree for Wise River and its tributaries. (Case No. 2627). The United States contends that if the water rights were in use in 1923, they would have been included in the decree. The United States contends that the claims are either invalid, or the claimant must prove all elements of the claims.

Claimants Lovell and Allen oppose the United States' contentions. Claimants contend that the water rights involved with claims 41D 93099-00, 41D 93100-00 and 41D 93101-00 could not have been included in the 1923 decree because they were owned by the United States during that time, and the District Court would not have had jurisdiction over the claims.

Claimants are correct that the Forest Service was not bound by the state court decrees, because it was not a party to the proceedings and could not have been made a party prior to the McCarran Amendment. The fact that these water rights were not present in the 1923 decree does not, in these circumstances, render them invalid.

21. The United States also contends that the water right claims, if established, did not transfer when the land was transferred to claimant's predecessor in the 1937 land exchange. As evidence, the United States cites to the deed language stating that the land transferred was "subject to any vested and accrued water rights." Mr. Simon stated that this language reserved all water rights of the United States. Claimants assert that this language is an acknowledgment that the land received may be subject to the earlier water rights of other people.

Reviewing the patent, which was admitted as Exhibit 1, paragraph three states:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Joseph W. Potts and to his heirs, the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Joseph W. Potts and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands thereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States...

This language is not a reservation of water rights, but a recognition of any other rights established under the prior appropriation system.

22. The United States alternatively argues that the 1912 water right was never perfected. If the water right was not perfected, there would have been no reason to reserve it, so these assertions are contradictory. The evidence and testimony from Dean Stanchfield, Donald Jones, and Dana Miller indicates that the headgate for this right was in place in the late 1930s, and was old at that time.

The 1917 GLO map is not conclusive evidence that the ditch did not exist. The objector did not meet the burden to show that the right was not perfected.

23. Claimants assert that the place of use for claim 41D 93099-00 should be increased from 40.00 acres to approximately 113 acres. This parcel is the upper (Touchstone) land. The issue remark on the claim states that 0.00 acres were identified as irrigated on the 1979 aerial photograph reviewed during claims examination. The earlier DNRC examination found 33.5 acres irrigated on the same 1979 aerial photograph. The claim file indicates that the 1955 aerial photograph showed either 46.75 acres or 33 acres, depending on which DNRC examination worksheet is reviewed. Claimants' objection, filed October 1, 2007, states that "we believe historically that approximately 35 acres

were irrigated and that is what the claimant wishes to have after adjudication.”

At hearing, Mr. Lovell stated that there are about 113 acres in that parcel, and it is irrigated using Swamp Creek. Mr. Lovell also owns the bottom ground to the west and north, which totals around 356 acres. This area runs between the river and the mountain range. Mr. Lovell thought he irrigated 50 acres in section 10. Regarding the 2007 objection form, Mr. Lovell states that he knows more about the property now than he did 6 months ago, or in 2007, and he believes the correct number is 50 acres.

Exhibit 1 is the patent for the Touchstone property. This water right is based on a filing also admitted as Exhibit G-7. Exhibit 2 is the notice of appropriation. Exhibit 3 is an aerial photograph of the Touchstone place. Mr. Lovell drew the yellow line, which shows what Mr. Lovell thinks he irrigates now.

Based on the evidence presented at hearing, and information in the claim file, the prima facie claim has not been overcome. Claim 41D 93099-00 should remain as decreed at 40 acres, and the DNRC issue remark regarding the water resource survey should be removed.

24. The United States also questions whether stock and domestic use currently exist from Swamp Creek as claimed for claims 41D 93100-00 and 41D 93101-00, and if so, whether the stock and domestic uses are year-round.

Mr. Simon indicated that he does not think that water could be diverted into the ditch for these claims in the winter, due to the elevation the water would freeze much of the time. He stated that April to October or November seems to be reasonable period of use for claims using this diversion site. Mr. Simon also stated that he did not see any sign of domestic use on his site visit, but he and Mr. Lovell did not discuss domestic use at that time. Mr. Simon stated that there is a well that was drilled in 2001.

Regarding claim 41D 93101-00, Mr. Simon stated that he did not see any evidence of recent stock use. He stated that the area is natural pasture, but he did not see signs of animals such as hoof damage or chewed grass. The USFS permits grazing in this area,

and has water rights of its own. On the Quartz Hill allotment, Mr. Zucker has the lease, and the Lovells did not have a permit to graze near Swamp Creek.

Dean Stanchfield indicated that cattle and horses were up on this property historically at different times. Mr. Lovell indicated that when he bought the place, there was a stone foundation which neighbors said was an old house, and the foundation is still there. Mr. Lovell stated that there is a fire setup system, with a pump below his house on Swamp Creek, that was put in 10 years ago. He also stated that stock is placed on the upper ground for 28 days in two rotations, once in the spring, and then again later on. Mr. Lovell has not had stock there in the winter himself.

Although the record is sparse, the prima facie claims for domestic and stock use were not overcome. However, no evidence was presented indicating any winter use of the domestic or stock rights since at least 1993. Accordingly, the period of use for claims 41D 93100-00 and 41D 93101-00 should be modified to April 1 to November 1.

25. Mr. Simon stated that he visited the point of diversion located in the SWNESW of Section 10, and using a global positioning system (GPS) device, he determined that the legal description is accurate and it is located on national forest lands. He stated that there is a rock and tarp diversion that shunts water into the ditch, but there is no headgate. He stated that the ditch looked to be freshly maintained, about 5 feet wide, 1 foot deep. He stated that the Lovells and Allens do not have authorization from the national forest for the use of this ditch. This is a ditch easement issue between the claimants and the United States, and is outside the jurisdiction of this case.

26. Mr. Kamperschroer filed amendments to claims 41D 93830-00, 41D 93821-00, 41D 93820-00, 41D 93829-00, and 41D 93828-00. Claims 41D 93830-00, 41D 93821-00, 41D 93820-00 are supplemental with claims in this case, and were then consolidated into this case. All of these claims were amended to reduce the acreage.

On May 12, 2011, DNRC Water Resource Specialist Myles VanHemelryck filed a memorandum indicating that many of the issue remarks remained unresolved, but that

issue remarks on claims 41D 93101-00, 41D 93826-00, and 41D 93829-00 were resolved.

On December 5, 2011, Peter Kamperschroer filed a motion for stay of claims 41D 182379-00, 41D 93824-00, 41D 93825-00, and 41D 93828-00 pending resolution of cases 41D-117A and 41D-119. Amendments to claims 41D 93816-00 and 41D 93826-00 were also filed. 41D-117A and 41D-119 are resolved in separate Master's Reports issued concurrently with this one, and the decree exceeded remarks on the claims in this case are resolved as shown on the abstracts attached to this Report.

CONCLUSIONS OF LAW

- I. The Montana Water Court has jurisdiction to review all objections to preliminary decrees pursuant to §85-2-233 MCA.
- II. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.
- III. Sage Creek Drainage Area, Case No, 40G-2 (MT Water Court Memorandum Opinion and Order Adopting Master's Report Mar. 11, 1997) states as follows:

A prima facie claim meets the minimum threshold of evidence necessary to establish the facts alleged and shifts the burden or production to an objector to overcome that threshold. The burden of persuasion remains ultimately with the claimant to prove up a water right claim. Section 26-1-402, MCA.

Absent evidence to the contrary, the prima facie claim may satisfy the claimant's burden, although the Court is not required to accept the prima facie statement of claim as true and may review a range of information to evaluate the claim. Objectors have the initial burden to produce evidence that overcomes one or more elements of the prima facie statement of claim. Objectors must meet this burden by a preponderance of the evidence and are not required to meet a higher standard of clear, unambiguous and convincing evidence.

IV. The testimony of the farmers and ranchers on the land, who know the soil and the kind of crops that can be raised on it, who have spread the water and dug into the soil, and watched the effect during the entire growing season, brings in evidence of considerable weight. Federal Land Bank v. Morris, 112 Mont. 445, 116 P.2d 1007 (1941). Further, an appropriator cannot be compelled to divert according to the most scientific method known. Worden v. Alexander, 108 Mont. 208, 215, 90 P.2d 160 (1939). Additionally, in Montana's water rights adjudication, water right claims are prima facie proof of their contents. Section 85-2-227, MCA.

V. Prior to July 1, 1973 when the Montana Water Use Act became law, a water user could change the point of diversion, place of use, or even purpose of a water right by simply implementing the change. The only restriction was that the change could not cause injury to other water users. Section 89-803 Revised Codes of Montana (1947):

89-803. (7095). Point of diversion may be changed – change of use. The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated. Section 89-803, RCM (1947) (Repealed).

No prior approval was necessary. The water user could simply implement the change and continue the new water use practice unless it was called into question by another water user. The burden was on the party claiming an injury to prove that the change to the water right at issue adversely impacted their ability to exercise their water rights. Hansen v. Larsen (1911), 44 Mont. 350, 120 P. 229. Thompson v. Harvey, 164 Mont. 133, 136, 519 P.2d 963, 965 (1974). Elements of claim 41D 93823-00 appear to have been permissibly moved prior to July 1, 1973.

VI. Section 85-2-248(2), MCA, requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the

Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. § 85-2-247(2), MCA.

VII. Rule 34 of the Montana Claims Examination Rules provides for amendments prior to issuance of a Water Court decree, as follows:

RULE 34. AMENDMENTS TO CLAIMS

RULE 34(a). Claimant request to modify claim. A claimant may request and authorize a modification of their claim prior to that claim's inclusion in an interlocutory decree issued for the particular basin.

RULE 34(b). Amendment of claim. An amendment is required to alter any element of a claim when that element cannot be clarified or changed in accordance with these rules.

RULE 34(c). Amendment form. An amendment form or a written request must be submitted by the claimant to authorize an amendment. An amendment form is attached as Exhibit C.

(1) The amendment request, whether on an amendment form or other written request, must include the amendment and the date.

(2) The amendment request must contain the notarized signature of all current owners of the right as listed in the centralized record system or a legal authorized representative. The amendment may not be submitted by a non-owner (e.g., tenant, ranch manager, forest service district employee).

(3) The amendment request may include the reasons for the amendment and may be supplemented with maps, letters, copies of documents, or other materials.

RULE 34(d). Processing of amendment. An amendment received by the department will be processed in the following manner:

(1) if received prior to printing the decree, it will be microfilmed or scanned, added to the claim file, and the respective elements will be amended in the centralized record system; or

(2) if received after printing of the decree, it will be microfilmed or scanned and sent to the water court.

RULE 34(e). Examination of amendment. The department will examine amendments according to the procedures in the rule governing the amended element.

Pursuant to this rule, amendments filed prior to the issuance of a Water Court decree relate back to the prima facie statement of claim, and are processed and examined by the DNRC. The amendment of the source of claim 41D 93823-00 prior to the issuance of the 41D decree relates back to the statement of claim, and was not overcome by the objectors in this case.

VIII. Under current case law, the Water Court employs a two-step process for determining abandonment of a water right claim. The objectors bear the initial burden of showing a long period of continuous non-use of the claim. This showing raises a rebuttable presumption that the claimant intended to abandon the water right claim. The burden then shifts to the claimant to explain the long period of non-use. In re the Adjudication of Water Rights of the Clark Fork River, 254 Mont. 11, 15, 833 P.2d 1120 (1992), 79 Ranch v. Pitsch, 204 Mont. 426, 432-33, 666 P.2d 215 (1983). The presumption of abandonment cannot be rebutted by simply expressing a hope or desire reflecting a "gleam in the eye philosophy" regarding the future use of water. Id. The claimant must introduce specific evidence explaining or excusing the long period of non-use, In re the Adjudication of Water Rights of the Musselshell River, 255 Mont. 43, 51, 840 P.2d 577 (1992). The period of use in the winter months for claims 41D 93100-00 and 41D 93101-00 has been abandoned.

IX. Implied claims, as provided for in Rule 35 W.R.C.E.R., are used to separate multiple claims from the single statement of claim filing. The need for an implied claim can be identified through the settlement process or as a result of a hearing. An implied claim should not be an expansion of a water right or an attempt to circumvent claim filing requirements under Sections 85-2-221 and 85-2-224, MCA. *Eliasson Ranch Co. v. Rodeghiero*, Case 40A-115, (MT Water Court Order Amending and Adopting Master's Report Jun. 28, 2004). The overstatement of an element on a statement of claim, is the most common indicator supporting the need for an implied claim. *Eliasson* at 4-5. The evidence in this case does not support an implied claim for 41D 93823-00.

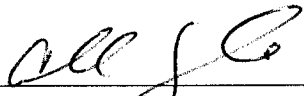
X. All issue remarks are resolved and should be removed from these claims.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin.

Post Decree Abstracts of Water Right Claims are served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

DATED this 12th day of December, 2012.



Colleen Coyle
Senior Water Master

CERTIFICATE OF SERVICE

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

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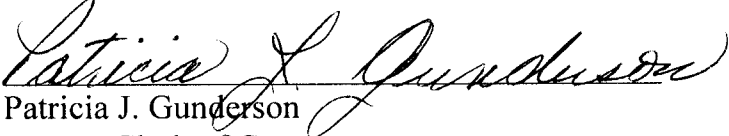
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Lovell Family Trust
Fred and Nancy Lovell, Trustees
2912 Via Rivera
Palos Verdes Peninsula, CA 90274

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DATED this *12* day of *December*, 2012.


Patricia J. Gunderson
Deputy Clerk of Court

ATTORNEY	REPRESENTING
Jody Miller	United States of America (USDA Forest Service)
Patti Rowland	Peter C. Kamperschroer
W. G. Gilbert III	Lovell Family Trust Griffen and Joann Allen

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93099-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

GRIFFIN ALLEN
4056 MCGRITS BLVD
JACKSONVILLE, FL 32210

JOANN ALLEN
4056 MCGRITS BLVD
JACKSONVILLE, FL 32210

LOVELL FAMILY TRUST
FRED & NANCY LOVELL, TRUSTEES
2912 VIA RIVERA
PALOS VERDES PENINSULA, CA 90274 2831

Priority Date: MAY 31, 1912

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.52 CFS

THE FLOW RATE OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 17 GPM PER ACRE GUIDELINE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 40.00

Source Name: SWAMP 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		SW	NESW	10	1S 11W	BEAVERHEAD

Period of Diversion: APRIL 1 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00		S2NWNW	10	1S	11W	BEAVERHEAD
2	25.00		SWNW	10	1S	11W	BEAVERHEAD
3	10.00		N2NWSW	10	1S	11W	BEAVERHEAD
Total:	40.00						

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.

93099-00 93100-00 93101-00

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**BIG HOLE RIVER
BASIN 41D**

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: 41D 93100-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

GRIFFIN ALLEN
4056 MCGRITS BLVD
JACKSONVILLE, FL 32210

JOANN ALLEN
4056 MCGRITS BLVD
JACKSONVILLE, FL 32210

LOVELL FAMILY TRUST
FRED & NANCY LOVELL, TRUSTEES
2912 VIA RIVERA
PALOS VERDES PENINSULA, CA 90274 2831

Priority Date: MAY 31, 1912

Type of Historical Right: FILED

Purpose (use): DOMESTIC

***Flow Rate:** 35.00 GPM

Volume: 12.00 AC-FT

Households: 1

Maximum Acres: 5.00

Source Name: SWAMP 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		NWNWNW	10	1S	11W	BEAVERHEAD

***Period of Diversion:** APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

***Period of Use:** APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00		NWNWNW	10	1S	11W	BEAVERHEAD

Total: 5.00

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.

93099-00 93100-00 93101-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93101-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

GRIFFIN ALLEN
4056 MCGRITS BLVD
JACKSONVILLE, FL 32210

LOVELL FAMILY TRUST
FRED & NANCY LOVELL, TRUSTEES
2912 VIA RIVERA
PALOS VERDES PENINSULA, CA 90274 2831

Priority Date: MAY 31, 1912

Type of Historical Right: FILED

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 Name: SWAMP 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>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SW	NESW	10	1S	11W	BEAVERHEAD

***Period of Diversion:** APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

***Period of Use:** APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NEN	WSW	10	1S	11W	BEAVERHEAD

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.

93099-00 93100-00 93101-00

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93816-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

Priority Date: MAY 5, 1904

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 255.00 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 15.00

Source Name: JIMMIE NEW CREEK, WEST FORK

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		NENESW	26	1N	11W	SILVER BOW

Period of Diversion: APRIL 25 TO OCTOBER 9

Diversion Means: HEADGATE

Period of Use: APRIL 25 TO OCTOBER 9

***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	15.00		S2SW	26	1N	11W	SILVER BOW

Total: 15.00

Remarks:

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/11/1991: MAXIMUM ACRES, PLACE OF USE, PERIOD OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/01: PLACE OF USE, MAXIMUM ACRES.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**BIG HOLE RIVER
BASIN 41D**

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: 41D 93823-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

GRIFFIN ALLEN
4056 MCGRITS BLVD
JACKSONVILLE, FL 32210

LOVELL FAMILY TRUST
FRED & NANCY LOVELL, TRUSTEES
2912 VIA RIVERA
PALOS VERDES PENINSULA, CA 90274 2831

Priority Date: MAY 1, 1908

THIS RIGHT, DECREED IN CASE 2627, BEAVERHEAD COUNTY, PRECEDES THE RIGHTS DECREED IN CASE 4100, REGARDLESS OF PRIORITY. THOSE WATER RIGHTS FROM CASE 4100 ARE: 4208-00, 27450-00, 27451-00, 27452-00, 49586-00, 49587-00, 49588-00, 49589-00, 92701-00, 93437-00, 93438-00, 93439-00, 93440-00, 93441-00, 93442-00, 93443-00, 93444-00, 93445-00, 93826-00, 93827-00, 93828-00, 93829-00, 93830-00, 93831-00, 93832-00, 93833-00, 93834-00, 93835-00, 93836-00, 110677-00, 118188-00, 118189-00, 182351-00, 182352-00, 182353-00, 195272-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.50 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 190.00

Source Name: SWAMP 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>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENENE	9	1S	11W	BEAVERHEAD

Period of Diversion: APRIL 15 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 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	3.00	2		3	1S	11W	BEAVERHEAD
2	15.00	3		3	1S	11W	BEAVERHEAD
3	13.00	5		3	1S	11W	BEAVERHEAD
4	10.00	6		3	1S	11W	BEAVERHEAD
5	3.00		S2NE	3	1S	11W	BEAVERHEAD
6	63.00		S2NW	3	1S	11W	BEAVERHEAD
7	37.00		SW	3	1S	11W	BEAVERHEAD
8	2.00	5		4	1S	11W	BEAVERHEAD
9	22.00		E2SE	4	1S	11W	BEAVERHEAD
10	20.00		E2NE	9	1S	11W	BEAVERHEAD
11	2.00		W2W2NW	10	1S	11W	BEAVERHEAD

Total: 190.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93820-00 93821-00 93822-00 93823-00 93826-00 93828-00 93829-00
 93830-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/11/1991: SOURCE, MAXIMUM ACRES, PLACE OF USE, PERIOD OF USE.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93824-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

GRIFFIN ALLEN
4056 MCGRITS BLVD
JACKSONVILLE, FL 32210

LOVELL FAMILY TRUST
FRED & NANCY LOVELL, TRUSTEES
2912 VIA RIVERA
PALOS VERDES PENINSULA, CA 90274 2831

PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: MAY 1, 1907

THIS RIGHT, DECREED IN CASE 2627, BEAVERHEAD COUNTY, PRECEDES THE RIGHTS DECREED IN CASE 4100, REGARDLESS OF PRIORITY. THOSE WATER RIGHTS FROM CASE 4100 ARE: 4208-00, 27450-00, 27451-00, 27452-00, 49586-00, 49587-00, 49588-00, 49589-00, 92701-00, 93437-00, 93438-00, 93439-00, 93440-00, 93441-00, 93442-00, 93443-00, 93444-00, 93445-00, 93826-00, 93827-00, 93828-00, 93829-00, 93830-00, 93831-00, 93832-00, 93833-00, 93834-00, 93835-00, 93836-00, 110677-00, 118188-00, 118189-00, 182351-00, 182352-00, 182353-00, 195272-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 2.30 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 61.00

Source Name: WISE RIVER

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		SWNWNW	3	1S	11W	BEAVERHEAD

Period of Diversion: APRIL 15 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 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	1.00		S2NENE	34	1N	11W	BEAVERHEAD
2	37.00		SENE	34	1N	11W	BEAVERHEAD
3	7.00		E2SWNE	34	1N	11W	BEAVERHEAD
4	12.00		N2NESE	34	1N	11W	BEAVERHEAD
5	4.00		NENWSE	34	1N	11W	BEAVERHEAD

Total: 61.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93824-00 93825-00 182379-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/12/1991: MAXIMUM ACRES, PLACE OF USE, PERIOD OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/2001: MAXIMUM ACRES, PLACE OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 10/27/1998: MAXIMUM ACRES, PLACE OF USE.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93825-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

GRIFFIN ALLEN
4056 MCGRITS BLVD
JACKSONVILLE, FL 32210

LOVELL FAMILY TRUST
FRED & NANCY LOVELL, TRUSTEES
2912 VIA RIVERA
PALOS VERDES PENINSULA, CA 90274 2831

PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: MAY 1, 1904

THIS RIGHT, DECREED IN CASE 2627, BEAVERHEAD COUNTY, PRECEDES THE RIGHTS DECREED IN CASE 4100, REGARDLESS OF PRIORITY. THOSE WATER RIGHTS FROM CASE 4100 ARE: 4208-00, 27450-00, 27451-00, 27452-00, 49586-00, 49587-00, 49588-00, 49589-00, 92701-00, 93437-00, 93438-00, 93439-00, 93440-00, 93441-00, 93442-00, 93443-00, 93444-00, 93445-00, 93826-00, 93827-00, 93828-00, 93829-00, 93830-00, 93831-00, 93832-00, 93833-00, 93834-00, 93835-00, 93836-00, 110677-00, 118188-00, 118189-00, 182351-00, 182352-00, 182353-00, 195272-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 1.98 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 579.00

Source Name: WISE RIVER

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		SWSENE	9	1S	11W	BEAVERHEAD

Period of Diversion: APRIL 15 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 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	22.00		S2S2S2	26	1N	11W	BEAVERHEAD
2	16.00		E2NE	34	1N	11W	BEAVERHEAD
3	16.00		N2SE	34	1N	11W	BEAVERHEAD
4	445.00			35	1N	11W	BEAVERHEAD
5	2.00		SWSESW	36	1N	11W	BEAVERHEAD
6	77.00		W2W2	36	1N	11W	BEAVERHEAD
7	1.00		NWNWNW	1	1S	11W	BEAVERHEAD

Total: 579.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93824-00 93825-00 182379-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/12/1991: MAXIMUM ACRES, PLACE OF USE, PERIOD OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/2001: MAXIMUM ACRES, PLACE OF USE.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93826-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

Priority Date: MAY 1, 1887

THIS RIGHT, PURSUANT TO CASE 4100, BEAVERHEAD COUNTY, IS SUBSEQUENT TO THE RIGHTS DECREED IN CASE 2627, REGARDLESS OF PRIORITY DATE. THOSE WATER RIGHTS FROM CASE 2627 ARE: 1080-00, 27459-00, 27460-00, 41591-00, 41592-00, 92794-00, 92891-00, 93193-00, 93194-00, 93195-00, 93820-00, 93821-00, 93822-00, 93823-00, 93824-00, 93825-00, 182379-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.75 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 246.00

Source Name: UNNAMED TRIBUTARY OF BIG HOLE RIVER

Source Type: SURFACE WATER
ALSO KNOWN AS JIMMIE KNEW SLOUGH OR SPRING CREEK

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		SENENE	34	1N	11W	BEAVERHEAD

Period of Diversion: APRIL 1 TO OCTOBER 4

Diversion Means: HEADGATE

Ditch Name: DODGSON DITCH NO. 3

Period of Use: APRIL 1 TO OCTOBER 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	2.00		S2S2SE	26	1N	11W	BEAVERHEAD
2	21.00		S2SESW	26	1N	11W	BEAVERHEAD
3	6.00		NENE	34	1N	11W	BEAVERHEAD
4	46.00		N2NW	35	1N	11W	BEAVERHEAD
5	11.00		E2E2SE	35	1N	11W	BEAVERHEAD
6	108.00		N2	35	1N	11W	BEAVERHEAD
7	52.00		W2SW	36	1N	11W	BEAVERHEAD
Total:	246.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93820-00 93821-00 93822-00 93823-00 93826-00 93828-00 93829-00
93830-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/11/1991: POINT OF DIVERSION, MAXIMUM ACRES, PLACE OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/01: POINT OF DIVERSION, PLACE OF USE, MAXIMUM ACRES.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**BIG HOLE RIVER
BASIN 41D**

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: 41D 93828-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

Priority Date: AUGUST 30, 1890

THIS RIGHT, PURSUANT TO CASE 4100, BEAVERHEAD COUNTY, IS SUBSEQUENT TO THE RIGHTS DECREED IN CASE 2627, REGARDLESS OF PRIORITY DATE. THOSE WATER RIGHTS FROM CASE 2627 ARE: 1080-00, 27459-00, 27460-00, 41591-00, 41592-00, 92794-00, 92891-00, 93193-00, 93194-00, 93195-00, 93820-00, 93821-00, 93822-00, 93823-00, 93824-00, 93825-00, 182379-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 9.65 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 449.00

Source Name: WISE RIVER

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		SWSENE	9	1S	11W	BEAVERHEAD

Period of Diversion: APRIL 15 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 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	2.00		S2S2SE	26	1N	11W	BEAVERHEAD
2	6.50		N2NESE	34	1N	11W	BEAVERHEAD
3	18.00		SENE	34	1N	11W	BEAVERHEAD
4	16.00		S2	35	1N	11W	BEAVERHEAD

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
5	240.00		N2	35	1N	11W	BEAVERHEAD
6	22.00		N2SW	35	1N	11W	BEAVERHEAD
7	92.50		SW	36	1N	11W	BEAVERHEAD
8	52.00		W2W2	36	1N	11W	BEAVERHEAD
Total:	449.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93820-00 93821-00 93822-00 93823-00 93826-00 93828-00 93829-00
93830-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/11/1991: MAXIMUM ACRES, PLACE OF USE, PERIOD OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/01: PLACE OF USE, MAXIMUM ACRES.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**BIG HOLE RIVER
BASIN 41D**

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: 41D 93829-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

Priority Date: AUGUST 30, 1890

THIS RIGHT, PURSUANT TO CASE 4100, BEAVERHEAD COUNTY, IS SUBSEQUENT TO THE RIGHTS DECREED IN CASE 2627, REGARDLESS OF PRIORITY DATE. THOSE WATER RIGHTS FROM CASE 2627 ARE: 1080-00, 27459-00, 27460-00, 41591-00, 41592-00, 92794-00, 92891-00, 93193-00, 93194-00, 93195-00, 93820-00, 93821-00, 93822-00, 93823-00, 93824-00, 93825-00, 182379-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 246.00

Source Name: WISE RIVER

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		SE	34	1N	11W	BEAVERHEAD

Period of Diversion: APRIL 15 TO OCTOBER 4

Diversion Means: HEADGATE

Ditch Name: DODGSON DITCH NO. 2

Period of Use: APRIL 15 TO OCTOBER 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	2.00		S2S2SE	26	1N	11W	BEAVERHEAD
2	21.00		S2SESW	26	1N	11W	BEAVERHEAD
3	6.00		NENE	34	1N	11W	BEAVERHEAD

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
4	46.00		N2NW	35	1N	11W	BEAVERHEAD
5	11.00		E2E2SE	35	1N	11W	BEAVERHEAD
6	108.00		N2	35	1N	11W	BEAVERHEAD
7	52.00		W2W2	36	1N	11W	BEAVERHEAD
Total:	246.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93820-00 93821-00 93822-00 93823-00 93826-00 93828-00 93829-00
93830-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/11/1991: MAXIMUM ACRES, PLACE OF USE, PERIOD OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/01: POINT OF DIVERSION, PLACE OF USE, MAXIMUM ACRES.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D**

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: 41D 182379-00 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners:

GRIFFIN ALLEN
2912 VIA RIVERA
PALOS VERDES PENINSULA, CA 90274 2831

LOVELL FAMILY TRUST
FRED & NANCY LOVELL, TRUSTEES
2912 VIA RIVERA
PALOS VERDES PENINSULA, CA 90274 2831

PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: MAY 1, 1890

THIS RIGHT, DECREED IN CASE 2627, BEAVERHEAD COUNTY, PRECEDES THE RIGHTS DECREED IN CASE 4100, REGARDLESS OF PRIORITY. THOSE WATER RIGHTS FROM CASE 4100 ARE: 4208-00, 27450-00, 27451-00, 27452-00, 49586-00, 49587-00, 49588-00, 49589-00, 92701-00, 93437-00, 93438-00, 93439-00, 93440-00, 93441-00, 93442-00, 93443-00, 93444-00, 93445-00, 93826-00, 93827-00, 93828-00, 93829-00, 93830-00, 93831-00, 93832-00, 93833-00, 93834-00, 93835-00, 93836-00, 110677-00, 118188-00, 118189-00, 182351-00, 182352-00, 182353-00, 195272-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 635.00

Source Name: WISE RIVER

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		SWSENE	9	1S	11W	BEAVERHEAD

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 1

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	28.00		E2E2	34	1N	11W	BEAVERHEAD
2	3.00		SEWSE	34	1N	11W	BEAVERHEAD
3	375.00			35	1N	11W	BEAVERHEAD
4	68.00		W2W2	36	1N	11W	BEAVERHEAD
5	127.00		W2W2	3	1S	11W	BEAVERHEAD
6	30.00		E2E2E2	4	1S	11W	BEAVERHEAD
7	4.00		NENENE	9	1S	11W	BEAVERHEAD

Total: 635.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93824-00 93825-00 182379-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/2001: MAXIMUM ACRES, PLACE OF USE.

AN AMENDMENT WAS SUBMITTED ON 09/12/1991 REQUESTING TO AMEND THE PLACE OF USE, MAXIMUM ACRES, AND PERIOD OF USE. BECAUSE NO AMENDED MAP WAS SUBMITTED, THE AMENDMENT HAS NOT BEEN IMPLEMENTED.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

THE DNRC EXAMINATION OF THIS CLAIM FOUND NO SIGNIFICANT FACTS, DATA, OR ISSUES TO REPORT TO THE WATER COURT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93820-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

Priority Date: MAY 1, 1889

THIS RIGHT, DECREED IN CASE 2627, BEAVERHEAD COUNTY, PRECEDES THE RIGHTS DECREED IN CASE 4100, REGARDLESS OF PRIORITY. THOSE WATER RIGHTS FROM CASE 4100 ARE: 4208-00, 27450-00, 27451-00, 27452-00, 49586-00, 49587-00, 49588-00, 49589-00, 92701-00, 93437-00, 93438-00, 93439-00, 93440-00, 93441-00, 93442-00, 93443-00, 93444-00, 93445-00, 93826-00, 93827-00, 93828-00, 93829-00, 93830-00, 93831-00, 93832-00, 93833-00, 93834-00, 93835-00, 93836-00, 110677-00, 118188-00, 118189-00, 182351-00, 182352-00, 182353-00, 195272-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 449.00

Source Name: WISE RIVER

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		S	9	1S	11W	BEAVERHEAD

Period of Diversion: APRIL 25 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: APRIL 25 TO OCTOBER 4

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		S2S2SE	26	1N	11W	BEAVERHEAD
2	18.00		SENE	34	1N	11W	BEAVERHEAD
3	6.50		N2NESE	34	1N	11W	BEAVERHEAD
4	16.00		S2	35	1N	11W	BEAVERHEAD
5	240.00		N2	35	1N	11W	BEAVERHEAD
6	22.00		N2SW	35	1N	11W	BEAVERHEAD
7	92.50		SW	35	1N	11W	BEAVERHEAD
8	52.00		W2W2	36	1N	11W	BEAVERHEAD
Total:	449.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93820-00 93821-00 93822-00 93823-00 93826-00 93828-00 93829-00
93830-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/11/1991: PERIOD OF USE, MAXIMUM ACRES, PLACE OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/01: POINT OF DIVERSION, PLACE OF USE, MAXIMUM ACRES.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93821-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

Priority Date: MAY 1, 1905

THIS RIGHT, DECREED IN CASE 2627, BEAVERHEAD COUNTY, PRECEDES THE RIGHTS DECREED IN CASE 4100, REGARDLESS OF PRIORITY. THOSE WATER RIGHTS FROM CASE 4100 ARE: 4208-00, 27450-00, 27451-00, 27452-00, 49586-00, 49587-00, 49588-00, 49589-00, 92701-00, 93437-00, 93438-00, 93439-00, 93440-00, 93441-00, 93442-00, 93443-00, 93444-00, 93445-00, 93826-00, 93827-00, 93828-00, 93829-00, 93830-00, 93831-00, 93832-00, 93833-00, 93834-00, 93835-00, 93836-00, 110677-00, 118188-00, 118189-00, 182351-00, 182352-00, 182353-00, 195272-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 173.00

Source Name: UNNAMED TRIBUTARY OF BIG HOLE RIVER

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		SEN	WNW 35	1N	11W	BEAVERHEAD

Period of Diversion: APRIL 15 TO OCTOBER 4

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 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	2.00		S2S2SE	26	1N	11W	BEAVERHEAD
2	108.00		N2	35	1N	11W	BEAVERHEAD
3	11.00		E2E2SE	35	1N	11W	BEAVERHEAD
4	52.00		W2W2	36	1N	11W	BEAVERHEAD
Total:	173.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93820-00 93821-00 93822-00 93823-00 93826-00 93828-00 93829-00
93830-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/11/1991: MAXIMUM ACRES, PLACE OF USE, PERIOD OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/01: PLACE OF USE, MAXIMUM ACRES.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D
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: 41D 93830-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PETER C KAMPERSCHROER
PO BOX 201
WISE RIVER, MT 59762 0201

Priority Date: MAY 1, 1894

THIS RIGHT, PURSUANT TO CASE 4100, BEAVERHEAD COUNTY, IS SUBSEQUENT TO THE RIGHTS DECREED IN CASE 2627, REGARDLESS OF PRIORITY DATE. THOSE WATER RIGHTS FROM CASE 2627 ARE: 1080-00, 27459-00, 27460-00, 41591-00, 41592-00, 92794-00, 92891-00, 93193-00, 93194-00, 93195-00, 93820-00, 93821-00, 93822-00, 93823-00, 93824-00, 93825-00, 182379-00.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 246.00

Source Name: WISE RIVER

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		SEWN	34	1N	11W	BEAVERHEAD

Period of Diversion: APRIL 15 TO OCTOBER 4

Diversion Means: HEADGATE

Ditch Name: DODGSON DITCH NO. 1

Period of Use: APRIL 15 TO OCTOBER 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	2.00		S2S2SE	26	1N	11W	BEAVERHEAD
2	21.00		S2S2	26	1N	11W	BEAVERHEAD
3	6.00		NENE	34	1N	11W	BEAVERHEAD

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
4	108.00		N2	35	1N	11W	BEAVERHEAD
5	46.00		N2NW	35	1N	11W	BEAVERHEAD
6	11.00		E2E2SE	35	1N	11W	BEAVERHEAD
7	52.00		W2W2	36	1N	11W	BEAVERHEAD
Total:	246.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

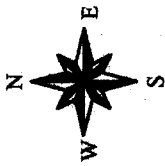
93820-00 93821-00 93822-00 93823-00 93826-00 93828-00 93829-00
93830-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 09/11/1991: MAXIMUM ACRES, PLACE OF USE, PERIOD OF USE.

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 05/25/01: POINT OF DIVERSION, PLACE OF USE, MAXIMUM ACRES.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

93823 v1



W093823
WY1000000

~~Wise River~~

-  W093823pod.shp
-  W093823ditch.shp
-  W093823.shp
-  W093823wrs.shp
-  W093823usda.shp