

IN THE WATER COURT OF THE STATE OF MONTANA

* * * * *

NOTICE OF FILING OF MASTER'S REPORT

TO: ALL PARTIES

RE: Case 41F-16, Claims 41F-W-132919-00, 41F-W-132921-00,
41F-W-132922-00, 41F-W-214042-00

This is to provide you with Notice that the Water Master has filed a Master's Report (Findings of Fact and Conclusions of Law) with the Clerk of the Water Court for the water right(s) listed above. A copy of the Master's Report is enclosed with this Notice.

Please review this Master's Report carefully. If there are any corrections or changes that need to be made, you have 10 days from service of this Notice to file a written objection. You must mail a copy of your written objection to all the other parties who have been involved in this proceeding and file a certificate of such mailing with the Water Court. (This procedure is required by Rule 1.II. Water Right Claims Examination Rules and by Rules 5 and 53 of the Montana Rules of Civil Procedure.)

DATED this 13th day of February 1992.

LORI M. BURNHAM
Clerk of Court
Montana Water Court
P. O. Box 879
Bozeman, MT 59771-0879
(406) 586-4364
1-800-624-3270 (in Montana)

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MADISON RIVER BASIN (41F)

* * * * *

IN THE MATTER OF THE ADJUDICATION) CASE NO. 41F-16
OF THE EXISTING RIGHTS TO THE USE) 41F-W-132919-00
OF ALL THE WATER, BOTH SURFACE AND) 41F-W-132921-00
UNDERGROUND, WITHIN THE MADISON) 41F-W-132922-00
RIVER DRAINAGE AREA, INCLUDING ALL)
TRIBUTARIES OF THE MADISON RIVER)
IN BEAVERHEAD, GALLATIN AND MADISON)
COUNTIES, MONTANA.)

FILED

FEB 13 1992

CLAIMANT: Eugene C. and Lois M. Walsh

Montana Department of State Lands

OBJECTOR: United States of America (Bureau of Land Management)
Montana Department of State Lands

MASTER'S REPORT
FINDINGS OF FACT

1. The Montana Department of State Lands objected to the above-referenced stockwater claims of Eugene C. and Lois M. Walsh on the basis of ownership, point of diversion and place of use.

2. The United States of America objected to these claims on the basis of ownership.

3. On September 3, 1991 the claimants and the United States of America filed a stipulation with the Water Court stating that the points of diversion and places of use of these water right claims include the following public lands administered by the Bureau of Land Management:

| <u>LOT</u> | <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> |
|------------|-----------------|-------------|-------------|-------------|---------------|
| | W2SW | 14 | 08S | 01W | MADISON |
| | SE | 14 | 08S | 01W | MADISON |
| | E2 | 24 | 08S | 01W | MADISON |
| | N2SW | 24 | 08S | 01W | MADISON |
| | NW | 24 | 08S | 01W | MADISON |
| | SESW | 24 | 08S | 01W | MADISON |
| | SWSE | 24 | 08S | 01W | MADISON |

CONTINUED NEXT PAGE

| <u>LOT</u> | <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> |
|------------|-----------------|-------------|-------------|-------------|---------------|
| 1 | E2NENE | 01 | 09S | 01W | MADISON |
| 2 | W2NENE | 01 | 09S | 01W | MADISON |
| 3 | NWNE | 01 | 09S | 01W | MADISON |
| 8 | NESE | 01 | 09S | 01W | MADISON |
| 9 | SESE | 01 | 09S | 01W | MADISON |
| 1 | E2NENE | 12 | 09S | 01W | MADISON |
| 2 | W2NENE | 12 | 09S | 01W | MADISON |
| 3 | E2SENE | 12 | 09S | 01W | MADISON |
| 4 | W2SENE | 12 | 09S | 01W | MADISON |

4. The Stipulation states that the parties agree that the United States is the sole owner of a stockwater right directly from the Madison River at the above-referenced points of diversion and places of use.

5. The stipulation states that the claimants are the owners of stockwater rights directly from the Madison River at the following listed points of diversion and places of use:

| <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> |
|-----------------|-------------|-------------|-------------|---------------|
| E2SE | 14 | 08S | 01W | MADISON |
| NENE | 23 | 08S | 01W | MADISON |
| E2 | 25 | 08S | 01W | MADISON |
| E2 | 36 | 08S | 01W | MADISON |
| SENE | 01 | 09S | 01W | MADISON |

6. On September 23, 1991 the claimants and the Montana Department of State Lands filed a stipulation stating that the parties agree that the following points of diversion and places of use be deleted from the Temporary Preliminary Decree:

Points of Diversion:

| <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> | |
|-----------------|-------------|-------------|-------------|---------------|--------------------|
| E2 | 36 | 08S | 01W | MADISON | DIRECT FROM SOURCE |

Place of Use:

| <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> |
|-----------------|-------------|-------------|-------------|---------------|
| | 36 | 08S | 01W | MADISON |

7. The Temporary Preliminary Decree for these stockwater claims contains broad legal descriptions encompassing points of diversion and places of use for livestock watering directly from two sources: (1) the Madison River and (2) the Smith Ditch, an irrigation ditch running through claimant's land west of and approximately parallel to the river. Due to these broad legal descriptions encompassing both sources and the deletion of several points of diversion and places of use from the Madison River by the stipulations, the Temporary Preliminary Decree does not reflect accurate legal descriptions for points of diversion and places of use for claimants' stockwater rights from the Smith Ditch.

On November 29, 1991 the claimants filed an Affidavit with the Water Court clarifying the correct points of diversion and places of use of their stockwater rights from the Smith Ditch as follows:

| <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> |
|-----------------|-------------|-------------|-------------|---------------|
| E2 | 23 | 08S | 01W | MADISON |
| E2NW | 23 | 08S | 01W | MADISON |
| W2SE | 25 | 08S | 01W | MADISON |
| NW | 25 | 08S | 01W | MADISON |
| NENE | 26 | 08S | 01W | MADISON |

8. In a letter received December 24, 1991, the United States indicated to the Water Court that it agrees with the points of diversion and places of use set forth in claimant's Affidavit.

9. The Temporary Preliminary Decree includes the

following points of diversion and places of use for these claims:

Points of Diversion and Means of Diversion:

| <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> | |
|-----------------|-------------|-------------|-------------|---------------|--------------------|
| NENWNE | 36 | 08S | 01W | MADISON | HEADGATE |
| NE | 12 | 09S | 01W | MADISON | DIRECT FROM SOURCE |
| E2E2 | 01 | 09S | 01W | MADISON | DIRECT FROM SOURCE |
| E2 | 36 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| E2 | 25 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| | 24 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| NENE | 23 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| S2 | 14 | 08S | 01W | MADISON | DIRECT FROM SOURCE |

Place of Use for Stock:

| <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> |
|-----------------|-------------|-------------|-------------|---------------|
| S2 | 14 | 08S | 01W | MADISON |
| | 23 | 08S | 01W | MADISON |
| W2 | 24 | 08S | 01W | MADISON |
| SWSE | 24 | 08S | 01W | MADISON |
| NENE | 26 | 08S | 01W | MADISON |
| | 25 | 08S | 01W | MADISON |
| | 36 | 08S | 01W | MADISON |
| | 01 | 09S | 01W | MADISON |
| NE | 12 | 09S | 01W | MADISON |

10. The correct points of diversion and places of use for these stockwater claims as indicated by the combined Stipulations and Affidavit are at the following locations:

Points of Diversion and Means of Diversion:

| <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> | |
|-----------------|-------------|-------------|-------------|---------------|--------------------|
| NENWNE | 36 | 08S | 01W | MADISON | HEADGATE |
| E2 | 23 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| E2NW | 23 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| W2SE | 25 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| NW | 25 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| NENE | 26 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| E2SE | 14 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| NENE | 23 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| E2 | 25 | 08S | 01W | MADISON | DIRECT FROM SOURCE |
| SENE | 01 | 09S | 01W | MADISON | DIRECT FROM SOURCE |

Place of Use for Stock:

| <u>QTR.SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> |
|-----------------|-------------|-------------|-------------|---------------|
| E2 | 23 | 08S | 01W | MADISON |
| E2NW | 23 | 08S | 01W | MADISON |
| W2SE | 25 | 08S | 01W | MADISON |
| NW | 25 | 08S | 01W | MADISON |
| NENE | 26 | 08S | 01W | MADISON |
| E2SE | 14 | 08S | 01W | MADISON |
| NENE | 23 | 08S | 01W | MADISON |
| E2 | 25 | 08S | 01W | MADISON |
| SENE | 01 | 09S | 01W | MADISON |

CONCLUSIONS OF LAW

I

The Montana Water Court has jurisdiction to review all objections to temporary preliminary decrees pursuant to Mont. Code Ann. §85-2-233.

II

The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights and may consider a matter within the Court's jurisdiction on its own motion. Mont. Code. Ann. §3-7-224.

III

Upon review of the Stipulations and the Affidavit, it appears that they are proper and are accepted by this Court.

IV

By accepting the Stipulation filed by the claimants and the United States the Water Court does not address the legal issue concerning private ownership of stockwater claims located on lands administered by the United States of America (Bureau of Land Management).

V

An implied claim with the United States as owner should be generated based on the Stipulation of the parties. This claim will be designated number 41F-W-214042-00 and should be assigned the earliest priority date of the three parent claims, April 12, 1902 from claim 41F-W-132921-00.

VI

Water right claims 41F-W-132919-00, 41F-W-132921-00 and 41F-W-132922-00 appear to duplicate each other in all respects except for priority date. To assure the orderly adjudication and administration of water rights, the following remark shall be added to these claims:

CLAIM NOS. W-132919, W-132921 AND W-132922 APPEAR TO BE DUPLICATIVE IN ALL RESPECTS EXCEPT FOR PRIORITY DATE. IT APPEARS THAT THESE CLAIMS MAY INVOLVE A SINGLE RIGHT WITH THE EARLIEST CLAIMED PRIORITY DATE. TO ASSURE THE ORDERLY ADJUDICATION OF WATER RIGHTS, THE WATER COURT MAY SET A HEARING TO DETERMINE THESE ISSUES IF NO OBJECTIONS ARE MADE AFTER ISSUANCE OF THE PRELIMINARY DECREE.

VII

The changes to points of diversion and places of use set forth in Finding of Fact No. 10 should be made to water right claims 41F-W-132919-00, 41F-W-132921-00 and 41F-W-132922-00 in the Temporary Preliminary Decree for the Madison River Basin (41F).

DATED this 12th day of February 1992.



Michael J. L. Cusick
Water Master

CERTIFICATE OF SERVICE

I, Janet Lackey Fulcher, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above MASTER'S REPORT, FINDINGS OF FACT, CONCLUSIONS OF LAW was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

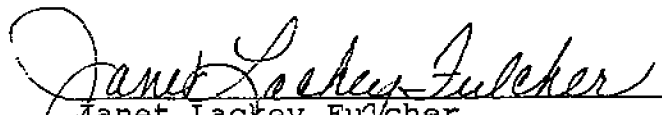
Eugene C. and Lois M. Walsh
Box 531
Cameron, MT 59720

United States of America
Bureau of Land Management
P. O. Box 36800
Billings, MT 59107

Eric S. Gould, Attorney
U. S. Dept. of Justice
Environment & Natural Resources Division
P. O. Box 663
Washington, DC 20044

Lon Maxwell, Attorney
Mt. Dept. of State Lands
Capitol Station
Helena, MT 59620

DATED this 13 day of February 1992.


Janet Lackey Fulcher
Deputy Clerk

IN THE WATER COURTS OF THE STATE OF MONTANA SEP 3 1991
UPPER MISSOURI DIVISION
MADISON RIVER BASIN (41F)

* * * * * Montana Water Court

IN THE MATTER OF THE ADJUDICATION OF)
THE EXISTING RIGHTS TO THE USE OF ALL) CASE NUMBER: 41F-16
THE WATER, BOTH SURFACE AND UNDERGROUND) CLAIM NUMBER:
WITHIN THE MADISON RIVER DRAINAGE AREA,) 41F-W-132922-00
INCLUDING ALL TRIBUTARIES OF THE MADISON)
RIVER IN BEAVERHEAD, GALLATIN, AND MADISON)
COUNTIES, MONTANA.)

COMES NOW, the United States of America, by and through its undersigned attorneys, and Lois M. Walsh and Eugene C. Walsh, Claimants pro se, to hereby stipulate and agree as follows:

- 1. The Temporary Preliminary Decree for Basin 41F reflects that the owners of water right claim 41F-W-132922-00 are Lois M. Walsh and Eugene C. Walsh.
- 2. The points of diversion and places of use listed for water right claim number 41F-W-132922-00 include public lands of the United States which are administered by the Bureau of Land Management. Livestock use of such lands can occur only pursuant to a permit issued and administered by the Bureau of Land Management. The involved public lands are listed below:

| <u>QTRQTR</u> | <u>SEC</u> | <u>TWP</u> | <u>RNG</u> | <u>COUNTY</u> | <u>POD</u> | <u>POU</u> |
|----------------|------------|------------|------------|---------------|------------|------------|
| W2SW | 14 | 08S | 01W | MADISON | X | X |
| SE | 14 | 08S | 01W | MADISON | X | X |
| E2 | 24 | 08S | 01W | MADISON | X | |
| N2SW | 24 | 08S | 01W | MADISON | X | X |
| NW | 24 | 08S | 01W | MADISON | X | X |
| SESW | 24 | 08S | 01W | MADISON | X | X |
| SWSE | 24 | 08S | 01W | MADISON | | X |
| LOT 1 (E2NENE) | 1 | 09S | 01W | MADISON | X | X |
| LOT 2 (W2NENE) | 1 | 09S | 01W | MADISON | X | X |
| LOT 3 (NWNE) | 1 | 09S | 01W | MADISON | | X |
| LOT 8 (NESE) | 1 | 09S | 01W | MADISON | X | X |
| LOT 9 (SESE) | 1 | 09S | 01W | MADISON | X | X |
| LOT 1 (E2NENE) | 12 | 09S | 01W | MADISON | X | X |
| LOT 2 (W2NENE) | 12 | 09S | 01W | MADISON | X | X |
| LOT 3 (E2SENE) | 12 | 09S | 01W | MADISON | X | X |
| LOT 4 (W2SENE) | 12 | 09S | 01W | MADISON | X | X |

- 3. The United States of America filed a Notice of Objection to the Temporary Preliminary Decree for this water right on the basis that the water pertaining to the public lands included in this claim was actually appropriated by the United States and should be so decreed.

4. Claimants agree that the Temporary Preliminary Decree for water right 41F-W-132922-00 should be changed to reflect that the United States is the sole owner of a water right for livestock use directly from the Madison River at the points of diversion and places of use listed in paragraph 2 of this stipulation.
5. That the Temporary Preliminary Decree for water right claim 41F-W-132922-00 should be changed to reflect that Lois M. Walsh and Eugene C. Walsh are the owners of a water right for livestock watering directly from the Madison River at the following listed points of diversion and places of use:

| <u>OTROTR</u> | <u>SEC</u> | <u>TWP</u> | <u>RNG</u> | <u>COUNTY</u> | <u>POD</u> | <u>POU</u> |
|---------------|------------|------------|------------|---------------|------------|------------|
| E2SE | 14 | 08S | 01W | MADISON | X | X |
| NENE | 23 | 08S | 01W | MADISON | X | X |
| E2 | 25 | 08S | 01W | MADISON | X | X |
| E2 | 36 | 08S | 01W | MADISON | X | X |
| SENE | 1 | 09S | 01W | MADISON | X | X |

6. Upon entry of Preliminary and Final decrees for water right number 41F-W-132922-00 reflecting separate water rights for the United States and Lois M. Walsh and Eugene C. Walsh as described herein, the Objection of the United States of America shall be deemed to have been withdrawn.

DATED this 20th day of August, 1991.

BY: *Lois M. Walsh*
LOIS M. WALSH, Claimant pro se
P.O. Box 531
Cameron, Montana 59720

BY: *Eugene C. Walsh*
EUGENE C. WALSH, Claimant pro se
P.O. Box 531
Cameron, Montana 59720

CASE NUMBER: 41F-16
STIPULATION: 41F-W-132921-00

PAGE 3 OF 3

DORIS M. POPPLER
U.S. Attorney
District of Montana

BY: 

JOHN R. HILL, JR., attorney
U.S. Department of Justice
Land and Natural Resources Div.
1961 Stout Street, Drawer 3607
Denver, Colorado 80294-3607
(303) 844-2892

ATTORNEYS FOR
UNITED STATES OF AMERICA
OBJECTOR

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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION - MADISON RIVER BASIN (41F)

* * * * *

IN THE MATTER OF THE ADJUDICATION)
OF THE EXISTING RIGHTS TO THE USE) CASE NO. 41F-16
OF ALL THE WATER, BOTH SURFACE AND) 41F-W-132919-00
UNDERGROUND, WITHIN THE MADISON) 41F-W-132921-00
RIVER DRAINAGE AREA, INCLUDING ALL) 41F-W-132922-00
TRIBUTARIES OF THE MADISON RIVER)
IN BEAVERHEAD, GALLATIN AND MADISON)
COUNTIES, MONTANA.)

FILED

SEP 23 1991

Montana Water Court

CLAIMANT: Eugene C. and Lois M. Walsh

OBJECTOR: United States of America (Bureau of Land Management) Montana Department of State Lands

STIPULATION

Eugene C. Walsh and Lois M. Walsh, owners of the above referenced Claims, and the Montana Department of State Lands, objector to these Claims, stipulate to the following changes in the Temporary Preliminary Decree for the Madison River Basin, a tributary of the upper Missouri River (41F):

1. As to all three Claims: Because the State owns all of Section 36 T08S R01W, delete E½ Sec. 36 T08S R01W from points of diversion and Sec. 36 T08S R01W from places of use. (It is unnecessary to generate any Implied Claims for the State from these three Claims, as DSL filed Claim No. 41F-W-137232 covering this portion of the Madison River.)


2. This Stipulation does not affect that portion of these Claims showing a point of diversion in the NE¼NW¼NE¼ of Section 36 T08S R01W. Claimants divert water from that point

1 by means of a headgate for use on adjacent fee lands. DSL
2 recognizes such right or rights as belonging to claimants.


3 3. The basis of these changes is the decision in
4 Department of State Lands v. Pettibone, 216 Mt. 361, 702 P.2d
5 948 (1985), wherein the Montana Supreme Court held that title
6 to water rights on state school trust lands vests in the name
7 of the State and not its lessees.

8 4. That upon the signing of this Stipulation by both
9 parties and with the understanding that the Montana Water
10 Court will implement the above changes, the objections filed
11 by DSL against these Claims will be deemed completely
12 withdrawn, thereby concluding this litigation.

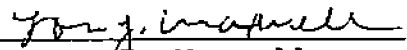
13 DATED this 19th of September, 1991.

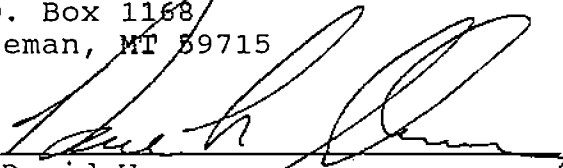
14 
15 Eugene C. Walsh

Montana Department of
State Lands
1625 Eleventh Avenue
Helena, Montana 59620

16 
17 Lois M. Walsh

18 Morrow, Sedivy & Bennett
19 Attorneys at Law
20 P.O. Box 1168
Bozeman, MT 59715

By: 
Lon G. Maxwell
Staff Attorney

21 By: 
22 David Weaver

RECEIVED

NOV 23 1991

Eugene C. Walsh

DIABLO MESA RANCH
BOX 531
CAMERON, MONTANA 59720

November 26, 1991

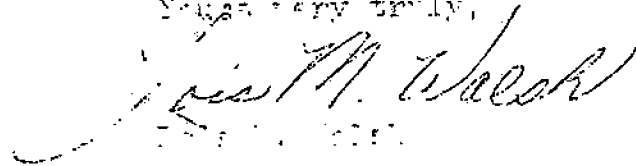
Montana Water Court

Dear Mr. Cusick,

I have enclosed the notarized legal description and map prepared by Mr. Scott Compton of the DMRC as you requested.

I will be glad to help you with any other questions you may have. Thank you.

Yours very truly,



NOV 29 1991

STATE OF MONTANA)
) ss.
COUNTY OF GALLATIN)

Montana Water Court

AFFIDAVIT

1. I/We Ernest C Walsh, Jr. & Joan M. Walsh
are the owner(s) of water right numbers 41F-W-132919, 132921,
132922.

2. The place of use prior to July 1, 1973 is:

| <u>QTR. SEC.</u> | <u>SEC.</u> | <u>TWP.</u> | <u>RGE.</u> | <u>COUNTY</u> |
|---------------------|-------------|-------------|-------------|---------------|
| E ^{1/2} | 23 | 8S | 1W | MA |
| E ^{1/2} NW | 23 | 8S | 1W | MA |
| W2SE | 25 | 8S | 1W | MA |
| NW | 25 | 8S | 1W | MA |
| NENE | 26 | 8S | 1W | MA |

4. A correct map describing the above is attached.

5. I/We hereby swear that the information contained in this Affidavit is true.

Ernest C Walsh
(Owner)

11/21/91
(Date)

Joan M. Walsh
(Owner)

11/26/91
(Date)

Subscribed and Sworn to before me this 26 day of November, 1991.

(NOTARY SEAL)

Scott Compton
Notary Public
Residing at: Bellevue
My Commission Expires: 11/26/99

SECTION 10
52 1 W





WMC:ESGould
90-1-2-1233

Washington, D.C. 20530

December 23, 1991

Michael J.L. Cusick
Water Master
Montana Water Court
P.O. Box 879
Bozeman, Montana 59771-0879

RECEIVED

DEC 24 1991

Montana Water Court

Re: Case No. 41F-16

Dear Water Master Cusick:

This letter constitutes the Status Report of the United States as requested in the Water Courts' letter of November 1991, and December 9, 1991.

Based on the research of the Bureau of Land Management regarding the claimants' Smith Ditch, the claimed place of use does not appear to affect the BLM's stock water rights directly from the Madison River subject to the stipulation of the parties.

With regard to the inquiry regarding the nature of the implied claim on behalf of the United States, the United States believes that it is more appropriate that the claim be made as to a single stockwater right with the priority of the earliest claim. It is the understanding of counsel for the United States that such position will not prejudice the claimant's claims.

Sincerely,

Eric S. Gould
United States Department of Justice
Environment and Natural Resources
Division
General Litigation Section

cc: Lon Maxwell, Montana Dept. of State Lands
Bureau of Land Management, Billings, MT
J.H. Morrow