

IN THE WATER COURT OF THE STATE OF MONTANA

* * * * *

NOTICE OF FILING OF MASTER'S REPORT

FILED

FEB 11 1992

TO: ALL PARTIES

RE: Case 76M-65

Montana Water Court

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 11th 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
 CLARK FORK DIVISION - CLARK FORK RIVER BETWEEN THE
 BLACKFOOT RIVER AND FLATHEAD RIVER BASIN (76M)
 * * * * *

IN THE MATTER OF THE ADJUDICATION)
 OF THE EXISTING RIGHTS TO THE USE)
 OF ALL THE WATER, BOTH SURFACE AND)
 UNDERGROUND, WITHIN THE CLARK FORK)
 RIVER BETWEEN THE BLACKFOOT RIVER)
 AND FLATHEAD RIVER DRAINAGE AREA,)
 INCLUDING ALL TRIBUTARIES OF THE)
 CLARK FORK RIVER BETWEEN THE BLACKFOOT)
 RIVER AND FLATHEAD RIVER IN)
 LAKE, MINERAL, MISSOULA AND SANDERS)
 COUNTIES, MONTANA.)

Case No. 76M-65
 76M-W-105214-00

FILED

FEB 1 1 1992

Montana Water Court

CLAIMANT: Earl E. and Noella Morgenroth

ON MOTION OF THE WATER COURT

OBJECTOR: Montana Department of Natural Resources & Conservation

MASTER'S REPORT

FINDINGS OF FACT

1. This Noella Morgenroth and Earl E. Morgenroth irrigation claim is for a use right, 50.00 miner's inches from Mitouer Gulch, appropriated on February 25, 1972. The November 11, 1981 Affidavit of Earl E. Morgenroth, which is attached to the Statement of Claim, states that "... the volume of water set forth in the Statement of Claim for Existing Water Rights has been used on the property described in that Statement of Claim since on or about February 25, 1972. Those waters have been used continuously since that time, up to and through the time of making this Affidavit." That period of continuous use is February 25, 1972 to November 11, 1981.

2. The Montana Department of Natural Resources and

Conservation ("Department") objected to the acres irrigated, volume and flow rate of this Earl E. Morgenroth and Noella Morgenroth irrigation claim.

3. This claim was called in on Motion of the Montana Water Court due to the gray area remark concerning acres irrigated, volume and flow rate.

4. On July 28, 1987 the Department filed a Withdrawal of Objection which does not specify any changes to be made.

5. On September 16, 1987 John Westenberg, Adjudication Specialist for the Department, filed his field investigation report. He had conducted a field investigation for the Department's legal staff in 1986. Mr. Morgenroth did not accompany him during the investigation. His 1986 report found 4.00 riparian acres flat enough for irrigation but no evidence of historical irrigation. Mr. Morgenroth requested a second field investigation so he could show Mr. Westenberg the point of diversion and place of use. A second field investigation was conducted with Mr. Morgenroth in 1987. The 1987 report states:

No additional evidence of historic irrigation was observed on the second field investigation. Physical evidence of a pump site could not be found, and the side channel shown to me by Mr. Morgenroth followed irregular lines that indicated it had not been improved for use as a conveyance. According to Mr. Morgenroth, the side channel was used to irrigate a small garden as recently as five years ago. No physical evidence of such a garden

remains. The area is covered by tall brush and trees. Included in the report were photographs of the claimed place of use and point of diversion. These photographs were taken by John Westenberg during his 1986 field investigation. These photographs clearly show that there has not been irrigation on the claimed place of use since 1972 as claimed. The thick, tall grass, bushes and trees belie any irrigation, particularly continuous irrigation, since the claimed appropriation date of February 25, 1972.

6. On September 18, 1989 Earl E. Morgenroth filed an Affidavit stating that the historically irrigated place of use was 4.00 acres lying along Mitouer Gulch in the NWNE section 8, 31N, 18W.

7. Upon review of the Statement of Claim, the Affidavits and the field investigation reports it appears that a diversion structure does not and did not exist, and that there has not been any irrigation of the claimed place of use.

8. This claimed water right has not been used.

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 Affidavit and Withdrawal of Objection it appears that they are proper and are accepted by this Court.


IV.

As this claimed water right has not been used, this claimed right has not been perfected and is not an existing water right.

V.

As this is not an existing water right, this claim should be dismissed and should not appear in the Preliminary or Final Decrees in the Clark Fork River Between the Blackfoot River and Flathead River Basin (76M).

DATED this 11 day of February, 1992.


Kathryn L. W. Lambert
Water Master

CERTIFICATE OF SERVICE

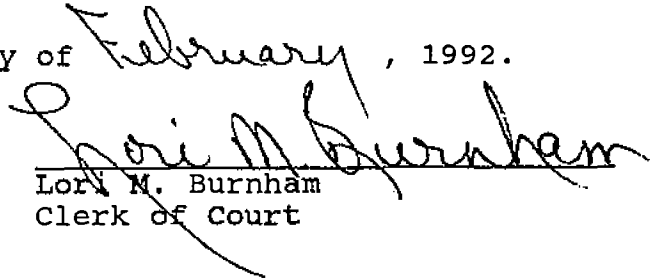
I, Lori M. Burnham, Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above MASTER'S REPORT was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

Earl and Noella Morgenroth
215 Westview Drive
Missoula, MT 59801

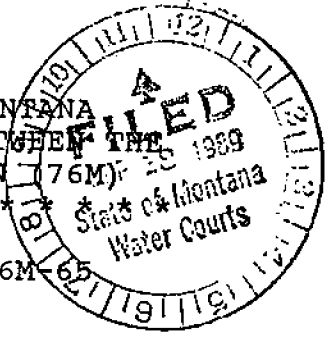
Randy Cox, Attorney
201 West Main
P. O. Box 9199
Missoula, MT 59807

Tim D. Hall, Attorney
Dept. of Natural Resources
1520 East Sixth
Helena, MT 59620

DATED this 11 day of February, 1992.


Lori M. Burnham
Clerk of Court

IN THE WATER COURTS OF THE STATE OF MONTANA
 CLARK FORK DIVISION - CLARK FORK RIVER BETWEEN THE
 BLACKFOOT RIVER AND FLATHEAD RIVER BASIN (76M)-65



IN THE MATTER OF THE ADJUDICATION)
 OF THE EXISTING RIGHTS TO THE USE)
 OF ALL THE WATER, BOTH SURFACE AND)
 UNDERGROUND, WITHIN THE CLARK FORK)
 RIVER BETWEEN THE BLACKFOOT RIVER)
 AND FLATHEAD RIVER DRAINAGE AREA,)
 INCLUDING ALL TRIBUTARIES OF THE)
 CLARK FORK RIVER BETWEEN THE BLACK-)
 FOOT RIVER AND FLATHEAD RIVER IN)
 LAKE, MINERAL, MISSOULA AND SANDERS)
 COUNTIES, MONTANA.)

CASE 76M-65
 AFFIDAVIT OF
 EARL E. MORGENROTH


STATE OF MONTANA)
) ss.
 County of Missoula)

EARL E. MORGENROTH, being first duly sworn upon
 oath, deposes and says:

1. Affiant is the owner of property to which the water rights claim for irrigation purposes dated November 18, 1981 applies. The case number 76-M-65 has been assigned by the Department of Natural Resources & Conservation. The claim number assigned by the Department is W105214.
2. The original irrigation claim submitted was for irrigation of 25 acres in two separate locations, including eight acres lying along Mithauer (or Mitouer) Gulch and 17 acres in another portion of property owned by me.
3. On August 3, 1987, I accompanied Mr. John Westenberg of the Montana Department of Natural Resources & Conservation as he conducted a field investigation of the subject property. I showed him a pumpsite and a side channel that had been used to divert water and convey it to property lying in a riparian plain along Mithauer Gulch. The irrigable portion of that property is approximately four acres and has been irrigated in the past, as recently as seven years ago.
4. After review of the results of the field investigation by Mr. Westenberg and based upon my own knowledge of the past irrigation practices conducted under

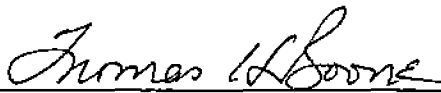
Handwritten mark

the Notice of Appropriation attached to my original water rights claim form, I respectfully request that the claim form submitted by me be amended to reflect irrigation of 4 acres lying along Mithauer (Mitouer) Gulch in the NW 1/4 NE 1/4, Section 8, T31N, R18W. That is an area that has been irrigated by me for a garden area and to grow grass for horses that are pastured there. I wish to retain my right to irrigate that ground through this amended claim.



EARL E. MORGENROTH

SUBSCRIBED AND SWORN TO before me this 15 day of September, 1989.



NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at Missoula, Montana
My Commission Expires: 3/13/91

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

MISSOULA WATER RIGHTS FIELD OFFICE

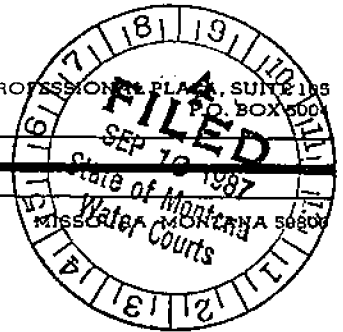


TED SCHWINDEN, GOVERNOR

HOLIDAY VILLAGE PROFESSIONAL PLACE, SUITE 185
P.O. BOX 500

STATE OF MONTANA

(406) 721-4284



TO: KATHRYN LAMBERT, WATER MASTER

FROM: JOHN WESTENBERG, ADJUDICATION SPECIALIST JW

APPROVED BY: LARRY HOLMAN, WATER RIGHTS BUREAU CHIEF

RE: Case 76M-65 (Earl and Noella Morgenroth, Claimant)

DATE: September 9, 1987

As ordered by Judge Lessley (see enclosed), I have field investigated Irrigation claim W105214 to determine the number of acres irrigated. Earl Morgenroth, the claimant, accompanied me on the investigation, which was conducted on the morning of August 3, 1987.

I previously field investigated this claim on April 5, 1986. However, Mr. Morgenroth was unable to accompany me on that date. A copy of the report describing that earlier investigation is enclosed. As the initial report indicates, no evidence of historic irrigation could be found.

Mr. Morgenroth subsequently asked that a second field investigation be conducted and that he accompany me. The purpose was to point out the location of a pumpsite and a side channel used to divert and convey water that may have been overlooked during the initial investigation.

No additional evidence of historic irrigation was observed on the second field investigation. Physical evidence of a pumpsite could not be found, and the side channel shown to me by Mr. Morgenroth followed irregular lines that indicated it had not been improved for use as a conveyance. According to Mr. Morgenroth, the side channel was used to irrigate a small garden as recently as five years ago. No physical evidence of such a garden remains. The area is covered by tall brush and trees.

The garden area pointed out by Mr. Morgenroth is also described on his domestic water right claim, W105215. The claim describes 1/4 acre of lawn and garden. No objections or water court motions have been made regarding this domestic claim.

If you have any further questions about this field investigation, please feel free to call me.

JW:db

RECEIVED

APR 30 1986

MONT. DEPT. of NATURAL
RESOURCES & CONSERVATION

FIELD INVESTIGATION REPORT

FOR DNRC OBJECTION TO FILE #105214

On April 3, 1986, John Westenberg investigated the claimed place of use for water right W105214. W105214 was filed by Earl and Noella Morgenroth and describes the diversion of water from Mitouer Gulch for the irrigation of 25 acres in Section 8, T13N, R18W. The priority date claimed for this use is February 25, ~~1986~~.

1972

DNRC's air photo analysis of the claimed place of use did not discern any evidence of existing or recent irrigation. DNRC subsequently objected to the claim. Randy Cox, attorney for the Morgenroth's, authorized a field investigation of the claim by DNRC. (See attached correspondence)

Field conditions on April 5 were excellent, with fair skies, 50 degree temperatures, no snow cover, and because it was early spring, no foliage to obscure important features. Mitouer Gulch was running bankfull.

I walked the length of Mitouer Gulch as it flows through the Morgenroth property, and was unable to locate any ditches coming off of it. I located what appeared to be old wheel tracks (see photo #1), as well as what appeared to be an overflow channel (see photo #2) crossing portions of the claimed place of use. Although each of these "watercourses" had small amounts of water in it, this water appeared to be the result of the high water flows in Mitouer Gulch; there were no turnouts, headgates or wing dams where they intersected with the Gulch. Also, neither of these features were logically located for the irrigation of the claimed place of use.

I also was unable to find any ground within the claimed place of use that showed evidence of existing or historic irrigation. The existence of a well established growth of brush, willows, cottonwoods, and ponderosa pine precludes the possibility that any portions of the claimed place of use could have been cleared and put into crop or pasture as recently as 1972.

Of the 25 claimed acres, only 4 are sufficiently flat to be irrigated. These 4 acres, which are outlined on the attached air photo, are riparian in character. The remaining 21 acres claimed consist of +50% slopes which rise directly from the streambank, and are not irrigable with the flood techniques described on the claim.

In summary, my field investigation corroborates DNRC's original air photo analysis; I could find no evidence of irrigation, present or historic.

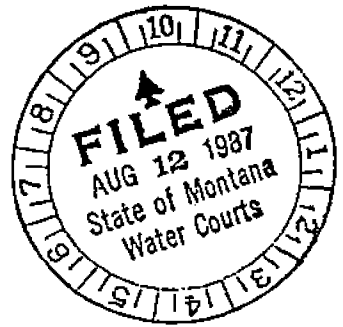
JW:sll
Attachment

J.W.

IN THE WATER COURTS OF THE STATE OF MONTANA
 CLARK FORK DIVISION - CLARK FORK RIVER BETWEEN THE
 BLACKFOOT RIVER AND FLATHEAD RIVER BASIN (76M)
 * * * * *

IN THE MATTER OF THE ADJUDICATION)
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 FOOT RIVER AND FLATHEAD RIVER IN)
 LAKE, MINERAL, MISSOULA AND SANDERS)
 COUNTIES, MONTANA.)

CASE NO. 76M-65



CLAIMANT: Earl & Noella Morganroth

OBJECTOR: Mt. Dept. of Natural Resources & Conservation

ORDER

It is ORDERED that a field investigation shall be conducted to determine the number of acres irrigated.

DATED this 12 day of August, 1987.

W. W. Lessley

 W. W. Lessley
 Chief Water Judge

Larry Holman, Chief
 Missoula Field Office

7101317
 MONTANA D.N.R.C.
 FIELD

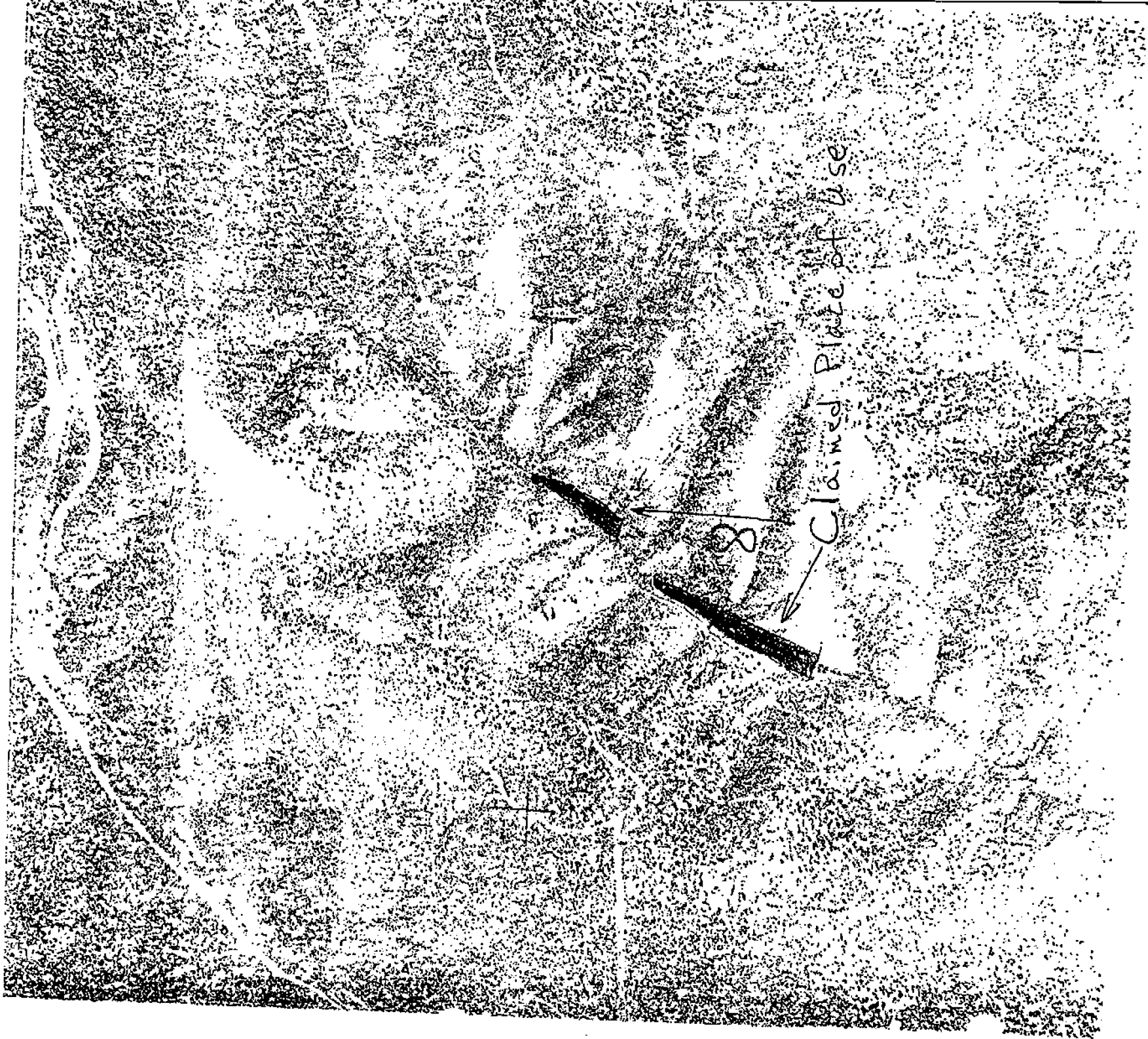
Flora References



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8

Claimed Plate of Use

IN THE WATER COURTS OF THE STATE OF MONTANA
 CLARK FORK DIVISION - CLARK FORK RIVER BETWEEN THE
 BLACKFOOT RIVER AND FLATHEAD RIVER BASIN

IN THE MATTER OF THE ADJUDICATION)
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 RIVER AND FLATHEAD RIVER DRAINAGE)
 AREA, INCLUDING ALL TRIBUTARIES OF)
 THE CLARK FORK RIVER BETWEEN THE)
 BLACKFOOT RIVER AND FLATHEAD RIVER)
 IN LAKE, MINERAL, MISSOULA, AND)
SANDERS COUNTIES, MONTANA.)

NOTICE OF OBJECTION AND
 REQUEST FOR HEARING
 BASIN 76M

1. Claim # W-105214
2. Source Mitouer Gulch; County Missoula
3. Type of Claim: Irr Dom Stock Other Uses
4. Name of Party to whom the water right was issued:
Earl and Noelle Morgenroth
5. Objector's name, address and phone number:
Department of Natural Resources & Conservation (DNRC)
 Last Name First Name Middle Initial
32 South Ewing
 Street Address or Post Office Box
Helena, Montana 59620
 City State Zip Code
406 444-6601
 Area Code Phone Number
6. Name of objecting party's attorney and address, if any:
Hall Tim D.
 Last Name First Name Middle Initial
32 South Ewing
 Street Address or Post Office Box
Helena, Montana 59620
 City State Zip Code
406 444-6698
 Area Code Phone Number
7. Basis of Objection:
 Ownership Place of Use Point of Diversion
 Priority date Acres Irrigated Means of Diversion
 Purpose of Right Source Volume or Flow Rate
 Period of Use
8. Signature of Objector: [Signature] Date 3/1/83
9. Attach on separate sheet of paper an explanation of the reason for your objection.
10. Send completed objection form to: Montana Water Courts
 P.O. Box 879
 Bozeman, MT 59715

ATTACHMENT TO NOTICE OF OBJECTION FORM (WCR6)

Claim No. W-105214

1. Findings and conclusions with which the DNRC disagrees:

Maximum Acres: 25

Place of Use:

8 acres E2NWNE Sec 8 T13N R18W
6 acres E2SEW Sec 8 T13N R18W
11 acres W2NESW Sec 8 T13N R18W
25 acres total

Flow Rate: .95 cfs

Volume: 75 ac-ft/year

(b) Page No. 1185, Paragraph No. 4,5,7,&11 of Preliminary Decree.

2. Department contends these findings should be:

Maximum Acres: 0 (zero)

Flow Rate: 0 (zero)

Volume: 0 (zero)

3. Specific grounds and evidence upon which DNRC's objection is based:

Analysis of USDA Aerial Photo No. 1379-194, dated 7/21/1980, indicates zero acres of irrigation.

4. Standing to object:

The DNRC's standing to object to the above-identified (Temporary) Preliminary Decree is granted under Section 85-2-233, MCA, and the DNRC's responsibility under the Water Use Act.

DNRC FIELD INVESTIGATION REQUEST

TO: Missoula FIELD OFFICE
FROM: Tim D. Hall
Legal Counsel *TDH*
DATE: 11/7/85
RE: Clark Fork BASIN 76 M
CLAIM # 105214
NAME: Morgenroth

This claimant has authorized a field investigation for the above claim(s). Enclosed is a copy of the authorization which you should have with you when you make the investigation.

Would you please complete the investigation and report by ASAP. *let me know if field conditions are too bad.*

Please call Susan Cottingham, DNRC Paralegal, if there are any problems with this timetable (444-6704).

Thank you.

cc: Bob Poad

Yes No The claimant must accompany you on the field investigation.

LAW OFFICES
BOONE, KARLBERG & HADDON

SUITE 301 CENTRAL SQUARE
201 W MAIN

MISSOULA, MONTANA 59802

WT BOONE (1910-1984)
KARL R. KARLBERG
THOMAS H. BOONE
SAM E. HADDON
JAMES J. BORN
WILLIAM L. CHOWLEY
RANDY J. COX
ROBERT J. SULLIVAN

TELEPHONE
543-6648
AREA CODE 406

November 5, 1985

RECEIVED

NOV 07 1985

MONTANA DEPT. OF NATURAL
RESOURCES & CONSERVATION

Susan Cottingham
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59601

Re: Earl and Noella Morgenroth

Dear Susan:

This is response to our telephone conversation of October 30, 1985. In that conversation, you requested that the Department of Natural Resources be authorized to conduct a field investigation on the property. You are, by this letter, authorized to conduct such an investigation. Mr. Morgenroth is unlikely to be able to accompany anyone on such a trip and I do not have sufficient knowledge of my own to be of any assistance. Accordingly, I suggest that the field examination be carried out by the Department alone.

Sincerely,

BOONE, KARLBERG & HADDON



Randy J. Cox

RJC:ks

Enc.

cc: Earl E. and Noella Morgenroth

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was duly served by mail upon the following individuals at their addresses this 8th day of July, 1986:

Tim D. Hall, Esq.
Legal Counsel
Department of Natural Resources
and Conservation
1520 East Sixth Avenue
Helena, Montana 59620

John Westenberg
Department of Natural Resources
and Conservation
2102 Bow Street
Missoula, Montana 59801

BOONE, KARLBERG & HADDON
Suite 301, Central Square
201 West Main
Missoula, Montana 59802-4392

BY Kathleen M. Hutzel
Secretary

LAW OFFICES
BOONE, KARLBERG & HADDON

201 W. MAIN
SUITE 301 CENTRAL SQUARE
P.O. BOX 9199

MISSOULA, MONTANA 59807

W.T. BOONE (1910-1984)
THOMAS H. BOONE
SAM E. HADDON
JAMES J. BENN
WILLIAM L. CROWLEY
RANDY J. COX
ROBERT J. SULLIVAN
DAVID J. DIETRICH

TELEPHONE
543-6646
AREA CODE 406

KARL R. KARLBERG
OF COUNSEL

April 13, 1987

John Westenberg
Department of Natural Resources
and Conservation
Water Rights Bureau
1900 Brooks
Missoula, Montana 59801

Re: Earl Morgenroth Water Rights

Dear John:

I have contacted Earl Morgenroth in response to your recent phone call. He will get ahold of you before his next trip to Missoula or on his next trip to Missoula to arrange a time to visit the property. I appreciate your patience and your persistence.

Sincerely,

BOONE, KARLBERG & HADDON



Randy J. Cox

RJC/ks

RECEIVED

APR 13 1987

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

RECEIVED

105214

STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS IRRIGATION

MONTANA D.I.R.C. MISSOULA FIELD OFFICE

MS-C
07-01-01-15
40.00

For the Water Courts of the State of Montana

1. Owner of Water Right MORGENROTH / Earl / E.
Last First Middle Initial

Co-Owner or Other Interest Owner MORGENROTH / Noella /
Last First Middle Initial

Address 215 Westview Drive
 City Missoula State Montana Zip Code 59801
 Home Phone No. 728-2381 Business Phone No. 728-2850

2. Person completing form Cox Randy J.
 Address Boone, Karlberg & Haddon, Suite 301, Central Square, 201 West Main
 City Missoula State Montana Zip Code 59802
 Home Phone No. Business Phone No. 543-6646

3. Name of ditch, creek or river Unnamed creek flowing through Mithauer (Mitoer)
 Use: Irrigation Sprinkler Furrow Flood

4. Method of Irrigation Use: Sprinkler Furrow Flood

5. Source of Water: (Check Only One)
 Spring Name _____
 Well Name _____
 Stream Name Unnamed creek flowing through Mithauer (Mitoer) Tributary of Clark Fork River
 Name Gulch Stream _____
 Lake Name _____ Stream _____
 Reservoir Name _____ Stream _____
 Tributary of _____

6. Point of Diversion: County Missoula
NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8 T 13 N. R. 18 E. W
 Lot _____ Block _____ Subdivision _____

7. Means of Diversion: See Addendum Attached
 Pump Capacity _____ gpm
 Headgate and ditch or pipe
 Flood and dike

8. Means of Conveyance:
 Ditch
 Pipeline
 Other: Explain _____

DNR

Place of use and acres irrigated. County Missoula See Continuation Sheet Attached

<u>8</u> acres	Lot	Block	<u>E 1/4 NW 1/4 NE 1/4</u>	Section	<u>8</u>	T	<u>13</u>	R	<u>18</u>	EW
<u>6</u> acres	Lot	Block	<u>E 1/4 SE 1/4 NW 1/4</u>	Section	<u>8</u>	T	<u>13</u>	R	<u>18</u>	EW
<u>11</u> acres	Lot	Block	<u>W 1/4 NE 1/4 S 1/4</u>	Section	<u>8</u>	T	<u>13</u>	R	<u>18</u>	EW
_____ acres	Lot	Block	_____	Section	_____	T	_____	R	_____	EW
_____ acres	Lot	Block	_____	Section	_____	T	_____	R	_____	EW
<u>25</u> Total acres	Subdivision _____									

10. Flow rate claimed: 50 _____
 cubic feet per second
 gallons per minute
 miner's inches

11. Volume claimed: 75 _____
acre feet per year

12. Period(s) of use: April 1 to November 1
Month Day Month Day

13. Check one: Decreed Water Right Priority date or date of first use
 Filed Appropriation Right April 1 1972
 Use Water Right Nov 25 1972

14. Attach copies of the Decree, Record of Filing or Proof of Use Right.

15. Attach copies of aerial photographs, U.S. Geological Survey maps or such other documents necessary to show point of diversion, place of use, place of storage, and conveyance facilities.

16. Notarized Statement signed by claimant.

STATE OF MONTANA)

County of Missoula
EARL E. MORGENROTH and
NOELLA MORGENROTH

_____ having been duly sworn, depose and say that I, being of legal age and being the claimant of this claim of existing water right, and the person whose name is signed to it as the claimant, know the contents of this claim and the matters and things stated there are true and correct.

X Earl E. Morgenroth
X Noella Morgenroth

Subscribed and sworn before me, this 11th day of November 19 81

Randy J. Cox
Notary Public for the State of Montana

Residing at Missoula, Montana

My Commission expires October 20, 1984

CONTINUED FROM PREVIOUS PAGE

IRRIGATION
EARL L. MORGENROTH AND NOELLA MORGENROTH

ADDENDUM TO STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS

a) Approximately 8 acres lying along the _____ Gulch in the NW 1/4 NE1/4, Section 8,

b) Approximately 17 acres lying in T13N, R18W, the N1/2 NE1/4 SW1/4, Section 8, T13N, R18W, and the SW1/4 NE1/4 SW1/4, Section 8, T13N, R18W.

For the Water Courts of the State of Montana

ADDITIONAL POINT OF DIVERSION SHEET

Use this sheet if you have more than one point of diversion from a single source. List your primary point of diversion on the claim form.

County	_____	Missoula	_____	T	13	N/S R	15	EW
Lot	_____	Block	_____	Subdivision	_____	_____	_____	_____
County	_____	_____	_____	T	_____	N/S R	_____	EW
Lot	_____	Block	_____	Subdivision	_____	_____	_____	_____
County	_____	_____	_____	T	_____	N/S R	_____	EW
Lot	_____	Block	_____	Subdivision	_____	_____	_____	_____
County	_____	_____	_____	T	_____	N/S R	_____	EW
Lot	_____	Block	_____	Subdivision	_____	_____	_____	_____
County	_____	_____	_____	T	_____	N/S R	_____	EW
Lot	_____	Block	_____	Subdivision	_____	_____	_____	_____
County	_____	_____	_____	T	_____	N/S R	_____	EW
Lot	_____	Block	_____	Subdivision	_____	_____	_____	_____

Use additional sheets if necessary

A F F I D A V I T

STATE OF MONTANA)
) ss.
 County of Missoula)

EARL E. MORGENROTH, being duly sworn upon oath,
 deposes and says:

This Affidavit is submitted in support of Affiant and Noella Morgenroth's Statement of Claim for Existing Water Rights (Irrigation). Affiant states that the volume of water set forth in the Statement of Claim for Existing Water Rights has been used upon the property described in that Statement of Claim since on or about February 25, 1972. Those waters have been used continuously since that time, up to and through the time of making of this Affidavit.

In support of Affiant and Noella Morgenroth's Statement of Claim for Existing Water Rights is submitted a Notice of Appropriation filed February 25, 1972 by Affiant and Noella Morgenroth. That Notice of Appropriation sets out that Affiant and Noella Morgenroth intend to appropriate 50 inches of the waters of the unnamed creek flowing through Mithauer (Mitouer) Gulch and to use those waters on certain described property as set forth in the Notice of Appropriation. Affiant states that the Notice of Appropriation inadvertently failed to set forth an additional place of use, that being the NE1/4, Section 8, T13N, R18W. Affiant states that the waters which were intended to be appropriated by the filing of the Notice of Appropriation have been used upon the land as set forth in the Statement of Claim for Existing Water Rights including the NE1/4, Section 8, T13N, R18W. Since the Notice of Appropriation fails to properly describe the lands upon which the water was intended to be used and has been used, Affiant and Noella Morgenroth

105214

are submitting this Statement of Claim for Existing Water Rights claiming a Use right rather than a Filed Appropriation Right.

DATED this 11 day of Nov, 1981.

Earl E. Morgenroth
Earl E. Morgenroth

SUBSCRIBED AND SWORN to before me this 11th day of November, 1981.

Randy J. Carr
Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission expires: Oct. 20, 1984

(SEAL)

76M STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS DOMESTIC

RECEIVED

105215

MS-C

09-021-01-19

40.00

For the Water Courts of the State of Montana

MONTANA DIVISION OF WATER RESOURCES

1. Owner of Water Right MORGENROTH / Earl / E. Last First Middle Initial

Co-Owner or Other Interest Owner MORGENROTH / Noella / Last First Middle Initial

Address 215 Westview Drive City Missoula State Montana Zip Code 59801 Home Phone No. 728-2381 Business Phone No. 728-2850

2. Person completing form Cox / Randy / J. Last First Middle Initial

Address Boone, Karlberg & Haddon Suite 301, Central Square, 201 West Main City Missoula State Montana Zip Code 59802 Home Phone No. Business Phone No. 543-6646

3. Use: [X] Domestic

4. Source of Water:

- [X] Stream Name LT Tributary of Clark Fork River
[] Spring Unnamed creek flowing through Mithauer (Mitouer) Gulch Tributary of the Clark Fork
[] Well
[] Lake Name Stream Tributary of
[] Reservoir Name Stream Tributary of

5. Point of Diversion: County Missoula NE 1/4 SE 1/4 NW 1/4, Section 8, T 13, N 18, R 18 E/W Lot 2, Block, Subdivision

6. Means of Diversion: [] Pump Capacity gpm [X] Gravity flow [] Other: Explain

7. Place of use and acres irrigated. County Missoula 1/4 acres, NE 1/4 SE 1/4 NW 1/4, Section 8, T 13, N 18, R 18 E/W acres, Lot 2, Block, Subdivision

8. Number of persons served Five

9. Flow rate claimed: 20 cubic feet per second
 gallons per minute
 miner's inches

10. Volume claimed: 1.5 acre-feet

11. Period(s) of use: January 1 to December 31

12. Check one: Decreed Water Right
 Filled Appropriation Right
 Use Water Right

Feb 1, 1972

13. Attach copies of the Decree, Record of Filing or Proof of Use Right.

14. Attach copies of aerial photographs, U.S. Geological Survey maps or such other documents necessary to show point of diversion, place of use, place of storage, and conveyance facilities.

15. Notarized Statement signed by claimant.

STATE OF MONTANA)

) ss.

County of Missoula)

EARL E. MORGENROTH and
NOELLA MORGENROTH

, having been first duly sworn, depose(s) and say(s) that ~~he~~ ~~she~~ (they), being of legal age and being the claimant(s) of the foregoing claim of Existing Water Right, and the person(s) whose name(s) is (are) subscribed thereto as the claimant(s), that ~~he~~ ~~she~~ (they) know(s) the contents of said foregoing claim and that the matters and things therein are true and correct.

X Earl E. Morgenroth

X Noella Morgenroth

Subscribed and sworn before me, this 11th day of November 19 81

Randy J. Kay
Notary Public for the State of Montana

Residing at Missoula, Montana

My Commission expires October 20, 1984

A F F I D A V I T

STATE OF MONTANA)
County of Missoula) ss.

EARL E. MORGENROTH, being duly sworn upon oath,

deposes and says:

This Affidavit is submitted in support of the Statement of Claims for Existing Water Rights (Domestic) submitted on behalf of Affiant and Affiant's wife, wherein Affiant and NOELLA MORGENROTH claim an existing use right to 20 gallons per minute of water used for Domestic purposes.

Affiant states that water from the unnamed creek flowing through Mithauer (Mitouer) Gulch has been a source of water for domestic purposes, and has been used for those purposes since on or about February 1, 1972. Since that date, Affiant has applied the water to use for domestic purposes upon the property as set forth in the Statement of Claim for Existing Water Rights. Affiant further states that the water has been used continuously on a periodic basis since February 1, 1972, to and including the date of the making of this Affidavit.

DATED this 11 day of Nov, 1981.

Earl E. Morgenroth
Earl E. Morgenroth

SUBSCRIBED AND SWORN to before me this 11th day of November, 1981.

Randy J. [Signature]
Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission expires: Oct. 20, 1984

(SEAL)

10524B

F O R E S T

POINT OF DIVERSION AND PLACE OF USE

Woody Mountain

Pinegrave

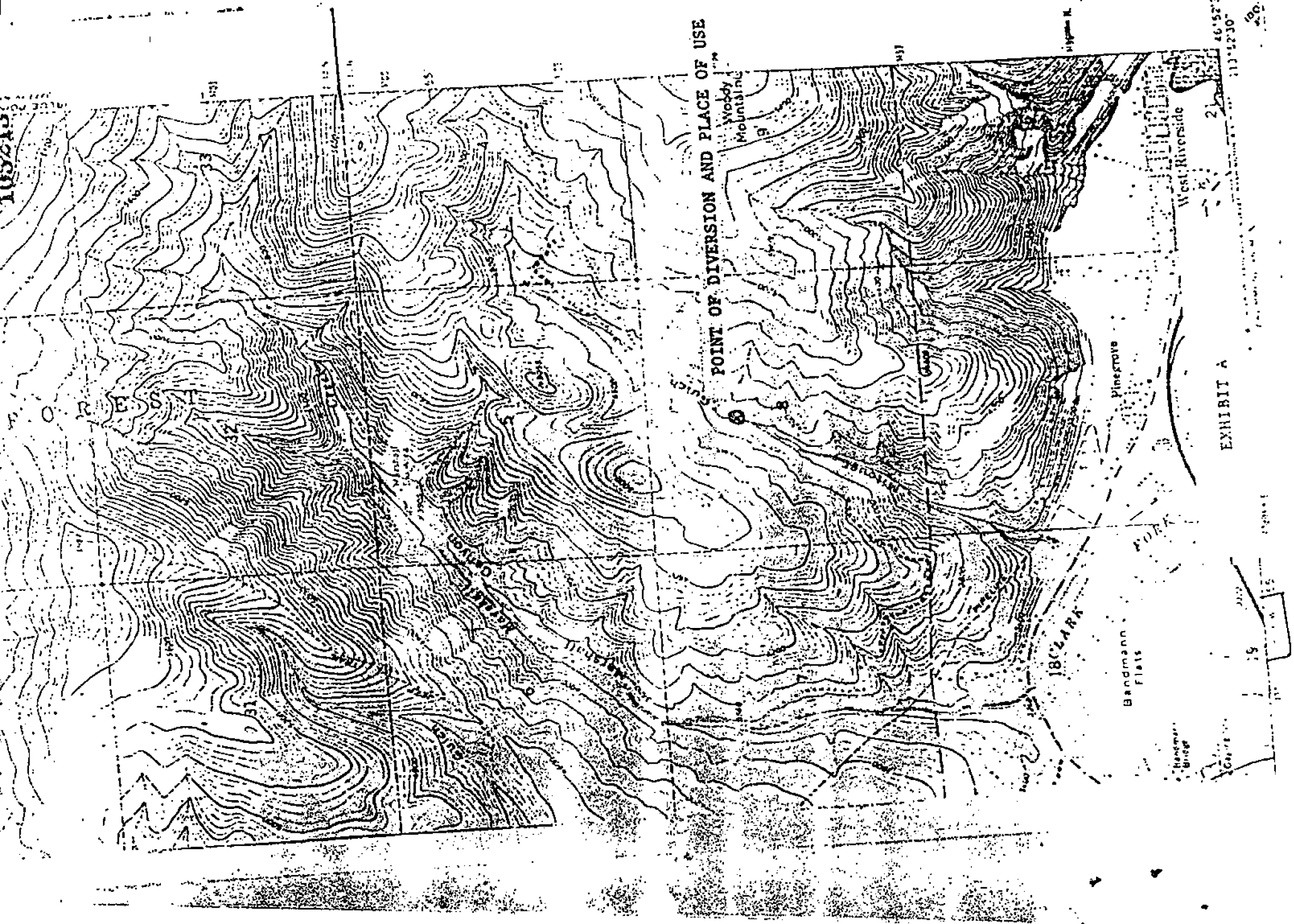
Bandmann Flats

West Riverside

EXHIBIT A

465234
113-1230

DOMESTIC



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NOV 16 1981

MISSOURI D.N.R.C.
MISSOURI FIELD OFFICE

LAW OFFICES
BOONE, KARLBERG & HADDON

SUITE 301 CENTRAL SQUARE
201 W MAIN

MISSOULA, MONTANA 59802-4392

WT BOONE
KARL H. KARLBERG
THOMAS H. BOONE
LANE E. HADDON
JAMES J. BROWN
WILLIAM L. CROWLEY
RANDY J. COX

November 11, 1981

Department of Natural Resources
and Conservation
P.O. Box 5004
2101 Bow Street
Missoula, Montana 59806

FILING OF STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS
EARL E. AND NOELLA MORGENROTH - DOMESTIC

Enclosed is a Statement of Claim for Existing Water Rights
(Domestic) submitted on behalf of Earl E. and Noella Morgenroth.
Also enclosed are the following items which are submitted in
support of the Statement of Claim.

1. A U.S.G.S. map covering Claimant's property
lying in T13N, R18W.
2. The Affidavit of Earl E. Morgenroth.
3. A check in the amount of \$40.00 to cover
the filing fee, made payable to DNRC.

Please send the acknowledgment of filing of the attached
Statement of Claim for Existing Water Rights to me at the
following address:

Randy J. Cox, Esq.
Boone, Karlberg & Haddon
Suite 301, Central Square
201 West Main
Missoula, Montana 59802-4392

Thank you for your assistance.

BOONE, KARLBERG & HADDON

By

Randy J. Cox

ENCLOSURE
Enclosures

#3 Looking South, Southwest
across "Place of Use". Note
wheel tracks in center
of photo. This area is a
portion of 4 acres that
have less than 50% slopes



#4 Same as #3 above



#5 Looking South,
Southwest at Southern
portion of Claimed Place
of Use.

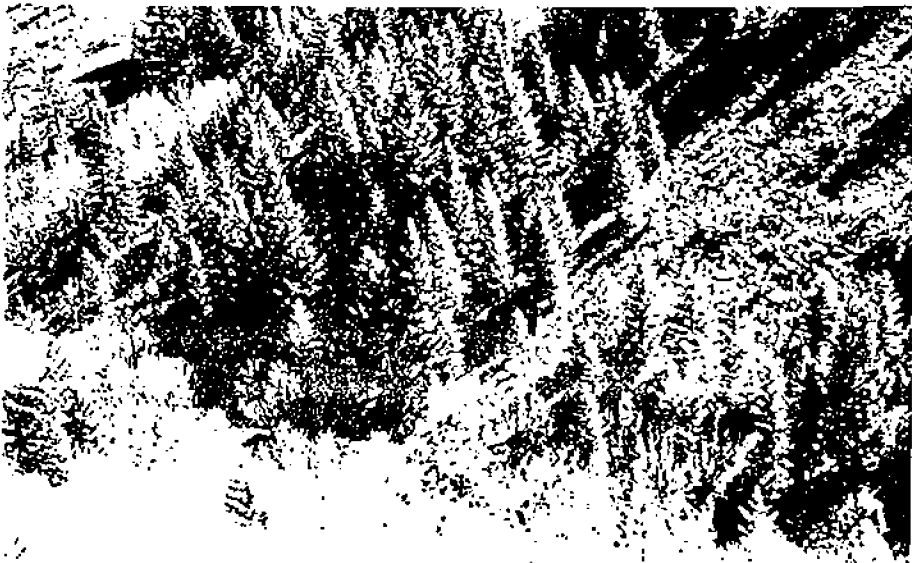




#6 This access road ^{COVERS} entire canyon bottom for about 100 yards. It is shown on claimants map as irrigated acreage.



#7 Looking from road access, located at mid slope, into southern portion of claimed place of use.



#8 Looking into southern portion of claimed place of use.



#9 Looking Northeast into Claimed Place
of Use



#1 Wheel Tracks *Claimed* *Place of Use*,
Looking North by North West. *See attached* *air photo for*
location.

#2 Overflow

Channel within claimed
Place of Use. See Attached
air photo for location.

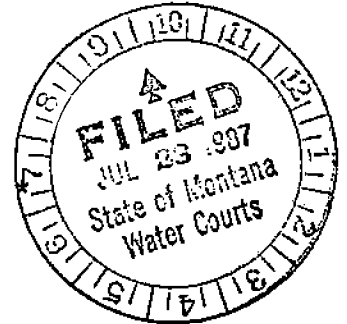


IN THE WATER COURTS OF THE STATE OF MONTANA
CLARK FORK DIVISION - CLARK FORK RIVER BETWEEN THE
BLACKFOOT RIVER AND FLATHEAD RIVER BASIN

* * * * *

IN THE MATTER OF THE ADJUDICATION)
OF THE EXISTING RIGHTS TO THE USE)
OF ALL THE WATER, BOTH SURFACE AND)
UNDERGROUND, WITHIN THE CLARK FORK)
RIVER BETWEEN THE BLACKFOOT RIVER)
AND FLATHEAD RIVER DRAINAGE AREA,)
INCLUDING ALL TRIBUTARIES OF THE)
CLARK FORK RIVER BETWEEN THE)
BLACKFOOT RIVER AND FLATHEAD RIVER)
IN LAKE, MINERAL, MISSOULA, AND)
SANDERS COUNTIES, MONTANA.)

CASE NO. 76M-65
WATER RIGHT CLAIM
NO. 76M-W-105214




* * * * *

WITHDRAWAL OF OBJECTION

The Montana Department of Natural Resources and Conservation (DNRC), by and through the undersigned attorney, withdraws its Objection(s) to the above water rights claim(s).

The DNRC is withdrawing its objection(s) because budget limitations make it impractical for the DNRC to proceed on the objection(s) in an effective and judicious manner, and further because it is the Department's understanding that the Water Court will be calling in before it on its own motion claims that are of questionable accuracy or otherwise in need of correction. This objection(s) is not being withdrawn because we feel it was filed in error. In some instances the DNRC is withdrawing its objection(s) because of new statutory language regarding water right volumes in decrees.

DATED this 27th day of July, 1987.

By: 
Legal Counsel
Department of Natural Resources
and Conservation
1520 E. Sixth Avenue
Helena, MT 59620-2301

d

CERTIFICATE OF SERVICE

I, Debbie Aqui, one of the secretaries for the Department of Natural Resources and Conservation, hereby certify that on the 21st day of July, 1987, a true and accurate copy of the WITHDRAWAL OF OBJECTION was duly served upon all parties or counsel of record, by depositing the same, postage prepaid, in the United States Mail.

Randy Cox, Attorney
Suite 301, Central Square
201 West Main
Missoula, MT 59802

Debbie Aqui
Department of Natural Resources
and Conservation
1520 East Sixth Avenue
Helena, MT 59620-2301