

OCT 14 1993

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)

Montana Water Court

* * * * *

IN THE MATTER OF THE ADJUDICATION)	41G-W-078422-00
OF THE EXISTING RIGHTS TO THE USE)	41G-W-078423-00
OF ALL THE WATER, BOTH SURFACE AND)	41G-W-078425-00
UNDERGROUND, WITHIN THE JEFFERSON)	41G-W-078430-00
RIVER DRAINAGE AREA, INCLUDING ALL)	41G-W-078434-00
TRIBUTARIES OF THE JEFFERSON RIVER)	41G-W-078436-00
IN BROADWATER, GALLATIN, MADISON,)	41G-W-078453-00
JEFFERSON AND SILVER BOW COUNTIES,)	41G-W-078455-00
MONTANA.)	41G-W-078461-00
)	41G-W-078477-00
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41G-W-078480-00,	41G-W-078486-00,	41G-W-078488-00,
41G-W-078490-00,	41G-W-078492-00,	41G-W-078495-00,
41G-W-078501-00,	41G-W-078507-00	

CLAIMANT: United States of America (Bureau of Land Management)

OBJECTOR: United States of America (Bureau of Land Management)

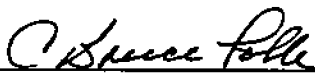
ORDER ADOPTING MASTER'S REPORT

Pursuant to Montana Code Annotated, §85-2-233(4), the above entitled case was assigned to Water Master Michael J. L. Cusick. On September 21, 1993 the Water Master issued a report containing Findings of Fact and Conclusions of Law. Copies of the report were served upon the parties. Over ten (10) days have elapsed since service, and no objections to the Findings and Conclusions have been filed by any party.

The Court has reviewed carefully the Water Master's Findings and Conclusions. Pursuant to Rule 53(e), Montana Rules of Civil Procedure, the Court adopts the Master's Report and

ORDERS that changes recommended in the Master's Conclusions of Law be made to the abstract of claims listed above as they appear in the Temporary Preliminary Decree of the Jefferson River Basin (41G).

DATED this 13 day of October 1993.



C. Bruce Loble
Chief Water Judge

CERTIFICATE OF SERVICE

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

United States of America
Bureau of Land Management
P. O. Box 36800
Billings, MT 59107-6800

David W. Gehlert, Attorney
U. S. Department of Justice
Environment & Natural Resources Division
P. O. Box 663
Washington, DC 20044

DATED this 14 day of October 1993.



Janet Fulcher
Deputy Clerk of Court

IN THE WATER COURT OF THE STATE OF MONTANA

* * * * *

FILED

NOTICE OF FILING OF MASTER'S REPORT

SEP 21 1993

Bozeman, Montana

TO: ALL PARTIES

RE: Claims 41G-W-078422-00, 078423-00, 078425-00, 078430-00,
078434-00, 078436-00, 078453-00, 078455-00, 078461-00,
078477-00, 078480-00, 078486-00, 078488-00, 078490-00,
078492-00, 078495-00, 078501-00, 078507-00

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 21st day of September 1993.

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)

Montana Water Court
PO Box 879
Bozeman, MT 59771-0879
1-800-624-3270 (In-state only)
(406) 586-4364

SEP 21 1993

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)

* * * * *

IN THE MATTER OF THE ADJUDICATION)	41G-W-078422-00
OF THE EXISTING RIGHTS TO THE USE)	41G-W-078423-00
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)	41G-W-078477-00
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41G-W-078480-00,	41G-W-078486-00,	41G-W-078488-00,
41G-W-078490-00,	41G-W-078492-00,	41G-W-078495-00,
41G-W-078501-00,	41G-W-078507-00	

CLAIMANT: United States of America (Bureau of Land Management)
OBJECTOR: United States of America (Bureau of Land Management)

MASTER'S REPORT

FINDINGS OF FACT

1. The United States of America (Bureau of Land Management) filed Statements of Claim for Existing Water Rights numbers 41G-W-078422-00, 41G-W-078423-00, 41G-W-078425-00, 41G-W-078430-00, 41G-W-078434-00, 41G-W-078436-00, 41G-W-078453-00, 41G-W-078455-00, 41G-W-078461-00, 41G-W-078477-00, 41G-W-078480-00, 41G-W-078486-00, 41G-W-078488-00, 41G-W-078490-00, 41G-W-078492-00, 41G-W-078495-00, 41G-W-078501-00 and 41G-W-078507-00 for stockwater purposes. The United States claimed a specific volume and flow rate for each of these stockwater rights.

2. The Temporary Preliminary Decree of the Jefferson River Basin (41G) does not decree a specific volume or flow rate for these claims. For each claim, the decree states the following:

FLOW RATE: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE.

VOLUME: 30 GALLONS PER DAY PER ANIMAL UNIT

NO VOLUME HAS BEEN DECREED BECAUSE THE USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE. THE RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON THE REASONABLE CARRYING CAPACITY AND HISTORIC USE OF THE AREA SERVICED BY THIS WATER SOURCE.

3. The United States of America (Bureau of Land Management) objected to the volume and flow rate appearing in the Temporary Preliminary Decree of these stockwater claims.

4. On October 23, 1992 Frances Rieman, a Water Rights Specialist for the United States of America, Bureau of Land Management with personal knowledge regarding these water right claims, filed an Affidavit in support of the claimed volume and flow rates originally submitted by the United States. The Affidavit states that the volume and flow rate amounts claimed by the United States for each of these claims should be reinstated because of the potential for private appropriation inherent to public land water sources. The Affidavit further states that the potential for such appropriations makes it necessary for the United States to be able to quantify its uses in order to protect them.

5. The flow rates attested to in the Affidavit of the United States include both the exact flow rates claimed to the nearest one-hundredth of a gpm (.01 gpm), and the properly rounded flow rate figures in gallons per minute. The Affidavit requests the Court to use the rounded figures. The volumes and rounded flow rates that the United States requested the Water Court to reinstate are as follows:

<u>CLAIM NUMBER</u>	<u>VOLUME</u>	<u>FLOW RATE</u>
41G-W-078422-00	0.55 AF/YR	5.00 GPM
41G-W-078423-00	0.92 AF/YR	1.00 GPM
41G-W-078425-00	0.92 AF/YR	1.00 GPM
41G-W-078430-00	0.92 AF/YR	12.30 GPM
41G-W-078434-00	0.92 AF/YR	5.00 GPM
41G-W-078436-00	0.92 AF/YR	3.00 GPM
41G-W-078453-00	0.92 AF/YR	2.00 GPM
41G-W-078455-00	0.92 AF/YR	2.00 GPM
41G-W-078461-00	0.92 AF/YR	2.00 GPM
41G-W-078477-00	0.34 AF/YR	2.00 GPM
41G-W-078480-00	0.34 AF/YR	2.00 GPM
41G-W-078486-00	0.34 AF/YR	2.00 GPM
41G-W-078488-00	0.34 AF/YR	2.00 GPM
41G-W-078490-00	0.55 AF/YR	2.00 GPM
41G-W-078492-00	0.55 AF/YR	2.00 GPM
41G-W-078495-00	0.55 AF/YR	2.00 GPM
41G-W-078501-00	0.34 AF/YR	0.50 GPM
41G-W-078507-00	0.34 AF/YR	3.00 GPM

6. As decreed, these eighteen claims all appear to share the following characteristics: (1) the decreed source is an unnamed tributary of the Jefferson River as opposed to a spring, (2) the means of diversion is livestock drinking directly from the source rather than a man-made diversion and (3) no flow rate was decreed for these claims. Thus, it appears that the amount of water historically "diverted" and put to a beneficial use for these direct from source stockwater claims depends in large part on the actions of the livestock drinking the water. By letter dated June 10, 1993, the Court requested the United States to clarify the methodology it uses to quantify volume and flow rate for stockwater claims that do not involve a man-made diversion.

7. On August 9, 1993, the United States of America withdrew Statements of Claim 41G-W-078495-00, 41G-W-078501-00 and 41G-W-078507-00.

8. On August 9, 1993, the United States also filed an affidavit clarifying the methodology it used to quantify the volume

and flow rate for the remaining 15 stockwater claims. With respect to flow rate, the affidavit states that the measurements were taken by damming the flow from the source with a visqueen apron and measuring the overflow through an opening; when field conditions or the individual source involved did not permit actual measurement of the source flow, the flow rate was estimated by the BLM personnel involved.

The Affidavit also explains the methodology used by the Bureau in quantifying stockwater consumptive use volumes for all water sources on public lands as well as these particular claims. According to the Affidavit and attachment, the volumes claimed by the Bureau for livestock use reflect only that amount of water which would be consumed at 15 gallons per head per day by those animals which could be grazed at the carrying capacity of the lands within a one mile radius of the water source.

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

Upon review of the Affidavit and Withdrawal of Statements of claim it appears that they are proper and are accepted by this Court.

III

Pursuant to Rule 4.IV., Water Right Claim Examination Rules, a specific quantified volume will not be decreed for

stockwater claims. The Court will decree an unquantified volume of 30 gallons per day per animal unit. The Rule further provides that no flow rate will be decreed for direct surface stockwater claims not associated with either offstream storage reservoirs or wells, springs, pumps and gravity flow pipelines. The source for each of these claims appearing in the Temporary Preliminary Decree is some unnamed stream tributary to the Jefferson River. The means of diversion for each claim is livestock drinking directly from the source. Thus, it appears that the volumes and flow rates were omitted in the decree in accordance with the Rule.

Section 85-2-234(6)(b), MCA, provides that the final decree of a water right shall state

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights,

(ii) by volume for rights, such as stockpond and reservoir storage rights and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right. . . . "

Based on the assertion of the United States that a specific flow rate and volume decree are necessary to protect its rights, the Court determines that both a specific volume and flow rate would be helpful in administering these rights. However, while the method employed by the United States to quantify the volume of its stockwater claims appears reasonably accurate, it does not appear that the method used to measure the flow rate of these direct from source stockwater claims actually reflects the amount of water "diverted" and put to a beneficial use. Rather, the method appears to measure the total flow the source. "Neither the appropriator of

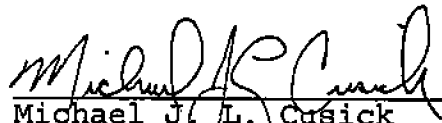
water nor one to whom a right is decreed owns the *corpus* of any part of the flow of a stream. He is entitled only to the beneficial use of the amount of water called for by his appropriation or decree" Tucker v. Missoula Light & Ry. Co., 77 Mont. 91, 101, 250 P. 11 (1926). For a direct from source stockwater right, an appropriate flow rate measurement would reflect the rate of flow by which the livestock consume the waters of the source. Such a measurement may be difficult to make. Because these stockwater rights do not involve a man-made diversion or "development," the rights do not appear to be "susceptible to measurement by flow rate" and no flow rate should be decreed. Section 85-2-234(6)(b)(ii), MCA.

IV

Water right claims 41G-W-078495-00, 41G-W-078501-00 and 41G-W-078507-00 should be terminated and should not appear in the Preliminary or Final Decree of the Jefferson River Basin (41G).

The changes to volume stated in the Findings of Fact for the remaining claims should be made to correct the Temporary Preliminary Decree in the Jefferson River Basin (41G).

DATED this 21st day of September 1993.



Michael J. L. Cusick
Water Master

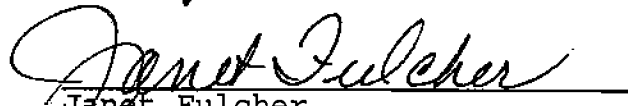
CERTIFICATE OF SERVICE

I, Janet 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.

United States of America
Bureau of Land Management
P. O. Box 36800
Billings, MT 59107-6800

David W. Gehlert, Attorney
U. S. Department of Justice
Environment & Natural Resources Division
P. O. Box 663
Washington, DC 20044

DATED this 21 day of September, 1993.



Janet Fulcher
Deputy Clerk of Court



U.S. Department of Justice

WMC:DWGehlert
(202) 272-6219

Washington, D.C. 20530

August 4, 1993

RECEIVED

AUG 9 1993

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

Montana Water Court

RE: 41G-W-078422-00, 41G-W-078423-00, 41G-W-078425-00,
41G-W-078430-00, 41G-W-078434-00, 41G-W-078436-00,
41G-W-078453-00, 41G-W-078455-00, 41G-W-078461-00,
41G-W-078477-00, 41G-W-078480-00, 41G-W-078486-00,
41G-W-078488-00, 41G-W-078490-00, 41G-W-078492-00,
41G-W-078495-00, 41G-W-078501-00, 41G-W-078507-00

Dear Mr. Cusick:

The enclosed filing is in response to your June 10, 1993 letter requesting that the United States Bureau of Land Management clarify the methodology by which the United States has quantified the flow rate and volume figures for the above listed claims.

As the enclosed affidavit and enclosures explain, the methodologies involved are rather simple. Flow rates were calculated by field visits done by BLM personnel. Volume is a bit more complicated. Claimed volumes are based upon a formula which considers carrying capacity expressed in acres per animal unit month, a figure of fifteen gallons per day consumed per head of cattle and one mile as the distance cattle will travel from a water source to determine a volume expressed in acre feet per year. Carrying capacity was determined by reference to Vegetative Rangeland Types in Montana, published by Montana State University.

The BLM field visits revealed that several of the springs claimed do not appear to produce an accessible and reliable flow to support the claimed use without further development. Accordingly, a withdrawal of those claims is also enclosed.

FILED

AUG 9 1993

IN THE WATER COURTS OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)

Montana Water Court

IN THE MATTER OF THE ADJUDICATION)	WITHDRAWAL OF STATEMENT
OF THE EXISTING RIGHTS TO THE USE)	OF CLAIM
OF ALL THE WATER, BOTH SURFACE AND)	41G-W-078495-00
UNDERGROUND, WITHIN THE JEFFERSON)	41G-W-078496-00
RIVER DRAINAGE AREA, INCLUDING ALL)	41G-W-078501-00
TRIBUTARIES OF THE JEFFERSON RIVER)	41G-W-078502-00
IN BROADWATER, GALLATIN, MADISON,)	41G-W-078507-00
JEFFERSON AND SILVER BOW COUNTIES,)	41G-W-078508-00
<u>MONTANA.</u>)	

COMES NOW, the United States of America, by and through its undersigned attorneys, to hereby withdraw its statements of claim, numbers 41G-W-078495-00, 41G-W-078496-00, 41G-W-078501-00, 41G-W-078502-00, 41G-W-078507-00, 41G-W-078508-00. These claims are being withdrawn because the springs claimed therein do not appear to produce an accessible and reliable flow to support the claimed use without further development.

DATED: August 4, 1993

Respectfully submitted,

LORRAINE D. GALLINGER
Interim United States Attorney
District of Montana

BY: David W. Gehlert
DAVID W. GEHLERT, Attorney
U.S. Department of Justice
Environment & Natural Resources Div
P.O. Box 663
Washington, DC 20044-0663
(202) 272-6219

ATTORNEYS FOR
UNITED STATES OF AMERICA
CLAIMANT

AFFIDAVIT OF FRANCES RIEMAN

RE: CLAIMED VOLUMES AND FLOW RATES: BASIN 41G

- 6. That the United States believes that the "Actual Flow Rate" rather than the "Claimed Flow Rate", as shown on Attachment 1, should appear for these claims in the Preliminary and Final decrees for Basin 41G and that the listed volume amounts should be reinstated for each claim.
- 7. That the flow rate figures provided by the Bureau of Land Management for the captioned claims were arrived at through field visits by BLM personnel to the sources claimed. Whenever possible, three measurements of the water produced by the undeveloped spring were taken and averaged to arrive at the claimed flow rate. Such measurements were taken by damming the flow from the spring with a visqueen apron and measuring the overflow through an opening. When field conditions or the individual source involved did not permit actual measurement of the source flow, the flow rate was estimated by the BLM personnel involved. Copies of the "Water Rights Field Inventory Form" for each spring so inventoried, measured, recorded and claimed are included in Attachment 2. The claim number has been noted in the upper right corner of page one of each form for easier reference. This form is an unofficial record utilized by the Bureau to collect data on water sources visited by field personnel for inventory purposes.
- 8. That Attachment 3 details the methodology used by the Bureau in quantifying stockwater consumptive use volumes for all water sources on public lands. The volumes claimed by the Bureau for livestock use reflect only that amount of water which would be consumed at 15 gallons per head per day by those animals which could be grazed at the carrying capacity of the lands within a one mile radius of the water source.

Further affiant sayth not.

Frances S. Rieman
 Signature of affiant

7-22-93
 Date

State of Montana)
) ss.
 County of Yellowstone)

On this 22nd day of July, 1993, before me, Jay R. Spindeman ^{DRS},
 Notary Public for the State of Montana, personally appeared Frances S. Rieman, known
 to me to be the person whose name she subscribed to the within instrument and
 acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have here unto set my hand and affixed my notarized seal the day and year first above written.

Jay R. Spindeman
 Notary Public for the State of Montana
 Residing at B. Kings
 My Commission Expires 15 April 1996

AFFIDAVIT OF FRANCES S. RIEMAN
 RE: QUANTIFICATION OF CLAIMS
 ATTACHMENT 1 PAGE 1

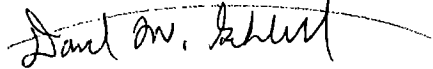
CLAIM QUANTIFICATION LISTING - BASIN 41G

<u>CLAIM NBR:</u>	<u>POINT OF DIVRSN LOCATION:</u>	<u>AMOUNT CLAIMED:</u>	<u>CLAIMED FLOW RATE:</u>	<u>MEASURED OR ESTIMTD:</u>	<u>ACTUAL FLOW RATE</u>	<u>BLM PROJECT NAME:</u>
41G-W-078422	01N-02W-12-NWSW	0.55 AF/YR	4.98 GPM	M	5.00 GPM	UNNAMED SPRING
41G-W-078423	01N-02W-13-SWSE	0.92 AF/YR	0.99 GPM	M	1.00 GPM	HULLER SPRING
41G-W-078425	01N-02W-13-SWSE	0.92 AF/YR	0.99 GPM	E	1.00 GPM	UNNAMED SPRING
41G-W-078430	01N-02W-13-NESE	0.92 AF/YR	12.30 GPM	M	12.30 GPM	CRYSTAL SPRINGS
41G-W-078434	01N-02W-14-SWNE	0.92 AF/YR	4.98 GPM	E	5.00 GPM	UNNAMED SPRING
41G-W-078436	01N-02W-14-NWSW	0.92 AF/YR	3.01 GPM	E	3.00 GPM	UNNAMED SPRING
41G-W-078453	02N-04W- 2-NWNE	0.92 AF/YR	2.02 GPM	E	2.00 GPM	UNNAMED SPRING
41G-W-078455	02N-04W- 2-NENW	0.92 AF/YR	2.02 GPM	E	2.00 GPM	UNNAMED SPRING
41G-W-078461	02N-04W-25-NENE	0.92 AF/YR	2.02 GPM	E	2.00 GPM	UNNAMED SPRING
41G-W-078477	02N-06W-14-NESW	0.34 AF/YR	2.02 GPM	E	2.00 GPM	UNNAMED SPRING
41G-W-078480	02N-06W-24-SWSE	0.34 AF/YR	2.02 GPM	E	2.00 GPM	WHISKEY SPRING
41G-W-078486	03N-04W-26-NENE	0.34 AF/YR	2.02 GPM	E	2.00 GPM	UNNAMED SPRING
41G-W-078488	03N-04W-26-NWNE	0.34 AF/YR	2.02 GPM	E	2.00 GPM	UNNAMED SPRING
41G-W-078490	03N-05W-25-NWNE	0.55 AF/YR	2.02 GPM	E	2.00 GPM	UNNAMED SPRING
41G-W-078492	03N-05W-25-NWNE	0.55 AF/YR	2.02 GPM	E	2.00 GPM	UNNAMED SPRING
41G-W-078495 ¹	03N-05W-35-NESE	0.55 AF/YR	2.02 GPM	E	2.00 GPM	LOWER IRIS SPRING
41G-W-078501 ¹	01S-04W- 4-SWSE	0.34 AF/YR	0.49 GPM	E	0.50 GPM	GOLD HILL SPRING
41G-W-078507 ¹	02S-03W-23-NENW	0.34 AF/YR	3.01 GPM	E	3.00 GPM	CATARACT SPRING

¹ Field Inventory Forms not available for these proposed spring development projects.

I hope this material adequately explains the methodology used by the United States' Bureau of Land Management. Should you need any further explanation, please do not hesitate to contact me.

Yours very truly,



David W. Gehlert
Attorney
U.S. Department of Justice
Environment & Natural
Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663

Enclosures

cc: Francis Reiman, BLM
John Chaffin, DOI

WATER USES FIELD INVENTORY FORM

To be completed in the office:

Record Identifier Number: 14354 JDR Number: _____

Project Name: _____

Priority Date: _____ USGS Quad Name: Jefferson Island

Source Location: T. 1N R. 2W Sec. 12 1/4 NW 1/4 SW

Has the source location been verified by aerial photo? Yes

Aerial Photo Number: _____

Apparent condition of source from aerial photo: (functional)
(not functional)

Source Type: Spring X, Well _____, Reservoir _____, Catchment _____
Stream for waterspreaders _____

To be completed in the field:

RESERVOIRS

Reservoir Condition: _____ Functional
_____ Dam or spillway in need of repair
_____ Not functional

Reason not functional: _____

Observed uses: _____

Maximum height of dam to the spillway: _____



General comments on the reservoir condition (ex. degree of siltation, depth, turbidity, etc.): _____

SPRINGS

Developed: _____ Yield: 5 gpm estimated: _____

Undeveloped: X measured: X Average of 3 measurements

Observed uses: Cattle + Wildlife

WELLS

Yield: _____ gpm estimated: _____

measured: _____

Gas or electric pump: _____, Windmill: _____, Flowing: _____,

Not in use: _____, Abandoned: _____

Observed use: _____

WATER SPREADERS

_____ Functional

_____ Not Functional

Storage Facilities

Number of diversions from source: _____

Capacity of storage tanks: Tank 1: _____ gals.

Tank 2: _____ gals.

Tank 3: _____ gals.

Total _____ gals.

(If there are more than 3 tanks, insert data.)

Capacity of conveyance system: _____ cfs.

_____ cfs.

_____ cfs.

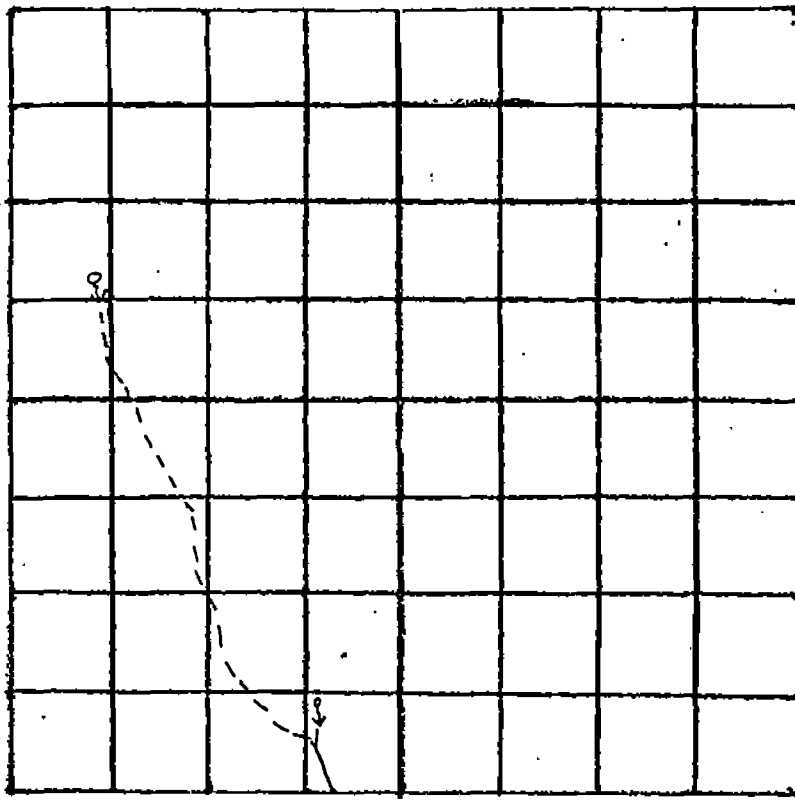
Total _____ cfs.

Note how and where source is diverted and used: _____



Section 12

Section 7



Sketch
source and
diversions

Section 13

Section 18

Comments: Intermittent Flow in stream

Observer: Tim Booth

Date: 9/23/81

IN THE WATER COURTS OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)

FILED

OCT 23 1992

Montana Water Court

IN THE MATTER OF THE ADJUDICATION)
OF THE EXISTING RIGHTS TO THE USE)
OF ALL THE WATER, BOTH SURFACE AND) AFFIDAVIT OF
UNDERGROUND, WITHIN THE JEFFERSON) FRANCES S. RIEMAN
RIVER DRAINAGE AREA, INCLUDING ALL) IN SUPPORT OF CLAIMS
TRIBUTARIES OF THE JEFFERSON RIVER) BY UNITED STATES OF
AMERICA-
IN BROADWATER, GALLATIN, MADISON,) BUREAU OF LAND MANAGEMENT
JEFFERSON AND SILVER BOW COUNTIES,)
MONTANA.)

Frances S. Rieman, being first duly sworn, hereby deposes and says:

1. That she is employed by the United States Department of Interior, Bureau of Land Management, Montana State Office in the Division of Lands and Renewable Resources as a Water Rights Specialist. As such, she has personal knowledge of the information utilized by the United States in the preparation of its water rights claims.
2. That the United States of America, Bureau of Land Management filed water right claims in the Jefferson River Basin (41G) for livestock use of springs located on public lands. Each of these claims included a volume and flow rate of water claimed by the United States.
3. That the attached listing accurately describes the volume and flow rate amounts as claimed by the United States for each of these water right claims.
4. That the volume and flow rate amounts claimed by the United States for each of these claims should be reinstated in the Preliminary and Final Decrees because of the potential for private appropriation which is inherent to public land water sources. Such an appropriation would require the United States to be able to quantify its uses for their protection.
5. That the computer program used by the United States to generate its statements of claim included a formula which converted the cubic feet per second flow rate figure from the computerized data base to a gallons per minute rate for the claim forms. This formula did not properly round the resulting gallons per minute flow rate figure.
6. That the attached listing includes a column labelled "Actual Flow Rate" which reflects the properly rounded gallons per minute flow rate figure.

AFFIDAVIT OF FRANCES S. RIEMAN
 RE: QUANTIFICATION OF CLAIMS
 ATTACHMENT 1 PAGE 1

CLAIM QUANTIFICATION LISTING - BASIN 41G

<u>CLAIM NUMBER:</u>	<u>POINT OF DIRVRSN LOCATION:</u>	<u>AMOUNT CLAIMED:</u>	<u>CLAIMED FLOW RATE:</u>	<u>ACTUAL FLOW RATE:</u>	<u>BLM PROJECT NAME:</u>
41G-W-078420	01N-01W-18-SESE	0.93 AF/YR	3.01 GPM	3.00 GPM	SAPPINGTON SPRING
41G-W-078422	01N-02W-12-NWSW	0.55 AF/YR	4.98 GPM	5.00 GPM	UNNAMED SPRING
41G-W-078423	01N-02W-13-SWSE	0.92 AF/YR	0.99 GPM	1.00 GPM	HULLER SPRING
41G-W-078425	01N-02W-13-SWSE	0.92 AF/YR	0.99 GPM	1.00 GPM	UNNAMED SPRING
41G-W-078429	01N-02W-13-SWSE	0.93 AF/YR	11.98 GPM	12.00 GPM	CRYSTAL SPRING
41G-W-078430	01N-02W-13-NESE	0.92 AF/YR	12.30 GPM	12.30 GPM	CRYSTAL SPRINGS
41G-W-078431	01N-02W-13-NENW	0.93 AF/YR	2.24 GPM	2.25 GPM	DUTCHER SPRING
41G-W-078433	01N-02W-14-SWSE	0.93 AF/YR	4.98 GPM	5.00 GPM	LEWIS & CLARK SPRING
41G-W-078434	01N-02W-14-SWNE	0.92 AF/YR	4.98 GPM	5.00 GPM	UNNAMED SPRING
41G-W-078436	01N-02W-14-NWSW	0.92 AF/YR	3.01 GPM	3.00 GPM	UNNAMED SPRING
41G-W-078441	02N-03W-17-SWSW	0.93 AF/YR	3.99 GPM	4.00 GPM	SHEEP SPRING
41G-W-078443	02N-03W-18-SENE	0.93 AF/YR	2.02 GPM	2.00 GPM	MICROWAVE SPRING
41G-W-078445	02N-03W-19-NWNW	0.93 AF/YR	2.02 GPM	2.00 GPM	BEAVER SPRING & PIPELN
41G-W-078448	02N-03W-19-NWNW	0.92 AF/YR	11.98 GPM	12.00 GPM	BEAVER SPRING NORTH
41G-W-078449	02N-03W-30-SWNW	0.93 AF/YR	0.76 GPM	0.75 GPM	SUNLIGHT SPRING
41G-W-078453	02N-04W- 2-NWNE	0.92 AF/YR	2.02 GPM	2.00 GPM	UNNAMED SPRING
41G-W-078455	02N-04W- 2-NENW	0.92 AF/YR	2.02 GPM	2.00 GPM	UNNAMED SPRING
41G-W-078459	02N-04W-24-NWNE	0.93 AF/YR	0.76 GPM	0.75 GPM	CABIN SPRING
41G-W-078460	02N-04W-24-SENW	0.93 AF/YR	0.99 GPM	1.00 GPM	ST PAUL SPRING
41G-W-078461	02N-04W-25-NENE	0.92 AF/YR	2.02 GPM	2.00 GPM	UNNAMED SPRING
41G-W-078463	02N-05W- 2-SESW	0.55 AF/YR	3.01 GPM	3.00 GPM	CHARLEY SPRING
41G-W-078464	02N-05W- 2-NENE	0.55 AF/YR	3.99 GPM	4.00 GPM	CHERRY SPRING
41G-W-078467	02N-05W- 4-NWSW	0.55 AF/YR	3.99 GPM	4.00 GPM	PIPESTONE SPRING
41G-W-078469	02N-05W- 7-NWSW	0.55 AF/YR	0.99 GPM	1.00 GPM	SPIRE SPRING
41G-W-078472	02N-05W- 8-SWSW	0.55 AF/YR	0.99 GPM	1.00 GPM	STROZZI SPRING
41G-W-078473	02N-05W- 9-SWNW	0.55 AF/YR	3.50 GPM	3.50 GPM	ERVIN SPRING&PIPELINE
41G-W-078476	02N-06W-12-NESE	0.34 AF/YR	0.49 GPM	0.50 GPM	WHISKEY SPRING
41G-W-078477	02N-06W-14-NESW	0.34 AF/YR	2.02 GPM	2.00 GPM	UNNAMED SPRING
41G-W-078480	02N-06W-24-SWSE	0.34 AF/YR	2.02 GPM	2.00 GPM	WHISKEY SPRING
41G-W-078482	02N-06W-25-NWSW	0.34 AF/YR	2.02 GPM	2.00 GPM	POLE CANYON SPRING
41G-W-078484	02N-06W-35-NWNW	0.34 AF/YR	1.48 GPM	1.50 GPM	TUTTLE SPRING
41G-W-078486	03N-04W-26-NENE	0.34 AF/YR	2.02 GPM	2.00 GPM	UNNAMED SPRING
41G-W-078488	03N-04W-26-NWNE	0.34 AF/YR	2.02 GPM	2.00 GPM	UNNAMED SPRING
41G-W-078490	03N-05W-25-NWNE	0.55 AF/YR	2.02 GPM	2.00 GPM	UNNAMED SPRING
41G-W-078492	03N-05W-25-NWNE	0.55 AF/YR	2.02 GPM	2.00 GPM	UNNAMED SPRING
41G-W-078493	03N-05W-26-SWSE	0.56 AF/YR	2.02 GPM	2.00 GPM	WHITETAIL SPRING
41G-W-078495	03N-05W-35-NESE	0.55 AF/YR	2.02 GPM	2.00 GPM	LOWER IRIS SPRING
41G-W-078498	03N-05W-35-SENW	0.55 AF/YR	1.30 GPM	1.30 GPM	IRIS SEEP SPRING
41G-W-078500	01N-04W-34-NWSW	0.92 AF/YR	3.01 GPM	3.00 GPM	KOUNTZ SPRING #2
41G-W-078501	01S-04W- 4-SWSE	0.34 AF/YR	0.49 GPM	0.50 GPM	GOLD HILL SPRING
41G-W-078503	01S-04W- 5-L 10	0.92 AF/YR	3.01 GPM	3.00 GPM	KOUNTZ SPRING #1
41G-W-078505	01S-04W-30-SWNE	0.92 AF/YR	6.01 GPM	6.00 GPM	SHAKY SPRING
41G-W-078507	02S-03W-23-NENW	0.34 AF/YR	3.01 GPM	3.00 GPM	CATARACT SPRING
41G-W-078509	02S-06W- 2-NWNE	0.93 AF/YR	10.01 GPM	10.00 GPM	IRON ROD SPRING # 2
41G-W-078512	02S-06W-11-SENW	0.93 AF/YR	3.01 GPM	3.00 GPM	WEINGART SPRING

**AFFIDAVIT OF FRANCES S. RIEMAN
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41G-W-078514	02S-06W-11-SESW	0.93 AF/YR	0.76 GPM	0.75 GPM	NOLTE SPRING
41G-W-078515	02S-06W-14-NWSW	0.93 AF/YR	2.02 GPM	2.00 GPM	BLACKMAN GULCH SPRING
41G-W-078517	02S-06W-14-SWNW	0.55 AF/YR	2.02 GPM	2.00 GPM	NUGGETT GULCH SPRING
41G-W-078520	02S-06W-15-SWNE	0.93 AF/YR	10.01 GPM	10.00 GPM	N A SPRING
41G-W-078521	02S-06W-15-SESE	0.93 AF/YR	0.99 GPM	1.00 GPM	ALLENS SPRING
41G-W-078524	02S-06W-22-SESE	1.39 AF/YR	0.99 GPM	1.00 GPM	IRON ROD SPRING #1
41G-W-078526	02S-06W-22-NWSE	1.39 AF/YR	0.99 GPM	1.00 GPM	BEAVER SPRING
41G-W-078527	02S-06W-28-NWNE	0.93 AF/YR	10.01 GPM	10.00 GPM	HIDDEN SPRING
41G-W-078529	02S-06W-28-SENW	0.92 AF/YR	3.01 GPM	3.00 GPM	SEIDENSTICKER SPRING
41G-W-078533	02S-06W-28-SESE	0.93 AF/YR	0.99 GPM	1.00 GPM	HELLS CANYON SPRING
41G-W-078534	02S-06W-28-NWSE	0.93 AF/YR	0.99 GPM	1.00 GPM	HELLS CANYON SPRING
41G-W-078535	02S-06W-30-NESE	0.55 AF/YR	3.01 GPM	3.00 GPM	JACK SPRING
41G-W-078537	02S-06W-30-SWSW	0.55 AF/YR	3.99 GPM	4.00 GPM	CO-OP SPRING #2
41G-W-078540	02S-06W-30-SESW	0.56 AF/YR	4.98 GPM	5.00 GPM	CO-OP SPRING
41G-W-078541	02S-06W-31-SWNW	0.55 AF/YR	6.01 GPM	6.00 GPM	COTTONWOOD SPRING
41G-W-078544	02S-06W-32-SESE	0.93 AF/YR	3.99 GPM	4.00 GPM	SEIDENSTICKER SPRING
41G-W-078545	02S-06W-32-SWNE	0.93 AF/YR	3.99 GPM	4.00 GPM	CEDAR SPRING
41G-W-078548	03S-06W- 4-NWNW	0.93 AF/YR	3.01 GPM	3.00 GPM	BOOT LEG SPRING
41G-W-078550	03S-06W- 5-SWNW	0.93 AF/YR	4.98 GPM	5.00 GPM	SEIDENSTICKER SPRING
41G-W-078552	03S-06W- 7-NWSW	0.93 AF/YR	3.01 GPM	3.00 GPM	SEIDENSTICKER SPRING
41G-W-078554	03S-07W- 1-SESE	0.93 AF/YR	4.98 GPM	5.00 GPM	LONE TREE SPRING
41G-W-078556	03S-07W- 1-SWNW	0.93 AF/YR	3.99 GPM	4.00 GPM	ROCHESTER BASIN SPRING