

IN THE WATER COURT OF THE STATE OF MONTANA

NOTICE OF FILING OF MASTER'S REPORT

FILED
AUG 25 2003
Montana Water Court

TO: ALL PARTIES

RE: CASE 76HB-22; CLAIMS 76H-W-151082-00, 76H-W-151084-00, 76H-W-151085-00, 76H-W-151086-00, 76H-W-151087-00, 76H-W-151088-00, 76H-W-151089-00, 76H-W-151090-00, 76H-W-151091-00, 76H-W-151092-00, 76H-W-151100-00, 76H-W-151103-00, 76H-W-151104-00, 76H-W-151105-00, 76H-W-151106-00, 76H-W-151107-00, 76H-W-151108-00, 76H-W-151109-00, 76H-W-151110-00, 76H-W-151111-00, 76H-W-151112-00, 76H-W-151115-00, 76H-W-151690-00, 76H-W-163387-00, 76H-30003670, 76H-30005814

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 25th day of August, 2003.

ANNA M. BURTON
Clerk of Court
Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
NORTH END SUBBASIN OF THE BITTERROOT RIVER BASIN (76HB)

IN THE MATTER OF THE ADJUDICATION)	CASE NO. 76HB-22
OF THE EXISTING RIGHTS TO THE USE)	
OF ALL THE WATER, BOTH SURFACE AND)	76H-W-151082-00
UNDERGROUND, EXCEPT FOR THE MAIN)	76H-W-151084-00
STEM OF THE BITTERROOT RIVER, BUT)	76H-W-151085-00
INCLUDING ALL TRIBUTARIES OF THE)	76H-W-151086-00
BITTERROOT RIVER IN THE NORTH END)	76H-W-151087-00
SUBBASIN OF THE BITTERROOT RIVER)	76H-W-151088-00
DRAINAGE AREA IN RAVALLI AND)	76H-W-151089-00
MISSOULA COUNTIES, MONTANA.)	76H-W-151090-00
)	76H-W-151091-00

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76H-W-151092-00, 76H-W-151100-00, 76H-W-151103-00, 76H-W-151104-00,
76H-W-151105-00, 76H-W-151106-00, 76H-W-151107-00, 76H-W-151108-00,
76H-W-151109-00, 76H-W-151110-00, 76H-W-151111-00, 76H-W-151112-00,
76H-W-151115-00, 76H-W-151690-00, 76H-W-163387-00, 76H-30003670, 76H-30005814

CLAIMANT: H. Bruce Maclay and Mary B. Maclay

MOTION OF MONTANA WATER COURT

OBJECTOR: Avista Corporation; Montana Power Company;
United States of America (Bureau of Indian Affairs);
Ivah G. Schmitz; H. Bruce Maclay

MASTER'S REPORT

1. Water Court Case 76HB-22 includes a total of 32 irrigation and stock water right claims from Carlton and McClain Creeks. The current owners of all 32 claims are H. Bruce Maclay and Mary B. Maclay (Maclays). The various claims received objections from several parties including: the United States of America (Bureau of Indian Affairs), Avista Corporation (formerly Washington Water Power Company), Montana Power Company, Ivah G. Schmitz, and H. Bruce

Maclay. Two parties, the United States Forest Service and Robert and Emma Porch, filed Notices of Intent to Appear on claims in the case. Montana Power Company and Robert and Emma Porch subsequently withdrew from the case.

2. The BIA, Forest Service, Avista, and the claimants have all accepted the terms of a Stipulation filed on August 11, 1999 addressing objections to 31 of the 32 claims. The remaining claim, 76H-W-151690-00, was withdrawn by the claimants on November 13, 2002.

3. Ivah G. Schmitz objected to a total of 10 claims in this case. Her objections to irrigation claim 76H-W-151100-00 and multiple use stock claim 76H-W-151115-00 were withdrawn prior to hearing. Her point of diversion and means of diversion objections to claims 76H-W-151094-00, 76H-W-151095-00, 76H-W-151096-00, 76H-W-151099-00, 76H-W-151116-00, 76H-W-151117-00, 76H-W-151118-00, and 76H-W-151119-00 were heard before the Water Master on November 7, 2001 in Missoula, Montana. On July 11, 2002, the Master issued a Master's Report recommending that the objections be denied and that the points of diversion and means of diversion for these claims remain as they appeared in the Temporary Preliminary Decree. This recommendation was adopted by the Water Court in an Order Amending and Adopting Master's Report issued on November 22, 2002.

4. On April 22, 2003, the Master issued an Order directing the parties to provide evidence supporting specific terms of the August 11, 1999 Stipulation. Claimants H. Bruce Maclay and Mary B. Maclay filed a response on June 17, 2003 addressing each issue raised by the Master.

5. The August 11, 1999 Stipulation breaks the claims into four groups: Carlton Creek irrigation claims, Carlton Creek stock claims, McClain Creek irrigation claims, and McClain Creek stock claims. The most significant change to the claims is the reduction in the number of acres irrigated by the Carlton Creek irrigation claims from 863.00 acres to 755.00 acres. The

McClain Creek irrigation claims are increased from 826.00 acres to 827.00 acres, with a significantly more detailed place of use parcel breakdown. A table attached to the Stipulation shows the number of acres that can be irrigated through each of the nine claimed points of diversion from McClain Creek. This table is attached to and by reference made part of this report as Attachment "C". The Stipulation also calls for removing the quantified flow rate and the reservoir record for all of the stock claims and generating two implied claims, one for Carlton Creek and one for McClain Creek for the stock reservoir. Finally, the Stipulation calls for increasing the flow rate for claim 76H-W-151095-00 from 3.00 CFS to 4.50 CFS. Claim 76H-W-163387-00 is referenced in the Stipulation but received no changes.

6. The Temporary Preliminary Decree for this Subbasin states that the place of use for claims 76H-W-151094-00, 76H-W-151095-00, 76H-W-151096-00, 76H-W-151099-00, and 76H-W-151100-00 (Carlton Creek irrigation claims) includes 863.00 acres in 10 parcels. The description for this acreage can be found in the Temporary Preliminary Decree. Based on the record before the Master, the place of use and acres irrigated for each of these five claims should be:

Place of Use for Irrigation:

	<u>ACRES</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
001	33.00	NWSW	14	11N	20W	MISSOULA
002	36.00	NESW	14	11N	20W	MISSOULA
003	38.00	SWSW	14	11N	20W	MISSOULA
004	33.00	SESW	14	11N	20W	MISSOULA
005	24.00	NWSE	15	11N	20W	MISSOULA
006	36.00	NESE	15	11N	20W	MISSOULA
007	35.00	SESE	15	11N	20W	MISSOULA
008	30.00	SWSE	15	11N	20W	MISSOULA
009	1.00	SENESE	15	11N	20W	MISSOULA
010	13.00	SESW	15	11N	20W	MISSOULA
011	38.00	SESE	22	11N	20W	MISSOULA
012	38.00	SWSE	22	11N	20W	MISSOULA
013	33.00	NWSE	22	11N	20W	MISSOULA
014	30.00	NESE	22	11N	20W	MISSOULA
015	8.00	E2NESW	22	11N	20W	MISSOULA

016	2.00	SESEW	22	11N	20W	MISSOULA
017	15.00	SWNE	22	11N	20W	MISSOULA
018	38.00	NENE	22	11N	20W	MISSOULA
019	35.00	SENE	22	11N	20W	MISSOULA
020	22.00	NWNE	22	11N	20W	MISSOULA
021	40.00	NWNW	23	11N	20W	MISSOULA
022	34.00	NENW	23	11N	20W	MISSOULA
023	8.00	N2SEW	23	11N	20W	MISSOULA
024	27.00	SWNW	23	11N	20W	MISSOULA
025	36.00	NWNE	27	11N	20W	MISSOULA
026	33.00	SWNE	27	11N	20W	MISSOULA
027	27.00	SEW	27	11N	20W	MISSOULA
028	10.00	NENW	27	11N	20W	MISSOULA
029	<u>2.00</u>	SWNW	27	11N	20W	MISSOULA
TOTAL	755.00					

All of the remaining elements of these claims should appear in the next decree for this Subbasin with no changes.

7. Claim 76H-W-151095-00 was filed by Mary B. Maclay and H. Bruce Maclay for irrigation from Carlton Creek. As filed, the claim is based on a 3.00 CFS right decreed to Robert F. King with an August 1, 1884 priority date. Maclays amended the claim on February 7, 1990 to reduce the acres irrigated and add two points of diversion. Following the issuance of the Temporary Preliminary Decree for this Subbasin, Maclays filed an objection to the claim to increase the flow rate from 3.00 CFS to 4.5 CFS. This increase is also one of the terms of the August 11, 1999 Stipulation. On June 17, 2003, claimant H. Bruce Maclay filed an affidavit further addressing the proposed flow rate increase. According to the affidavit, the King 3.00 CFS right was only part of the 9th right from Carlton Creek. A second part of the 9th right was decreed to Lena Wemple for 1.50 CFS with the same priority date. King acquired the Wemple right at some point in time. When he sold to Maclays in the 1930's, all 4.50 CFS went as part of the sale. Maclays have managed this 9th right as a single right. According to Bruce Maclay, the Statement of Claim filing was a mistake, he

had intended to claim all of the 9th right but inadvertently only claimed the original King portion and missed the Wemple portion.

8. Claims 76H-W-151115-00, 76H-W-151116-00, 76H-W-151117-00, 76H-W-151118-00, and 76H-W-151119-00 (Carlton Creek stock claims) all appeared in the Temporary Preliminary Decree with the same quantified flow rates as their corresponding multiple use irrigation claims, and a reservoir record referencing the same small off stream reservoir. This reservoir is little more than a wide spot in one of the claimant's ditches where cattle access water. It was added to the ditch in 1969 and has a surface area of .04 acres and a capacity of .10 acre feet. The quantified flow rates on these five stock claims gives the impression of a far more significant storage facility. The August 11, 1999 Stipulation resolves this issue by removing the quantified flow rate and reservoir record from all five claims and generating an implied claim for the reservoir. The Temporary Preliminary Decree states that the flow rates for these claims are:

<u>Claim</u>	<u>TPD Flow Rate</u>
76H-W-151115-00	2.50 CFS
76H-W-151116-00	3.00 CFS
76H-W-151117-00	2.50 CFS
76H-W-151118-00	6.75 CFS
76H-W-151119-00	2.50 CFS

Based on the record before the Master, these flow rates should be removed from these claims and replaced with the standard stock claim flow rate remark:

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

In addition, the reservoir record should be removed from all ten claims.

9. Implied claim 76H-30003670-00 should be generated based in information found in the Statement of Claim filings for claims 76H-W-151115-00, 76H-W-151116-00, 76H-W-

151117-00, 76H-W-151118-00, and 76H-W-151119-00. The elements of this implied claim are attached to and by reference made part of this report as Attachment "A".

10. The Temporary Preliminary Decree for this Subbasin states that the place of use for claims 76H-W-151082-00, 76H-W-151084-00, 76H-W-151085-00, 76H-W-151086-00, 76H-W-151087-00, 76H-W-151088-00, 76H-W-151089-00, 76H-W-151090-00, 76H-W-151091-00, and 76H-W-151092-00 (McClain Creek irrigation claims) includes 826.00 acres in 12 parcels. The description for this acreage can be found in the Temporary Preliminary Decree. Based on the record before the Master, the place of use and acres irrigated for each of these claims should be:

Place of Use for Irrigation:

	<u>ACRES</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
001	33.00	NWSW	14	11N	20W	MISSOULA
002	36.00	NESW	14	11N	20W	MISSOULA
003	38.00	SWSW	14	11N	20W	MISSOULA
004	33.00	SESW	14	11N	20W	MISSOULA
005	24.00	NWSE	15	11N	20W	MISSOULA
006	36.00	NESE	15	11N	20W	MISSOULA
007	35.00	SESE	15	11N	20W	MISSOULA
008	30.00	SWSE	15	11N	20W	MISSOULA
009	1.00	SENESE	15	11N	20W	MISSOULA
010	13.00	SESW	15	11N	20W	MISSOULA
011	19.00	S2SENE	21	11N	20W	MISSOULA
012	36.00	NESE	21	11N	20W	MISSOULA
013	23.00	SESE	21	11N	20W	MISSOULA
014	19.00	SWSW	22	11N	20W	MISSOULA
015	20.00	NWSW	22	11N	20W	MISSOULA
016	14.00	NESW	22	11N	20W	MISSOULA
017	1.00	NWSESW	22	11N	20W	MISSOULA
018	19.00	S2SWNW	22	11N	20W	MISSOULA
019	9.00	N2SWNW	22	11N	20W	MISSOULA
020	10.00	S2SENE	22	11N	20W	MISSOULA
021	15.00	SWNE	22	11N	20W	MISSOULA
022	15.00	W2NWSE	22	11N	20W	MISSOULA
023	18.00	E2NWSE	22	11N	20W	MISSOULA
024	38.00	SESE	22	11N	20W	MISSOULA
025	38.00	SWSE	22	11N	20W	MISSOULA
026	30.00	NESE	22	11N	20W	MISSOULA
027	23.00	NWNE	22	11N	20W	MISSOULA

028	38.00	NENE	22	11N	20W	MISSOULA
029	16.00	W2SESE	22	11N	20W	MISSOULA
030	19.00	E2SENE	22	11N	20W	MISSOULA
031	40.00	NWNW	23	11N	20W	MISSOULA
032	34.00	NENW	23	11N	20W	MISSOULA
033	8.00	N2SENW	23	11N	20W	MISSOULA
034	15.00	S2SENW	23	11N	20W	MISSOULA
035	<u>31.00</u>	SWNW	23	11N	20W	MISSOULA
TOTAL	827.00					

In addition, these ten claims are subject to the terms of the August 11, 1999 stipulation including the information found in Attachment C to this report. The following remark should appear on all ten claims to provide notice of this Stipulation:

THE FOLLOWING CLAIMS ARE SUBJECT TO THE TERMS OF A STIPULATION FILED WITH THE MONTANA WATER COURT ON AUGUST 11, 1999. THIS STIPULATION LIMITS THE NUMBER OF ACRES THAT CAN BE IRRIGATED BY EACH CLAIM THROUGH THE NINE CLAIMED POINTS OF DIVERSION. SEE THE CLAIM FILE OR WATER COURT CASE 76HB-22 FOR MORE INFORMATION: W151082-00, W151084-00, W151085-00, W151086-00, W151087-00, W151088-00, W151089-00, W151090-00, W151091-00, AND W151092-00.

All of the remaining elements of these claims should appear in the next decree for ths Subbasin with no changes.

11. Claims 76H-W-151103-00, 76H-W-151104-00, 76H-W-151105-00, 76H-W-151106-00, 76H-W-151107-00, 76H-W-151108-00, 76H-W-151109-00, 76H-W-151110-00, 76H-W-151111-00, and 76H-W-151112-00 (McClain Creek stock claims) all appeared in the Temporary Preliminary Decree with the same quantified flow rates as their corresponding multiple use irrigation claims, and a reservoir record referencing the same small off stream reservoir. This reservoir is little more than a wide spot in one of the claimant's ditches where cattle access water. It was added to the ditch in 1969 and has a surface area of .04 acres and a capacity of .10 acre feet. The quantified flow rates on these ten stock claims gives the impression of a far more significant storage facility. The August 11, 1999 Stipulation resolves this issue by removing the quantified flow rate and reservoir

record from all ten claims and generating an implied claim for the reservoir. The Temporary Preliminary Decree states that the flow rates for these claims are:

<u>Claim</u>	<u>TPD Flow Rate</u>
76H-W-151103-00	394.94 GPM
76H-W-151104-00	1.88 CFS
76H-W-151105-00	1.88 CFS
76H-W-151106-00	1.25 CFS
76H-W-151107-00	112.20 GPM
76H-W-151108-00	1.55 CFS
76H-W-151109-00	282.74 GPM
76H-W-151110-00	224.40 GPM
76H-W-151111-00	89.76 GPM
76H-W-151112-00	224.40 GPM

Based on the record before the Master, these flow rates should be removed from these claims and replaced with the standard stock claim flow rate remark:

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

In addition, the reservoir record should be removed from all five claims.

12. Implied claim 76H-30005814-00 should be generated based on information found in the Statement of Claim filings for claims 76H-W-151103-00, 76H-W-151104-00, 76H-W-151105-00, 76H-W-151106-00, 76H-W-151107-00, 76H-W-151108-00, 76H-W-151109-00, 76H-W-151110-00, 76H-W-151111-00, and 76H-W-151112-00. The elements of this implied claim are attached to and by reference made part of this report as attachment "B".

13. All 32 claims in this case appeared in the Temporary Preliminary Decree with remarks noting potential issues. The parties have not requested any changes to claim 76H-W-163387-00 and have not addressed the remarks that appeared on this claim. Claim 76H-W-151690-00 has been withdrawn thereby negating the need to address the remarks. The remaining 30 claims received remarks noting potential acres irrigated, place of use, and flow rate issues that have been

addressed and resolved by the parties. These remarks generally involve the use of the Schmitz Ditch and possible incremental development of irrigation when this ditch became a part of Maclay's irrigation system in the 1960's. The record before the Master, including various filings and evidence presented at hearing on the Ivah Schmitz objections, shows that any expansion of irrigated acres resulting from use of the Schmitz Ditch occurred prior to July 1, 1973 and was offset by corresponding reductions in the number of acres irrigated in other areas. In other words, Maclays may have brought some new ground under irrigation through this ditch, but they ceased irrigation on other ground at the same time. As a result, there was no actual increase in acres irrigated. Also, the parties provided evidence to support their claimed historical irrigation thereby addressing what appeared to be fewer acres irrigated in the 1958 Ravalli County Water Resource Survey.

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 validity may be overcome by other evidence that proves that one or more elements of the prima facie statement of claim are incorrect. This is the applicable standard of proof regardless of whether the objectors are adverse parties or the claimants objecting to their own water right claims. See Memorandum Opinion, Order Adopting Master's Report, Water Court Case 40G-2, (March 11, 1997).

III

Except as addressed below for claim 76H-W-151095-00, the record before the Master is sufficient to contradict and overcome the content of the prima facie claims and justifies the changes to claims 76H-W-151094-00, 76H-W-151095-00, 76H-W-151096-00, 76H-W-151099-00, 76H-W-151100-00, 76H-W-151115-00, 76H-W-151116-00, 76H-W-151117-00, 76H-W-151118-00, 76H-W-151119-00, 76H-W-151082-00, 76H-W-151084-00, 76H-W-151085-00, 76H-W-151086-00, 76H-W-151087-00, 76H-W-151088-00, 76H-W-151089-00, 76H-W-151090-00, 76H-W-151091-00, 76H-W-151092-00, 76H-W-151103-00, 76H-W-151104-00, 76H-W-151105-00, 76H-W-151106-00, 76H-W-151107-00, 76H-W-151108-00, 76H-W-151109-00, 76H-W-151110-00, 76H-W-151111-00, and 76H-W-151112-00 stated in the Findings of Fact. These changes are within the parameters of the original Statements of Claim as filed for these water rights.

IV

While Maclays may have managed the King and Wemple decreed rights as a single unit, they are clearly separate and distinct water rights. As a result, they were required to file a statement of claim for each right. Although they mistakenly failed to claim the right by the April 30, 1982 filing deadline set for this adjudication, they were aware of the problem by 1993 when they filed the objection to the claim and could have filed a late claim under Section 82-2-211(3) MCA to claim this overlooked right. Any party claiming an existing right to the use of water prior to July 1, 1973 was required to file a Statement of Claim for that right by either the original April 30, 1982 filing deadline or the July 1, 1996 late claim filing deadline. The failure to file the Statement of Claim resulted in a conclusive presumption that the water right was abandoned. See Section 85-2-221 and 226 MCA and *In the Matter of the Adjudication of the Water Rights Within the Yellowstone River* (1992) 253 Mont. 167, 832 P.2d 1210. Unfortunately, that is the fate of the Lena Wemple 1.5

CFS decreed right. Increasing the flow rate for claim 76H-W-151095-00 would circumvent the filing requirement and give Maclays a claim that they simply failed to file. This is not an appropriate amendment to the claim and should not be approved by the Water Court.

V

Montana Water Use Act became law on July 1, 1973. Prior to that time, 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)*. 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. In this case, the record shows that any changes to the Maclay rights occurred prior to July 1, 1973. There is not indication that these changes precipitated any objections at that time. Any remarks that appeared on these claims noting a potential issue resulting from pre July 1, 1973 changes to the claims should be removed.

RECOMMENDATIONS

1. The changes to claims 76H-W-151094-00, 76H-W-151095-00, 76H-W-151096-00, 76H-W-151099-00, 76H-W-151100-00, 76H-W-151115-00, 76H-W-151116-00, 76H-W-151117-00, 76H-W-151118-00, 76H-W-151119-00, 76H-W-151082-00, 76H-W-151084-00, 76H-W-151085-00, 76H-W-151086-00, 76H-W-151087-00, 76H-W-151088-00, 76H-W-151089-00, 76H-W-151090-00, 76H-W-151091-00, 76H-W-151092-00, 76H-W-151103-00, 76H-W-151104-00, 76H-W-151105-00, 76H-W-151106-00, 76H-W-151107-00, 76H-W-151108-00, 76H-W-151109-00, 76H-W-151110-00, 76H-W-151111-00, and 76H-W-151112-00, as stated in the

Findings of Fact, should be adopted by the Water Court to correct the Temporary Preliminary Decree for this Subbasin. All of the issue remarks should be removed from these claims.

2. Claim 76H-W-163387-00 should appear in the next decree for this Subbasin with no changes.


3. Claim 76H-W-151690-00 should be Dismissed and should not appear in the next decree for this Subbasin.

4. The proposal to increase the flow rate for claim 76H-W-151095-00 should be rejected by the Water Court.

5. Implied claim 76H-30003670-00 should be generated based in information found in claims 76H-W-151115-00, 76H-W-151116-00, 76H-W-151117-00, 76H-W-151118-00, and 76H-W-151119-00.

6. Implied claim 76H-30005814-00 should be generated based on information found in claims 76H-W-151103-00, 76H-W-151104-00, 76H-W-151105-00, 76H-W-151106-00, 76H-W-151107-00, 76H-W-151108-00, 76H-W-151109-00, 76H-W-151110-00, 76H-W-151111-00, and 76H-W-151112-00.

DATED this 25 day of August, 2003.


Douglas Ritter
Water Master

CERTIFICATE OF SERVICE

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

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This Order Only:
*Bureau of Indian Affairs
Att: Bill Bishop, Water Resources
316 N. 26th Street
Billings MT 59101*

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Branch of Resource Compliance
911 NE 11th Ave
Portland OR 97232-4769**

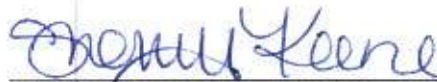
Roselyn Rennie, Attorney
Office of the Billings Field Solicitor
316 North 26th Street
Billings MT 59101

Jody Miller
Special Assistant U S Attorney
PO Box 7669
Missoula MT 59807

**MASTER'S REPORT ONLY
Montana Power Company
Legal Department
40 East Broadway
Butte MT 59701**

NOTE: SERVICE LIST HAS BEEN UPDATED!

DATED this 25th day of August, 2003.



Sherry Keene
Deputy Clerk

ATTACHMENT A

WATER RIGHT NUMBER: 76H-30003670-00

OWNERS: MARY B. MACLAY
H. BRUCE MACLAY

PURPOSE (USE): STOCK
TYPE OF IRRIGATION SYSTEM:

SOURCE: CARLTON CREEK
SOURCE TYPE: SURFACE WATER

PRIORITY DATE: DECEMBER 31, 1969
TYPE OF HISTORICAL RIGHT: USE

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 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.

PERIOD OF USE: MARCH 1 TO DECEMBER 04

POINTS OF DIVERSION AND MEANS OF DIVERSION:

	<u>LOT/BLK</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	<u>MEANS</u>
01		NWSESE	33	11N	20W	MISSOULA	HEADGATE
	DITCH NAME: SCHMITZ DITCH						

RESERVOIR:

		<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
01	OFFSTREAM	SWSESW	15	11N	20W	MISSOULA	
	CAPACITY:	.1 AC-FT	DAM HEIGHT:	FT	SURFACE AREA: .04 ACRES		

PLACE OF USE FOR STOCK:

	<u>ACRES</u>	<u>LOT/BLK</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
001			SESW	15	11N	20W	MISSOULA

REMARKS:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NOS. W151115-00, W151116-00, W151117-00, W151118-00, AND W151119-00.

ATTACHMENT B

WATER RIGHT NUMBER: 76H-30005814-00

OWNERS: MARY B. MACLAY
H. BRUCE MACLAY

PURPOSE (USE): STOCK
TYPE OF IRRIGATION SYSTEM:

SOURCE: MCCLAIN CREEK
SOURCE TYPE: SURFACE WATER

PRIORITY DATE: DECEMBER 31, 1969
TYPE OF HISTORICAL RIGHT: USE

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 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 REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

PERIOD OF USE: MARCH 1 TO DECEMBER 04

POINTS OF DIVERSION AND MEANS OF DIVERSION:

	<u>LOT/BLK</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	<u>MEANS</u>
01		SWSNW	22	11N	20W	MISSOULA	DITCH

RESERVOIR:

		<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
01	OFFSTREAM	SWSEW	15	11N	20W	MISSOULA	
	CAPACITY: <u>.1 AC-FT</u>			DAM HEIGHT: <u> FT</u>		SURFACE AREA: <u>.04 ACRES</u>	

PLACE OF USE FOR STOCK:

	<u>ACRES</u>	<u>LOT/BLK</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
001			SESW	15	11N	20W	MISSOULA

REMARKS:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NOS. W151103-00, W151104-00, W151105-00, W151106-00, W151107-00, W151108-00, W151109-00, W151110-00, W151111-00, AND W151112-00

ATTACHMENT C

McCLAIN CREEK PLACES OF USE ACREAGE BY POD
 POD (ACRES)

POU	ACRES	QUARTER	SEC.	TWN	RNG	#1	#2	#3	#4	#5	#6	#7	#8	#9
01	33	NWSW	14	IIN	20W	0	0	0	33	33	0	0	0	13
02	36	NESW	14	IIN	20W	0	0	0	36	36	0	0	0	36
03	38	SWSW	14	IIN	20W	0	0	0	38	38	0	0	0	24
04	33	SESW	14	IIN	20W	0	0	0	33	33	0	0	0	33
05	24	NWSE	15	IIN	20W	0	0	0	24	24	0	0	0	0
06	36	NESE	15	IIN	20W	0	0	0	36	36	0	0	0	0
07	35	SESE	15	IIN	20W	0	0	0	35	35	0	0	0	0
08	30	SWSE	15	IIN	20W	0	0	0	30	19	0	0	0	0
09	1	SENESEW	15	IIN	20W	0	0	0	1	1	0	0	0	0
10	13	SESW	15	IIN	20W	0	0	0	13	1	0	0	0	0
11	19	S2SENE	21	IIN	20W	19	8	0	0	0	0	0	0	0
12	36	NESE	21	IIN	20W	36	8	0	0	0	0	0	0	0
13	23	SESE	21	IIN	20W	23	3	0	0	0	0	0	0	0
14	19	SWSW	22	IIN	20W	19	19	0	0	0	0	0	0	0
15	20	NWSW	22	IIN	20W	20	20	0	0	0	0	0	0	0
16	14	NESW	22	IIN	20W	14	14	0	0	0	0	0	0	0
17	1	NWSESEW	22	IIN	20W	1	1	0	0	0	0	0	0	0
18	19	S2SWNW	22	IIN	20W	19	19	0	0	0	0	0	0	0
19	9	N2SWNW	22	IIN	20W	0	0	9	0	0	0	0	0	0
20	10	S2SENW	22	IIN	20W	10	10	0	0	0	0	0	0	0
21	15	SWNE	22	IIN	20W	2	2	0	13	0	0	0	0	0

22	15	W2NWSE	22	IIN	20W	15	15	0	0	0	0	0	0	0	0	0	0	0
23	18	E2NWSE	22	IIN	20W	18	18	0	0	0	0	0	0	0	0	0	0	0
24	38	SESE	22	IIN	20W	38	38	0	0	0	0	0	0	0	0	0	0	0
25	38	SWSE	22	IIN	20W	38	38	0	0	0	0	0	0	0	0	0	0	0
26	30	NESE	22	IIN	20W	30	30	0	0	0	0	0	0	0	0	0	0	0
27	23	NWNE	22	IIN	20W	0	0	0	22	1	0	0	0	0	0	0	0	0
28	38	NENE	22	IIN	20W	0	0	0	38	38	0	0	0	0	0	0	0	0
29	16	W2SENE	22	IIN	20W	0	0	0	16	16	0	0	0	0	0	0	0	0
30	19	E2SENE	22	IIN	20W	0	0	0	19	19	19	19	0	0	0	0	0	0
31	40	NWNW	23	IIN	20W	0	0	0	40	40	0	0	0	8	0	0	13	0
32	34	NENW	23	IIN	20W	0	0	0	34	34	0	0	0	0	0	0	0	34
33	8	N2SENW	23	IIN	20W	0	0	0	8	8	0	0	0	0	0	0	0	8
34	15	S2SENW	23	IIN	20W	0	0	0	0	0	0	0	0	0	0	0	15	0
35	31	SWNW	23	IIN	20W	0	0	0	27	27	0	0	0	0	0	0	4	0
Total	827					302	243	9	497	439	19	35	19	35	19	161		

The figure at the bottom of the acres column represent the total acres irrigated from McClain Creek. The figure at the bottom of each individual POD column represents the acres irrigated from that point of diversion. Please note that there are overlapping places of use for a number of the points of diversion.