

Montana Water Court
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FILED

JUL 21 2015

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
WESTSIDE SUBBASIN OF THE BITTERROOT RIVER BASIN (76HF)

C LAIMANTS: Lee Foss; Cheryl D. Rothlisberger;
Daniel L. Rothlisberger; Farmers Plant Aid Corp.,
Huggans Land Co. LLC

OBJECTORS: Millicent I. Huggans; Lee E. Foss;
Ward Irrigation District; United States of America
(Bureau of Indian Affairs); Avista Corporation;
Darrell R. Lee; Dean H. Frost

CASE 76HF-603

(In Part)

76H 105049-00

76H 105050-00

76H 105052-00

76H 125062-00

Unconsolidated Claim:

76H 151687-00

C LAIMANTS: Cheryl D. Rothlisberger; Daniel L.
Rothlisberger; Farmers Plant Aid Corp; Huggans Land
Co LLC; Lee Foss

OBJECTORS: United States of America (Bureau of
Indian Affairs); Avista Corporation; Lee E. Foss;
Millicent I. Huggans; Ward Irrigation District; Dean H.
Frost; Darrell R. Lee

CASE 76HF-618

76H 105051-00

CLOSING ORDER

I. STATEMENT OF THE CASE

This matter involves objections to water rights in the Bitterroot River Basin. The procedural history of these cases is as follows:

In May 2014, the claimants filed a settlement agreement resolving objections filed by the United States of America and Avista Corporation. The settlement agreement resolved objections by the United States of America and Avista, but did not resolve objections of other water users.

A trial was scheduled for May 14, 2014. At the beginning of trial, the parties read into the record the terms of a second settlement agreement. The settlement agreement resolved some but not all remaining issues. Trial occurred on unresolved issues.

Subsequent to the trial in May 2014, disagreements arose as to the scope and validity of the second settlement agreement read into the record at the beginning of trial.

In October 2014, this Court issued an Order addressing the issues litigated at trial and in the second settlement agreement. The Order concluded that a settlement agreement had been reached by the parties prior to trial, but that additional issues remained to be resolved that were not addressed by either the second settlement agreement or the trial itself.

In November 2014, the parties filed a third settlement agreement with the Court. The two preceding agreements were the May 2014 agreement resolving the objections of the United States and Avista Corporation, and the agreement read into the record at trial.

Unfortunately, the third settlement agreement contradicted the first settlement agreement, and failed to include information required by the Court to resolve issue remarks attached to the claims in these cases. Accordingly, the Court ordered the parties to supply additional information necessary to fill in the gaps left by the third settlement agreement.

Additional information was filed by the parties in January 2015.

In June 2015, the Court issued a Draft Order and provided a period for comment. Millicent Huggans, Huggans Land Co., and Ward Irrigation District filed comments with the Court. Those comments are addressed at the end of this Order in a section entitled "Parties' Comments on Draft Order." The following Closing Order is identical to the Draft Order other than the addition of that section addressing the Parties' comments.

The Court now has sufficient information before it to resolve the remaining issues in these cases.

II. ISSUES

1. What is the location of the first point of diversion for claim 76H 105051-00?
2. What is the location of the first point of diversion for claim 76H 125062-00?

3. What is the correct place of use and acreage irrigated for claim 76H 125062-00?

III. FINDINGS OF FACT

The following facts are established by a preponderance of the evidence.

Claim 76H 105051-00 was filed for water from Hayes Creek. This claim is diverted from Hayes Creek using the Ward Ditch. The first point of diversion for this claim is located in the SWSENE of Sec. 3, T4N, R21W. Water is then removed from the Ward Ditch using a second point of diversion, known as the Bray Lane Headgate, located in the SWSENE of Sec. 35, T5N, R21W.

The parties agreed that the Ward Irrigation District shall establish and maintain a measuring device in Hayes Creek at a location upstream from its confluence with the Ward Ditch, and shall provide owners of this claim with access to the measuring device using such right-of-way as Ward Irrigation District may obtain and shall provide a rating table and all information necessary to read the device. An information remark reflecting this agreement is included on the abstract for claim 76H 105051-00.

Claim 76H 125062-00 was filed for water from Camas Creek. This claim is diverted from Camas Creek using the Ward Ditch. The first point of diversion for this claim is located in the SESESW of Sec. 35, T5N, R21W. Water is then removed from the Ward Ditch using a second point of diversion, known as the Bray Lane Headgate, located in the SWSENE of Sec. 35, T5N, R21W.

Ward Irrigation District has agreed to upgrade the calibrated staff gauge in Camas Creek in the SESESE of Sec. 34, T4N, R21W, and shall provide the owners of this water right with access to the gauge, a rating table, and other information necessary to read the gauge. An information remark reflecting this agreement is included on the abstract for claim 76H 125062-00.

Claim 76H 125062-00 initially identified a place of use consisting of 450 total acres. The claimants have supplied evidence indicating the place of use for this right consists of 640 total acres. The legal description for this place of use is identified on the abstract for this claim attached to this Order. The lands included within this legal description were historically irrigated using claim 76H 125062-00.

IV. PRINCIPLES OF LAW

The Water Court is obliged to identify the characteristics of the water rights it decrees. These characteristics must include the place and means of diversion, the place of use, and a description of the land to which the right is appurtenant. § 85-2-234(6), MCA.

Beneficial use is generally the yardstick used to define the characteristics of a water right.

“The quantity of water which may be claimed lawfully under a prior appropriation is limited to that quantity within the amount claimed which the appropriator has needed, and which within a reasonable time he has actually and economically applied to a beneficial use . . . the principal of beneficial use [being of] paramount importance.”

McDonald v. State, 220 Mont. 519, 536 (Mont. 1986) (quoting *Allen v. Petrick*, 69 Mont. 373, 376-77, 222 P. 451, 452 (1924)).

V. ANALYSIS

1. What is the location of the first point of diversion for claim 76H 105051-00?

The evidence in these cases indicates the first point of diversion for claim 76H 105051-00 is located at the point where the Ward Ditch diverts water from Hayes Creek. This location has been historically used by the claimants to remove water from Hayes Creek.

2. What is the location of the first point of diversion for claim 76H 125062-00?

The evidence in these cases indicates the first point of diversion for claim 76H 125062-00 is located at the point where the Ward Ditch diverts water from Camas Creek. This location has historically been used by the claimants to remove water from Camas Creek.

3. What is the correct place of use and acreage irrigated for claim 76H 125062-00?

Claim 76H 125062-00 has been historically used to irrigate 640 acres of land in the Bitterroot basin. The lands irrigated with this claim are identified on the abstract attached to this Order.

VI. CONCLUSIONS OF LAW

1. The first point of diversion for claim 76H 105051-00 is in the SWSENE of Sec. 3, T4N, R21W.
2. The first point of diversion for claim 76H 125062-00 is in the SESESW of Sec. 35, T5N, R21W.
3. Claim 76H 125062-00 has been historically used to irrigate 640 acres of land in the Bitterroot Basin. The lands irrigated with this claim are identified on the abstract attached to this Order.

VII. SUMMARY OF CHANGES TO WATER RIGHTS

The process of resolving the objections and issue remarks associated with the claims in cases 76HF-603 and 76HF-618 has been long and complicated and has involved numerous settlement agreements and Court Orders. Accordingly, the changes to the elements of the water rights in cases 76HF-603 and 76HF-618 are summarized below. For further analysis and information on those changes, see the referenced filings.

Claims 76H 151687 -00 and 76H 105050-00

Claims 76H 151687 -00 and 76H 105050-00 are terminated pursuant to the Court's Order Regarding Settlement Agreement (October 31, 2014). Claim 76H 151687-00 was not part of either case 76HF-603 or 76HF-618, but was withdrawn as a result of an agreement between the parties.

Claims 76H 105049-00 and 76H 105052-00

The issue remarks and objections associated with claims 76H 105049-00 and 76H 105052-00 were resolved by the settlement agreement signed by the claimants and objectors Avista Corporation and the United States of America (BIA) (May 8, 2014). The settlement agreement provided that the maximum irrigated acres would be reduced from 731.00 acres to 678.00 acres. The places of use were modified, with the most significant change being the addition of a 20 acre parcel owned by Cheryl and Daniel Rothlisberger.

The places of use (located in Ravalli County) were changed from:

<u>POU</u>	<u>ACRES</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>
1	521		26	5N	21W
2	50	N2NE	35	5N	21W
3	40	SWNE	35	5N	21W
4	80	N2NW	35	5N	21W
5	40	SEnw	35	5N	21W

The new places of use are:

<u>POU</u>	<u>ACRES</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>
1	20	E2SWSE	23	5N	21W
2	200	N2	26	5N	21W
3	80	E2SW	26	5N	21W
4	100	W2SE	26	5N	21W
5	80	W2SW	26	5N	21W
6	20	NENE	34	5N	21W
7	54	N2NE	35	5N	21W
8	80	N2NW	35	5N	21W
9	20	SEnw	35	5N	21W
10	24	SWNE	35	5N	21W

Claim 76H 105051-00

The issue remarks and objections associated with claim 76H 105051-00 concerning place of use and max acres irrigated were resolved by the settlement agreement signed by the claimants and objectors Avista Corporation and the United States of America (BIA) (May 8, 2014). The settlement agreement provided that the maximum irrigated acres would be reduced from 731.00 acres to 678.00 acres. The places of use were modified in the same way as claims 76H 105049-00 and 76H 105052-00, described above.

Claim 76H 105051-00 had additional issue remarks and objections concerning the location of the points of diversion. Point of diversion one is changed to the SWSENE of Sec. 3, T4N, R 21W pursuant to this Order. A second point of diversion located in the SWSENE of Sec. 35, T5N, R21W is added and was described in the Court's Order Regarding Settlement Agreement (October 31, 2014). A remark concerning the points of

diversion is added to the abstract to indicate that point of diversion one is where water from Hayes Creek is dropped into the Ward Ditch, and that point of diversion two is where water from Hayes Creek is removed from the Ward Ditch at the Bray Lane Headgate.

Additionally, pursuant to the parties' November 19, 2014 Stipulation and Agreement, the following information remark will be added to the abstract:

WARD IRRIGATION DISTRICT SHALL ESTABLISH AND MAINTAIN A MEASURING DEVICE IN HAYES CREEK AT A LOCATION UPSTREAM FROM BUT AS NEAR TO ITS CONFLUENCE WITH THE WARD DITCH AS IS TECHNICALLY FEASIBLE AND SHALL PROVIDE OWNERS OF THIS CLAIM WITH (A) ACCESS TO THE DEVICE WITHIN SUCH RIGHT-OF-WAY AS WARD IRRIGATION DISTRICT MAY OBTAIN AND (B) A RATING TABLE AND ALL INFORMATION NECESSARY TO READ THE DEVICE.

Claim 76H 125062-00

The issue remarks and objections associated with claim 76H 125062-00 are resolved pursuant to the parties' November 19, 2014 Stipulation and Agreement and this Order.

Point of diversion one is changed from the SWSENE of Sec. 35, T5N, R21W to the SESESW of Sec. 35, T5N, R21W. Point of diversion two is changed from the NWNWSE of Sec. 35, T5N, R21W to the SWSENE of Sec. 35, T5N, R21W. A remark concerning the points of diversion is added to the abstract to indicate that point of diversion one is where water from Camas Creek is dropped into the Ward Ditch, and that point of diversion two is where water from Camas Creek is removed from the Ward Ditch at the Bray Lane Headgate.

The maximum acres irrigated is increased from 450 acres to 640 acres. The places of use (located in Ravalli County) are changed from:

<u>POU</u>	<u>ACRES</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>
1	80	W2SE	26	5N	21W
2	160	SW	26	5N	21W
3	50	N2NE	35	5N	21W
4	40	SWNE	35	5N	21W
5	80	N2NW	35	5N	21W
6	40	SENW	35	5N	21W

The new places of use are¹:

<u>POU</u>	<u>ACRES</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>
1	163	N2	26	5N	21W
2	12	N2	26	5N	21W
3	175	S2	26	5N	21W
4	80	S2	26	5N	21W
5	50	N2NE	35	5N	21W
6	80	N2NW	35	5N	21W
7	40	S2N2	35	5N	21W
8	20	S2N2	35	5N	21W
9	20	E2SWSE	23	5N	21W

Additionally, pursuant to the parties' November 19, 2014 Stipulation and Agreement, the following information remark will be added to the abstract:

WARD IRRIGATION DISTRICT SHALL UPGRADE THE CALIBRATED STAFF GAUGE IN CAMAS CREEK IN THE SESESE OF SECTION 34, TOWNSHIP 4 NORTH, RANGE 21 WEST AND SHALL PROVIDE THE OWNERS OF THIS WATER RIGHT WITH (A) ACCESS TO THE GAUGE (OR OTHER DEVICE) AND (B) A RATING TABLE AND OTHER INFORMATION NECESSARY TO READ IT.

VIII. PARTIES' COMMENTS ON DRAFT ORDER

In June 2015, the Court issued a Draft Order containing the above analysis, findings of fact, and conclusions of law. Because of the complicated and lengthy procedural history involved in these cases, the parties were provided an opportunity to

¹ In their Stipulation and Agreement, the parties listed place of use number five as being in the NWNE of Sec. 35. This legal land description has been modified to the N2NE of Sec. 35. The quarter quarter section NWNE only consists of 40 acres and the place of use being described is 50 acres. Therefore the N2NE description is more accurate.

comment on the Draft Order. The Court made clear that the purpose of the comment period was strictly to ensure that the abstracts were accurate and resolved the outstanding issues; the purpose of the comment period was not to re-argue issues that had been decided or agreed upon, nor an opportunity to raise new issues.

Millicent Huggans and Huggans Land Co. (“Huggans”) filed comments with the Court, as did Ward Irrigation District (“WID”).

Abstract Corrections

Both Huggans and WID agree that the ditch name appearing on the abstract for claim 76H 125062-00 should be changed from “Ward Ditch B” to “Ward Ditch.” The abstract has been updated accordingly.

Additionally, WID pointed out that while the secondary point of diversion for claim 76H 105051-00 was accurately identified in the Order, it was misidentified on the abstract. The abstract has been corrected to show the first point of diversion as the SWSENE of Sec. 3, T4N, R21W and the second point of diversion as the SWSENE of Sec. 35, T5N, R21W.

Place of Use for Claim 76H 125062-00

In their comments, both WID and Huggans address the place of use for claim 76H 125062-00. Huggans asserts that the place of use for claim 76H 125062-00 should be the same place of use as claims 76H 105049-00, 76H 105051-00, and 76H 105052-00. WID asserts that the place of use provided for claim 76H 125062-00 is correct, but that the place of use for claim 76H 105051-00 should be changed to be identical to that of claim 76H 125062-00.

The places of use for claims 76H 125062-00 and 76H 105051-00 were contained in two separate stipulations between the parties. The two agreements described different places of use for the two claims. The May 8, 2014 Stipulation provided a 678 acre place of use for claim 76H 105051-00. The November 19, 2014 Stipulation provided a 640 acre place of use for claim 76H 125062-00.

The Court drew the parties’ attention to this discrepancy. See December 10, 2015 Order Setting Status Conference, 2-3. The parties did not address the difference between

the places of use, and did not modify the Stipulations. Therefore the places of use for claims 76H 125062-00 (640 max acres) and 76H 105051-00 (672 max acres) will remain as they appeared in the Draft Order and how they appear above.

New Issues

WID argues that “the supplemental relationship between claimants’ Hayes Creek and Camas Creek water rights and their allocations of District water should be reflected in the Closing Order.” This contention raises a new issue. The comment period was not for the purpose of raising new issues, and the Court will not entertain new arguments on issues that have not been previously presented.

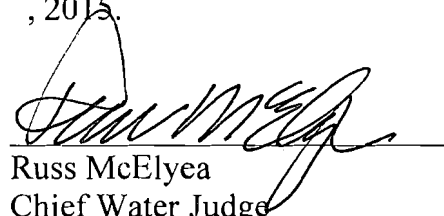
IX. CONCLUSION

This Order, together with previous Orders of this Court and settlement agreements filed by the parties, resolves all remaining issues regarding the claims in these cases. Abstracts reflecting the Orders of this Court and settlement agreements filed by the parties are attached to this Order.

X. ORDER

The claims in these cases shall be decreed in accordance with the abstracts attached to this Order.

DATED this 21 day of July, 2015.



Russ McElyea
Chief Water Judge

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WESTSIDE SUBBASIN- BITTERROOT RIVER
BASIN 76H
IMPORTANT NOTICE**

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76H 105049-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners:

LEE FOSS
365 GOLD CREEK LOOP
HAMILTON, MT 59840 8939

FARMERS PLANT AID CORP
822 WALL CREEK RD
STITES, ID 83552

CHERYL D ROTH LISBERGER
PO BOX 2135
HAMILTON, MT 59840

DANIEL L ROTH LISBERGER
PO BOX 2135
HAMILTON, MT 59840

HUGGANS LAND CO LLC
1477 US HWY 93
HAMILTON, MT 59840

* OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE PRELIMINARY DECREE.

Priority Date: OCTOBER 25, 1934

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.75 CFS

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

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 678.00

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF CAMAS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2W2SW	35	5N	21W	RAVALLI

Period of Diversion: APRIL 1 TO OCTOBER 19

Diversion Means: DITCH

Period of Use: APRIL 1 TO OCTOBER 19

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00		E2SWSE	23	5N	21W	RAVALLI
2	200.00		N2	26	5N	21W	RAVALLI
3	80.00		E2SW	26	5N	21W	RAVALLI
4	100.00		W2SE	26	5N	21W	RAVALLI
5	80.00		W2SW	26	5N	21W	RAVALLI
6	20.00		NENE	34	5N	21W	RAVALLI
7	54.00		N2NE	35	5N	21W	RAVALLI
8	80.00		N2NW	35	5N	21W	RAVALLI
9	20.00		SEW	35	5N	21W	RAVALLI
10	24.00		SWNE	35	5N	21W	RAVALLI

Total: 678.00

SUBDIVISION: WARDS COVE 1ST ADDITION

PLACE OF USE ID #2 INCLUDES LOTS 1-4 AND 14-18 IN BLOCK 2.

PLACE OF USE ID #3 INCLUDES LOTS 5 AND 10-13 IN BLOCK 2.

PLACE OF USE ID #4 INCLUDES LOTS 5 AND 6-8 IN BLOCK 2.

PLACE OF USE ID #5 INCLUDES LOTS 5 AND 19-22 IN BLOCK 2.

PLACE OF USE ID #7 INCLUDES LOTS 5 AND 9 IN BLOCK 2.

PLACE OF USE ID #9 INCLUDES LOTS 13, PT 1 AND 11 IN BLOCK 4.

Remarks:

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

105036-00	105037-00	105038-00	105039-00	105040-00	105041-00	105042-00
105043-00	105044-00	105045-00	105046-00	105047-00	105048-00	105049-00
105051-00	105052-00	105053-00	105054-00	105055-00	105056-00	105057-00
125062-00	30043197	30043198	30043202	30043203		

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

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WESTSIDE SUBBASIN- BITTERROOT RIVER
BASIN 76H**

IMPORTANT NOTICE

*****THIS WATER RIGHT CLAIM HAS BEEN WITHDRAWN*****

**AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE
MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

Water Right Number: 76H 105050-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: WITHDRAWN

Owners:

LEE FOSS
365 GOLD CREEK LOOP
HAMILTON, MT 59840 8939

DANIEL L ROTHLSBERGER
PO BOX 2135
HAMILTON, MT 59840

CHERYL D ROTHLSBERGER
PO BOX 2135
HAMILTON, MT 59840

HUGGANS LAND CO LLC
1477 US HWY 93
HAMILTON, MT 59840

FARMERS PLANT AID CORP
822 WALL CREEK RD
STITES, ID 83552

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF CAMAS CREEK

Source Type: SURFACE WATER

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF CAMAS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS AT THE REQUEST OF THE
CLAIMANT ON 05/06/2015.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WESTSIDE SUBBASIN- BITTERROOT RIVER
BASIN 76H
IMPORTANT NOTICE**

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76H 105051-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

FARMERS PLANT AID CORP
822 WALL CREEK RD
STITES, ID 83552

DANIEL L ROTH LISBERGER
PO BOX 2135
HAMILTON, MT 59840

SAM W FOSS
PO BOX 1975
HAMILTON, MT 59840 1975

CHERYL D ROTH LISBERGER
PO BOX 2135
HAMILTON, MT 59840

LEE FOSS
365 GOLD CREEK LOOP
HAMILTON, MT 59840 8939

HUGGANS LAND CO LLC
1477 US HWY 93
HAMILTON, MT 59840

* OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE PRELIMINARY DECREE.

Priority Date: OCTOBER 25, 1934

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

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

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 678.00

Source Name: HAYES CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
*1		SWSENE	3	4N	21W	RAVALLI

Period of Diversion: APRIL 1 TO OCTOBER 19

Diversion Means: HEADGATE

Ditch Name: WARD DITCH

*2		SWSENE	35	5N	21W	RAVALLI
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Period of Diversion: APRIL 1 TO OCTOBER 19

Diversion Means: HEADGATE

POINT OF DIVERSION ID #1 IS WHERE WATER FROM HAYES CREEK IS DROPPED INTO THE WARD DITCH. POINT OF DIVERSION ID #2 IS WHERE WATER FROM HAYES CREEK IS REMOVED FROM THE WARD DITCH AT THE BRAY LANE HEADGATE.

Period of Use: APRIL 1 TO OCTOBER 19

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00		E2SWSE	23	5N	21W	RAVALLI
2	200.00		N2	26	5N	21W	RAVALLI
3	80.00		E2SW	26	5N	21W	RAVALLI
4	100.00		W2SE	26	5N	21W	RAVALLI
5	80.00		W2SW	26	5N	21W	RAVALLI
6	20.00		NENE	34	5N	21W	RAVALLI
7	54.00		N2NE	35	5N	21W	RAVALLI
8	80.00		N2NW	35	5N	21W	RAVALLI
9	20.00		SENW	35	5N	21W	RAVALLI
10	24.00		SWNE	35	5N	21W	RAVALLI

Total: 678.00

SUBDIVISION: WARDS COVE 1ST ADDITION

PLACE OF USE ID #2 INCLUDES LOTS 1-4 AND 14-18 IN BLOCK 2.

PLACE OF USE ID #3 INCLUDES LOTS 5 AND 10-13 IN BLOCK 2.

PLACE OF USE ID #4 INCLUDES LOTS 5 AND 6-8 IN BLOCK 2.

PLACE OF USE ID #5 INCLUDES LOTS 5 AND 19-22 IN BLOCK 2.

PLACE OF USE ID #7 INCLUDES LOTS 5 AND 9 IN BLOCK 2.

PLACE OF USE ID #9 INCLUDES LOTS 13, PT 1 AND 11 IN BLOCK 4.

Remarks:

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

105036-00	105037-00	105038-00	105039-00	105040-00	105041-00	105042-00
105043-00	105044-00	105045-00	105046-00	105047-00	105048-00	105049-00
105051-00	105052-00	105053-00	105054-00	105055-00	105056-00	105057-00
125062-00	30043197	30043198	30043202	30043203		

WARD IRRIGATION DISTRICT SHALL ESTABLISH AND MAINTAIN A MEASURING DEVICE IN HAYES CREEK AT A LOCATION UPSTREAM FROM BUT AS NEAR TO ITS CONFLUENCE WITH THE WARD DITCH AS IS TECHNICALLY FEASIBLE AND SHALL PROVIDE OWNERS OF THIS CLAIM WITH (A) ACCESS TO THE DEVICE WITHIN SUCH RIGHT-OF-WAY AS WARD IRRIGATION DISTRICT MAY OBTAIN AND (B) A RATING TABLE AND ALL INFORMATION NECESSARY TO READ THE DEVICE.

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

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WESTSIDE SUBBASIN- BITTERROOT RIVER
BASIN 76H
IMPORTANT NOTICE**

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76H 105052-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

***Owners:**

LEE FOSS
365 GOLD CREEK LOOP
HAMILTON, MT 59840 8939

CHERYL D ROTH LISBERGER
PO BOX 2135
HAMILTON, MT 59840

HUGGANS LAND CO LLC
1477 US HWY 93
HAMILTON, MT 59840

FARMERS PLANT AID CORP
822 WALL CREEK RD
STITES, ID 83552

DANIEL L ROTH LISBERGER
PO BOX 2135
HAMILTON, MT 59840

* OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE PRELIMINARY DECREE.

Priority Date: OCTOBER 25, 1934

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 280.55 GPM

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

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 678.00

Source Name: UNNAMED TRIBUTARY OF CAMAS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	35	5N	21W	RAVALLI

Period of Diversion: APRIL 1 TO OCTOBER 19

Diversion Means: DITCH

Period of Use: APRIL 1 TO OCTOBER 19

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00		E2SWSE	23	5N	21W	RAVALLI
2	200.00		N2	26	5N	21W	RAVALLI
3	80.00		E2SW	26	5N	21W	RAVALLI
4	100.00		W2SE	26	5N	21W	RAVALLI
5	80.00		W2SW	26	5N	21W	RAVALLI
6	20.00		NENE	34	5N	21W	RAVALLI
7	54.00		N2NE	35	5N	21W	RAVALLI
8	80.00		N2NW	35	5N	21W	RAVALLI
9	20.00		SEnw	35	5N	21W	RAVALLI
10	24.00		SWNE	35	5N	21W	RAVALLI

Total: 678.00

SUBDIVISION: WARDS COVE 1ST ADDITION

PLACE OF USE ID #2 INCLUDES LOTS 1-4 AND 14-18 IN BLOCK 2.

PLACE OF USE ID #3 INCLUDES LOTS 5 AND 10-13 IN BLOCK 2.

PLACE OF USE ID #4 INCLUDES LOTS 5 AND 6-8 IN BLOCK 2.

PLACE OF USE ID #5 INCLUDES LOTS 5 AND 19-22 IN BLOCK 2.

PLACE OF USE ID #7 INCLUDES LOTS 5 AND 9 IN BLOCK 2.

PLACE OF USE ID #9 INCLUDES LOTS 13, PT 1 AND 11 IN BLOCK 4.

Remarks:

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

105036-00 105037-00 105038-00 105039-00 105040-00 105041-00 105042-00
105043-00 105044-00 105045-00 105046-00 105047-00 105048-00 105049-00
105051-00 105052-00 105053-00 105054-00 105055-00 105056-00 105057-00
125062-00 30043197 30043198 30043202 30043203

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

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WESTSIDE SUBBASIN- BITTERROOT RIVER
BASIN 76H
IMPORTANT NOTICE**

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76H 125062-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE
Status: ACTIVE

Owners:

FARMERS PLANT AID CORP
822 WALL CREEK RD
STITES, ID 83552

HUGGANS LAND CO LLC
1477 US HWY 93
HAMILTON, MT 59840

LEE FOSS
365 GOLD CREEK LOOP
HAMILTON, MT 59840 8939

CHERYL D ROTH LISBERGER
PO BOX 2135
HAMILTON, MT 59840

DANIEL L ROTH LISBERGER
PO BOX 2135
HAMILTON, MT 59840

* OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE PRELIMINARY DECREE.

Priority Date: OCTOBER 20, 1882

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 12.50 CFS

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

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 640.00

Source Name: CAMAS CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
*1		SESESW	35	5N	21W	RAVALLI

Period of Diversion: APRIL 1 TO OCTOBER 19

Diversion Means: HEADGATE

Ditch Name: WARD DITCH

*2		SWSENE	35	5N	21W	RAVALLI
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Period of Diversion: APRIL 1 TO OCTOBER 19

Diversion Means: HEADGATE

POINT OF DIVERSION ID #1 IS WHERE WATER FROM CAMAS CREEK IS DROPPED INTO THE WARD DITCH. POINT OF DIVERSION ID #2 IS WHERE WATER FROM CAMAS CREEK IS REMOVED FROM THE WARD DITCH AT THE BRAY LANE HEADGATE.

Period of Use: APRIL 1 TO OCTOBER 19

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	163.00		N2	26	5N	21W	RAVALLI
2	12.00		N2	26	5N	21W	RAVALLI
3	175.00		S2	26	5N	21W	RAVALLI
4	80.00		S2	26	5N	21W	RAVALLI
5	50.00		N2NE	35	5N	21W	RAVALLI
6	80.00		N2NW	35	5N	21W	RAVALLI
7	40.00		S2N2	35	5N	21W	RAVALLI
8	20.00		S2N2	35	5N	21W	RAVALLI
9	20.00		E2SWSE	23	5N	21W	RAVALLI

Total: 640.00

PLACE OF USE FOR ID #1 INCLUDES LOTS 1-4, 14, 16, 18, AND PT OF 15, BLOCK 2.

PLACE OF USE FOR ID #2 INCLUDES PT OF LOT 17, BLOCK 2.

PLACE OF USE FOR ID #3 INCLUDES LOTS 5-8 AND 10-13, BLOCK 2.

PLACE OF USE FOR ID #4 INCLUDES LOTS 19-22, BLOCK 2.

PLACE OF USE FOR ID #5 INCLUDES LOT 9, BLOCK 2.

PLACE OF USE FOR ID #7 INCLUDES LOTS 5, 13, AND 14, BLOCK 4.

PLACE OF USE FOR ID #8 INCLUDES LOTS 11, 12, AND PT OF 1, BLOCK 4 (WEST OF HWY 93).

Remarks:

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

105036-00	105037-00	105038-00	105039-00	105040-00	105041-00	105042-00
105043-00	105044-00	105045-00	105046-00	105047-00	105048-00	105049-00
105051-00	105052-00	105053-00	105054-00	105055-00	105056-00	105057-00
125062-00	30043197	30043198	30043202	30043203		

WARD IRRIGATION DISTRICT SHALL UPGRADE THE CALIBRATED STAFF GAUGE IN CAMAS CREEK IN THE SESESE OF SECTION 34, TOWNSHIP 4 NORTH, RANGE 21 WEST AND SHALL PROVIDE THE OWNERS OF THIS WATER RIGHT WITH (A) ACCESS TO THE GAUGE (OR OTHER DEVICE) AND (B) A RATING TABLE AND OTHER INFORMATION NECESSARY TO READ IT.

July 8, 2015
76H 125062-00

Page 3 of 3
Post Decree Abstract

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

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WESTSIDE SUBBASIN- BITTERROOT RIVER
BASIN 76H**

IMPORTANT NOTICE

*****THIS WATER RIGHT CLAIM HAS BEEN WITHDRAWN*****

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76H 151687-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **WITHDRAWN**

Owners: WARD IRRIGATION DISTRICT
220 CAMAS CREEK LOOP
HAMILTON, MT 59840

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF CAMAS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS AT THE REQUEST OF THE CLAIMANT ON 05/06/2015.