

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Sargent Ranch Family Ltd Partnership

OBJECTOR: Sargent Ranch Family Ltd Partnership

CASE 40A-0195-R-2022

40A 113061-00

40A 203600-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 40A 113061-00 and 40A 203600-00 appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claims are owned by Sargent Ranch Family LTD. Claim 40A 203600-00 received a self-

objection from Sargent Ranch, and both claims received issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights, and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

40A 113061-00

1. Claim 40A 113061-00 appeared in the Basin 40A Preliminary Decree as a claim for flood irrigation that diverts water from Simmons Creek via a headgate in the NWNWNE of Section 24, T5N, R17E, Golden Valley.

2. According to the claim file, the claimed water is conveyed to the place of use in Section 18 via a ditch. The claim received the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE AND DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. On April 21, 2022, the Court ordered Claimant to file information resolving the issue remark. Nothing was filed by the deadline.

4. During reexamination, the point of diversion was standardized to match the claim map, and the issue remark was added because the claim examiner was unable to see the headgate or ditch in the claimed location.

5. On June 24, 2022, the Court ordered Claimant to meet with the DNRC to discuss resolution of the issue remark.

6. On August 4, 2022, Water Resources Specialist Michael Melin filed a memorandum of his findings. Based on Mr. Melin's discussions with Claimant and historical aerial photographs and maps, he found the headgate and ditch were decreed accurately. Mr. Melin recommended that the issue remark be removed from the claim abstract and all claim elements remain as they appeared in the Basin 40A Preliminary Decree.

7. Claim 40A 113061-00 also received the following notice-type issue remark:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

8. The issue remark states the point of diversion was modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remark indicates that if no objections are filed, the point of diversion will remain as it appears on the abstract and the remark will be removed. The claim did not receive objections.

40A 203006-00

9. Claim 40A 203006-00 appeared in the Basin 40A Preliminary Decree as a claim for stock drinking from a pit in the NWSWSE of Section 1, T4N, R17E, Golden Valley County.

10. The claim received the following issue remark:

IT APPEARS THIS CLAIM MAY NEED A RESERVOIR RECORD. THE CLAIM MATERIALS SUGGEST THE SOURCE OF WATER IS A DEVELOPED SPRING AND THE PLACE OF USE IS A PIT.

11. Claimant self-objected to claim 40A 203006-00 based on point of diversion/means of diversion. Based on the information provided by Claimant, there is no pit at the claimed location, but there is a small depression that was created when Claimant dug out the overflow for the spring tank.

12. Mr. Melin also received claim 40A 203006-00 with Claimant and verified that claim 40A 203006-00 is for a developed spring rather than a pit. He recommended the means of diversion be modified accordingly.

13. Mr. Melin's memorandum also suggests correcting the point of diversion and place of use from the NWSWSE of Section 1, T4N, R17E, Golden Valley to the SWSWSE of Section 1, T5N, R17E, Golden Valley. Based on the historical aerial photographs provided, it appears there was a clerical error on the Statement of Claim.

14. Claimant owns the NWSWSE of Section 1, T4N, R17E, Golden Valley and the SWSWSE of Section 1, T5N, R17E, Golden Valley.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant’s objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

9. After the issuance of a temporary preliminary decree and close of the objection period in a basin, a claimant may amend their Statement of Claim. Section 85-2-233(6), MCA.

10. Notice is required to other water users if a motion to amend may adversely affect other water rights. Section 85-2-233(6), MCA.

11. A claimant asserting an amendment to its claim has the burden to show that the historical use of the claim is accurately reflected by the requested amendment. *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

CONCLUSIONS OF LAW

40A 113061-00

1. The point of diversion issue remark does not overcome the prima facie status of claim 40A 113061-00. Based on the evidence provided in Mr. Melin's memorandum, the point of diversion is historically accurate. The point of diversion issue remark should be removed from the claim abstract, and the point of diversion should remain as it appeared in the Basin 40A Preliminary Decree.

2. The notice-type issue remark on claim 40A 113061-00 provided notice of the change made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remark does not raise unresolved issues that need to be addressed. No proceedings are required to resolve the remark; the remark should be removed from the claim abstract.

40A 203006-00

3. The means of diversion issue remark does not overcome the prima facie status of claim 40A 203006-00. Claimant showed by a preponderance of the evidence that the historically accurate means of diversion for claim 40A 203006-00 is a developed spring. The means of diversion should be modified accordingly. This modification resolves the point of diversion issue remark, and the remark should be removed from the claim abstract.

4. The information in Mr. Melin's memorandum, combined with the information provided by Claimant, shows the point of diversion and place of use contain a clerical error. Additionally, Claimant owns the land associated with both the incorrect and the correct locations of the developed spring. There is no potential for adverse effect to other water users, therefore no additional notice of this correction is required. The point of diversion and place of use should be modified to the SWSWSE of Section 1, T5N, R17E, Golden Valley.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report, and a copy of the map depicting the corrected point of diversion and place of use for claim 40A 203006-00 has been placed in the claim file.

Melissa Lockman
Senior Water Master

Service via USPS Mail:

Sargent Ranch Family Ltd Partnership
113 Cherry Creek Rd
Shawmut, MT 59078

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 113061-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SARGENT RANCH FAMILY LTD PARTNERSHIP
 113 CHERRY CREEK RD
 SHAWMUT, MT 59078 9514

Priority Date: APRIL 14, 1900

Type of Historical Right: FILED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

***Flow Rate:** 273.90 GPM

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

Climatic Area: 3 - MODERATE

***Maximum Acres:** 16.00

Source Name: SIMMONS 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		NWNWNE	24	5N	17E	GOLDEN VALLEY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

***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	6.00		NWNW	18	5N	18E	GOLDEN VALLEY
2	10.00		SWNW	18	5N	18E	GOLDEN VALLEY
Total:	16.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

113048-00 113061-00

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 203600-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SARGENT RANCH FAMILY LTD PARTNERSHIP
113 CHERRY CREEK RD
SHAWMUT, MT 59078 9514

Priority Date: DECEMBER 31, 1920

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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.

Source Name SPRING, UNNAMED TRIBUTARY OF SIMMONS CREEK

Source Type: GROUNDWATER

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		SWSWSE	1	4N	17E	GOLDEN VALLEY

Period of Diversion: JANUARY 1 TO DECEMBER 31

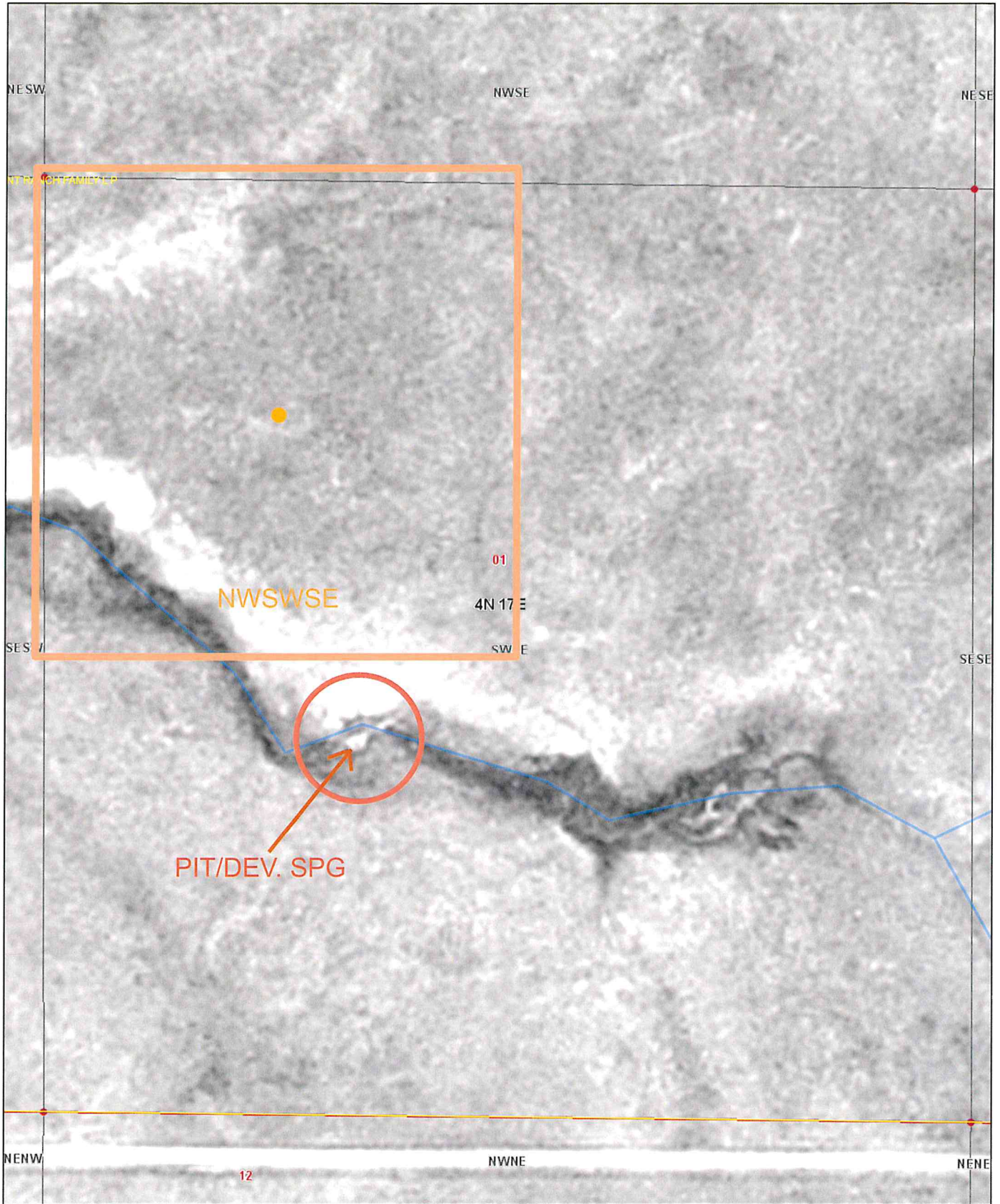
Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

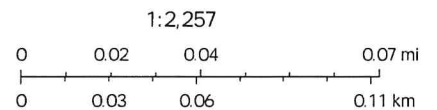
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSWSE	1	4N	17E	GOLDEN VALLEY

DNRC Map 3; CASE 40A-0195-R-2022; 40A 203600



8/4/2022, 11:24:15 AM

- | | | | |
|--|---|---|--|
| <ul style="list-style-type: none"> — Override 1 ▭ Areas ▭ Override 2 ▭ Override 3 ● Active Water Rights (Points of Diversion) ▭ GROUNDWATER ▭ Cadastral Parcels ▭ DNRC Basins | <ul style="list-style-type: none"> — NHD Flowlines ▭ PLSS Second Division ▭ Aliquot Part ▭ Remainder Aliquot Part ▭ Government Lot ▭ Unnumbered Lot ▭ PLSS First Division ▭ Section | <ul style="list-style-type: none"> Protracted Block PLSS Township PLSS Meandered Water PLSS Special Survey ● PLSS Point ▭ 1990s Aerial Photos ▭ High: 238 ▭ Low: 0 | <ul style="list-style-type: none"> ▭ 2005 CIR Aerial Photos ▭ Red: Infrared ▭ Green: Red ▭ Blue: Green ▭ 2005 Aerial Photos ▭ Red: Red ▭ Green: Green ▭ Blue: Blue |
|--|---|---|--|

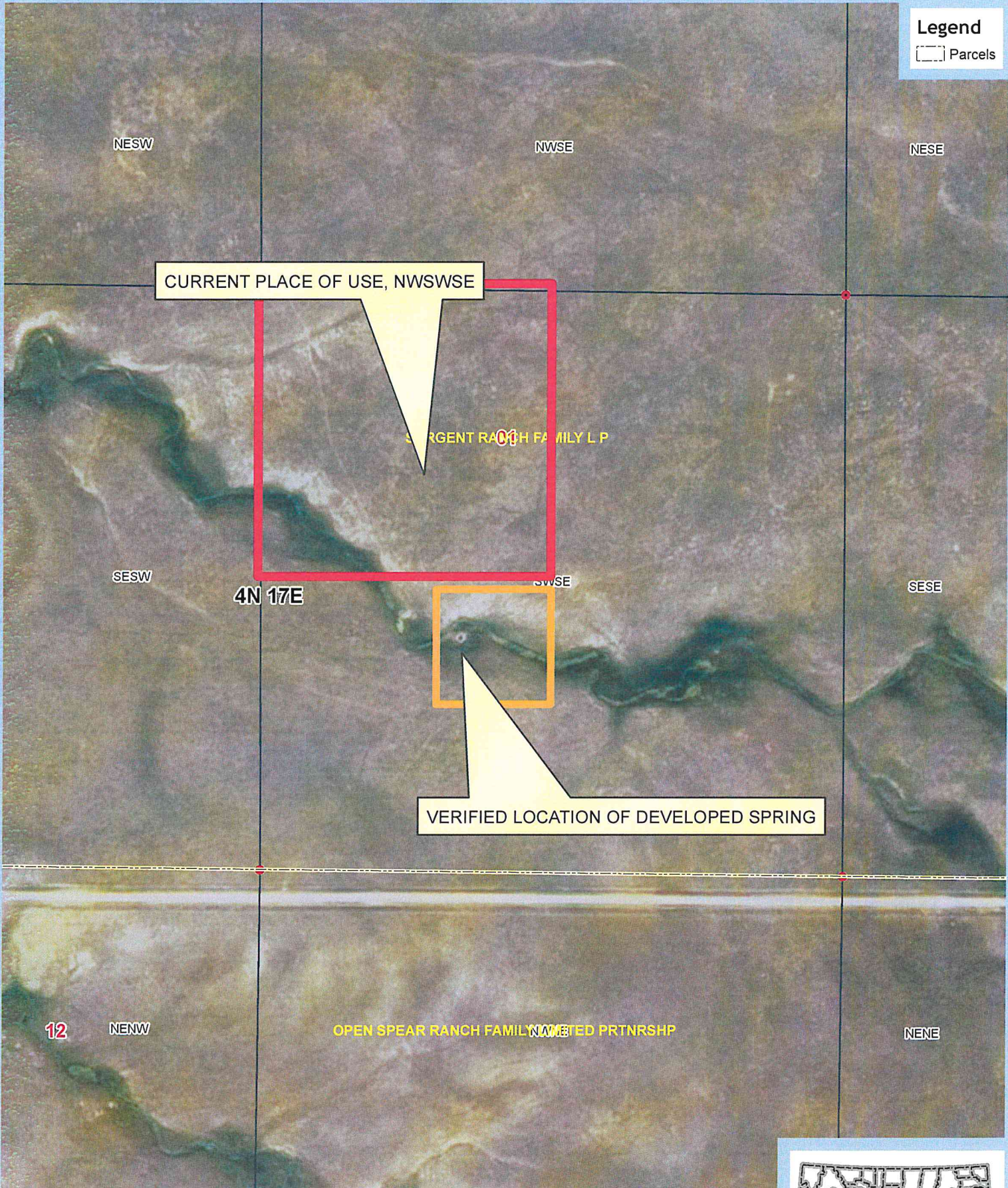


Bureau of Land Management, Esri, Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA, USDA, U.S. Geological Survey, Montana State Library

DNRC Map 4; Case 40A-0195-R-2022; 40A 203600 Aerial 2011

Legend

Parcels



1:3,500

Map Created: 8/4/2022

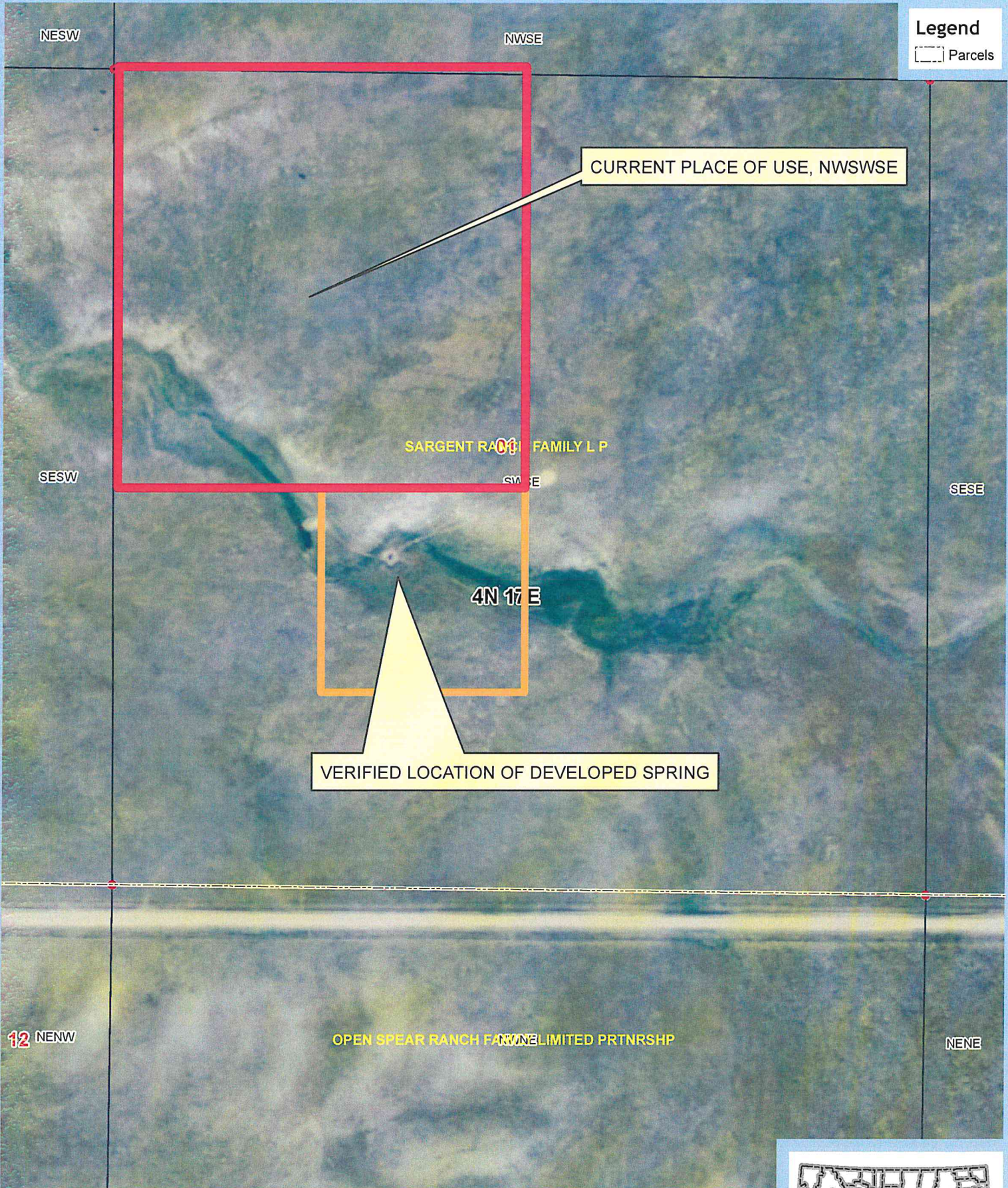
0 0.0175 0.035 0.07 Miles



Service Layer Credits: Montana State Library
Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



DNRC Map 5; Case 40A-0195-R-2022; 40A 203600 Aerial 2013



N 1:2,500
0 0.0125 0.025 0.05 Miles

Map Created: 8/4/2022



Service Layer Credits: Montana State Library
Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

