

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER
AND FORT PECK DAM - BASIN (40E)
PRELIMINARY DECREE

CLAIMANTS: Thomas S. Browning; Karen A. Browning

CASE 40E-0236-R-2022

40E 41262-00

40E 30105088

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

FINDINGS OF FACT

1. Thomas S. Browning and Karen A. Browning (the Brownings) are the record owners of claims 40E 41262-00 and 40E 30105088.
2. Claims 40E 41262-00 and 40E 30105088 were decreed with DNRC issue remarks:

Claim 40E 41626-00:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

Claim 40E 30105088:

THE CLAIMED PRIORITY DATE PRECEDES 01/01/1884 , THE EARLIEST GENERAL DATE OF SETTLEMENT WITHIN THE MISSOURI RIVER DRAINAGE.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40E DECREE ISSUED 03/07/1985.

3. The Brownings were ordered to meet with the DNRC to address issue remarks.

4. On June 13, 2022, DNRC Water Resource Specialist Pam Weinmeister filed a Memorandum stating Thomas Browning called her on May 23, 2022. Mr. Browning requested information regarding the claims, and Ms. Weinmeister sent him the information. According to Ms. Weinmeister, Mr. Browning failed to follow up with her to discuss the resolution of the issue remarks.

Ms. Weinmeister indicated that she reviewed the information in the claim files, the Supreme Court Water Right Claim Examination Rules, aerial photographs, and the McCone County WRS book as sources for her Memorandum.

5. The decreed point of diversion for the reservoir described by claim 40E 41262-00 is:

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENENW	29	20N	44E	MCCONE
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		DAM				
Reservoir:		ONSTREAM				
	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
		NENENW	29	20N	44E	MCCONE
Diversion to Reservoir: DIVERSION # 1						

Daniel Hinnaland originally claimed the point of diversion as the NWNWNE of Section 29, T20N, R44E, McCone County, and the point of diversion was changed during the 1984 examination of the claim. Ms. Weinmeister reported she was unable to locate a reservoir at the claimed or decreed point of diversion in the aerial photographs she reviewed. Without additional evidence, it appears claim 40E 41262-00 should be dismissed.

6. Stock claim 40E 30105088 was decreed with a July 2, 1864 priority date.

The earliest date of settlement in the area was 1884:

According to the McCone County Water Resources Survey book, the July 2, 1864 priority date predates the earliest settlement date for McCone County. In the History and Organization section of the water resources survey book it explains “Large herds of buffalo roamed the area until the early 1880’s when the buffalo hunters had taken more than a million hides. The N-N Cattle Ranch was established in McCone County in 1884” (Exhibit A Page 3).

Ms. Weinmeister reported that Thomas Browning filed a land patent for the place of use on October 17, 1941. Without additional evidence, it appears the priority date for claim 40E 30105088 should be October 17, 1941.

7. To provide Claimants Thomas S. Browning and Karen A. Browning another opportunity to address the issue remarks or agree that claim 40E 41262-00 should be dismissed and the priority date for claim 40E 30105088 should be changed to October 17, 1941, an Order Setting Filing Deadline was issued. The Order set a July 15, 2022 deadline for the Brownings to file evidence addressing the issue remarks. The Order stated:

If nothing is filed by July 15, 2022, this Master will conclude Claimants Thomas S. Browning and Karen A. Browning agree that claim 40E 41262-00 should be dismissed and the priority date for claim 40E 30105088 should be changed to claim October 17, 1941. The Claimants may also request a hearing by the deadline. (emphasis in original)

And

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

8. On July 13, 2022, the Brownings requested an extension of the deadline. On July 14, 2022, an Order Extending Filing Deadline was issued. The Order Extending used language like the language in Finding of Fact No. 7.

9. On August 9, 2022, the Brownings filed Statements for both claims in this Case indicating changes that should be made, a Motion to Amend for claim 30105088, and they attached an aerial photo and a map, as well as a May 23, 2022 letter from Ms. Weinmeister and Ms. Weinmeister’s Memorandum in the Case.

10. Along with correspondence and copies from the DNRC, the following statement was attached:

8-5-22
case # 40E-0936-R-2022
Montana Water Court;
This note is in regard to
claim 40E 41262-00 to try to
resolve the issue.
After talking to Kirk Anderson
of the BLM, we feel that the
legal description was wrong.
The original claim filed by
Danial Hinnaland read:
NW NW NE priority date
12-31-1950.
This should have been NW
NW sec 29 twp 20N Range
44E. We got a couple of
maps to show you folks.
We hope you will transfer
the water rights to us.
Thank you

A topographic map and a water resources survey aerial photo were attached. The topographic map shows a blue dot in the NWNW of Section 29. The aerial photograph shows a marking that says “small dam” in the NWNW of Section 29, Township 20 North, Range 44 East. The dam is not readily visible in the aerial photograph.

11. On August 9, 2022, the Brownings filed a Motion to Amend the priority date of claim 40E 30130588 from July 2, 1864 to December 31, 1884. Stock claim 40E 30105088 was decreed with a July 2, 1864 priority date. The earliest date of settlement in the area was 1884. The August 9, 2022 Statement from the Brownings says:

Montana Water Court;
We applied for water right claim
40 E 3010 5088 with priority
date 1864. The reason is the
railroad had that priority date
on the adjoining section (on the
creek) which we have.
But, history said the McCone
County area wasn't settled until
later. In 1884, one of the
ranches - N-N cattle ranch -
was formed. If we can't have
the 1864 date, we would like
the 1884 priority date
8-5-22 Thank you
Thomas S. Browning
Karen A Browning

It appears the Brownings based their request for an 1884 priority date off research provided to them by Ms. Weinmeister:

According to the McCone County Water Resources Survey book, the July 2, 1864 priority date predates the earliest settlement date for McCone County. In the History and Organization section of the water resources survey book it explains "Large herds of buffalo roamed the area until the early 1880's when the buffalo hunters had taken more than a million hides. The N-N Cattle Ranch was established in McCone County in 1884" (Exhibit A Page 3).

Unfortunately, the Brownings failed to provide any information showing that *their* place of use or source was put to historical beneficial use in 1884.

12. Another Order Setting Filing Deadline was issued on August 15, 2022. The Order explained that evidence is needed and the Claimants must provide that evidence. The Order set a deadline for the Brownings to address the issue remarks or agree that claim 40E 41262-00 should be dismissed and the priority date for claim 40E 30105088 should be changed to claim October 17, 1941. Language like the language referenced in Finding of Fact No. 7 was included in the Order.

13. The Brownings requested multiple extensions of the filing deadline and the extensions were granted. The extensions included language indicating that if nothing were filed by the deadline, this Water Master would conclude the Brownings agree that

claim 40E 41262-00 should be dismissed and the priority date for claim 40E 30105088 should be changed to October 17, 1941.

14. The November 18, 2022 deadline has passed and nothing was filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The remark indicating claim 40E 30105088 was not included in the March 7, 1985 decree is a notice-type remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 40E 41262-00 should be dismissed.
2. The priority date for claim 40E 30105088 should be changed to October 17, 1941, the date Thomas Browning filed a land patent for the place of use.
3. The issue remarks should be removed from claim 40E 30105088. Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Thomas S. Browning
Karen A. Browning
P.O. Box 96
Winnett, MT 59087-0096
Home 406-486-5040
Cell 406-366-0614

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E

Water Right Number: 40E 41262-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: THOMAS S BROWNING
PO BOX 96
WINNETT, MT 59087 0096

KAREN A BROWNING
PO BOX 96
WINNETT, MT 59087 0096

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: MORRIS COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E**

Water Right Number: 40E 30105088 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: THOMAS S BROWNING
PO BOX 96
WINNETT, MT 59087 0096

KAREN A BROWNING
PO BOX 96
WINNETT, MT 59087 0096

Priority Date: OCTOBER 17, 1941

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: TIMBER 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		NW	12	19N	43E	MCCONE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		W2SE	12	19N	43E	MCCONE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		E2SW	12	19N	43E	MCCONE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

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			NW	12	19N	43E	MCCONE
2			W2SE	12	19N	43E	MCCONE
3			E2SW	12	19N	43E	MCCONE

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Glasgow Water Resources Regional Office



GREG GIANFORTE
GOVERNOR

222 6TH ST SOUTH
PO BOX 1269

PHONE: (406) 228-2561

GLASGOW, MONTANA 59230-1269

MEMORANDUM

ELECTRONICALLY FILED

40E-0236-R-2022

June 13, 2022

DATE: June 8, 2022

CASE HEADING: **CASE 40E-0236-R-2022**
CLAIM: 40E 41262-00
40E 30105088

Montana Water Court

TO: Anika M Stern, Senior Water Master
Montana Water Court

FROM: Pam Weinmeister, Water Resources Specialist
Glasgow Water Resources Office

CLAIMANT(S): Thomas S. Browning
Karen A. Browning

INTRODUCTION:

Pursuant to the April 25, 2022 Order from the Montana Water Court, Thomas S. Browning and Karen A. Browning were ordered to confer with the Glasgow Regional Office of the Department of Natural Resources & Conservation (DNRC) regarding the reservoir issue remark on claim 40E 41262-00 and the priority date issue on 40E 30105088. They were given until May 9, 2022 to contact the Glasgow Regional Office.

MATERIALS REVIEWED

Information in the claim file, Supreme Court Claim Examination rules, May 23, 2022 phone call with Thomas Browning, Water Resources Survey photo AZN-8R-102 dated 10/3/1956, USDI Aerial photo 179-132 dated 9/17/1979, Earth Explorer photo 1 – 71 GSVDAS (AR1VDAS0001071) dated 8/11/1972, and McCone County Water Resources Survey book served as the primary data sources for this memorandum.

DISCUSSION 40E 41262-00

This is a stock claim for a reservoir located on Morris Coulee. The decreed point of diversion is NENENW Sec. 29 Twp. 20N Rge. 44E McCone County.

On May 23, 2022, Thomas Browning contacted the Glasgow Regional Office to discuss the following issue remark.

R100 EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED
WITH AVAILABLE DATA.

During the conversation, Mr. Browning requested information regarding the water right. The following copies were sent to Mr. Browning

- the original claim file
- decree abstract
- the 1956 Water Resource Survey photo
- the 1979 USDA Aerial photo

As of June 8, 2022, Mr. Browning has not responded to discuss a resolution to the issue remark.

The original claim was filed by Daniel Hinnaland. The claimed point of diversion was NWNWNE Sec. 29 Twp. 20N Rge. 44E. During the 1984 claim examination, the point of diversion was changed to NENENW Sec. 29 Twp. 20N Rge. 44E per the office map. It appears they were looking at the 1979 USDA Aerial photo. The decreed priority date is Dec. 31 1950.

According to Water Resource Survey photo AZN-8R-102 dated 10/3/1956 (Exhibit 1), no reservoir exists at the claimed or decreed legal descriptions. If a reservoir was built in 1950, it should be visible on the 1956 photo. A reservoir is visible on USDA Aerial photo 179-132 dated 9/17/1979 (Exhibit 2). However, the location of this reservoir is W2NENW Sec. 29 Twp. 20N Rge. 44E.

BNSF Railway Co. filed a stock water claim for a reservoir located in the NWNENW Sec. 29, Twp. 20N Rge. 44E. This filing was assigned water right 40E 108630-00. A priority date of Oct. 7, 1970 was claimed. The reservoir visible on USDA Aerial photo 179-132 (Exhibit 2) is the reservoir for water right 40E 108630-00. This reservoir is also visible on Earth Explorer photo 1 – 71 GS VDAS (AR1VDAS00010071) dated 8/11/1972 (Exhibit 3A). Included is the Earth Explore photo (Exhibit 3B) zoomed in reflecting the approximate location of Sec. 29 Twp. 20N Rge. 44E. The claimed priority of Oct. 7, 1970 for water right 40E 108630-00 appears to be accurate.

There is only one visible reservoir located in Section 29 Twp. 20N Rge. 44E. It appears water right 40E 41262-00 and water right 40E 108630-00 maybe filings for the same reservoir.

Both water right 40E 41262-00 and 40E 108630-00 (Exhibit 4) are currently owned by Thomas S. & Karen A. Browning.

RECOMMENDATION:

It appears 40E 108630-00 reflects the historic information for the only visible reservoir located in Sec. 29 Twp. 20N Rge. 44E. No reservoir exists in the NENENW Sec. 29 Twp. 20N Rge. 44E as reflected on water right 40E 41262-00.

Dismissal of claim 40E 41262-00 would resolve the following issue remark.

R100 EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED
WITH AVAILABLE DATA.

DISCUSSION 40E 30105088

This is a stock claim for livestock direct from Timber Creek. The decreed points of diversion are

- NW Sec. 12 Twp. 19N Rge. 43E McCone County
- W2SE Sec. 12 Twp. 19N Rge. 43E McCone County
- E2SW Sec. 12 Twp. 19N Rge. 43E McCone County.

On May 23, 2022, Thomas Browning contacted the Glasgow Regional Office to discuss the following issue remark.

P479 THE CLAIMED PRIORITY DATE PRECEDES 01/01/1884 , THE EARLIEST GENERAL DATE OF SETTLEMENT WITHIN THE MISSOURI RIVER DRAINAGE.

During the conversation, Mr. Browning requested information regarding the water right. The following copies were sent to Mr. Browning

- the original claim file
- decree abstract
- Water Resources Survey book information
- patent deed information

As of June 8, 2022, Mr. Browning has not responded to the discuss a resolution the issue remark.

According to the McCone County Water Resources Survey book, the July 2, 1864 priority date predates the earliest settlement date for McCone County. In the History and Organization section of the water resources survey book it explains “Large herds of buffalo roamed the area until the early 1880’s when the buffalo hunters had taken more than a million hides. The N-N Cattle Ranch was established in McCone County in 1884” (Exhibit A Page 3).

Thomas Browning filed a land patent for the property described as the place of use on Oct. 17, 1941 (Exhibit B). No information is available to indicate stock didn’t drink from Timber Creek before the land patent was filed.

It appears the priority date could be as early as 1884 when the N-N Cattle Ranch was established, or it could be Oct. 17, 1941 the date the land patent was issued to Thomas Browning.

RECOMMENDATION:

Without additional information, I cannot recommend a priority date that will resolve the following issue remark.

P479 THE CLAIMED PRIORITY DATE PRECEDES 01/01/1884 , THE EARLIEST GENERAL DATE OF SETTLEMENT WITHIN THE MISSOURI RIVER DRAINAGE.

SIGNED

By Pam Weinmeister Digitally signed by Pam Weinmeister
Date: 06/10/2022 4:01 PM

Pam Weinmeister, Water Resource Specialist
406-228-2561 pweinmeister@mt.gov

REVIEWED:



Digitally signed by Todd
Netto
Date: 2022.06.10
16:45:39 -06'00'

By _____
Todd Netto, Glasgow Deputy Regional Manager

Service List via USPS Mail:

Thomas S. Browning
Karen A. Browning
PO Box 96
Winnett, MT 59087-0096

Map 51
T20N 44E
Sec-29
Mc

Case 40E-0236-R-2022
40E 41262-00

8R-101

Water Resource Survey
Exhibit

10-3-56

AZN-8R-102

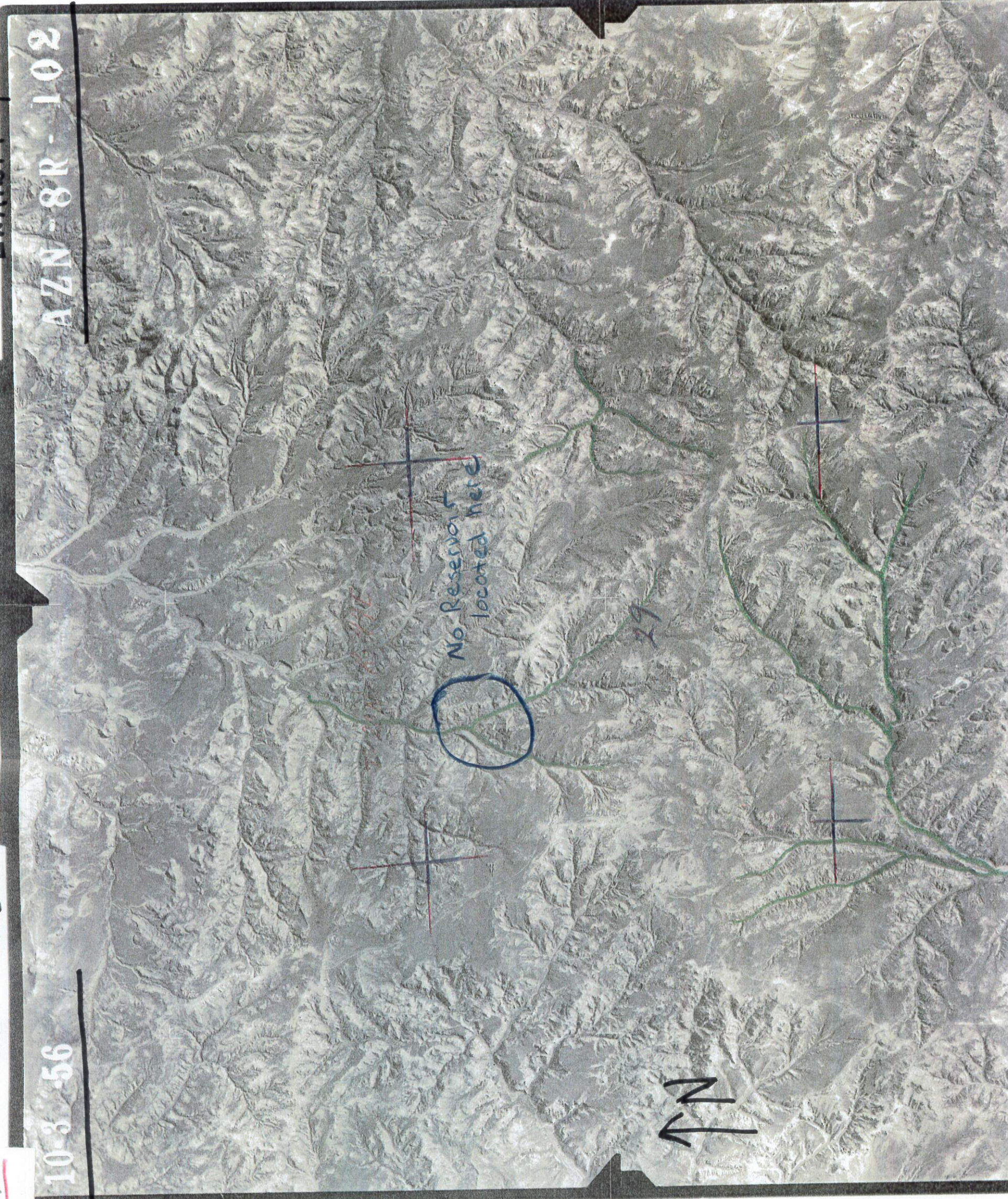
9R-24



No Reservoir
located here

29

4FF-265



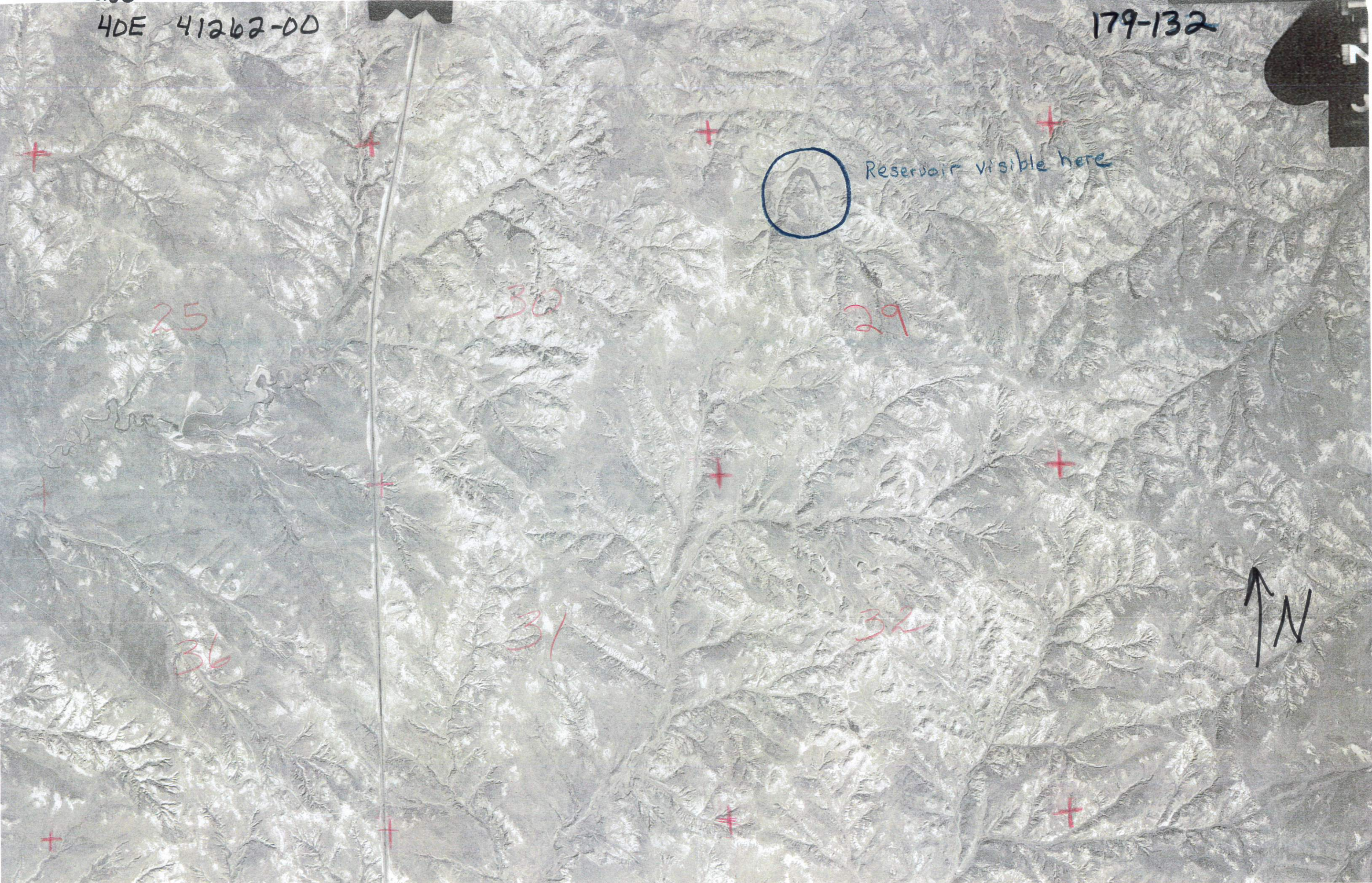
Case 4DE-0236-R-2022

Exhibit 2

Dated-9-17-1979 USDA Aerial Photo

4DE 41262-00

179-132



Reservoir visible here

25

30

29

36

31

32



T
20
N
R
44
E
T

8-11-72

Case 40E 0236 R 2022
40E 41283 00
Earth Explorer 1 76 GS VDAS
Entry ID: AXTV02500010071
Photo dated 8/11/1972

1-71

GS·VDAS

Exhibit 3a

Reservoir is visible on
this 1972 photo

29



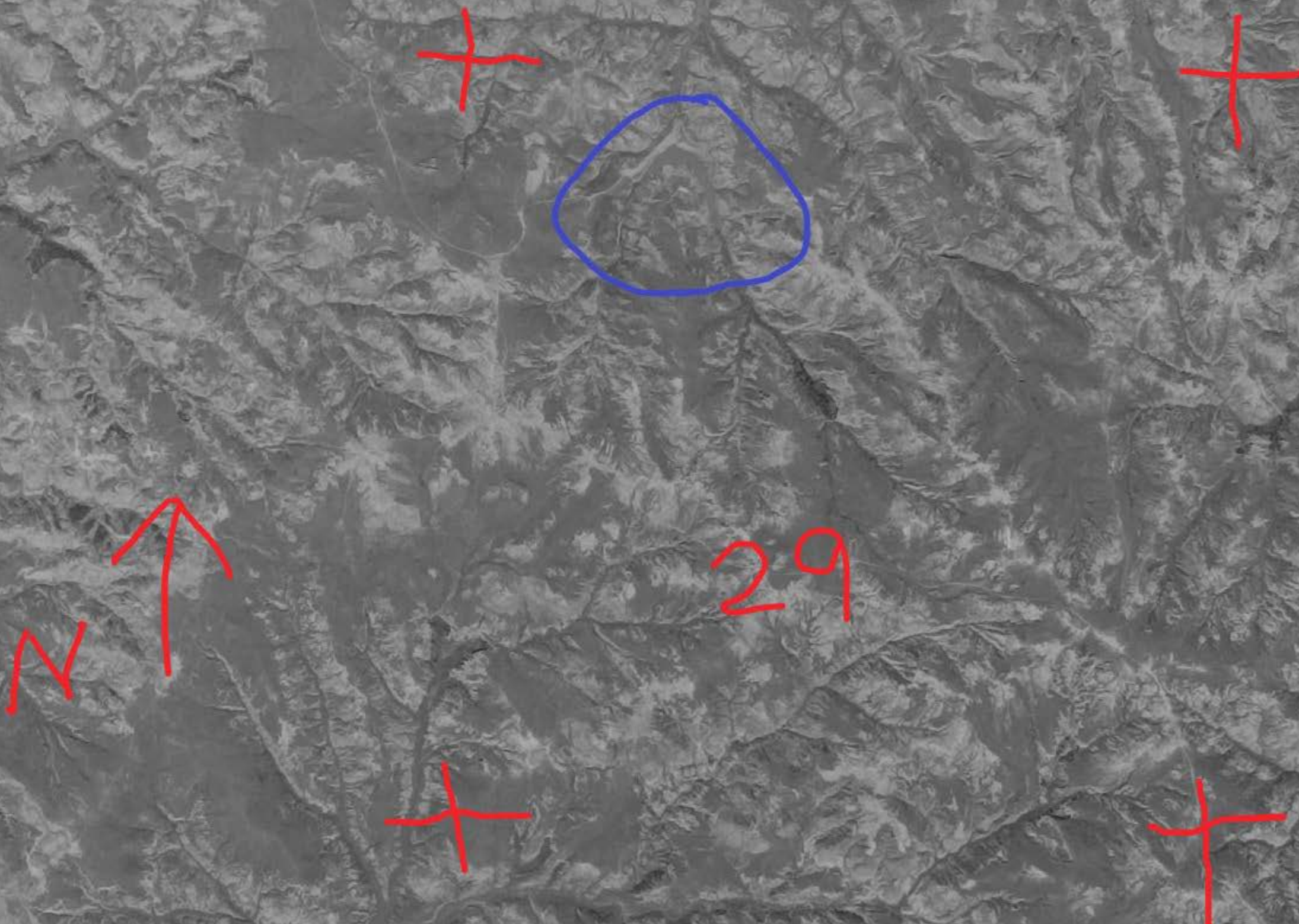
2-26

Case 40E-0236 R 2022
40E 41262 00

Earth Explorer 1 - 71 GS VDAS
Entity ID: AR1VDAS00010071
Photo Dated 8/1/1972

Exhibit 3B

Approximate location of Sec. 29 Twp. 20N Rge. 44E



**PRELIMINARY DECREE
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E
ABSTRACT OF WATER RIGHT CLAIM**

IMPORTANT NOTICE

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE MONTANA WATER COURT OR BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE PREPARATION OF THIS PRELIMINARY DECREE. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: 40E 108630-00 STATEMENT OF CLAIM

Version: 2 -- REEXAMINED

Status: ACTIVE

Owners: THOMAS S BROWNING
PO BOX 96
WINNETT, MT 59087 0096

KAREN A BROWNING
PO BOX 96
WINNETT, MT 59087 0096

Priority Date: OCTOBER 7, 1970

Type of Historical Right: USE

Purpose(use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** 10.00 AC-FT

Source Name: MORRIS COULEE

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		NWNENW	29	20N	44E	MCCONE

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNENW	29	20N	44E	MCCONE

Diversion to Reservoir: DIVERSION # 1

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			NENW	29	20N	44E	MCCONE

THE DNRC EXAMINATION OF THIS CLAIM FOUND NO SIGNIFICANT FACTS, DATA, OR ISSUES TO REPORT TO THE WATER COURT.

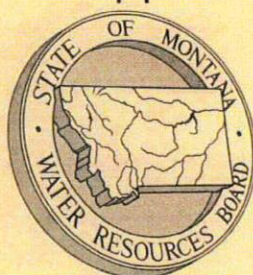
A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING SUBBASINS OR BASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC PREPARATION OF THIS PRELIMINARY DECREE AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.

Water Resources Survey

RECORDS
MANAGEMENT
WRS COPY



Part I:
WATER AND RELATED LAND
RESOURCES

and

Part II:
IRRIGATION DEVELOPMENT WITH
MAPS SHOWING IRRIGATED AREAS
IN COLORS DESIGNATING
SOURCES OF SUPPLY

*McCone
County,
Montana*

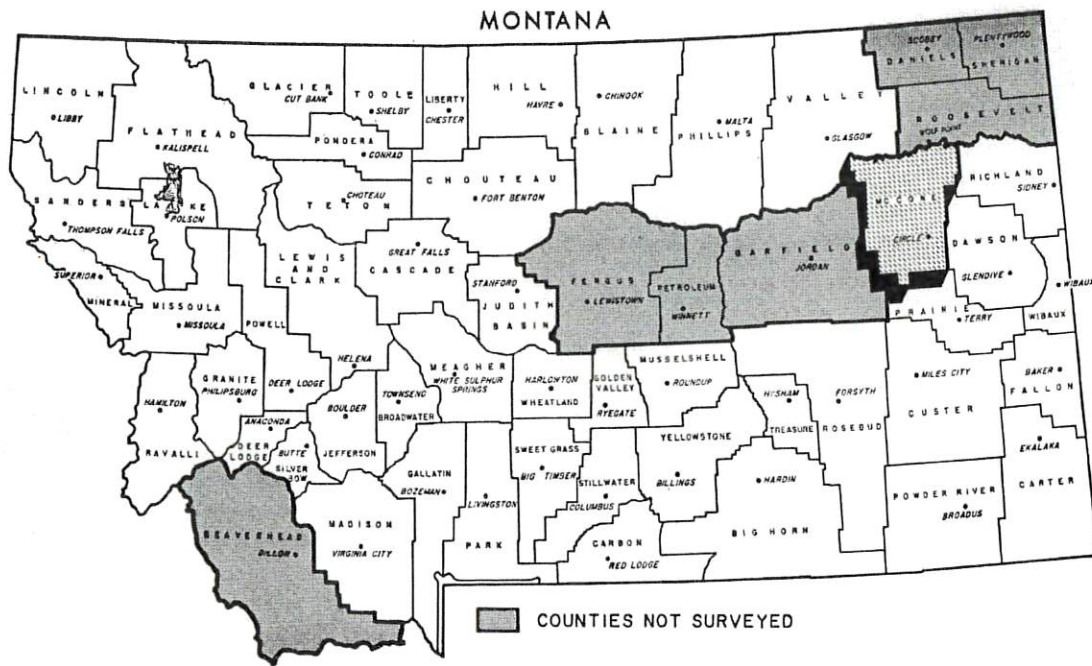
Published by
MONTANA WATER RESOURCES BOARD
Sam W. Mitchell Building
Helena, Montana 59601 — September, 1971
Telephone: 406/449-3648

WATER RESOURCES SURVEY

McCONE COUNTY, MONTANA

PART I

Water and Related Land Resources



Published by
 MONTANA WATER RESOURCES BOARD
 Sam W. Mitchell Building
 Helena, Montana 59601
 September, 1971

Page 1 of 1
88070108 304
Case 4DE-0236-R-2682

HISTORY AND ORGANIZATION

Early settlement and development in the present area of McCone County came at a much later date than in other counties in Montana. This condition existed mainly because of the rugged terrain and the white man's designation of the area as "Indian Country". All of the country between the Missouri and Yellowstone Rivers was a natural habitat for thousands of game animals, and until about 1880, the common hunting ground of all Indian tribes.

Large herds of buffalo roamed the area which is now McCone County until the early 1880's when the buffalo hunters had taken more than a million hides. This slaughter of the buffalo left the range open for the big cattle ranchers to move in with their herds.

X

One of the largest and most important ranches established in the McCone County area was the N-N. The N-N Cattle Ranch was formed by the Neidringhaus brothers of St. Louis, Missouri, in 1884. The N-N was also known as Home Land & Cattle Company.

In 1884, the Neidringhaus brothers took over, on a debt, 6,000 head of cattle and purchased the H3 horse ranch from Hunter and Evans. The H3 ranch was located just over the southwest line of what is now McCone County, and was the first headquarters ranch of N-N in Montana. In the fall of 1884 the N-N trailed their cattle west to the vicinity of Deer Lodge; however, the following winters of 1885-86 and 1886-87 were disastrous to the herd and the N-N suffered heavy losses. These bad winters and heavy losses did not discourage the Neidringhaus brothers and in 1887 they established a new headquarters ranch on Prairie Elk Creek near its junction with the Missouri.

The largest part of the N-N herd ranged between the Yellowstone and Missouri Rivers, with some ranging as far south as the Musselshell River. The greatest number of cattle the N-N ran at one time was 50,000 head and during a peak working season they employed as many as 150 cowboys. Many of these cowboys later became prominent stockmen and farmers in McCone County.

In 1902 the N-N was sold to the Pioneer Land & Cattle Company. The brand used by this company was the CK after its president, Conrad Kohrs, one of Montana's most prominent early citizens.

The Pioneer Land & Cattle Company operated on a large scale until it closed out in 1915. As many as 45,000 cattle were run by the CK in one season. The CK was one of the last large ranch operators to bring in Longhorn cattle from Mexico, with 7,000 head shipped from there to their ranch in 1911.

One other ranch should be noted in the livestock history of McCone County, the Circle (O) Ranch. The Circle (O) Ranch was established in 1884 by Mayberry and Carter, who continued operations until 1900 when the ranch was sold to Cross and Quigley. Cross and Quigley established a saloon and stopping station at the Circle (O) Ranch, which in later years brought about the location of the town of Circle.

Sheep began appearing on the ranges of McCone County as early as 1898. Some of the first sheepmen in the area were Dan Lavalley and Peter Dreyer, who located in the western part of the county. Probably the largest sheep ranch operation in the area was run by Tom Cotter who ran as many as 20,000 head.

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By the year 1915, the operations of big cattle ranches were on the decline; in fact many of them had already sold out. The main reasons why the big cattle outfits closed out at this time were the incoming homesteaders and sheepmen who forced the cattle ranchers out by running sheep on the range, fencing the land and planting crops.

The homesteaders were of every race, religion and class, and all had one basic goal—to get rich as quickly as possible. However, the homesteaders faced many a hardship and if it hadn't been for an occasional stray beef and the abundant supply of lignite coal, many of them would have never survived. The drouth years of 1917 to 1923 forced many homesteaders to relinquish their land which reverted to the county for taxes. Those who stayed survived by hard work and some luck, and eventually made a success of their farm operations.

Today, agriculture is the principal industry of McCone County. The farms are mostly of the dryland type, although there are some diversified farm operators in the central part of the county. The largest percentage of agricultural land is the rangeland for the livestock operations, while the cultivated farm areas produce primarily wheat, oats, barley and alfalfa hay. There is a small amount of irrigation in the county, most of which is located in the northern part along the Missouri River. The livestock raised are mainly cattle and sheep, with some hogs for local consumption.

During the drouth periods (1917-1923) and at a later period (1930-1940), diversified farming came more into prominence along with all phases of soil conservation practices and better farming methods initiated into farm programs.

What could become a new industry in the area is the drilling of oil which so far has been confined to the eastern part of the county.

Over forty miles of Fort Peck Lake borders the western part of McCone County, with numerous recreational sites along its shore line constructed for sportsmen and outdoor enthusiasts. The Fort Peck power dam has made electric power available to rural areas through the R.E.A.

McCone County is a part of the Great Plains Region of the United States that extends into Montana. The elevation of this plains country ranges from 2,000 feet in the eastern part to a height of nearly 4,000 feet in the western foothills of Montana. In McCone County this vast expanse of rolling lands is broken by wide isolated valleys and some isolated hills. The drainage area consists of the headwaters of the Redwater River and its tributaries in the southern and eastern part, where the river flows north and empties into the Missouri River near the McCone-Richland County boundary. Some of the numerous small tributaries to the Redwater River are: Tussler, Horse, Duck, Cow, Wolf, Sheep and Nickwall Creeks, to name a few. Two other streams in the central part of the county that flow north and empty into the Missouri River are Prairie and Sand Creeks. The western part consists of the Big Dry with its tributaries of Timber, Nelson, McGuire, Rock, Bear and Milk River Coulee. Since Fort Peck dam was completed, the Big Dry Creek channel in McCone County is now inundated by backwaters of the Fort Peck Reservoir. The Missouri River forms the northern boundary of McCone County.

McCone County was created on February 19, 1919, from part of Prairie, Richland and Dawson Counties. It was named after Senator George McCone of Dawson County, who exerted considerable influence during the legislative session favoring passage of the bill creating the new county.

The main town in McCone County is Circle, the county seat, with a population of about 1,100 people. It was named after the Circle (O) Ranch, one of the pioneer ranches of the early days located near the townsite. Other small towns and rural communities in the county are: Brockway, population about 200; Presserville, Sand Creek and Vida. Presserville is on State Highway No. 13, with Sand Creek and Vida located west and east of Presserville, respectively, on secondary roads.

Transportation facilities in McCone County are limited to three state highways and several secondary county roads. State Highway 200S begins at Glendive and connects with State Highway 200 at Circle. From Sidney, State Highway 200 passes through Circle to Jordan and west to Lewistown. Beginning at Circle, State Highway 13 follows a course northward connecting U. S. No. 2 at Wolf Point. The nearest airport facilities are at Sidney and Glendive, although many "flying" farmers and ranchers have their own small planes in McCone County.

CLIMATE

With the Missouri River bordering to the north and plains in other directions, McCone County, like the surrounding counties, is relatively flat. The average elevation is under 3,000 feet.

Being located east of the Continental Divide, the climate can be classified as a Continental type; that is, warm summers, cold winters, and sparse precipitation. However, 50 percent of the precipitation falls during the critical growing season, May through July. Temperature extremes of -57° and 110° have been observed.

The three most important weather producers during the year are arctic invasions during the winter, an occasional active low pressure during the spring, and thunderstorms during the summer. Without protection of mountain barriers, arctic outbreaks accompanied by strong winds occasionally cause blizzards with considerable drifting snow and below zero weather is common. True chinook conditions occur much less frequently than near the Continental Divide. Snowfall during the year ranges 25-35 inches. During the spring cold rains and snow can prove damaging to livestock.

By summer, precipitation gradually changes into showery nature, with thundershowers occurring about every four days. Occasionally these thundershowers are strong enough to produce damaging winds and hail. Tornadoes, though rare, have been observed.

The lower elevation of the County causes a slightly longer growing season than areas of western Montana. The first frost occurs from middle to end of September with the last frost near end of May. However, frosts have been observed during June through August

Exhibit B
4DE 30105008

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Land Patent Details

Accession Nr: 1112196 Document Type: Serial Patent State: Montana Issue Date: 10/17/1941 Cancelled: No

Names On Document

<input checked="" type="checkbox"/> <u>BROWNING, THOMAS</u>	
Military Rank:	---

Miscellaneous Information

Land Office:	Miles City
US Reservations:	Yes
Mineral Reservations:	No
Tribe:	---
Militia:	---
State In Favor Of:	---
Authority:	April 14, 1914: Supplemental Non-Coal Patent (38 Stat. 335)

Document Numbers

Document Nr:	018694
Misc. Doc. Nr:	---
BLM Serial Nr:	MTMC 0018694 01
Indian Allot. Nr:	---

Survey Information

Total Acres:	320.00
Survey Date:	---
Geographic Name:	---
Metes/Bounds:	No

Land Descriptions

State	Meridian	Twp - Rng	Aliquots	Section	Survey #	County
MT	Montana PM	019N - 043E	NW¼	12		Mccone *
MT	Montana PM	019N - 043E	E½SW¼	12		Mccone *
MT	Montana PM	019N - 043E	W½SE¼	12		Mccone *