

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 411 166913-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT

Version Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF RECLAMATION)
PO BOX 30137
BILLINGS, MT 59107-0137

Priority Date: DECEMBER 1, 1970

Enforceable Priority Date: DECEMBER 1, 1970

Type of Historical Right: USE

Purpose (use): FISH AND WILDLIFE
THIS WATER RIGHT IS INCIDENTALLY USED FOR DUST ABATEMENT.

Maximum Flow Rate: 40.00 CFS

Maximum Volume: 8,223.00 AC-FT

Source Name: MISSOURI RIVER

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	19	7N	2E	BROADWATER

Period of Diversion: MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Ditch Name: WESTSIDE CANAL

DITCH NAME: WESTSIDE CANAL

Reservoir: OFF STREAM **Reservoir Name** POND NO.4

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	N2NENE	11	7N	1E	BROADWATER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 15.00 FEET

Surface Area: 881.00 ACRES

Current Capacity: 3,524.00 ACRE-FEET

Original Capacity: 3,524.00 ACRE-FEET

THE DAM FOR POND NO. 4 IS LOCATED IN PARTS OF SECTIONS 11, 12 AND 13 TWP 07N RGE 01E AND SECTIONS 7 AND 8 TWP 07N RGE 02E BROADWATER COUNTY.

Period of Use: MARCH 1 to NOVEMBER 30

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			SWSWSW	11	7N	1E	BROADWATER
2				12	7N	1E	BROADWATER
3				13	7N	1E	BROADWATER
4				7	7N	2E	BROADWATER
5				18	7N	2E	BROADWATER

THE PLACE OF USE IS THE SURFACE AREA OF POND NO. 4.

Remarks:

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

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

40921-00 166913-00

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40921-00 166911-00 166912-00 166913-00 166914-00

Remarks:

THIS CLAIM AND CLAIM NO. W040921-00 MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS THAT ONLY ONE WATER RIGHT IS INVOLVED.

WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

THE CLAIMED PRIORITY DATE IS QUESTIONABLE. IT APPEARS THE PRIORITY DATE SHOULD BE THE DATE THE IMPOUNDMENT WAS FIRST PUT TO USE. CONSTRUCTION OF THE WESTSIDE CANAL DID NOT COMMENCE UNTIL AFTER OCTOBER OF 1972. SEE CLAIM FILE FOR A CONSTRUCTION CHRONOLOGY.

THERE IS A QUESTION AS TO THE VALIDITY OF THIS CLAIMED RIGHT. IN THE MATTER OF THE DEARBORN DRAINAGE AREA, 234 MONT. 343 (1988) (THE BEAN LAKE CASE) THE MONTANA SUPREME COURT STATED: "IT IS CLEAR THEREFORE THAT UNDER MONTANA LAW BEFORE 1973, NO APPROPRIATION RIGHT WAS RECOGNIZED FOR RECREATION, FISH AND WILDLIFE, EXCEPT THROUGH A MURPHY RIGHT STATUTE."

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THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

THE USE OF THIS WATER APPEARS TO BE LARGELY NON-CONSUMPTIVE.