

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: 76H 214980-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Version Status: ACTIVE
Late Claim: B

Owners: JOSEPH E LUBERTAZZI
1650 SMOKETREE AVE S, UNIT 157
LAKE HAVASU CITY, AZ 86403

THERESA M LUBERTAZZI
1650 SMOKETREE AVE S
UNIT #157
LAKE HAVASU CITY, AZ 86403

Priority Date: DECEMBER 31, 1969

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 02/28/96 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): FISH AND WILDLIFE

Maximum Flow Rate: 136.00 GPM

Maximum Volume: 219.00 AC-FT

Source Name: UNNAMED TRIBUTARY OF NEZ PERCE FORK

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		SENESE	26	1N	22W	RAVALLI

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Reservoir: OFF STREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSW	25	1N	22W	RAVALLI

Diversion to Reservoir: DIVERSION # 1

Surface Area: 2.50 ACRES

Current Capacity: 18.00 ACRE-FEET

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			SWSW	25	1N	22W	RAVALLI

Geocodes/Valid: 13-0968-25-1-01-01-0000 - Y

Remarks:

THE VOLUME WAS AMENDED BY THE CLAIMANT ON 04/24/96.

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

WATER RIGHT NO. ASSIGNED TO MISSOULA ON 02/28/96.

OWNERSHIP UPDATE RECEIVED

OWNERSHIP UPDATE TYPE DOR # 92834 RECEIVED 05/04/2009.

CLAIM WAS NOT INCLUDED IN THE BASIN 76HE TEMPORARY PRELIMINARY DECREE ISSUED 05/25/94.
CLAIM FILED LATE 02/28/96 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

Remarks:

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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