

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

CLAIMANT: Horpestad Ranch Inc.

CASE 40A-0521-R-2021
40A 211554-00

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, conclusion 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

Claim 40A 211554-00 appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claim is owned by

Horpestad Ranch Inc. The claim did not receive objections, counterobjections, or notices of intent to appear, but did receive issue remarks during the DNRC's reexamination. 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

1. Claim 40A 211554-00 is a flood irrigation from Swimming Woman Creek with four points of diversion.

2. The claim received the following substantive issue remarks:

POINT OF DIVERSION NOS. 1 AND 2 APPEAR TO BE INCORRECT. THE LOCATION OF THE HEADGATES CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

POINT OF DIVERSION NO. 4 APPEARS TO BE INCORRECT. THE HEADGATE MAY BE IN GOV'T LOT 1 IN THE NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO. THE GOLDEN VALLEY WATER RESOURCES SURVEY SUGGESTS THE INITIAL DIVERSION FROM SWIMMING WOMAN CREEK MAY BE IN THE AREA OF GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO.

THERE APPEARS TO BE A SECONDARY DIVERSION FOR POINT OF DIVERSION NO. 4. IT APPEARS THE SECONDARY DIVERSION IS LOCATED ON AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK AND IT IS LOCATED IN THE NESWNE SEC 8 TWP 9N RGE 19E GOLDEN VALLEY CO. IF SO, THEN A CONVEYANCE INFORMATION REMARK SHOULD BE ADDED.

THE CLAIMED SOURCE AND/OR POINT OF DIVERSION MAY BE QUESTIONABLE/INCOMPLETE. POINT OF DIVERSION NO. 4 IS INCONSISTENT WITH THE CLAIMED SOURCE. THE CLAIMED SOURCE IS SWIMMING WOMAN CREEK BUT DIVERSION NO. 4 IS DESCRIBED TO BE ON AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK.

3. Based on the nature of the issue remarks, the Court ordered Claimant to work with the DNRC to resolve the issue remarks.

4. On October 7, 2021, Water Resources Specialist Matt Schmidt filed his *Memorandum*. In addition to reviewing aerial photographs, the claim file, Water Resources Survey notes, and topographic maps, Mr. Schmidt conducted a field investigation before compiling his *Memorandum* which included recommendations for resolving the issue remarks. Mr. Schmidt's *Memorandum* is extensive and covers the entire, complicated history of this claim. The *Memorandum* is attached to the end of this Report.

5. Three of the issue remarks address Point of Diversion No. 4. Based on the information in the *Memorandum*, Point of Diversion No. 4 should be removed from the claim because it does not divert water from the claimed source – Swimming Woman Creek. Instead, Point of Diversion No. 4 describes a transfer point where water diverted from Swimming Woman Creek in Govt Lot 2 in the NWNWNE of Section 4, T9N, R19E, Golden Valley County passes through on its way to the place of use in Section 8.

6. Instead of a point of diversion, the information captured by Point of Diversion No. 4 would be more accurate as the following information remark:

WATER DIVERTED UNDER THIS CLAIM FROM SWIMMING WOMAN CREEK IN GOVT LOT 2, NWNWNE OF SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO. PASSES THROUGH A HEADGATE AT GOVT LOT 1, NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO. ALONG WITH WATERS DIVERTED FROM LABELLE CREEK UNDER CLAIM 40A 17190-00.

7. An additional information remark is needed to fully capture how the claimed water from Swimming Woman Creek moves to the place of use. Specifically, an unnamed tributary of Swimming Woman Creek is used as a natural carrier to convey water diverted in Govt Lot 2 in the NWNWNE of Section 4, T9N, R19E, Golden Valley County to the place of use in Section 8. Mr. Schmidt proposed the following information remark:

WATER DIVERTED FROM SWIMMING WOMAN CREEK IS CONVEYED TO AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK IN THE NESWNE SEC 8 TWP 9N RGE 19E WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

8. Point of Diversion Nos. 1 and 2 share a diversion from Swimming Woman Creek. The initial diversion from Swimming Woman Creek is reflected by Point of Diversion ID No. 1 (SWSESW of Section 4, T9N, R19E). Point of Diversion ID No. 1 diverts water into Greer Flood Ditch.

9. Point of Diversion ID No. 2 (diversion to Hahn Flood Ditch) is a secondary diversion from Point of Diversion ID No. 1. Therefore, it should be included in an information remark that states:

POINT OF DIVESION ID NO. 1 (GREER DITCH) INCLUDES A SECONDARY DIVERSION AT THE NENWNW OF SEC 9 TWP 9N RGE 19E, GOLDEN VALLEY CO. (HAHN FLOOD DITCH).

10. Claim 40A 211554-00 also received the following notice-type issue remarks:

CLAIM WAS NOT INCLUDED IN THE BASIN 40A TEMPORARY PRELIMINARY DECREE ISSUED 05/07/1985.

ON NOVEMBER 6, 1998 A STIPULATION IN CASE 40A-2L WAS FILED BY THE PARTIES STATING CLAIM 40A 210819-00 WOULD BE WITHDRAWN UPON THE WATER COURT'S ADOPTION OF CLAIMS 40A 211552-00, 40A 211553-00, 40A 211554-00, AND 40A 211555-00. THESE LATE CLAIMS DID NOT APPEAR IN THE 40A TEMPORARY PRELIMINARY DECREE. OBJECTIONS TO THESE CLAIMS AND/OR THE STIPULATION WILL BE HEARD AFTER NOTICE ON THE NEXT OBJECTION LIST. A COPY OF THE STIPULATION HAS BEEN ADDED TO THE CLAIM FILE FOR REFERENCE.

CLAIM FILED LATE 11/04/1985 . 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.

11. The remark stating the claim number was not included in the Basin 40A Temporary Preliminary Decree served its notice purpose and should be removed.

12. The remark stating claim 40A 211554-00 is a late claim also served its notice purpose and should be removed. The claim will still be identified as a late claim via an information remark under the priority date on the claim abstract.

13. The remark regarding the stipulation in Case 40A-2L is resolved. Claims 40A 211552-00, 40A 211553-0, and 40A 211555-00 are addressed in Case 40A-0520-R-2021.

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. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

9. 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.

10. Information remarks are “[r]emarks that limit, define, or explain unique aspects of a claim....” Rule 2(a)(57), W.R.C.E.R.

[M]any water rights cannot be accurately described by elements alone, and are therefore supplemented with information remarks.... Information remarks provide facts regarding prior use of a right that are critical to its administration in accord with historical use. ...[I]nformation remarks are routinely used by the Water Court to supplement abstracts.

76G-A8, Order Adopting Master's Report in Part, October 29, 2014.

CONCLUSIONS OF LAW

1. The issue remarks regarding Point of Diversion No. 4 overcome the prima facie status of the claim. Point of Diversion No. 4 should be removed from the claim and replaced with the information remarks described in Finding of Fact Nos. 6 and 7. These modifications resolve the issue remarks regarding Point of Diversion No. 4, and the remarks should be removed from the claim.

2. The issue remark regarding Point of Diversion Nos. 1 and 2 overcome the prima facie status of the claim. Point of Diversion No. 1 should be modified to the SWSESW of Section 4, T9N, R19E and Point of Diversion No. 2 should be removed and replaced with the information remark described in Finding of Fact No. 9.

3. The notice-type issue remarks served their notice purposes and do not raise unresolved issues that require further process. The remarks should be removed from the claim.

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 the water right claim reflecting the recommended changes is attached to this Report and a copy of the map depicting the corrected points of diversion has been placed in the claim file.

Melissa Lockman
Senior Water Master

Service via USPS Mail

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DEPARTMENT OF NATURAL RESOURCES
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Lewistown Water Resources Regional Office



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40A-0521-R-2021

October 7, 2021

MEMORANDUM

DATE: October 5, 2021

CASE: 40A-0521-R-2021 (Claim 40A 211554-00)

Montana Water Court

TO: Melissa Lockman
Water Master

FROM: Matt Schmidt
Water Resources Specialist

CLAIMANT(S): Horpestad Ranch Inc.

INTRODUCTION:

The April 23, 2021 Order from the Montana Water Court required the Claimant to visit with DNRC to discuss resolution of the following issue remarks on the above-listed claim. It also requested the DNRC to provide a memorandum of recommendations on the results.

MATERIALS REVIEWED:

Abstracts, scanned claim file, water resources survey notes, aerial photos, and topographic maps. A field investigation was conducted on August 4, 2021.

Claim No. 40A 211554-00, 1925, Swimming Woman Creek

Issue Remarks:

PDIS:

POINT OF DIVERSION NOS. 1 AND 2 APPEAR TO BE INCORRECT. THE LOCATION OF THE HEADGATES CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

PDIS:

POINT OF DIVERSION NO. 4 APPEARS TO BE INCORRECT. THE HEADGATE MAY BE IN GOV'T LOT 1 IN THE NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO. THE GOLDEN VALLEY WATER RESOURCES SURVEY SUGGESTS THE INITIAL DIVERSION FROM SWIMMING WOMAN CREEK MAY BE IN THE AREA OF GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO.

PDIS:

THERE APPEARS TO BE A SECONDARY DIVERSION FOR POINT OF DIVERSION NO. 4. IT APPEARS THE SECONDARY DIVERSION IS LOCATED ON AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK AND IT IS LOCATED IN THE NESWNE SEC 8 TWP 9N RGE 19E GOLDEN VALLEY CO. IF SO, THEN A CONVEYANCE INFORMATION REMARK SHOULD BE ADDED.

SNIS:

THE CLAIMED SOURCE AND/OR POINT OF DIVERSION MAY BE QUESTIONABLE/INCOMPLETE. POINT OF DIVERSION NO. 4 IS INCONSISTENT WITH THE CLAIMED SOURCE. THE CLAIMED SOURCE IS SWIMMING WOMAN CREEK BUT DIVERSION NO. 4 IS DESCRIBED TO BE ON AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK.

Discussion:

Statement of Claim 40A 211554-00 was filed for adjudication purposes on November 4, 1985. It claims irrigation rights to Swimming Woman Creek for irrigation of 266 acres within Sections 4, 8 and 9, T9N, R19E, with points of diversion in sections 4, 5 and 9, T8N, R25E.

On February 9, 2016, during reexamination, DNRC personnel added the above-listed PDIS and SNIS issue remarks as part of the Point of Diversion review. This review involved comparing claimed PODs to claimed POUs and observing the conveyances involved using aerial photos, topo maps, and water resources survey maps and notes. The claim has a long history of proposed corrections or amendments to the Point of Diversion, some of which were implemented and some of which were not.

Four points of diversion are listed on the claim. They were claimed as follows:

POD 1: NENWNW	Sec. 9 9N 19E
POD 2: SENENE	Sec. 5 9N 19E
POD 3: NENWSW	Sec. 4 9N 19E
POD 4: NWNWSW	Sec. 4 9N 19E

On or about September 27, 2004 the claim was investigated by DNRC staff and the following corrections were proposed to the POD legal land descriptions. These corrections first appear on a post decree abstract of the claim dated August 13, 2008, and match what is reflected on modern abstracts.

POD 1: SENENE	Sec. 5 9N 19E
POD 2: NENWSW	Sec. 4 9N 19E
POD 3: NENWSW	Sec. 4 9N 19E
POD 4: SESWSW	Sec. 4 9N 19E

However, even though these preceding corrections were eventually implemented, on about December 3, 2007 a letter was sent from the Montana Water Court to the Claimant saying that "Point of Diversion Claimed SENESE Sec. 5 9N 19E [with] Source Swimming Woman Creek should be SENESE Sec. 4 9N 19E [with] Ditch La Belle Creek". This proposed modification is confusing, because the former location was not claimed or amended to, and the latter location is about ¾ mile away from either Swimming Woman Creek or LaBelle Creek. It may be that the latter location was erroneously in section 4, and meant for section 5, both in 9N 19E. Also, LaBelle Creek is a source, not a ditch. In any case, this proposed correction appears to have never been implemented.

On or about November 10, 2008 a Master's Report was filed, and subsequently adopted on December 4, 2008 and the following corrections were proposed to the POD legal land descriptions of the claim.

POD 1: SENESE	Sec. 5 9N 19E
POD 2: NENWSW	Sec. 4 9N 19E
POD 3: SWSESW	Sec. 4 9N 19E
POD 4: SESWSW	Sec. 4 9N 19E

These proposed modifications appear to be based on an affidavit filed by Fred Horpestad with the Montana Water Court on Dec. 31, 2007 after working with adjudication staff and our aerial photo resources at the DNRC Lewistown Regional Office on December 17, 2007. However, they do not appear in their entirety on any subsequent abstract in the claim file. It may be that POD #3 was entered into the database erroneously. I suspect this may be the case because on current abstracts, POD 2 and 3 legal land descriptions are identical, whereas the intent of POD 3 may have been to enter it as described on November 10, 2008. The correction to this erroneous POD also matches a recommendation I will make to POD 1 (as reflected above, or as POD 4 on current abstracts) later in this memo.

Three of the four Issue remarks on this claim have to do with POD 4 (as reflected on current abstracts). In short, POD 4 should be removed from the claim because it is not on the claimed source of Swimming Woman Creek and does not divert water from said claimed source. Rather, this point acts as a transfer point where waters already diverted from Swimming Woman Creek at GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO simply pass through on their way to Places of Use in section 8. This diversion is located on UT Swimming Woman Creek AKA LaBelle Creek. Waters from LaBelle Creek are diverted at this point based on claim 40A 17190-00. Essentially, POD 4 should be replaced with an information remark that says something along the lines of: "WATERS DIVERTED FROM SOURCE SWIMMING WOMAN CREEK AT GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO PASS THROUGH HEADGATE AT GOV'T LOT 1 IN THE NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO ALONG WITH WATERS DIVERTED FROM LABELLE CREEK BASED ON CLAIM 40A 17190-00"

A Commissioner Report in the claim file dated April 19, 2007 contains a note for the claim stating "Not Swimming Woman Creek, POD is off LaBelle Creek into "flood ditch". The heading on the document further specifies said POD at SENESE Sec. 4 9N 19E, Flood Ditch (Sec. 4). This is an important clue

because it establishes POD 4 (as reflected on current reexamination abstracts) as an active and accurate diversion location even though the comment reflects the wrong section (It should be section 5, not section 4, because there are no diversions off LaBelle Creek in Section 4 on any of the resources reviewed) and also that this diversion should be reflected in the aforementioned suggested information remark rather than in the official list of PODs of this claim, because it is not on the source of this claim.

The current reexamination abstracts reflect the correct section of this "transfer point" diversion, but the accuracy of the legal land description could be further improved by taking into account the text of the following PDIS issue remark:

PDIS:

POINT OF DIVERSION NO. 4 APPEARS TO BE INCORRECT. THE HEADGATE MAY BE IN GOV'T LOT 1 IN THE NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO. THE GOLDEN VALLEY WATER RESOURCES SURVEY SUGGESTS THE INITIAL DIVERSION FROM SWIMMING WOMAN CREEK MAY BE IN THE AREA OF GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO.

The text of this remark appears to be accurate when compared to the 1949 Water Resources Survey map (See DNRC Map 1). Claimant Fred Horpestad confirmed that the ditch originating in the GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E and terminating in the GOV'T LOT 1 IN THE SENENE SEC 5 TWP 9N RGE 19E was active, though he said that it flows the opposite way, which would be from West to East. DNRC topographic analysis indicates that this ditch flows from East to West (See DNRC Map 4), carrying water from Swimming Woman Creek to LaBelle Creek where it can be further routed through all other PODs of the claim. The confluence where LaBelle Creek meets Swimming Woman Creek is just downstream of POD 4 (as reflected on current abstracts). The aforementioned PDIS remark can be resolved by modifying the legal land descriptions of POD 4 to GOV'T LOT 1 IN THE NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO, replacing it with the aforementioned information remark, and adding a POD to the claim to represent the diversion at GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO.

During analysis and confirmation with claimant Fred Horpestad, it was determined that the text of the following issue remark is accurate. This diversion involves a natural carrier and is necessary for waters from POD 4 (as reflected on current abstracts) and the diversion in the GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO (currently not reflected on claim abstracts) to reach Places of Use in Section 8, 9N 19E (See DNRC Map 1 where it is labelled "Natural Carrier"). Because it is not a diversion off the primary source of Swimming Woman Creek, it should not be represented in the list of PODs for the claim, but rather in an information remark resembling the following C121 remark: WATER DIVERTED FROM "SWIMMING WOMAN CREEK" IS CONVEYED TO "AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK IN THE NESWNE SEC 8 TWP 9N RGE 19E" WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE

PDIS:

THERE APPEARS TO BE A SECONDARY DIVERSION FOR POINT OF DIVERSION NO. 4. IT APPEARS THE SECONDARY DIVERSION IS LOCATED ON AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK

AND IT IS LOCATED IN THE NESWNE SEC 8 TWP 9N RGE 19E GOLDEN VALLEY CO. IF SO, THEN A CONVEYANCE INFORMATION REMARK SHOULD BE ADDED.

This contemporary DNRC analysis has resulted in confirmation that the following issue remark text is false. Waters diverted from POD 4 (as reflected on current abstracts) can include waters originating from an unnamed tributary of Swimming Woman Creek (aka LaBelle Creek), but these waters are covered by claim number 40A 17190-00. The purpose of POD 4 on claim 40A 211554-00 is to transfer waters from Swimming Woman Creek to supplement some of the Places of Use served by claim 40A 17190-00 which is sourced out of the Unnamed Tributary of Swimming Woman Creek (aka LaBelle Creek) as described in the remark.

SNIS:

THE CLAIMED SOURCE AND/OR POINT OF DIVERSION MAY BE QUESTIONABLE/INCOMPLETE. POINT OF DIVERSION NO. 4 IS INCONSISTENT WITH THE CLAIMED SOURCE. THE CLAIMED SOURCE IS SWIMMING WOMAN CREEK BUT DIVERSION NO. 4 IS DESCRIBED TO BE ON AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK.

The remaining discussion has to do with the following issue remark:

PDIS:

POINT OF DIVERSION NOS. 1 AND 2 APPEAR TO BE INCORRECT. THE LOCATION OF THE HEADGATES CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

During conversations with the claimant and associated analysis, it was confirmed that these two PODs share a single diversion from the source, Swimming Woman Creek. The initial diversion is located in the SWSESW of Sec. 4, 9N 19E. This is the diversion to the Geer Flood Ditch as reflected on current abstracts, and also as reflected on the 1949 Water Resources Survey maps. POD 2 (aka diversion for Hahn Flood Ditch) is a secondary diversion from POD 1 and should not be listed under Points of Diversion of the claim. Rather, it should be represented by a conveyance information remark reflecting the secondary diversion at NENWNW of Section 9 9N 19E (See DNRC Map 1) as in: "POINT OF DIVERSION #1 IS THE GEER DITCH, THIS PRIMARY DITCH FEATURES A SECONDARY DIVERSION TO A SECONDARY DITCH, THE HAHN FLOOD DITCH, AT THE NENWNW of Section 9 9N 19E, GOLDEN VALLEY COUNTY."

Recommendation:

The following PDIS remark can be resolved by removing POD 4 and replacing it with an information remark that says something along the lines of: "WATERS DIVERTED FROM SOURCE SWIMMING WOMAN CREEK AT GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO PASS THROUGH HEADGATE AT GOV'T LOT 1 IN THE NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO ALONG WITH WATERS DIVERTED FROM LABELLE CREEK BASED ON CLAIM 40A 17190-00" and adding a POD to the claim to represent the initial diversion from the source at GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO

PDIS:

POINT OF DIVERSION NO. 4 APPEARS TO BE INCORRECT. THE HEADGATE MAY BE IN GOV'T LOT 1 IN THE NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO. THE GOLDEN VALLEY WATER RESOURCES SURVEY SUGGESTS THE INITIAL DIVERSION FROM SWIMMING WOMAN CREEK MAY BE IN THE AREA OF GOV'T LOT 2 IN THE NWNWNE SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO.

The following PDIS remark can be resolved by adding a conveyance information remark per the issue remark text:

PDIS:

THERE APPEARS TO BE A SECONDARY DIVERSION FOR POINT OF DIVERSION NO. 4. IT APPEARS THE SECONDARY DIVERSION IS LOCATED ON AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK AND IT IS LOCATED IN THE NESWNE SEC 8 TWP 9N RGE 19E GOLDEN VALLEY CO. IF SO, THEN A CONVEYANCE INFORMATION REMARK SHOULD BE ADDED.

Please see DNRC Map 1 where it is labelled "Natural Carrier" and consider the following suggested C121 remark: WATER DIVERTED FROM "SWIMMING WOMAN CREEK" IS CONVEYED TO "AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK IN THE NESWNE SEC 8 TWP 9N RGE 19E" WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE

If the aforementioned recommendations are implemented, then DNRC also recommends the removal of the following issue remark:

SNIS:

THE CLAIMED SOURCE AND/OR POINT OF DIVERSION MAY BE QUESTIONABLE/INCOMPLETE. POINT OF DIVERSION NO. 4 IS INCONSISTENT WITH THE CLAIMED SOURCE. THE CLAIMED SOURCE IS SWIMMING WOMAN CREEK BUT DIVERSION NO. 4 IS DESCRIBED TO BE ON AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK.

If the Court modifies the legal land description of POD 1 to the SWSESW of Sec. 4 9N 19E, removes POD 2 from the claim, and adds a conveyance information remark (something along the lines of: "POINT OF DIVERSION #1 IS THE GEER DITCH, THIS PRIMARY DITCH FEATURES A SECONDARY DIVERSION TO A SECONDARY DITCH, THE HAHN FLOOD DITCH, AT THE NENWNW of Section 9 9N 19E, GOLDEN VALLEY COUNTY.") representing POD 2, then DNRC recommends removal of the following remark:

PDIS:

POINT OF DIVERSION NOS. 1 AND 2 APPEAR TO BE INCORRECT. THE LOCATION OF THE HEADGATES CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Enclosures:

1. DNRC Map 1: 1949 WRS Map
2. DNRC Map 2: 1947 WRS Photo
3. DNRC Map 3: 1979 USDA Aerial Photo
4. DNRC Map 4: USGS Topographic Map

Date: October 5, 2021

Written by: M. Schmidt
Matt Schmidt, Water Resources Specialist
Lewistown Water Resources Regional Office

Date: October 5, 2021

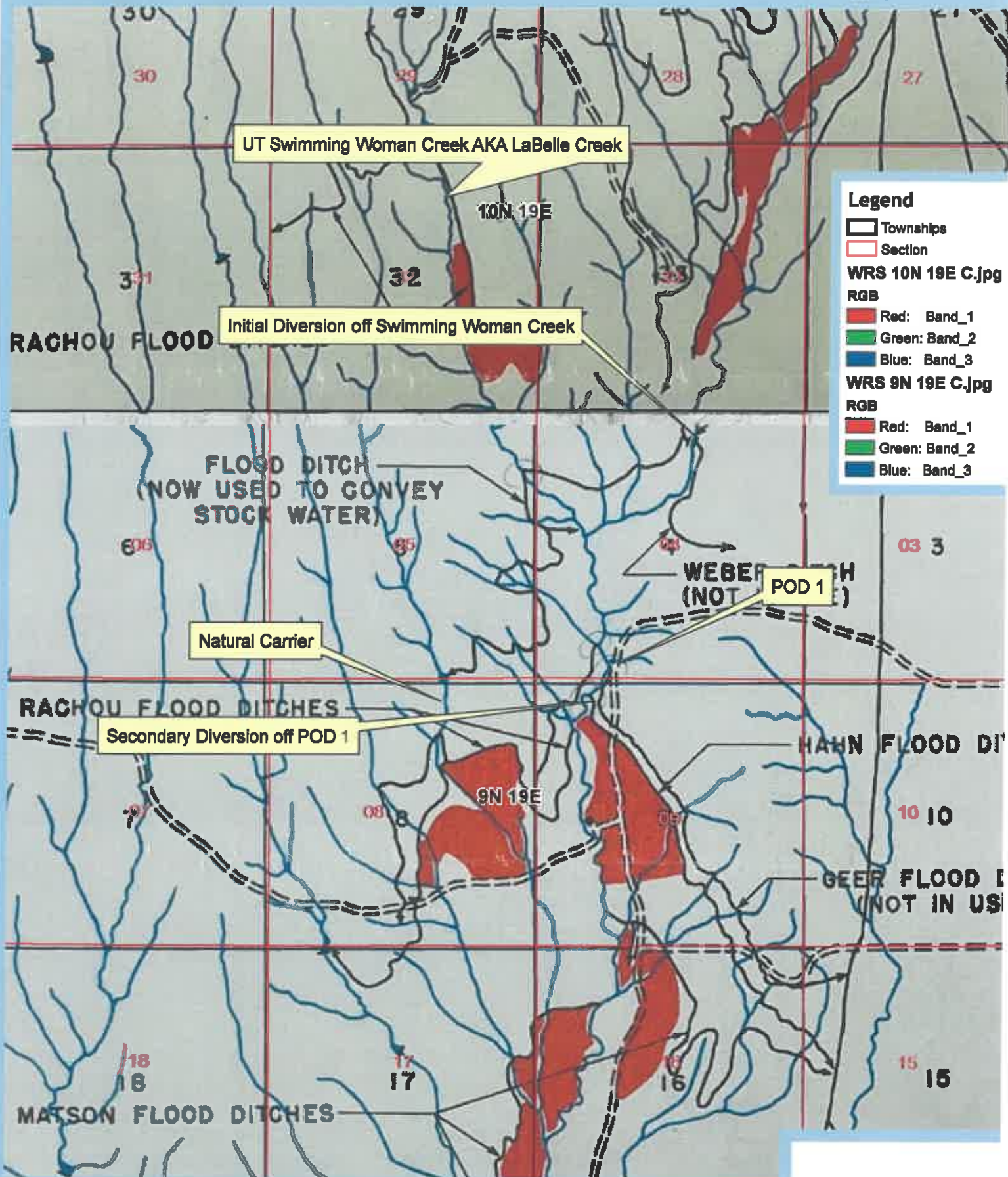
Reviewed by: Scott Irvin
Scott Irvin, Regional Manager
Lewistown Water Resources Regional Office

Service List:

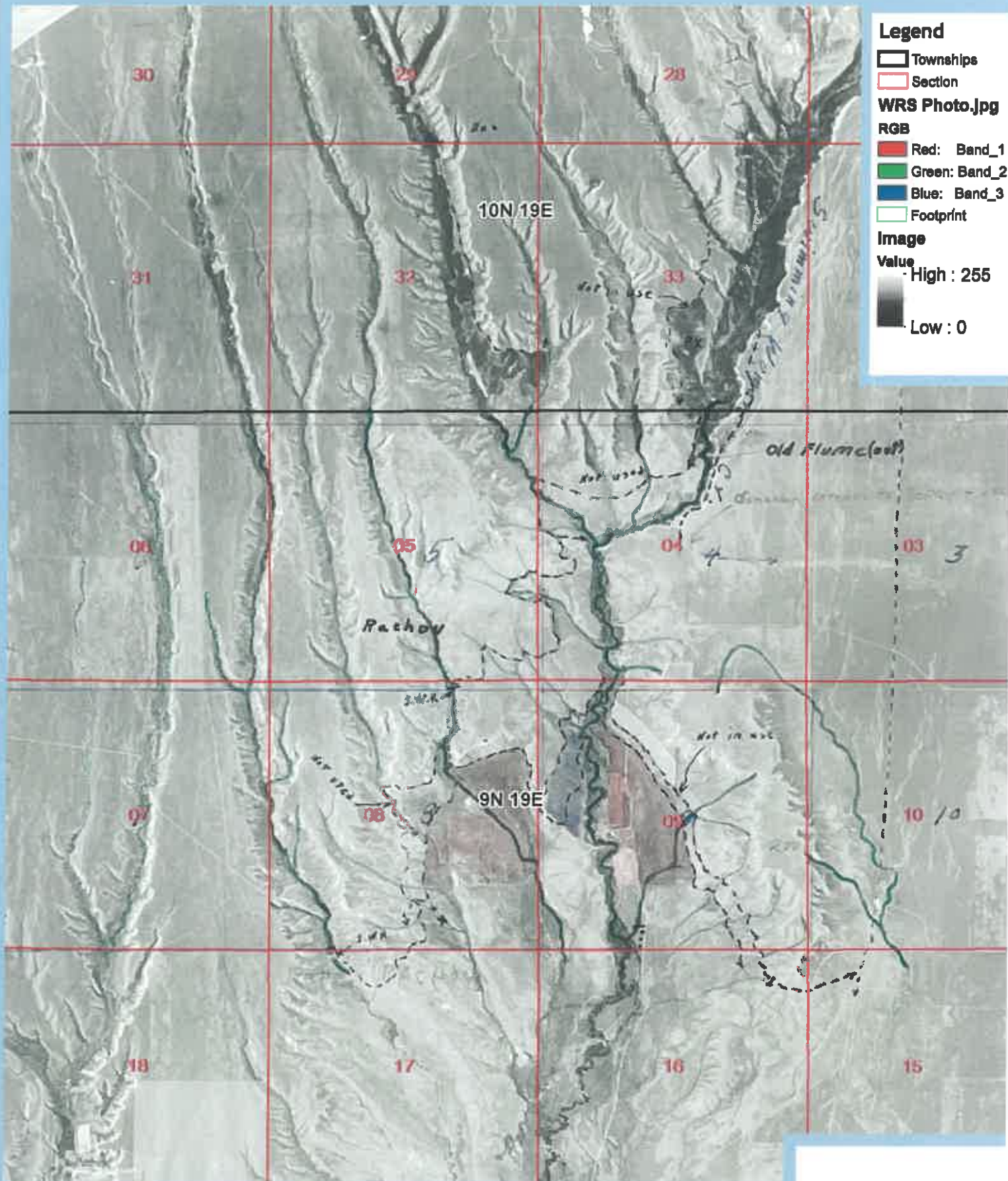
MONTANA WATER COURT
PO BOX 1389
BOZEMAN, MT 59771-1389

HORPESTAD RANCH INC
PO BOX 93
LAVINA, MT 59046-0093

DNRC Map 1; Case 40A 0521-R-2021; Claim 40A 211554-00; 1949 WRS Map



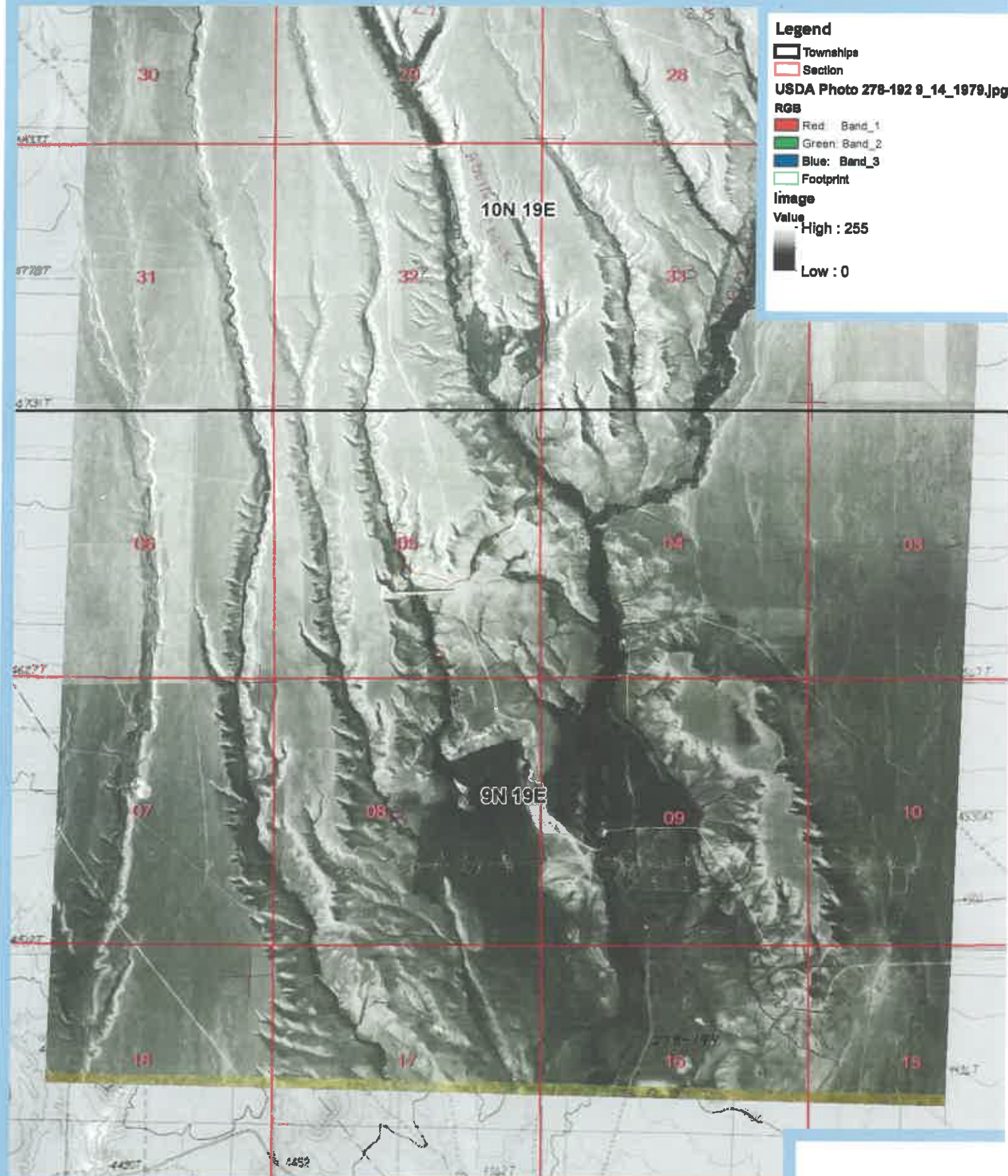
DNRC Map 2; Case 40A 0521-R-2021; Claim 40A 211554-00; 1949 WRS Photo



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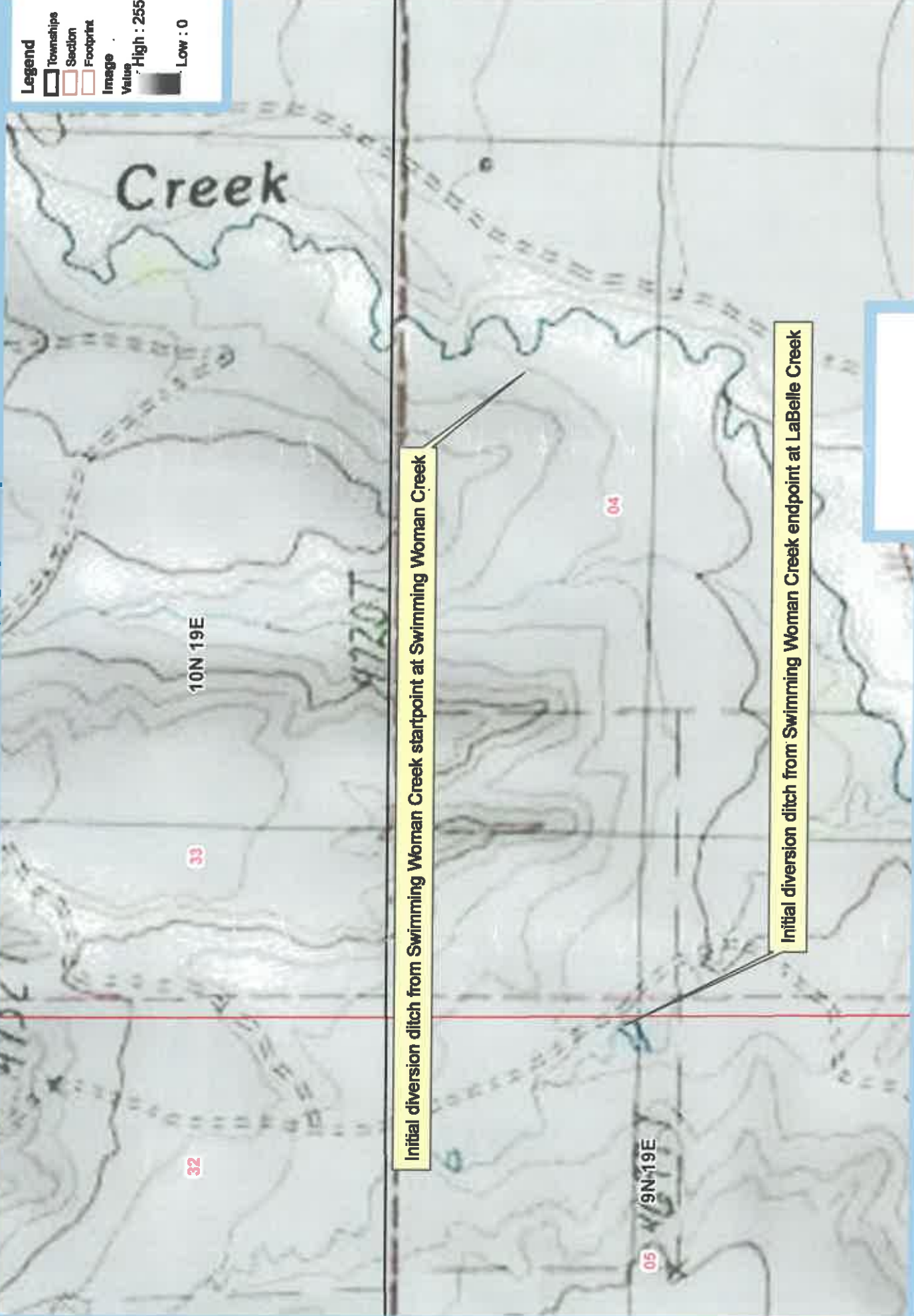


Service Layer Credits: Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Legend

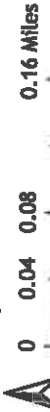
- Townships
- Section
- Footprint
- Image
- Value
- High : 255
- Low : 0



Initial diversion ditch from Swimming Woman Creek startpoint at Swimming Woman Creek

Initial diversion ditch from Swimming Woman Creek endpoint at LaBelle Creek

N 1:7,284 Map Created: 9/22/2021



Service Layer Credits: Sources: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

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

Water Right Number: 40A 211554-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: ANVIL LAND MONTANA LLC
295 KURZEN RD N
DALTON, OH 44618 9009

Priority Date: FEBRUARY 1, 1925

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 11/04/1985 . 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): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 10.08 CFS

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: 266.00

Source Name: SWIMMING WOMAN 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		SWSESW	4	9N	19E	GOLDEN VALLEY

Period of Diversion: FEBRUARY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: GEER FLOOD DITCH

2		SESWW	4	9N	19E	GOLDEN VALLEY
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Period of Diversion: FEBRUARY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: RACHOU DITCH

WATER DIVERTED UNDER THIS CLAIM FROM SWIMMING WOMAN CREEK IN GOVT LOT 2, NWNWNE OF SEC 4 TWP 9N RGE 19E GOLDEN VALLEY CO. PASSES THROUGH A HEADGATE AT GOVT LOT 1, NWNENE SEC 5 TWP 9N RGE 19E GOLDEN VALLEY CO. ALONG WITH WATERS DIVERTED FROM LABELLE CREEK UNDER CLAIM 40A 17190-00.

WATER DIVERTED FROM SWIMMING WOMAN CREEK IS CONVEYED TO AN UNNAMED TRIBUTARY OF SWIMMING WOMAN CREEK IN THE NESWNE SEC 8 TWP 9N RGE 19E WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

POINT OF DIVESION ID NO. 1 (GREER DITCH) INCLUDES A SECONDARY DIVERSION AT THE NENWNW OF SEC 9 TWP 9N RGE 19E, GOLDEN VALLEY CO. (HAHN FLOOD DITCH).

Period of Use: FEBRUARY 1 TO OCTOBER 31

THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF SWIMMING WOMAN CREEK.

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	8.00		W2SW	4	9N	19E	GOLDEN VALLEY
2	67.00		NE	8	9N	19E	GOLDEN VALLEY
3	66.00		SE	8	9N	19E	GOLDEN VALLEY
4	8.00		NENW	9	9N	19E	GOLDEN VALLEY
5	9.00		NWNW	9	9N	19E	GOLDEN VALLEY
6	36.00		SENW	9	9N	19E	GOLDEN VALLEY
7	20.00		SWNW	9	9N	19E	GOLDEN VALLEY
8	17.00		NWSE	9	9N	19E	GOLDEN VALLEY
9	35.00		NESW	9	9N	19E	GOLDEN VALLEY
Total:	<hr/> 266.00						