

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
WHITEWATER CREEK - BASIN (40K)
PRELIMINARY DECREE

* * * * *

CLAIMANT: United States of America (Bureau of Land
Management)

CASE 40K-0064-R-2021

40K 70490-00	40K 70533-00
40K 70492-00	40K 70571-00
40K 70495-00	40K 70578-00
40K 70496-00	40K 70579-00
40K 70499-00	40K 70582-00
40K 70501-00	40K 70584-00
40K 70502-00	40K 70589-00
40K 70507-00	40K 70590-00
40K 70510-00	40K 70592-00
40K 70526-00	40K 70594-00
40K 70528-00	40K 70596-00
40K 70530-00	

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

The above-captioned claims appeared in the Preliminary Decree for Whitewater Creek (Basin 40K) issued on March 7, 2019. The claims are owned by the United States Department of Interior, Bureau of Land Management (BLM). The claims did not receive objections, counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's claims reexamination.

FINDINGS OF FACT

BLM Amendment

1. All of the claims in this matter, except claims 40K 70571-00 and 40K 70584-00, received the following issue remarks:

AN AMENDMENT WAS SUBMITTED ON 03/26/2018 REQUESTING TO AMEND THE MEANS OF CONVEYANCE, PRIORITY DATE, AND TYPE OF RIGHT. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

Priority Date:	April 17, 1926	<u>July 11, 1935</u>
Type of Historical Right:	Reserved	<u>Use</u>

3. The amendment also requested that the means of diversion be modified to "Wildlife Direct from Source." The means of diversion was modified prior to the issuance of the Basin 40K Preliminary Decree.

4. BLM attached a copy of Public Water Reserve No. 107 to the amendment. This filing supports the modifications requested in BLM's amendment.

40K 70571-00

5. Claim 40K 70571-00 is a wildlife claim for an onstream reservoir in the E2SENE of Section 18, T34N, R32E, Phillips County. During preparation of the Basin 40K Preliminary Decree, the DNRC added a reservoir record to the claim and estimated the capacity, dam height, maximum depth, and surface area of the claimed reservoir. The

DNRC estimated the capacity of the claimed reservoir as 8.44 acre-feet. The claim received an issue remark that the claimed volume of 22.38 acre-feet exceeds the capacity of the reservoir.

6. On August 34, 1988, a reservoir worksheet was completed and listed the maximum storage capacity of the reservoir as 28.16 acre-feet. BLM submitted a Project Completion Report in support of the claim that listed to the storage capacity of the reservoir as 23.22 acre-feet.

7. On August 24, 2021, the Court ordered BLM to file evidence showing the historically accurate storage capacity of the claimed reservoir.

8. On October 7, 2021, BLM filed the requested information. According to BLM, the aerial photograph relied on by DNRC for their reservoir estimates did not show the reservoir at full pool. The measurements taken from the reservoir at full pool are more consistent with the 1988 reservoir worksheet completed by BLM, and the historically accurate dimensions of the reservoir are those in the Project Completion Report. The historically accurate dimensions of the reservoir are as follows:

- Maximum Depth: 11 feet.
- Surface Area: 6.4 acres.
- Dam Height: 14 feet, assuming 3 feet freeboard.
- Maximum Capacity: 23.22 acre-feet.

40K 70584-00

9. Claim 40K 70584-00 is a stock claim that appeared in the Basin 40K Preliminary Decree as diverting water from a well in the NENE of Section 28, T34N, R32E, Phillips County. The claim received an issue remark stating:

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

10. The DNRC notes supporting the issue remark state that “well location could not be refined with the information in the file – no map or clear location on aerial imagery.”

11. BLM filed a map showing the location of the claimed well as being in the SENENE of Section 28, T34N, R32E, Phillips County. Although the map is undated, the refinement is a reduction to the claimed legal land description.

Notice-Type Issue Remarks

12. All of the claims in this matter, except claims 40K 70571-00 and 40K 70584-00, also received the following notice-type issue remarks:

THIS CLAIM WAS NOT INCLUDED IN THE BASIN 40K TEMPORARY PRELIMINARY DECREE ISSUED NOVEMBER 21, 1989.

SOURCE NAME 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.

13. Claim 40K 70571-00 received the following notice-type issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD 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.

14. The notice-type issue remarks identify elements modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remarks indicate that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remarks will be removed. None of the claims received objections.

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.

CONCLUSIONS OF LAW

BLM Amendment

1. BLM showed by a preponderance of the evidence that the priority date and type of historical right for each claim in this matter should be amended as described in Finding of Fact No. 2. These modifications resolve the amendment and type of right issue remarks on each claim. The remarks should be removed.

40K 70571-00

2. The volume issue remark does not overcome the prima facie status of claim 40K 70571-00. BLM showed the historically accurate dimensions of the claimed reservoir are as described in Finding of Fact No. 8, which means the claimed volume is equal to one fill of the reservoir. The volume should remain as it appeared in the Basin 40K Preliminary Decree, and the volume issue remark should be removed from the claim.

40K 70584-00

3. The point of diversion issue remark overcomes the prima facie status of the claim 40K 70584-00. BLM's refinement of the point of diversion is a reduction and should be applied. This reduction resolves the point of diversion issue remark, and the issue remark should be removed from the claim.

Notice-Type Issue Remarks

4. The notice-type issue remarks do not raise unresolved issues that need to be addressed. No proceedings are required to resolve the remarks; the remarks should be removed from the abstracts.

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 refined point of diversion for claim 40K 70584-00 has been placed in the claim file.

Melissa Lockman
Senior Water Master

Service via USPS Mail

Last Order:

USA (Dept of Interior Bureau of Land
Mgmt)
5001 Southgate Dr
Billings, MT 59101-4669

Service via Electronic Mail

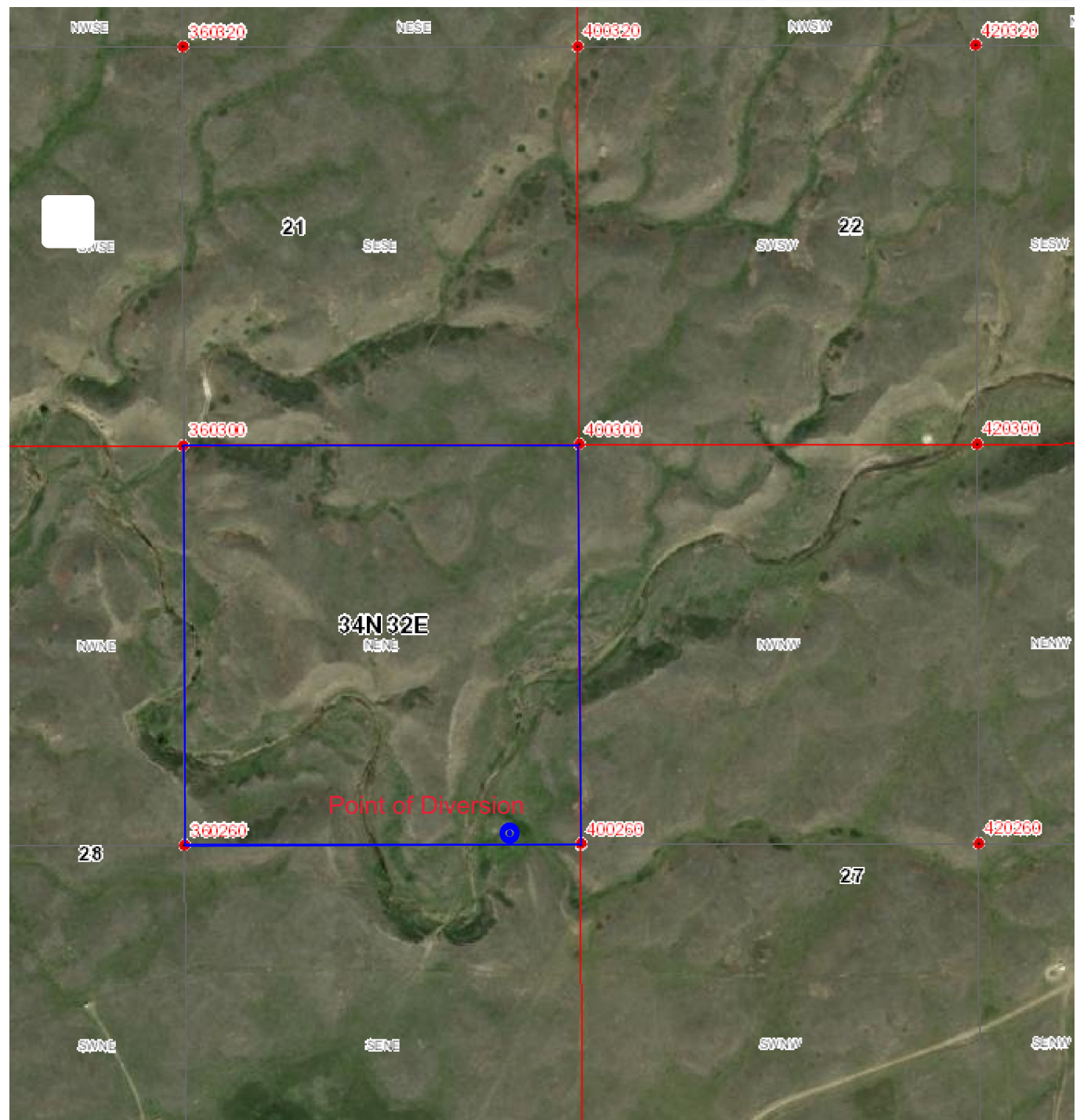
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Water Right Number:
40K 70584 00NULL

Print Map

Legend

- ☒ Diversion Count:
 - Surface water diversion.
 - Ground water diversion.
- ☐ Adjacent Diversions
 - Surface water diversion.
 - Ground water diversion.
- ☒ Place of Use Legal Land Descriptions
- ☐ Adjacent POUs
- ☐ Cadastral ?
- ☒ PLSS Detail ?



**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70490-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.58 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		NWSWSE	3	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			NWSWSE	3	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70492-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.58 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		N2SWSE	3	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			N2SWSE	3	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70495-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.58 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		SWSESE	3	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			SWSESE	3	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70496-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 1.09 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		NWSESE	3	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			NWSESE	3	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70499-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.73 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		SWNWSE	3	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			SWNWSE	3	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70501-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 1.09 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		SWNWSE	3	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE DIRECT FROM SOURCE

2		SENESEW	3	34N	31E	PHILLIPS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			SWNWSE	3	34N	31E	PHILLIPS
2			SENESEW	3	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70502-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.58 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		SWSESE	3	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			SWSESE	3	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70507-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.90 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		W2NENE	10	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			W2NENE	10	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70510-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 20.67 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK (AUSTIN LAKE)

Source Type: SURFACE WATER

POTHOLE LAKE

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		N2SWNE	10	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			N2SWNE	10	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70526-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 1.09 AC-FT

Source Name: UNNAMED TRIBUTARY OF LUSH COULEE

Source Type: SURFACE WATER

POTHOLE LAKE

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		NENESW	27	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			NENESW	27	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70528-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.58 AC-FT

Source Name: UNNAMED TRIBUTARY OF INTERIOR DRAINAGE

Source Type: SURFACE WATER

POTHOLE LAKE

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		SWSENW	33	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			SWSENW	33	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70530-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.58 AC-FT

Source Name: UNNAMED TRIBUTARY OF LUSH COULEE

Source Type: SURFACE WATER

POTHOLE LAKE

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		NESENW	33	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			NESENW	33	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70533-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.73 AC-FT

Source Name: UNNAMED TRIBUTARY OF LUSH COULEE

Source Type: SURFACE WATER

POTHOLE LAKE

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		NWSE	33	34N	31E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			NWSE	33	34N	31E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70571-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
ONSTREAM RESERVOIR.

Volume: 22.38 AC-FT

Source Name: COOP 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		E2SENE	18	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	E2SENE	18	34N	32E	PHILLIPS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 14.00 FEET

Depth: 11.00 FEET

Surface Area: 6.40 ACRES

Capacity: 23.22 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			E2SENE	18	34N	32E	PHILLIPS

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.

70571-00

70572-00

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70578-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 1.31 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK

Source Type: SURFACE WATER

POTHOLE LAKE

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		SWSENE	28	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			SWSENE	28	34N	32E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70579-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.58 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK

Source Type: SURFACE WATER

POTHOLE LAKE

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		S2SENE	28	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE DIRECT FROM SOURCE

2		NENESE	28	34N	32E	PHILLIPS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			S2SENE	28	34N	32E	PHILLIPS
2			NENESE	28	34N	32E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70582-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.90 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK

Source Type: SURFACE WATER

POTHOLE LAKE

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		W2NESE	28	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			W2NESE	28	34N	32E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70584-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: NOVEMBER 17, 1981

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 2.96 GPM

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: GROUNDWATER

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		SENE	28	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NENE	28	34N	32E	PHILLIPS

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.

70583-00 70584-00

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70589-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.90 AC-FT

Source Name: UNNAMED TRIBUTARY OF INTERIOR DRAINAGE

Source Type: SURFACE WATER

POTHOLE LAKE

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		NENWNE	30	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			NENWNE	30	34N	32E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70590-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.73 AC-FT

Source Name: UNNAMED TRIBUTARY OF INTERIOR DRAINAGE

Source Type: SURFACE WATER

POTHOLE LAKE

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		SEWNNE	30	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			SEWNNE	30	34N	32E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70592-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 1.31 AC-FT

Source Name: UNNAMED TRIBUTARY OF CLARK COULEE

Source Type: SURFACE WATER

POTHOLE LAKE

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		E2SESE	30	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE DIRECT FROM SOURCE

2		W2SWSW	29	34N	32E	PHILLIPS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			E2SESE	30	34N	32E	PHILLIPS
2			W2SWSW	29	34N	32E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70594-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 1.31 AC-FT

Source Name: UNNAMED TRIBUTARY OF WHITEWATER CREEK

Source Type: SURFACE WATER

POTHOLE LAKE

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		SWSNW	33	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE DIRECT FROM SOURCE

2		SESWNW	33	34N	32E	PHILLIPS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			SWSNW	33	34N	32E	PHILLIPS
2			SESWNW	33	34N	32E	PHILLIPS

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
WHITEWATER CREEK
BASIN 40K**

Water Right Number: 40K 70596-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

Type of Historical Right: USE

Purpose (Use): WILDLIFE

Flow Rate:

Volume: 0.73 AC-FT

Source Name: UNNAMED TRIBUTARY OF BELL COULEE

Source Type: SURFACE WATER

POTHOLE LAKE

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		E2SESW	34	34N	32E	PHILLIPS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WILDLIFE 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			E2SESW	34	34N	32E	PHILLIPS