

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

* * * * *

CLAIMANT: SRI River Holdings LLC

OBJECTORS: SRI River Holdings LLC

NOTICE OF INTENT TO APPEAR: United States of America
(Bureau of Reclamation)

CASE 41G-0350-R-2020
41G 195427-00

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

FINDINGS OF FACT

1. Claim 41G 195427-00 was originally consolidated in Case 41G-0353-R-2019 to address the objection from the claimant and the United States Forest Service (USFS), and the Notice of Intent to Appear filed by the United States Bureau of Reclamation (BOR). Claim 41G 195427-00 did not receive any DNRC issue remarks.

2. The claimant SRI River Holdings LLC (SRI) filed an objection to flow rate/volume stating, “the flow rate was reduced by the DNRC during claims examination. The reduced flow rate does not accurately reflect historical beneficial use.”

3. On December 9, 2020, SRI filed a Motion to Amend claim 41G 195427-00. In addition to the flow rate, SRI requested changes to the point of diversion and the source. The point of diversion and source elements did not appear on the Basin 41G Objection List. Claimant was ordered to publish notice pursuant to 85-2-233(6), MCA to provide notice of the requested modifications to other water users.

4. Also on December 9, 2020, the United States (both USFS and BOR) filed a statement regarding claimant's motion to amend claim 41G 195427-00. The statement indicated that the changes requested by the Claimant in its December 9, 2020 Motion to Amend resolve the United States' objections to claim 41G 195427-00.

5. On March 23, 2021, SRI filed a notice of publication confirming that it had complied with the publication requirement of 85-2-233(6), MCA. The deadline for a response or objection was April 26, 2021. Nothing was filed by the deadline.

6. SRI's Motion to Amend requests that the flow rate be corrected from 9.47 cfs to 14.30 cfs; that the source be corrected from the Jefferson River to the Doncaster (Lott) Slough; and that the point of diversion be corrected from the NESWSW of Section 15, T3S, R6W to the SWNESE of Section 15, T3S, R6W. The court requested additional evidence and information to support the historical accuracy of the requested changes and to establish that the requested amendments are warranted.

7. On October 27, 2021, SRI filed additional explanation and support for its motion to amend. SRI asserts that the modification to point of diversion and source requested by the Motion to Amend is the result of a valid change in use that occurred prior to July 1, 1973. The primary question is whether a change to source is allowed under Section 89-803, R.C.M., which is the historical change rule that applied prior to July 1, 1973.

Section 89-803, R.C.M. provides:

The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

It is clear from the plain language of the text of Section 89-803, R.C.M., that changes to point of diversion, means of diversion, place of use, and purpose were permitted prior to July 1, 1973. However, it is not as clear whether the source of a water right could be changed, while still retaining the original appropriation date.

SRI argues that source is an element that could be changed under Section 89-803, R.C.M. In support, SRI cites to *McIntosh v. Graveley*, 159 Mont. 72, 495 P.2d 186 (1972), and a recent water court order in Case 41B-72, *Final Order*, June 8, 2020.

In *McIntosh v. Graveley*, the Court approved a point of diversion change that resulted in a change of source from Spring Gulch to Ophir Creek. The court approved the change based on 89-803, R.C.M.

The Final Order in Case 41B-72, June 8, 2020, recognized a water right from the Beaverhead River through the River Ditch despite the originally decreed right claiming Albers Slough water. The court found that while the right was not decreed for the Beaverhead River, and was not originally claimed for the Beaverhead River, that it was moved from Albers Slough to the Beaverhead River sometime before 1973. Water Commissioner records established that the water right was diverted from the Beaverhead River from the 1950s or 1960s to the present. The court therefore recognized the change in source as a valid pre-July 1, 1973 change.

In both *McIntosh v. Graveley* and 41B-72 there was sufficient evidence to establish that the change in source occurred prior to July 1, 1973; there was no timely assertion of injury to other water users; and the sources at issue were closely hydrologically connected.

In this case, there is evidence that the change to source took place prior to July 1, 1973; there has been no assertion of injury by other water users; and the Jefferson River and the Doncaster (Lott) Slough are closely hydrologically connected.

Change took place prior to July 1, 1973

Attached to the Motion to Amend filed December 9, 2020 in Case 41G-0353-R-2019, is an affidavit of Richard Bayers. Richard Bayers was raised on a ranch north of Twin Bridges that is currently known as Bayers Ranch. Mr. Bayers explains that a substantial portion of the original Bayers Ranch is now owned by SRI.

Mr. Bayers states that he actively worked on the Ranch every irrigation season from the time he was in 8th Grade until he was 30 years old (roughly 1968-1985). According to Mr. Bayers, his neighbors Gary and Tana Boldt (SRI's predecessors) irrigated lands on the west side of Highway 41 from the Doncaster (Lott) Slough using a ditch that has existed since before July 1, 1973. To the best of his recollection the ditch was in existence while he was still attending high school in Twin Bridges. Mr. Bayers graduated from Twin Bridges Highschool in May of 1973.

No Injury Asserted by Any Water User

As SRI points out, there is no indication in the record that any objection was ever raised to change in point of diversion or the source for water right 41G 195427-00. As part of these proceedings, SRI published notice of the proposed amendments to claim 41G 195427-00. The objection deadline was April 26, 2021. No one objected to the proposed amendment.

The sources involved are closely hydrologically connected

The Doncaster (Lott) Slough is a tributary of the Jefferson River. SRI explains that the change in source and point of diversion occurred as a result of the Jefferson River changing over the years due to avulsion. SRI argues that the circumstantial evidence presented concerning the changing location of the main channel of the Jefferson River

provides a reasonable explanation why SRI's predecessor would have moved the water right from the Jefferson River to the Doncaster (Lott) Slough. With the Doncaster (Lott) Slough being a tributary of the Jefferson River, the two sources should be considered closely hydrologically connected.

8. SRI provided sufficient evidence and explanation to establish that the requested change to point of diversion and source was a valid pre-July 1, 1973 change. The requested amendments to point of diversion and source should be accepted.

Source: ~~Jefferson River~~ Doncaster (Lott) Slough

Point of Diversion: ~~NESWSW~~ SWNESE of Section 15, T3S, R6W

9. SRI also requests that the flow rate for claim 41G 195427-00 be amended from 9.47 cfs to 14.30 cfs. The original statement of claim listed a flow rate of 615 cfs, though this seems to have been in error; the attached notice of appropriation claims 65 cfs. The DNRC reduced the flow rate during claims examination. SRI provided an affidavit and report of professional engineer Jeremy May, attached to its December 9, 2020 Motion to Amend, to support its assertion that 14.30 cfs has historically been diverted under claim 41G 195427-00.

Based on a water stain on a culvert used as part of the conveyance system, May estimates the usual flow rate at 14.30 cfs. May states, "these results show that roughly 14 cfs is passed through this pipe often enough to create a water mark inside the pipe." May believes the "water stain" model is a conservative estimate of water use. See Exhibit 2 attached to December 9, 2020 Motion to Amend.

The DNRC reduced the flow rate based on DNRC flow rate guidelines. Guidelines are not evidence. The evidence before the court supports a 14.30 cfs flow rate. Claim 41G 195427-00 should be amended accordingly.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie

proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The evidence provided by SRI is sufficient to overcome the prima facie status of claim 41G 195427-00. The flow rate, point of diversion, and source should be modified pursuant to SRI's motion to amend.

2. Motions to amend are governed by Section 85-2-233(6), MCA, and Rule 10, W.R.Adj.R. Section 85-2-233(6), MCA includes requirements for providing notice of amendments to objections. Rule 10, W.R.Adj.R., requires that the motion to amend specify the requested amendment and the grounds for the amendment.

SRI's motion to amend complied with the requirements of Section 85-2-233(6), MCA. No objections were filed in response to SRI's motion to amend. The motion to amend is sufficiently supported and should be accepted by the court.

3. Under Section 89-803, R.C.M.:

The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

Section 89-803, R.C.M. applies to changes made to existing water rights prior to July 1, 1973. SRI provided sufficient argument and support to establish that source is an element that may be changed under Section 89-803, R.C.M. under the appropriate circumstances. The change to source and point of diversion of claim 41G 195427-00 occurred prior to July 1, 1973, and was a valid change under Section 89-803, R.C.M. The requested amendments should be accepted by the court.

RECOMMENDATIONS

1. Claim 41G 195427-00 should be amended as provided above.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

Madeleine Weisz
Senior Water Master

Service via Electronic Mail:

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**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 195427-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: SRI RIVER HOLDINGS LLC
% JAIME WOOD
PO BOX 447
TWIN BRIDGES, MT 59754 0447

Priority Date: MARCH 5, 1902

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 14.30 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 250.00

Source Name: DONCASTER (LOTT) SLOUGH

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		SWNESE	15	3S	6W	MADISON

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 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	80.00		S2NE	10	3S	6W	MADISON
2	40.00		SENE	10	3S	6W	MADISON
3	30.00		SWNW	10	3S	6W	MADISON
4	80.00		N2SE	10	3S	6W	MADISON
5	20.00		NESW	10	3S	6W	MADISON

Total: 250.00

41G-0353-R-2019

December 9, 2020

Montana Water Court

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**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER (BASIN 41G)
PRELIMINARY DECREE**

CLAIMANT: SRI River Holdings LLC

OBJECTORS: SRI River Holdings LLC; United States of
America (USDA Forest Service)

NOTICE OF INTENT TO APPEAR: United States of America
(Bureau of Reclamation)

CASE 41G-0353-R-2019

41G 195427-00

41G 196917-00

**SRI RIVER HOLDINGS LLC'S UNOPPOSED MOTION TO AMEND
WATER RIGHT CLAIM 41G 195427-00**

COMES NOW, Claimant and Objector SRI River Holdings LLC ("SRI"), and pursuant to Rule 10, W.R.Adj.R., Rule 19, W.R.Adj.R., and § 85-2-233(6), MCA, hereby submits this Unopposed Motion to Amend Water Right Claim 41G 195427-00 ("Motion") to correct the point of diversion, source, and flow rate. SRI moves the Water Court for an order granting leave of court for SRI to amend water right claim 41G 195427-00, as set forth below and in the Proposed Abstract attached to this Motion as **Exhibit A**, to more accurately describe the historical use of this water right.

The specific grounds for this Motion are further described below.

BACKGROUND

Water right claim 41G 195427-00 was consolidated into Water Court Case 41G-R353.¹ The proceedings in this Case involve this water right claim and water right claim 41G 196917-00, which is also owned by SRI.

SRI objected to the flow rate of water right claim 41G 195427-00 because it was reduced by DNRC during claims examination and the reduced flow rate does not accurately reflect historical beneficial use. The United States of America (Bureau of Reclamation) (“BOR”) filed a notice of intent to appear to water right claim 41G 195427-00 noting that there were no issue remarks on this water right claim and SRI had filed its own objection. Upon further investigation into the flow rate for water right claim 41G 195427-00, SRI has determined that the point of diversion and source also need to be amended to accurately reflect historical beneficial use. These amendments will resolve SRI’s objection to water right claim 41G 195427-00.

Rule 10, W.R.Adj.R. provides the claimants may file motions to amend their claims specifying the requested amendment and the grounds for such amendment, and that the Water Court will determine any additional notice of the amendment required pursuant to § 85-2-233 (6), MCA.

Section 85-2-233(6), MCA, provides that:

- (6)(a) After the issuance of a temporary preliminary decree or preliminary decree, notice must be published once a week for three consecutive weeks in two newspapers of general circulation in the basin where the decree was issued for:
 - (i) a motion to amend a statement of claim that may adversely affect other water rights...

¹ The original case number was “41G-R353” when it was consolidated in November 2019, but was subsequently changed by the Water Court to “41G-0353-R-2019” to reflect the Water Court’s new case management system protocol.

* * * *

(b) The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice.

(c) The water judge may order any additional notice of the motion as the water judge considers necessary.

(d) The costs of the notice required pursuant to this subsection must be borne by the moving party.

Pursuant to § 85-2-233(6), MCA, notice by publication is required for any motion to amend that may adversely affect other water rights. Unless the Water Court determines SRI's Motion may not adversely affect other water rights, publication of the Motion is required pursuant to § 85-2-233(6), MCA, and additional notice may be ordered if the water judge deems it necessary. As the source and point of diversion for water right claim 41G 195427-00 were not on the objection list for the Basin 41G Preliminary Decree, other water users in Basin 41G were not given notice these elements might be changed during the adjudication process. Therefore, an order for publication of SRI's Motion would provide other water users in Basin 41G with notice of the proposed amendments to claim 41G 195427-00 and an opportunity to object.

AMENDMENT TO POINT OF DIVERSION, SOURCE, AND FLOW RATE

The specific purpose of the requested amendments is to clarify and correct the point of diversion, source, and flow rate of water right claim 41G 195427-00 so they more accurately reflect the historical beneficial use of this water right claim. SRI is not requesting any changes to other elements of this water right claim; all other elements should remain as they appeared in the Basin 41G Preliminary Decree. SRI notes that the place of use and maximum acres does not need any corrections or changes. The place of use and acres have been examined and confirmed by the DNRC and SRI has

not objected to these elements nor does SRI believe they are inaccurate. This amendment is to clarify that the irrigation water that has historically been used under water right claim 41G 195427-00 does not get to the place of use from the source and point of diversion originally claimed by the original claimants, Gary J. Boldt and Tana L. Boldt. The amended point of diversion, source, and flow rate should be as follows:

Flow Rate: **14.30 CFS** ~~9.47 CFS~~

Source Name: **DONCASTER (LOTT) SLOUGH** ~~JEFFERSON RIVER~~

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Gov't Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	15	3S	6W	MADISON
1		SWNESE	15	3S	6W	MADISON

1. Point of Diversion/Source:

The claimed point of diversion for water right claim 41G 195427-00, as it appeared in the Basin 41G Preliminary Decree, is on the Jefferson River in the NESWSW of Section 15, T3S, R6W, Madison County. The claimed place of use is located in Section 10, T3S, R6W, Madison County, on property that was previously owned by Willard and Beverly Rehm. See Affidavit of Richard Bayers, attached and incorporated herein as **Exhibit B**. The place of use lies generally west of State Highway 41 in the N2S2 and S2N2 of Section 10, T3S, R6W, Madison County and is located north of and is irrigated from a dike and ditch system in the S2 of Section 10, T3S, R6W, Madison County. *Id.*

The ditch system for the place of use in Section 10 diverts water from what is known as Doncaster (Lott) Slough after it crosses under State Highway 41 in the SE of

Section 15; the ditch then runs north along the western edge of the Highway 41 to where it makes a right angle turned to the west in the S2 of Section 10. *Id.*

Doncaster (Lott) Slough originates east of Twin Bridges in Section 27, T3S, R6W, Madison County and has been referred to as both “Lott Slough” and “Doncaster Slough.” See Exhibit B. Doncaster (Lott) Slough is crossed by Bayers Lane and then the Bayers Ditch in the SW¼ of Section 23, near the present site of the Twin Bridges sewage lagoon as it flows north from Section 27. Doncaster (Lott) Slough eventually flows under State Highway 41 in the SE¼ of Section 15, T3S, R6W, Madison County, as depicted on the map from the 1954 Madison County Water Resources Survey. *Id.*

The ditch that diverts water from Doncaster (Lott) Slough on the west side of Highway 41 runs north along the west side of the highway right-of-way for approximately one mile. This ditch then turns at a 90° angle and heads west toward the Jefferson River. The location of this ditch is shown on the aerial photo images attached as Exhibits B and C to the Affidavit of Richard Bayers.

The ditch from Doncaster (Lott) Slough was primarily used by the Bayers Ranch as a drain ditch, but it was also used as an irrigation ditch by neighbors of the Bayers Ranch on the west side of State Highway 41. Richard Bayers recalls that their neighbors Gary and Tana Boldt irrigated lands on the west side of State Highway 41 from this ditch.² *Id.* Although Richard Bayers does not specifically know when this ditch was constructed, to the best of his knowledge and recollection the ditch has existed for many years and was in existence prior to July 1, 1973. Mr. Bayers recalls the ditch was in existence while he was still attending high school in Twin Bridges; he graduated from Twin Bridges High School in May of 1973. *Id.*

² The Boldts filed the original statement of claim for water right 41G 195427-00 in 1982.

Based on the foregoing, the claimed point of diversion and source for water right claim 41G 195427-00 are incorrect as claimed and SRI requests the source be amended from the Jefferson River to Doncaster (Lott) Slough, and correspondingly, that the point of diversion be amended from the NESWSW, Section 15, T3S, R6W to the SWNESE, Section 15, T3S R6W.

2. Flow Rate:

The flow rate is the rate at which water has been diverted, impounded, or withdrawn from the source for beneficial use. Rule 2(a)(27), W.R.C.E.R. The amount of water actually needed for beneficial use within the appropriation will be the *basis, the measure and the limit of the right*. *McDonald v. State*, 220 Mont. 519, 532, 722 P.2d 598, 606, (1986) (Emphasis added).

The original statement of claim for water right claim 41G 195427-00 listed a flow rate of 615 CFS. The flow rate for water right claim 41G 195427-00 has since been reduced by the DNRC twice. First, the flow rate was reduced by DNRC to 13.64 CFS during claims examination for the Basin 41G Temporary Preliminary Decree in the late 1980's. Water right claim 41G 195427-00 appeared in the Basin 41G Temporary Preliminary Decree with this 13.64 CFS flow rate. Second, DNRC further reduced the flow rate of water right claim 41G 195427-00 again to 9.47 CFS during claims examination for the Basin 41G Preliminary Decree based on DNRC guidelines. SRI objected to the flow rate reduction during the objection period for Basin 41G Preliminary as the reduced flow rate does not accurately reflect historical beneficial use.

Jeremy May, P.E., of Genesis Engineering, Inc. was hired by SRI to review and investigate the culvert within the Doncaster (Lott) Slough ditch to determine its capacity

as part of SRI's investigation into the correct historical flow rate water right claim 41G 195427-00. See Affidavit of Jeremy May, P.E., attached and incorporated herein as **Exhibit C**.

The culvert is located under a driveway to the west of State Highway 41 in the NE of Section 15, T3S, R6W and is 90 feet long reinforced concrete pipe. *Id.* There is a stain in the pipe and two methods of calculation were performed; when the upstream water was at a level equal with the top of the pipe and when the water matched the stain in the pipe. *Id.* The flow analysis based on the staining utilized the water staining on the outlet of the pipe to determine tailwater elevation. Mr. May calculated that the modeled pipe capacity using an assumed full pipe is equal to 30.9 CFS and the modeled pipe capacity using the water stains in the pipe is equal to 14.3 CFS. This result indicates that roughly 14 CFS has passed through the pipe often enough to create the defined staining on the inside of the pipe. The water stain model is the conservative estimate for determining the pipe capacity according to Mr. May. *Id.* Further, the culvert is the limiting factor in the ditch system that carries water from Doncaster (Lott) Slough to the place of use in Section 10, T3S, R6W, Madison County. Based on Mr. May's affidavit, the capacity of the culvert is more than sufficient to divert and convey the requested 14.3 CFS flow rate and SRI requests the flow rate be amended as the true basis, measure, and limit of water right claim 41G 195427-00.

RELIEF REQUESTED

Pursuant to Rule 10, W.R.Adj.R., SRI respectfully requests the Water Court determine the notice required for this Motion pursuant to § 85-2-233(6), MCA, and to issue an appropriate order for SRI to provide notice of its Motion by publication or

otherwise pursuant to the statute as required. After publication of any such notice, SRI respectfully requests the Water Court issue an order granting its Motion.

In accordance with the attached Affidavits and accompanying exhibits, the point of diversion, source, and flow rate for water right claim 41G 195427-00 should be amended and decreed as follows:

Flow Rate: **14.30 CFS** ~~9.47 CFS~~

Source Name: **DONCASTER (LOTT) SLOUGH** ~~JEFFERSON RIVER~~

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Gov't Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	15	3S	6W	MADISON
1		SWNESE	15	3S	6W	MADISON

See proposed abstract for water right claim 41G 195427-00 that is attached and incorporated herein as **Exhibit A**.

CONCLUSION

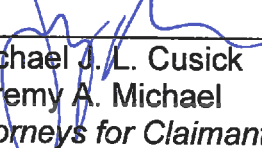
SRI respectfully requests the Water Court issue an order for SRI to provide notice of its Motion by publication or otherwise pursuant to statute. After publication of such notice, SRI respectfully requests the Water Court grant its Motion to amend the preliminary decree for water right claim 41G 195427-00 in accordance with the information provided herein to more accurately describe the historical use of water rights claim 41G 195427-00.

SRI reports that counsel for United States of America (USDA Forest Service) and United States of America (Bureau of Reclamation) has been contacted regarding this

motion and that neither the United States of America (USDA Forest Service) nor the United States of America (Bureau of Reclamation) oppose the motion.

RESPECTFULLY SUBMITTED this 9th day of December, 2020.

CUSICK, FARVE, MATTICK & REFLING, P.C.

By 
Michael J. L. Cusick
Jeremy A. Michael
Attorneys for Claimant SRI

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document was duly served upon the opposing counsel or parties of record at the below addresses and in the manner indicated on this 9 day of December, 2020.

Jennifer A. Najjar
U.S. Dept. of Justice – ENRD-NRS
P.O. Box 7611
Washington, D.C. 20044-7611
Attorneys for USA

<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Hand Delivery
<input checked="" type="checkbox"/>	Email: jennifer.najjar@usdoj.gov
	MontanaBasins.ENRD@usdoj.gov


for Cusick, Farve, Mattick & Refling, P.C.

PROPOSED ABSTRACT

Water Right No.: 41G 195427-00 STATEMENT OF CLAIM

Version: 5 – REEXAMINED
Status: ACTIVE

Owners: SRI RIVER HOLDINGS LLC
% JAIME WOOD
PO BOX 447
TWIN BRIDGES, MT 59754-0447

Priority Date: MARCH 5, 1902

Type of Historical Right: FILED

Purpose(uses): IRRIGATION

Irrigation Type: FLOOD

*Flow Rate: 14.30 CFS 9.47 CFS

~~THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.~~

*Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4- MODERATELY LOW

*Maximum Acres: 250.00

*Source Name: DONCASTER (LOTT) SLOUGH JEFFERSON 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		SWNESE NESWSW	15	3S	6W	MADISON

Period of Diversion: MAY 1 TO OCTOBER 31
Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 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	80.00		S2NE	10	3S	6W	MADISON
2	40.00		SENW	10	3S	6W	MADISON
3	30.00		SWNW	10	3S	6W	MADISON
4	80.00		N2SE	10	3S	6W	MADISON
5	20.00		NESW	10	3S	6W	MADISON
Total:	250.00						

Remarks:

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

OWNERSHIP UPDATE RECEIVED

OWNERSHIP UPDATE TYPE 608 # 27323 RECEIVED 12/06/2005.
OWNERSHIP UPDATE TYPE DOR # 154269 RECEIVED 09/26/2016.
OWNERSHIP UPDATE TYPE DOR # 156406 RECEIVED 04/19/2017.
OWNERSHIP UPDATE TYPE DOR # 166221 RECEIVED 12/27/2017.

AFFIDAVIT OF RICHARD BAYERS

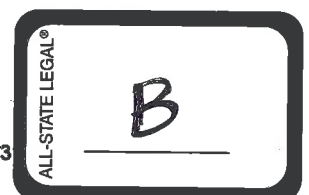
STATE OF MONTANA)
COUNTY OF Gallatin :ss

I, RICHARD BAYERS, being first duly sworn, depose and say as follows:

1. I am currently 65 years old. I was born and raised in Twin Bridges, Montana. I was raised on a ranch north of Twin Bridges that has been known over the years as the Bayers Hereford Ranch, Bayers Ranch, Inc., 5 B's Cattle Company, and is currently known as Bayers Ranches.

2. A substantial portion of the Ranch was irrigated, particularly the bottom lands in the vicinity of the Jefferson River. I actively worked on the Ranch every irrigation season from the time I was in about 8th grade until I was 30 years old. I was very involved with the Ranch and with the irrigation until approximately 1985, living on the Ranch most of the year with the exception of the time I spent attending Montana State University in Bozeman from the fall of 1973 until the spring of 1978. I currently reside in Buffalo, Wyoming but still have an ownership interest in the Bayers Ranch and make frequent trips to the Twin Bridges area every year. A substantial portion of the original Bayers Ranch is now owned by a neighboring ranch known as the Hamilton Ranch, which I understand is now owned by SRI River Holdings, LLC.

3. I am familiar with the major ditches that served the irrigated lands of the Bayers Ranch, as well as the major sources of water flowing through the Ranch and the ditch systems that served the adjoining lands of our neighbors. I acquired this familiarity through working on the Ranch and also learned about water rights for the ranch from my



father Arthur Byron Bayers who filed statements of claim for existing water rights for the ranch in the early 1980s for the Montana water adjudication process.

4. I am also familiar with a source of water known as the Lott Slough that originated east of Twin Bridges in Section 27, T3S, R6W, Madison County. I have also heard the Lott Slough referred to as Doncaster Slough. As the Lott Slough flowed north from Section 27, the Slough was crossed by Bayers Lane and then the Bayers Ditch in the SW¼ of Section 23, near the present site of the Twin Bridges sewage lagoon. The Slough eventually flowed under State Highway 41 in the SE¼ of Section 15, T3S, R6W, Madison County, as depicted on the map from the 1954 Madison County Water Resources Survey, attached as Exhibit A.

5. I recall that during my time on the Bayers Ranch there was a ditch that diverted water from Lott Slough on the west side of Highway 41 and that ran north along the west side of the highway right-of-way for approximately one mile, where the ditch then turned at a 90° angle and headed west toward the Jefferson River. The location of this ditch is shown on the aerial photo images attached as Exhibits B and C. This ditch is still in existence today.

6. This ditch was used primarily by the Bayers Ranch as a drain ditch, but it was used as an irrigation ditch by some of our neighbors on the west side of Highway 41. I can recall that our neighbors Gary and Tana Boldt irrigated lands on the west side of Highway 41 from this ditch. I do not specifically know when this ditch was constructed, but to the best of my knowledge and recollection the ditch has existed for many years and was in existence prior to July 1, 1973. To the best of my recollection this ditch was in

existence while I was still attending high school in Twin Bridges. I graduated from Twin Bridges High School in May of 1973.

Further Affiant sayeth naught.

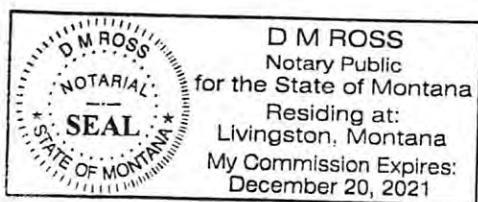
DATED this 6th day of July, 2020.

Richard Bayers
RICHARD BAYERS

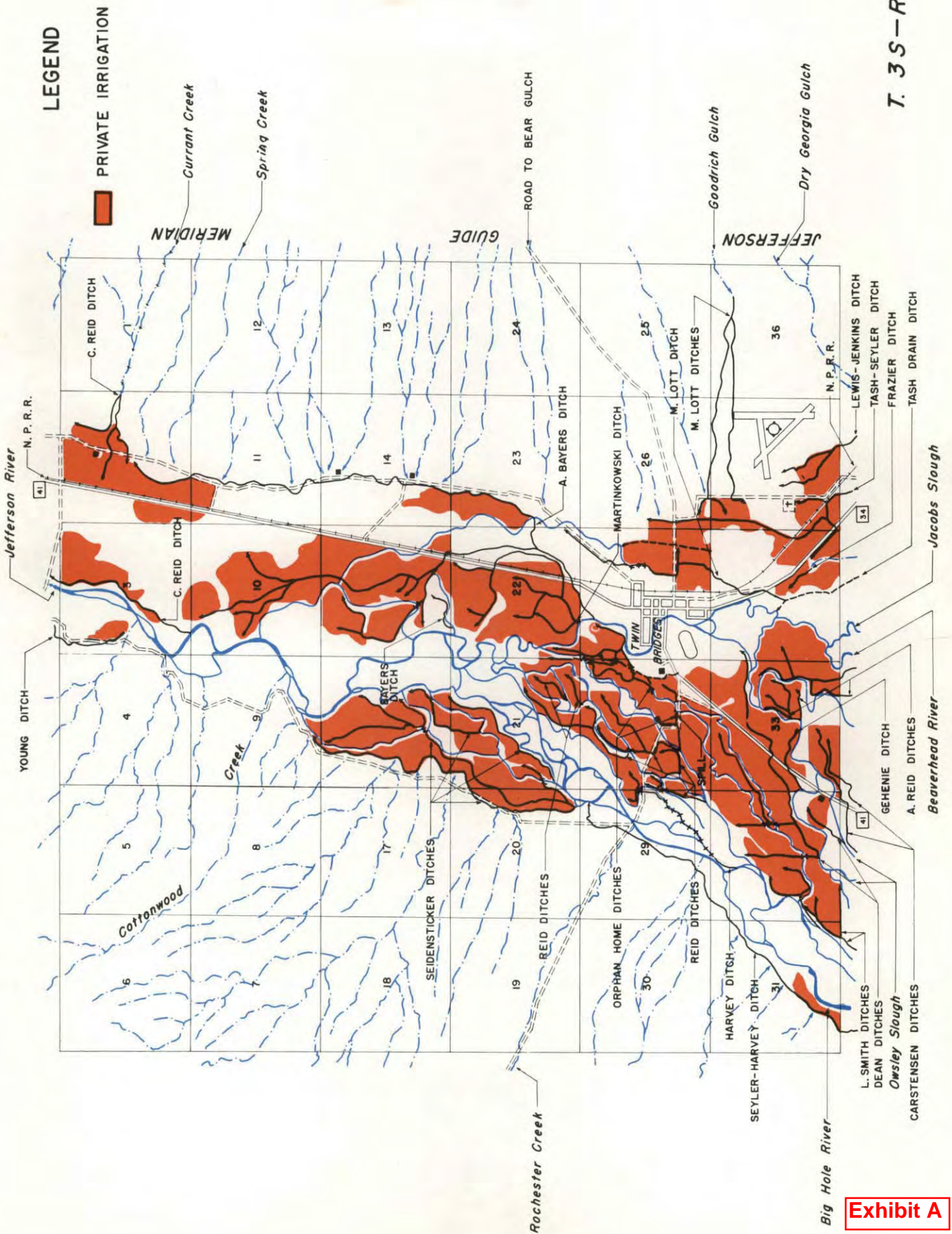
STATE OF MONTANA)
 :SS
County of Gallatin)

On this 6th day of July, 2020, before me, a Notary Public for the State of Montana, personally appeared Richard Bayers, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year in this certificate first hereinabove written.




D M Ross
Notary Public for the State of Montana




T. 3 S—R. 6 W

Ditch from Lott Slough

Legend

 POD

 POD on Lott Slough SE sec. 15, T3S, R6W

41

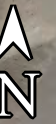
Bayer's Ranch Rd

Riverside Dr

Google Earth

© 2020 Google

Exhibit B





1000 ft


Ditch from Lott Slough

Write a description for your map.

Legend

 Ditch Crossing SE of Section 10, T3S, R6W

 Ditch Crossing SE of Section 10, T3S, R6W

Large spring complex 

41

Bayer's-Ranch-Rd


 POD on Lott Slough SE sec. 15, T3S, R6W

Exhibit C

Google Earth

© 2020 Google

4000 ft



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JEREMY A. MICHAEL, ESQ.
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Email: office@cmrlawmt.com
Attorneys for Claimant/Objector
SRI River Holdings LLC

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER (BASIN 41G)
PRELIMINARY DECREE**

CLAIMANT: SRI River Holdings LLC

OBJECTORS: SRI River Holdings LLC; United States of
America (USDA Forest Service)

NOTICE OF INTENT TO APPEAR: United States of America
(Bureau of Reclamation)

CASE 41G-R353
41G 195427-00
41G 196917-00

AFFIDAVIT OF JEREMY MAY

STATE OF MONTANA)
 :ss.
COUNTY OF GALLATIN)

I, **Jeremy May, P.E.**, being first duly sworn, depose and say as follows:

1. I am a licensed professional engineer, registered in the State of Montana since 2010, and am employed by Genesis Engineering, Inc. I graduated with my B.S. in Civil Engineering from Montana State University in 2006 and have 14 years of engineering experience. A copy of my resumé is attached as **Exhibit 1**.



2. I was hired by the claimant SRI River Holdings LLC ("SRI") to investigate the Doncaster Ditch culvert and capacity. Based on my expertise as a civil engineer and my analysis of the culvert for the Doncaster Ditch, I conclude that the modeled pipe capacity based on stains in the pipe is roughly 14.3 CFS and the modeled pipe capacity assuming a full pipe is 30.9 CFS. A copy of my report to SRI regarding the same is attached as **Exhibit 2**. The information in said report is true and correct and I incorporate that information into this affidavit.

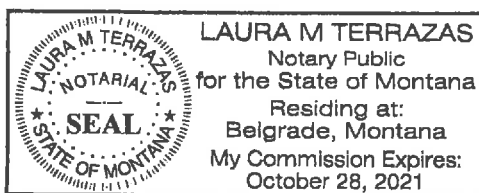
FURTHER YOUR AFFIANT SAYETH NAUGHT.

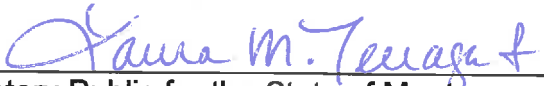
Dated this 18 day of September, 2020.



Jeremy May, P.E.

SUBSCRIBED AND SWORN to before me this 18 of September, 2020.





Notary Public for the State of Montana

Jeremy R. May
Professional Engineer No. 17579

EDUCATION

B.S. Civil Engineering, Montana State University, 2006

SPECIALIZATION

Construction Management and Oversight, Commercial Site Planning & Design, Mountain Access Road and Residential Design Processes, Storm Water Design & Permitting, Utility Design & Layout, Parking Lot Design and Construction Supervision, Construction & Topographic Surveying, Computer Aided Design and Drafting, Stream and Wetland Permitting. Software experience: AutoCAD Land Development, AutoCAD Civil 3D, Flowmaster, StormCAD, WaterCAD, Microsoft Project, Adobe Photoshop, and SpectraPave.

REGISTRATION

Professional Engineer: Montana (17579 PE)

PROFESSIONAL ASSIGNMENTS

2010 to Present Genesis Engineering, Inc.
2010 to 2012 Northwest Land Consultants, PLLC
2005 to 2010 Morrison-Maierle, Inc.

RELEVANT EXPERIENCE

- Quantel – 33,000 sqft Commercial Building Site, Design & Infrastructure on 2.8 acre site
- Foundant - 10,000 sqft Commercial Building Site, Design & Infrastructure on 2.0 acre site
- Mesa Laboratories- 82,000 sqft Commercial Building Site, Design & Infrastructure on 9.0 acre site
- Summit - 12,000 sqft Commercial Building Site, Design & Infrastructure on 2.2 acre site
- Play It Again Sports - 7,000 sqft Commercial Building Site, Design & Infrastructure on 1.0 acre site
- Flooring Place - 10,000 sqft Commercial Building Site, Design & Infrastructure on 4.3 acre site
- McCormick Dental - 7,000 sqft Commercial Building Site, Design & Infrastructure on 1.0 acre site
- Goodwill Site Plan - 19,000 sqft Commercial Building Site, Design & Infrastructure on 1.5 acre site
- J&D Family Subdivision, Mixed Use Subdivision, Bozeman, MT
- Billion AutoPlaza II, Dealership Siteplans, Bozeman, MT
- Stanley Village RV Park, Stanley, ND
- Walker Village, Watford City, ND
- Norton Ranch – Sewer Analysis, Bozeman, MT
- Gallatin Field Terminal Expansion, Belgrade, MT
- Gallatin Field Parking Lot, Lighting, Access Road and Utility Improvements, Belgrade, MT
- Gallatin Field Carwash Facility, Belgrade, MT
- Deer Lodge City-County Airport Perimeter Fence Improvements, Deer Lodge, MT
- Yellowstone Preserve – Design of 850 unit Subdivision, Livingston, MT
- Yellowstone Preserve, Main Extensions –Design & DEQ Submittal for River Crossings, Livingston, MT
- Park Street Utility Improvements – Design and DEQ Submittal, Livingston, MT

- Cruiser Lane Road Improvements – Belgrade, MT
- Big EZ Estates, Resort Development, Big Sky, MT
- Gallatin Preserve, Mountain Development, Big Sky, MT
- Dykstra Farms, Preliminary Plat Submittal, Belgrade, MT
- Greathorn Ranch Road and Fire Protection Improvements, Big Sky, MT
- RSH-Yellowstone Preserve, Private Mountain Development, Big Sky, MT
- Section 10-11 Connector Road, Construction & Design Big Sky, MT
- Yellowmule Trail Road, Construction & Design, Big Sky, MT

September 11, 2020

Jaime Wood
Hamilton Ranch

Re: Culvert Capacity – Doncaster Ditch

Dear Mr. Wood,

As requested, on September 10th, 2020, I visited the culvert of concern within Doncaster Ditch. The culvert is located under a driveway access off the west side of Highway 41 in the Northeast ¼ of Section 15, Township 3 South, Ranch 6 West. The culvert is a 90' long reinforced concrete pipe, sloping towards the north.

The capacity of the culvert was analyzed with two different water levels. These options are shown below in Figure 1.

1. Capacity when the upstream water was at a level equal with the top of pipe.
2. Capacity when the water matched a water stain in the pipe.

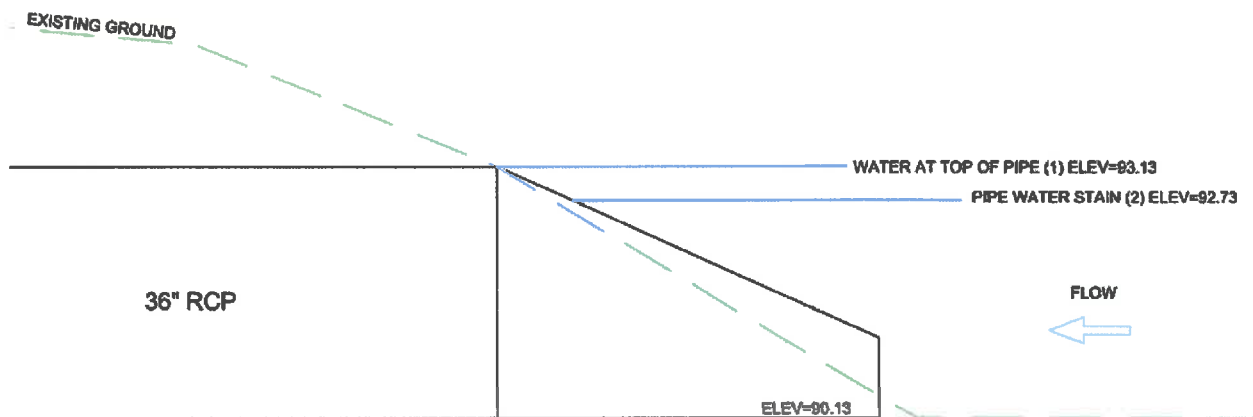


Figure 1 – Pipe capacity head water options

These capacities assume that the headgates immediately downstream of the pipe are open. There is an additional water mark on the downstream headgates that is roughly seven inches above the high-water mark in the pipe. This water mark is likely from when boards are in the east headgate, pushing water through the smaller headgate to the west.

The pipe capacities were modeled using Bentley's CulvertMaster. The model printouts are attached. The results are as follows.

Modeled Pipe capacity using water stains in pipe = 14.3 cfs
Modeled Pipe capacity assuming full pipe = 30.9 cfs

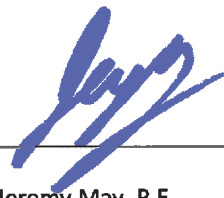
These results show that roughly 14 cfs is passed through this pipe often enough to create a defined water mark inside the pipe. The "water stain" flow analysis utilized a water stain on the outlet to determine the tailwater elevation. The

full flow pipe analysis removed this possible tailwater restriction since the ditch drops rapidly through the main headgate which provides adequate capacity when joined with the west headgate to exceed the pipe flow.

I believe that the "water stain" model is conservative when determining the pipe capacity. If additional capacity is warranted within the pipe, the best way to determine the flow capacity is to take measurements while the ditch is operating at its average flow.

Let us know if you need anything additional.

Sincerely,



Jeremy May, P.E.
Genesis Engineering, Inc.
406-581-5730

Enclosures

cc:

H:\1109\013\DOCS\Doncaster Ditch\capacity letter.doc

Culvert Calculator Report

36" RCP pipe stain elev

Solve For: Discharge

Culvert Summary

Allowable HW Elevation	92.73 ft	Headwater Depth/Height	0.87
Computed Headwater Elev.	92.73 ft	Discharge	14.30 cfs
Inlet Control HW Elev.	92.60 ft	Tailwater Elevation	92.60 ft
Outlet Control HW Elev.	92.73 ft	Control Type	Outlet Control

Grades

Upstream Invert	90.13 ft	Downstream Invert	90.00 ft
Length	90.00 ft	Constructed Slope	0.001444 ft/ft

Hydraulic Profile

Profile	M1	Depth, Downstream	2.60 ft
Slope Type	Mild	Normal Depth	1.61 ft
Flow Regime	Subcritical	Critical Depth	1.20 ft
Velocity Downstream	2.20 ft/s	Critical Slope	0.003991 ft/ft

Section

Section Shape	Circular	Mannings Coefficient	0.013
Section Material	Concrete	Span	3.00 ft
Section Size	36 inch	Rise	3.00 ft
Number Sections	1		

Outlet Control Properties

Outlet Control HW Elev.	92.73 ft	Upstream Velocity Head	0.08 ft
Ke	0.20	Entrance Loss	0.02 ft

Inlet Control Properties

Inlet Control HW Elev.	92.60 ft	Flow Control	Unsubmerged
Inlet Type	Groove end w/headwall	Area Full	7.1 ft ²
K	0.00180	HDS 5 Chart	1
M	2.00000	HDS 5 Scale	2
C	0.02920	Equation Form	1
Y	0.74000		

Culvert Calculator Report

36" RCP full

Solve For: Discharge

Culvert Summary

Allowable HW Elevation	93.13 ft	Headwater Depth/Height	1.00
Computed Headwater Elev.	93.13 ft	Discharge	30.91 cfs
Inlet Control HW Elev.	92.72 ft	Tailwater Elevation	92.50 ft
Outlet Control HW Elev.	93.13 ft	Control Type	Outlet Control

Grades

Upstream Invert	90.13 ft	Downstream Invert	90.00 ft
Length	90.00 ft	Constructed Slope	0.001444 ft/ft

Hydraulic Profile

Profile	M2	Depth, Downstream	2.50 ft
Slope Type	Mild	Normal Depth	N/A ft
Flow Regime	Subcritical	Critical Depth	1.80 ft
Velocity Downstream	4.91 ft/s	Critical Slope	0.004738 ft/ft

Section

Section Shape	Circular	Mannings Coefficient	0.013
Section Material	Concrete	Span	3.00 ft
Section Size	36 inch	Rise	3.00 ft
Number Sections	1		

Outlet Control Properties

Outlet Control HW Elev.	93.13 ft	Upstream Velocity Head	0.36 ft
Ke	0.20	Entrance Loss	0.07 ft

Inlet Control Properties

Inlet Control HW Elev.	92.72 ft	Flow Control	Unsubmerged
Inlet Type	Groove end w/headwall	Area Full	7.1 ft ²
K	0.00180	HDS 5 Chart	1
M	2.00000	HDS 5 Scale	2
C	0.02920	Equation Form	1
Y	0.74000		

LEIF M. JOHNSON, Acting U.S. Attorney
District of Montana
PAUL E. SALAMANCA, Deputy Assistant Attorney General
Environment & Natural Resources Division
JENNIFER A. NAJJAR, Trial Attorney
Natural Resources Section
Environment & Natural Resources Division
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Washington, D.C. 20044-7611
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Facsimile: (202) 305-0506

41G-0353-R-2019

December 9, 2020

Montana Water Court

ATTORNEYS FOR UNITED STATES OF AMERICA,
Bureau of Reclamation and USDA - Forest Service

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)**

CLAIMANT: SRI River Holdings LLC

CASE 41G-0353-R-2019

41G 195427-00

OBJECTORS: SRI River Holdings LLC; United States of America
(USDA - Forest Service)

41G 196917-00

NOTICE OF INTENT TO APPEAR: United States of America
(Bureau of Reclamation)

**UNITED STATES' STATEMENT REGARDING CLAIMANT'S MOTION TO AMEND
WATER RIGHT CLAIM 41G 195427-00**

On December 9, 2020, Claimant SRI River Holdings LLC ("Claimant") filed a Motion to Amend Water Right Claim No. 41G 195427-00 ("Motion to Amend"). In response, the United States of America, on behalf of the Bureau of Reclamation and Department of Agriculture – Forest Service (collectively the "United States"), submits the following Statement Regarding Claimant's Motion to Amend Water Right Claim No. 41G 195427-00.

In its Motion to Amend, the Claimant asked the Court to amend the point of diversion, source, and flow rate in 41G 195427-00. Specifically, Claimant asks the Court to modify the flow rate to 14.30 cubic feet per second, the source name to "Doncaster (Lott) Slough", and the legal land description for Point of Diversion Id. No. 1 to "SWNESE Section 15, T3S, R6W."

The amendments specified in the Motion to Amend resolve the United States' objections to 41G 195427-00, provided that no changes other than those specified in the Motion to Amend are entered. If other changes to 41G 195427-00 are proposed by the Court or the parties prior to the issuance of a final order in this case, the United States reserves its right to participate in those proceedings and pursue its objections.

Dated: December 9, 2020

Respectfully submitted,

LEIF M. JOHNSON, Acting U.S. Attorney
District of Montana

PAUL E. SALAMANCA, Deputy Assistant Attorney General
Environment & Natural Resources Division

/s/ *Jennifer A. Najjar*

JENNIFER A. NAJJAR, Trial Attorney
Jennifer.Najjar@usdoj.gov | (202) 305-0476
Natural Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Electronic Service: MontanaBasins.ENRD@usdoj.gov

ATTORNEYS FOR UNITED STATES OF AMERICA,
Bureau of Reclamation and USDA - Forest Service

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)**

CLAIMANT: SRI River Holdings LLC

CASE 41G-0353-R-2019

41G 195427-00

41G 196917-00

OBJECTORS: SRI River Holdings LLC; United States of America
(United States Department of Agriculture - Forest Service)

NOTICE OF INTENT TO APPEAR: United States of America
(Department of Interior, Bureau of Reclamation)

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2020, I sent a true and correct copy of the foregoing document to the following:

Michael JL Cusick
Cusick, Farve, Mattick & Refling, P.C.
PO Box 1288
Bozeman, MT 59771-1288
(406) 587-5511
office@cmrlawmt.com

/s/ Jessica S. Pannett
Jessica S. Pannett, Law Clerk