

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

400-4002-S-2021

July 20, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MILK RIVER BELOW WHITEWATER CREEK INCLUDING PORCUPINE CREEK (400)

\* \* \* \* \*

CLAIMANTS: Assiniboine & Sioux Tribes; Carla R. Tihista;  
Douglas J. Tihista

**CASE 400-4002-S-2021**  
400 202158-00  
**Split Claim:**  
**400 30151564**

**NOTICE OF FILING OF MASTER'S REPORT**

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations; or if there are errors in the Report.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report. Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

If you file an objection, you must mail 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**  
**PROCEDURAL HISTORY**

Livestock direct from source stock claim 40O 202158-00 is currently owned by Carla R. Tihista, Douglas J. Tihista, and the Assiniboiné and Sioux Tribes.

On March 17, 2021, Montana Department of Natural Resources and Conservation (“DNRC”) Compliance Technician Noreen Hohman submitted a memorandum regarding a split request for water right claim 40O 202158-00. The memorandum was based upon a DNRC Form 641 “DNRC Ownership Update Divided Interest.” The Form 641 was signed by Fall Line Farms Montana, LLC (now this portion of the place of use is owned by the Assiniboiné and Sioux Tribes) and Carla R. Tihista and Douglas J. Tihista.

The Form 641 identified with detail the proposed division of the points of diversion and place of use for claim 40O 202158-00 to Fall Line Farms Montana, LLC (now owned by the Assiniboiné and Sioux Tribes) and Carla R. Tihista and Douglas J. Tihista. The Form 641 was supported by a Warranty Deed from Fall Line Farms Montana, LLC (now owned by the Assiniboiné and Sioux Tribes) and Carla R. Tihista and Douglas J. Tihista. The DNRC created a map.

These documents supported and identified with detail the proposed division of the points of diversion and/or place of use for the stock claim. The DNRC map detailing the split of the claim’s points of diversion and place of use has been placed in each claim file.

Although DNRC identified the State of Montana as an owner of land within the place of use, previous proceedings determined that the State has no ownership interest in water right claim 40O 202158-00. (*See* Nov. 9, 2010 Master’s Report, Case 40O-79 Finding of Fact 3.) DNRC identified Carla R. Tihista and Douglas J. Tihista as lessees of the State. Therefore, these places of use remain on the portion of the claim owned by Carla R. Tihista and Douglas J. Tihista.

**FINDINGS OF FACT**

1. Stock claims are quantified by volume. The volume is quantified by a formula: 30 gallons per day per animal unit. The total number of animal units served is identified by the statement of claim.<sup>1</sup> The total number of livestock served by each parent claim,

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<sup>1</sup> Statement of claim 40O 202158-00 identifies 4,000 animal units.

and the split claim generated from it, cannot exceed the original number of livestock identified by the statement of claim.

2. Claimants each provided information identifying the number of animal units historically served by each portion of the claim. Therefore, the following information should be added to the abstract of the parent claim, 40O 202158-00.

**THIS WATER RIGHT HISTORICALLY SERVED 800 ANIMAL UNITS.**

The following information should be added to the abstract of the split claim, 40O 30151564.

**THIS WATER RIGHT HISTORICALLY SERVED 2,194 ANIMAL UNITS.<sup>2</sup>**

3. The following modifications should be made to the claims.

**Parent Claim 40O 202158-00** (Owned by Carla R. Tihista and Douglas J. Tihista)

**VOLUME:**

**THIS WATER RIGHT HISTORICALLY SERVED 800 ANIMAL UNITS.**

**POINT OF DIVERSION AND PLACE OF USE:**

**SEE MODIFIED ABSTRACT ATTACHED TO THIS REPORT.**

**ADD REMARK:**

**SPLIT CLAIM NO. 40O 30151564 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.**

**Split Claim 40O 30151564** (Owned by the Assiniboine and Sioux Tribes)

**VOLUME:**

**THIS WATER RIGHT HISTORICALLY SERVED 2,194 ANIMAL UNITS.**

**POINT OF DIVERSION AND PLACE OF USE:**

**SEE MODIFIED ABSTRACT ATTACHED TO THIS REPORT.**

**ADD REMARK:**

**THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40O 202158-00.**

### **CONCLUSIONS OF LAW**

1. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right

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<sup>2</sup> The Assiniboine and Sioux Tribes response includes a mathematical error. The total number of animal units served is 2,194 not 2,014.

claims. Section 85-2-231(2), MCA.

2. The Water Court may split claims upon request of the claimants. Rule 26, W.R.Adj.R.

3. A clerical mistake or a mistake arising from omission or oversight may be corrected by the court at any time. Rule 60(a), M. R. Civ.P.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claim accompany this Report to confirm that the recommended changes have been made in the state's centralized water right record system.

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Anna M. Stradley  
Senior Water Master

### **Service Via USPS Mail:**

Carla R. Tihista  
Douglas J. Tihista  
821 Geer Rd  
Nashua, MT 59248-9036  
(406) 785-4961

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**Caption Updated 6/24/2021**

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK  
BASIN 400**

**Water Right Number:** 400 202158-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CARLA R TIHISTA  
821 GEER RD  
NASHUA, MT 59248 9036

DOUGLAS J TIHISTA  
821 GEER RD  
NASHUA, MT 59248 9036

**Priority Date:** DECEMBER 31, 1900

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

**Volume:** THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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.

THIS WATER RIGHT HISTORICALLY SERVED 800 ANIMAL UNITS.

**Source Name:** PORCUPINE CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSW	5	30N	41E VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		E2	6	30N	41E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3			8	30N	41E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		W2W2	9	30N	41E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

5	E2NE	17	30N	41E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
6	SW	13	31N	40E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
7	6	31	31N	41E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
8	7	31	31N	41E	VALLEY
<b>*Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
9	8	31	31N	41E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
10	9	31	31N	41E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
11	10	31	31N	41E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
12	13	31	31N	41E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b> JANUARY 1 TO DECEMBER 31					

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSW	5	30N	41E	VALLEY
2			E2	6	30N	41E	VALLEY
3				8	30N	41E	VALLEY
4			W2W2	9	30N	41E	VALLEY
5			E2NE	17	30N	41E	VALLEY
6			SW	13	31N	40E	VALLEY
7		6		31	31N	41E	VALLEY
8		7		31	31N	41E	VALLEY
9		8		31	31N	41E	VALLEY
10		9		31	31N	41E	VALLEY
11		10		31	31N	41E	VALLEY
12		13		31	31N	41E	VALLEY

PARCEL NO. 4 DOES NOT INCLUDE THE E2E2W2N2 OF SECTION 9, T30N, R41E;  
PARCEL NO. 5 DOES NOT INCLUDE LOT 3 OF SECTION 17, T30N, R41E. SEE MAP  
LOCATED IN CLAIM FILE FOR ADDITIONAL INFORMATION.

**Remarks:**

THE POINT OF DIVERSION AND PLACE OF USE WERE AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

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

THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 30048482, 30048483.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE FORT PECK INDIAN RESERVATION.

SPLIT CLAIM NO. 400 30151564 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK  
BASIN 400**

**Water Right Number:**      **400 30151564**      STATEMENT OF CLAIM

**Version:**      1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:**                      ASSINIBOINE & SIOUX TRIBES  
   PO BOX 1027  
   POPLAR, MT 59255 1027

**Priority Date:**                DECEMBER 31, 1900

**Type of Historical Right:**    USE

**Purpose (Use):**                STOCK

**Flow Rate:**                NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK  
   DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

**Volume:**                    THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED  
   FOR STOCKWATERING 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.

THIS WATER RIGHT HISTORICALLY SERVED 2,194 ANIMAL UNITS.

**Source Name:**                PORCUPINE CREEK

**Source Type:**                SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			2	31N	40E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2	7		11	31N	40E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3	8		11	31N	40E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4	9		11	31N	40E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5	10		11	31N	40E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					



6	NE	14	31N	40E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
7		23	32N	40E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
8		26	32N	40E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
9		35	32N	40E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b> JANUARY 1 TO DECEMBER 31					
<b>Place of Use:</b>					

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				2	31N	40E	VALLEY
2		7		11	31N	40E	VALLEY
3		8		11	31N	40E	VALLEY
4		9		11	31N	40E	VALLEY
5		10		11	31N	40E	VALLEY
6			NE	14	31N	40E	VALLEY
7				23	32N	40E	VALLEY
8				26	32N	40E	VALLEY
9				35	32N	40E	VALLEY

PARCEL NO. 7 DOES NOT INCLUDE LOT 2 OF SECTION 23, T32N, R40E. SEE MAP LOCATED IN CLAIM FILE FOR ADDITIONAL INFORMATION.

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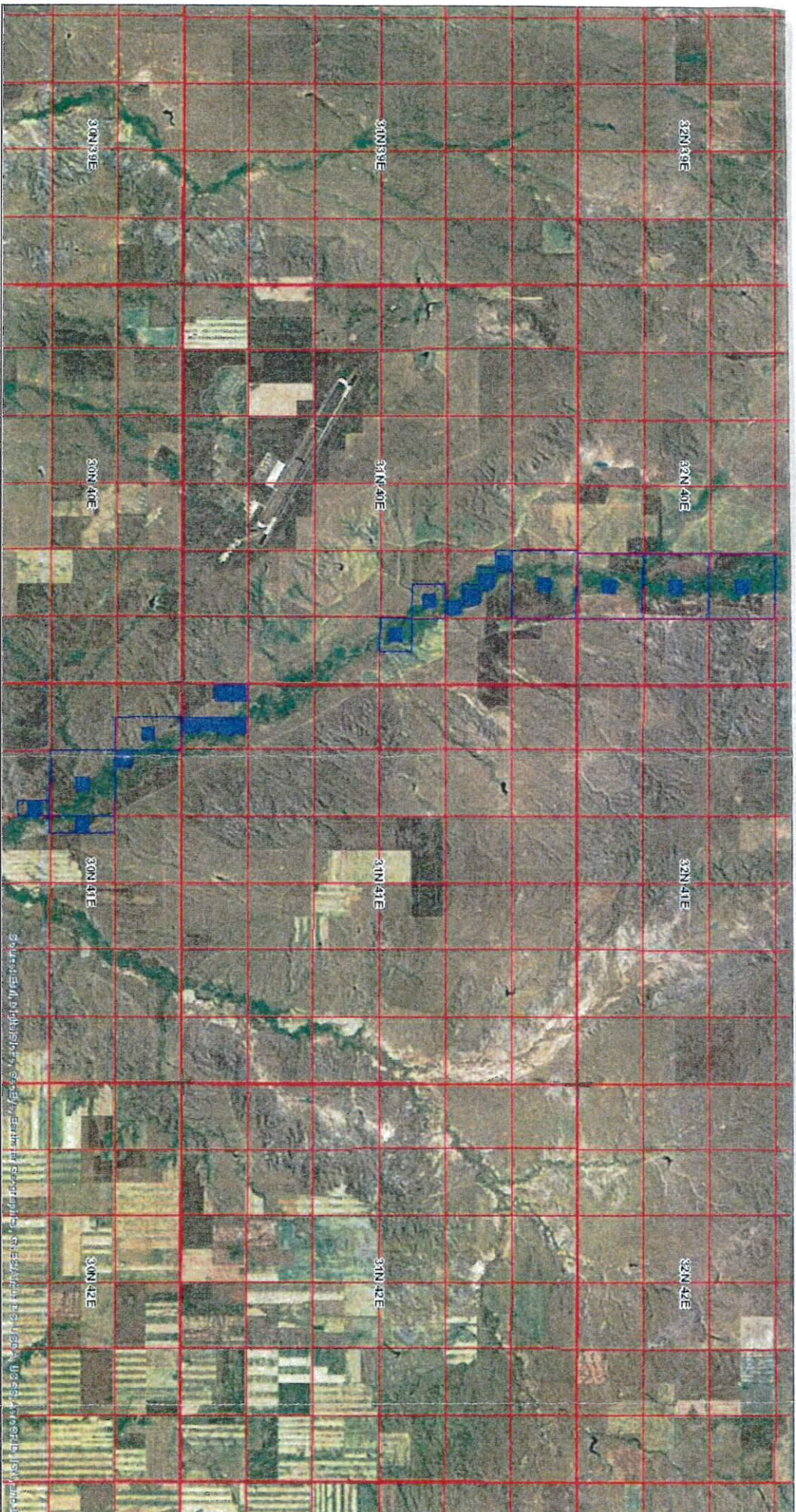
**Remarks:**

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THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 400 202158-00.



Surface Diversion ☐ Unserved Protracted Section

☒ Surface Water diversion

☒ Ground Water Diversion

☐ Place of Use

☐ PLSS Township

☐ PLSS First Division

☐ Protracted Block



Water Resources Division  
(406) 444-6601  
waterhelp@mt.gov



Geographic Information  
(406) 444-6601  
geoinfo@mt.gov



# Property owned by the Douglas and Carla Tihista for 400 202158-00



Property owned by  
Douglas J Tihista  
and Carla R Tihista

## Legend

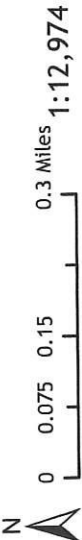
- Parcels
- Section
- Township & Range
- DNRC Basins
- Controlled 602 Areas



Service Layer Credits: Montana State  
Library  
Source: Esri, DigitalGlobe, GeoEye,  
Earthstar Geographics, CNES/Airbus DS,



Map Created: 3/29/2017 by Pam Weinmeister





# Property owned by the Douglas and Carla Tihista for 400 202158-00



Property owned by  
Douglas J Tihista  
and Carla R Tihista

**Legend**

- Parcels
- Section
- Township & Range
- DNRC Basins
- Controlled 602 Areas



Service Layer Credits: Montana State Library  
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS,



Map Created: 3/29/2017 by Pam Weinmeister

1:10,197

0.2 Miles

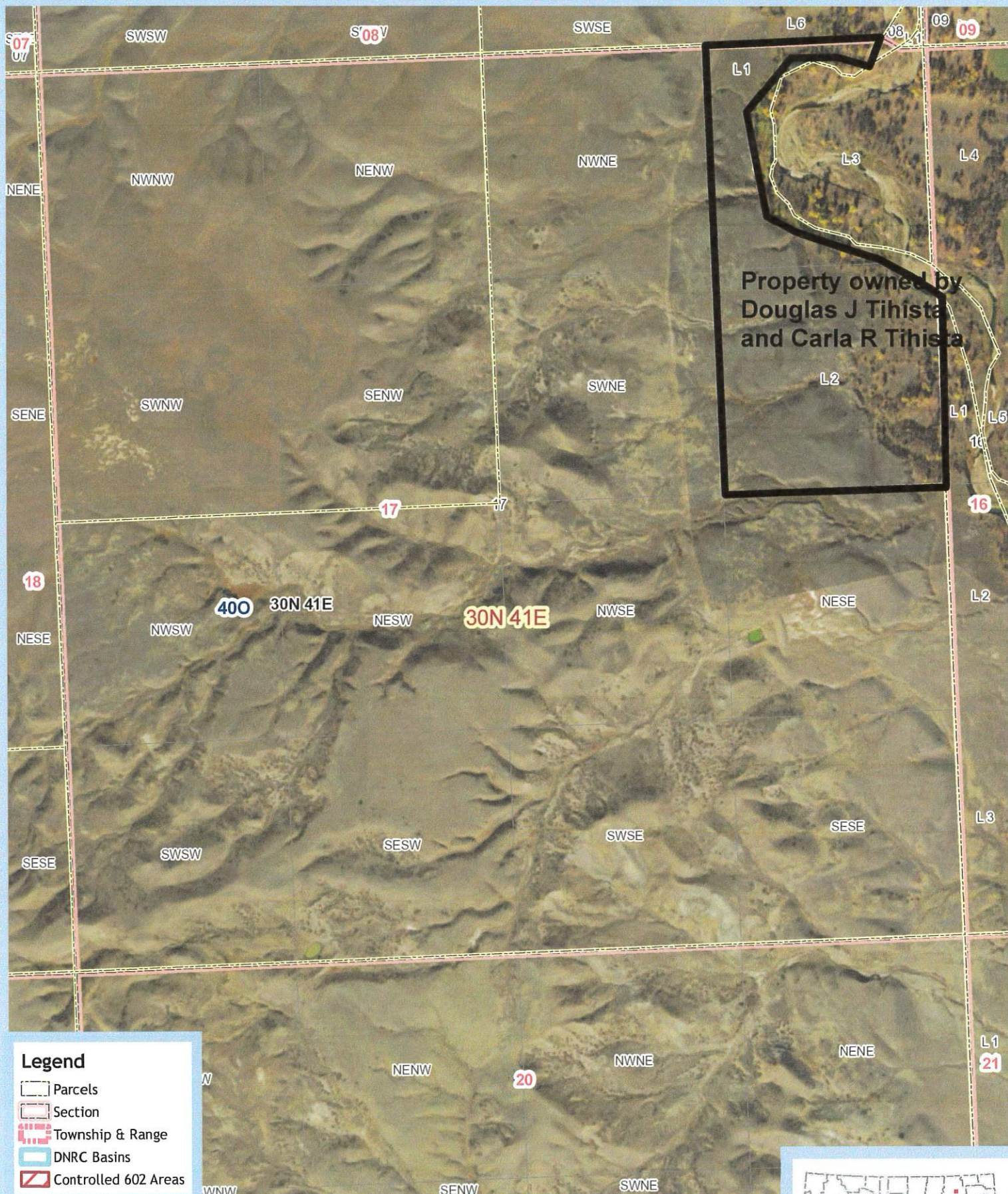
0.1

0.05





Property owned by the Douglas and Carla Tihista for 400 202158-00



Map Created: 3/29/2017 by Pam Weinmeister



Service Layer Credits: Montana State Library  
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS,





# Property owned by the Douglas and Carla Tihista for 400 202158-00

