

MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER
AND FORT PECK DAM - BASIN (40E)
PRELIMINARY DECREE

CLAIMANT: Thomas J. Schaetz

CASE 40E-0245-R-2022
40E 113850-00

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, conclusions 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. Thomas J. Schaetz is the record owner of stock claim 40E 113850-00.
2. Claim 40E 113850-00 was decreed with DNRC issue remarks:

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.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

The source issue remark is a notice-type remark that does not require further attention.

3. The Claimant was ordered to meet with the DNRC to address the reservoir issue remark decreed on the claim.

3. On June 17, 2022, DNRC Water Resource Pam Weinmeister filed a Memorandum stating she spoke with Claimant Thomas J. Schaetz regarding the claim. Ms. Weinmeister stated that she reviewed the Supreme Court Examination Rules, maps, and used a Motion to Amend submitted by Thomas J. Schaetz as data sources for the Memorandum. A Motion to Amend claim 40E 113850-00 was submitted with the Memorandum. A copy of the Memorandum and the Motion to Amend is attached to this Report.

4. Based on the recommendations made by Ms. Weinmeister and consistent with the Motion to Amend Claim 40E 113850-00, the following changes should be made:

Source Name:	CROOKED CREEK UNNAMED TRIBUTARY OF CROOKED CREEK						
Source Type:	SURFACE WATER						
Point of Diversion and Means of Diversion:							
ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	SESWNE	NESENE	26	19N	43E	MCCONE	
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	DAM						
Reservoir:	ONSTREAM						
	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
	E2SWNE	NESENE	26	19N	43E	MCCONE	
Diversion to Reservoir:	DIVERSION # 1 R35: THE DAM EXTENDS INTO THE SWSENE SEC 26 TWP 19N RGE 43E MCCONE COUNTY.						
Period of Use:	APRIL 1 TO OCTOBER 31						
Please add reservoir record: Maximum Depth: 10.00 FEET Dam Height: 13.00 FEET Capacity: 11.24 ACRE-FEET							
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		E2SWNE	SENE	26	19N	43E	MCCONE
2		SWSENE		26	19N	43E	MCCONE

PRINCIPLES AND CONCLUSIONS 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. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks that appear on a claim. Section 85-2-248, MCA.

3. The proposed corrections to source and place of use legal land descriptions do not have a reasonable potential to adversely affect other water users and therefore do not require further notice as provided for in Section 85-2-233(6), MCA. The changes do not constitute expansions of the elements of the claims, they merely reflect corrections to the paper water rights. The use of the water right on the ground has not changed.

4. The source name remark is a notice-type remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 40E 113850-00 should be changed as shown in Finding of Fact No. 4.

2. The issue remarks should be removed from claim 40E 113850-00.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Thomas J. Schaetz
494 MT Hwy 24
Brockway, MT 59214

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E

Water Right Number: 40E 113850-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: THOMAS J SCHAETZ
494 MT HWY 24
BROCKWAY, MT 59214

Priority Date: JULY 31, 1959

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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 UNNAMED TRIBUTARY OF CROOKED CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	26	19N	43E	MCCONE

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>
	E2SWNE	26	19N	43E	MCCONE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Capacity: 11.24 ACRE-FEET

THE DAM EXTENDS INTO THE SWSENE SEC 26 TWP 19N RGE 43E MCCONE COUNTY.

Period of Use: APRIL 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			SWSENE	26	19N	43E	MCCONE
2			E2SWNE	26	19N	43E	MCCONE

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Glasgow Water Resources Regional Office



GREG GIANFORTE
GOVERNOR

222 6TH ST SOUTH
PO BOX 1269

PHONE: (406) 228-2561

GLASGOW, MONTANA 59230-1269

MEMORANDUM

ELECTRONICALLY FILED

40E-0245-R-2022

June 17, 2022

DATE: June 16, 2022

CASE HEADING: **CASE 40E-00245-R-2022**
CLAIM: 40E 113850-00

Montana Water Court

TO: Anika M Stern, Senior Water Master
Montana Water Court

FROM: Pam Weinmeister, Water Resources Specialist
Glasgow Water Resources Office

CLAIMANT(S): Thomas J Schaetz

INTRODUCTION:

Pursuant to the May 2, 2022 Order from the Montana Water Court, Thomas J Schaetz was ordered to confer with the Glasgow Regional Office of the Department of Natural Resources & Conservation (DNRC) the reservoir issue remark. He was given until May 16, 2022 to contact the Glasgow Regional Office.

MATERIALS REVIEWED

Information in the claim files, Supreme Court Claim Examination rules, conversation with Thomas Schaetz, USDA Aerial photo 179-28 dated 9/17/1979, topographical maps Fortyfour Coulee & Flowing Well, Verified Motion to Amend Water Right Claim received 5/27/2022, and reservoir data received 5/27/2022 served as the primary data sources for this memorandum.

DISCUSSION 40E 113850-00

This is a stock claim for a dam located on Crooked Creek. The decreed point of diversion is NESENE Sec. 26 Twp. 19N Rge. 43E McCone County.

On May 9, 2022, Thomas Schaetz contacted the Glasgow Regional Office to discuss the following issue remark.

R100 EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED
WITH AVAILABLE DATA.

During the conversation, Thomas Schaetz explained there is only one reservoir located in Sec. 26 Twp. 19N Rge. 43E. A reservoir can be seen on USDA Aerial photo 179-28 dated 9/17/1979 (Exhibit 1). The location of this reservoir does not match the decreed point of diversion, reservoir information, or place of use.

It was discussed that if this reservoir is the one that was built in 1959, the point of diversion, reservoir information, and the place of use could be amended to reflect the actual historic location. It was further discussed the source would need to be amended if the point of diversion, reservoir information, and the place of use were amended. According to topographical maps Fortyfour Coulee and Flowing Well, the correct source would be Unnamed tributary of Crooked Creek (Exhibit 2).

A Verified Motion to Amend Water Right Claim and copy of USDA Aerial photo were mailed to Thomas Schaetz to review. Estimated reservoir information was sent to Mr. Schaetz.

- The surface area was measured at 2.81 acres
- Estimated maximum depth of 10 feet
- Estimated dam height of 13 feet.
- Estimated capacity of 11.24 Acre-Feet.

Mr. Schaetz was asked to provide the actual dam height and maximum depth of water. The formula to compute the capacity of the reservoir was supplied in the letter to calculate the capacity.

Mr. Schaetz submitted the Verified Motion to Amend Water Right on 5/27/2022 amending the source, point of diversion, reservoir information, and place of use to reflect the actual historic location of the reservoir. Information regarding the dam height and maximum depth of water were provided (See Exhibit 3).

The correct source is - Unnamed Tributary of Crooked Creek

The location of the dam (point of diversion) is

SESWNE Sec. 26 Twp. 19N Rge. 43E McCone County

The location of the dam structure (reservoir) is

E2SWNE Sec. 26 Twp. 19N Rge. 43E McCone County

The dam structure extends into

SWSENE Sec. 26 Twp. 19N Rge. 43E McCone County

The reservoir/storage of water (place of use) is described as follows:

E2SWNE Sec. 26 Twp. 19N Rge. 43E McCone County

SWSENE Sec. 26 Twp. 19N Rge. 43E McCone County

The reservoir capacity provided is

Surface Area:	2.81 Acres
Max Depth:	10 Feet
Dam Height:	13 Feet
Capacity:	11.24 Acre-feet

RECOMMENDATION:

The Verified Motion to Amend Water Right Claim proposes to amend the source, point of diversion, reservoir, and place of use as follows:

SOURCE: Unnamed Tributary of Crooked Creek
POINT OF DIVERSION: SESWNE Sec. 26 Twp. 19N Rge. 43E McCone County
RESERVOIR: E2SWNE Sec. 26 Twp. 19N Rge. 43E McCone County
Surface Area: 2.81 Acres
Max Depth: 10 Feet
Dam Height: 13 Feet
Capacity: 11.24 Acre-feet
Add R35: THE DAM EXTENDS INTO THE SWSENE SEC 26 TWP 19N
RGE 43E MCCONE COUNTY
PLACE OF USE: E2SWNE Sec. 26 Twp. 19N Rge. 43E McCone County
SWSENE Sec. 26 Twp. 19N Rge. 43E McCone County

If the above changes are implemented, I recommend the following issue remark is resolved and should be removed.

R100 EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED
WITH AVAILABLE DATA.

An abstract reflecting the proposed change is attached.

SIGNED

By Pam Weinmeister Digitally signed by Pam Weinmeister
Date: 06/16/2022 2:34 PM
Pam Weinmeister, Water Resource Specialist
406-228-2561 pweinmeister@mt.gov

REVIEWED: Todd Netto Digitally signed by
Todd Netto
Date: 2022.06.17
11:18:09 -06'00'

By _____
Todd Netto, Glasgow Deputy Regional Manager

Service List via USPS Mail:

Thomas J Schaetz
494 MT HWY 24
Brockway, MT 59214

**PRELIMINARY DECREE
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E
ABSTRACT OF WATER RIGHT CLAIM**

IMPORTANT NOTICE

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE MONTANA WATER COURT OR BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE PREPARATION OF THIS PRELIMINARY DECREE. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: 40E 113850-00 STATEMENT OF CLAIM

Version: 2 -- REEXAMINED

Status: ACTIVE

Owners: THOMAS J SCHAETZ
494 MT HWY 24
BROCKWAY, MT 59214

Priority Date: JULY 31, 1959

Type of Historical Right: USE

Purpose(use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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:** ~~CROOKED CREEK~~ **Unnamed Tributary of Crooked Creek**

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	SESWNE	NESENE	26	19N	43E	MCCONE

***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>
E2SWNE	NESENE	26	19N	43E	MCCONE

Surface Area: 2.81 Acres

Max Depth: 10 Feet

Dam Height: 13 Feet

Capacity: 11.24 Acre-Feet

Diversion to Reservoir: DIVERSION # 1

R35: THE DAM EXTENDS INTO THE SWSENE SEC 26 TWP 19N RGE 43E MCCONE COUNTY

Period of Use: APRIL 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		E2SWNE	SENE	26	19N	43E	MCCONE

Remarks:

SWSENE SEC 26 TWP 19N RGE 43E MCCONE

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

THE FOLLOWING ISSUES WERE IDENTIFIED BY THE DNRC DURING ITS EXAMINATION OF THIS WATER RIGHT CLAIM.

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.

~~EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.~~

A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING SUBBASINS OR BASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC PREPARATION OF THIS PRELIMINARY DECREE AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.

Case 40E 0245 R 2022

40E 113850-00

USDA Aerial photo 179-28 Dated 9/17/1979

Exhibit 1

Reservoir location is E2SWNE Sec. 26 Twp. 19N Rge. 43E

Point of Diversion SESWNE Sec. 26 Twp 19N Rge. 43E

Source is Unnamed Tributary of Crooked Creek

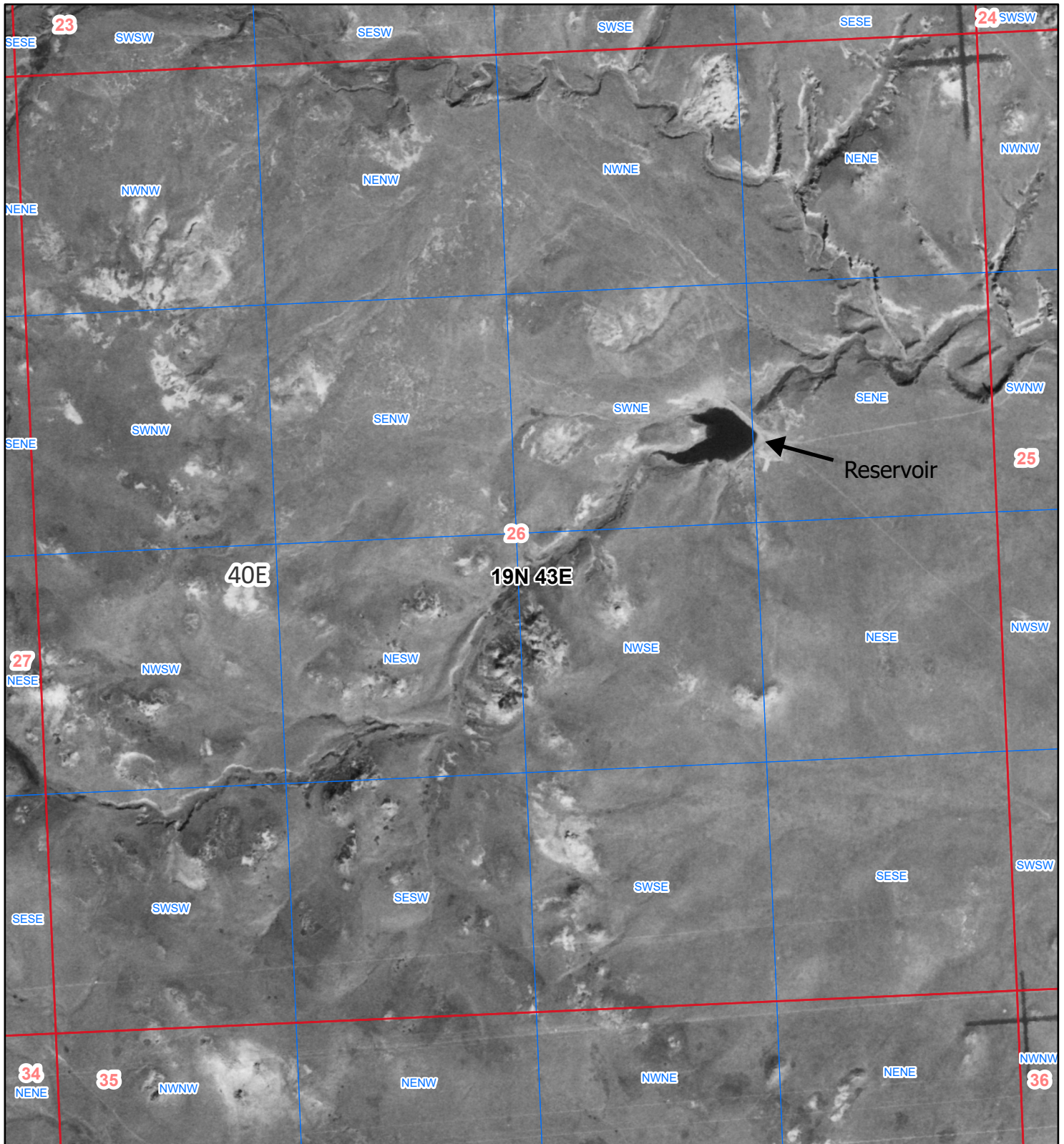
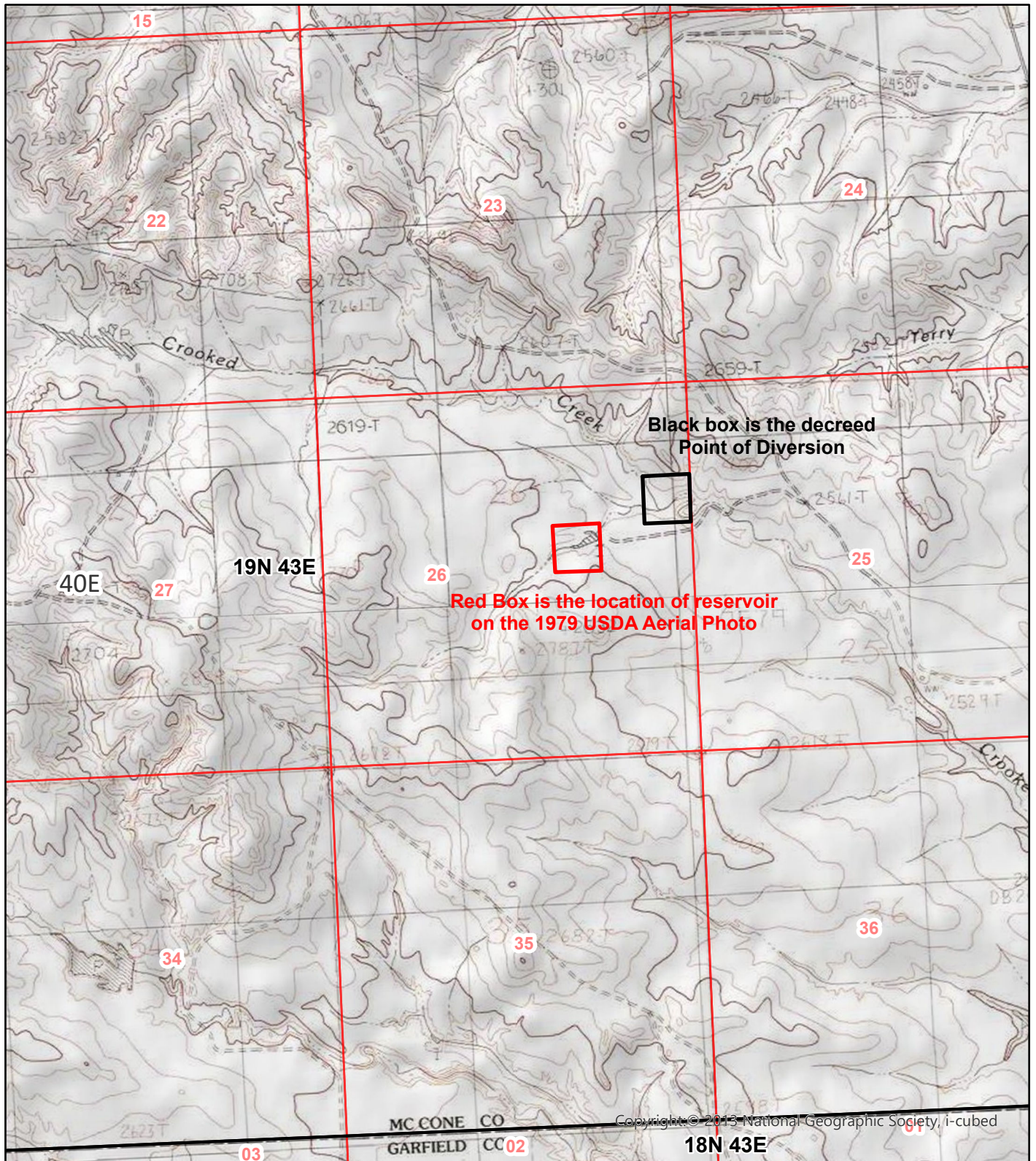


Exhibit 2

Case 40E 0245 R 2022

40E 113850-00

Topographical Maps Fortyfour Coulee and Flowing Well



DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Glasgow Water Resources Regional Office

Exhibit 3

Case 40E 0245 R 2022

40E 113850-00



GREG GIANFORTE
GOVERNOR

222 6TH ST SOUTH
PO BOX 1269

PHONE: (406) 228-2561

GLASGOW, MONTANA 59230-1269

13
May 14, 2022

Received

MAY 27 2022

DNRC Water Resources
Glasgow Regional Office

Thomas J Schaetz
494 MT HWY 24
Brockway, MT 59214

RE: Verified Motion to Amend Water Right Claim for claim 40E 113850-00

Dear Tom:

As we discussed on May 9, 2022, the purpose of the order from the Water Court is to resolve the reservoir issue remark.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED
WITH AVAILABLE DATA.

You explained there is only one reservoir in Sec. 26 Twp. 19N Rge. 43E. Looking at the 1979 USDA Aerial photo, it appears the reservoir is located in the SWNE Sec. 26 Twp. 19N Rge. 43E. If this is the reservoir that was constructed in July of 1959, the point of diversion, reservoir information, source, and place of use will need to be amended.

Enclosed is a Verified Motion to Amend Water Right Claim reflecting the amended elements, so the water right reflects the actual historic information about this reservoir. If you agree with the information on the verified motion to amend, please sign the form, and return to the Glasgow Water Resources Regional Office.

If you don't agree with the information on the amendment form, enclosed is a blank Verified Motion to Amend Water Right Claim form for you to complete.

I measured the surface area of the reservoir at 2.81 acres. I estimated the depth of the reservoir at 10 feet. The estimated dam height is 13 feet. The estimated capacity would be 11.24 acre-feet.

Please provide the actual dam height and the maximum depth of the water (spillway height).

- Dam height: 13'
- Maximum depth (spillway height): 10'
- Surface area when full, in acres: 2.81 acres
- Volume (acre-feet): 11.24

Compute as follows: surface area in acres x maximum depth in feet x 0.4 = acre-feet