

Montana Water Court  
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40N-0115-R-2022

November 2, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
ROCK CREEK, TRIBUTARY OF THE MILK RIVER BASIN (40N)  
PRELIMINARY DECREE

\* \* \* \* \*

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

**CASE 40N-0115-R-2022**

40N 75484-00  
40N 75485-00  
40N 75852-00  
40N 75857-00  
40N 168232-00  
40N 210829-00  
40N 30143026  
40N 30143027  
40N 30143120  
40N 30143136  
40N 30143146  
40N 30143179  
40N 30143186  
40N 30143193  
40N 30143194  
40N 30143195

**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**

### **Statement of the case**

The above captioned United States of America (Bureau of Land Management) ("BLM") claims received a mixture of issue remarks including notice that a claim's elements were modified by the DNRC during claims examination, notice a claim was not included in the previous Basin 40N decree, notice from the Water Court that an element did not appear on the claim abstract in the previous decree, the possibility that elements of a claim were not historically accurate, or questioning the claim's historical beneficial use/existence.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. The court may also add issue remarks, typically providing some sort of notice to water users concerning a claim.

Montana law requires the Water Court to resolve issue remarks.

On June 30, 2022, BLM filed evidence supporting its suggested resolution of the issue remarks on the claims. On September 6, 2022, BLM filed supplemental evidence in support of its suggested resolution of the issue remarks on the claims.

Unless otherwise mentioned by this report, the elements modified by this report appeared on the most recent Basin 40N Preliminary Decree objection list.

## **Issues**

1. Are the issue remarks appearing on the claims resolved?
2. Should BLM's amendments to the priority date for stock claim 40N 75857-00, the point of diversion for wildlife claim 40N 75485-00, and the place of use for stock claims 40N 168232-00, 40N 30143026, and 40N 30143136 be granted?

## **Findings of fact**

1. A preponderance of evidence (where necessary) establishes that the historically accurate legal land descriptions for the following claims are:

- multiple use stock claim 40N 75484-00 and wildlife claim 40N 75485-00 – place of use and point of diversion should be the SENWNW of Section 14, Township 33 North, Range 35 East, Valley County;
- stock claim 40N 168232-00 – point of diversion, reservoir record, and place of use should be the S2NWSE of Section 11, Township 36 North, Range 37 East, Valley County;
- stock claim 40N 210829-00 – remove point of diversion and place of use in the E2NW of Section 33, Township 33 North, Range 37 East, Valley County;
- stock claim 40N 30143026 – the W2E2 of Section 29, Township 37 North, Range 36 East, Valley County should be added to the point of diversion and place of use, and the NESE of Section 10 and the NWSW of Section 11 both in Township 36 North, Range 36 East, Valley County should be removed from the point of diversion and place of use;
- stock claim 40N 30143120 – the N2SE of Section 20, Township 36 North, Range 37 East, Valley County should be removed from the point of diversion and the place of use, and Rock Creek should be removed as a source; and
- stock claim 40N 30143136 – the SWSW of Section 34, Township 37 North, Range 36 East, Valley County should be removed from the point of diversion and the place of use.

2. The priority date for claim 40N 75857-00 is March 5, 1936.

3. All other elements not mentioned by findings of fact 1 and 2 identified by the above captioned Preliminary Decree abstracts are historically accurate.

### **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

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

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. If the settlement agreement expands or enlarges an element of a claim, the burden of proof must be met. If evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

6. When resolving issue remarks, the Montana 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.

7. The Montana Water Court has the authority to resolve issue remarks when the



claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

8. Notice by publication of an amendment is required if there is the possibility of adverse affect to other water users. Section 85-2-233(6), MCA.

9. Rule 15, M.R.Civ.P., restricts the scope of an amendment to the conduct, transaction, or occurrence set forth in the original pleading - the “same set of operative facts as contained in the original pleading.” *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423, 708 P.2d 1014, 1017 (1985). The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).

10. The party seeking to amend a water right claim has the burden to show, by a preponderance of the evidence, that the claim elements they challenge do not accurately reflect the beneficial use of the water rights as they existed prior to July 1, 1973. *Nelson v. Brooks*, 2014 MT 120, ¶34, 375 Mont. 86, 329 P.3d 558; Rule 19, W.R.Adj.R.

## Analysis

**Issues 1 and 2 – issue remark resolution; amended priority date for stock claim 40N 75857-00, amended point of diversion for wildlife claim 40N 75485-00, and amended place of use stock claims 40N 168232-00, 40N 30143026, and 40N 30143136**

Wildlife claim 40N 75852-00 and stock claim 40N 75854-00 received an issue remark stating the claims may be multiple uses. However, the volume identified by each claim adds up to one fill of the reservoir. BLM apportioned the total amount of water historically appropriated by the water right between each purpose in the multiple use relationship. This eliminates the need for the limitation enumerated by the multiple use information remark - that multiple use claims together may not use more water than the claimed water right - and the need for the multiple use information remark.

The proposed modifications for the claims in this case fall into several categories: BLM agreement with an issue remark, proposed modifications by BLM resulting in the elements of multiple use claims matching, refinements of legal land descriptions

identified by the Preliminary Decree abstracts, or confirmation of the historical accuracy of the prima facie statement of claim.

For some multiple use claims in this case, an issue remark concerning the possibility that a legal land description may require modification appeared on only one of the claims in the multiple use relationship. BLM agreed with the modifications suggested by the issue remark on one or both claims in the multiple use relationship, and proposed modifications and refinements where necessary so the legal land descriptions matched on the multiple uses of each water right.

Stock claim 40N 168232-00 received an issue remark questioning existence of the claimed reservoir. BLM provided 1974 and 2005 aerial photography supporting the historical accuracy of the reservoir's existence and the proposed modified point of diversion and place of use. Although the aerial photos postdate 1973, due to the 1958 priority date and the DNRC claims examination practice of using a post-1973 set of aerial photos, usually dating 1975 to 1980,<sup>1</sup> BLM's 1974 aerial photo provided reasonable evidence supporting existence of the reservoir in the proposed location. Additionally, no other water user claims the reservoir identified by the proposed modified point of diversion and place of use.

The priority date for stock claim 40N 75857-00, point of diversion for wildlife claim 40N 75485-00, and place of use for stock claims 40N 168232-00, 40N 30143026, and 40N 30143136 did not appear on the objection list for Basin 40N. Therefore, other water users failed to receive notice that the element may be modified for those claims. Accordingly, the BLM's proposed modifications to these claims' elements are deemed motions to amend.

The amendment to the priority date for stock claim 40N 75857-00 is a reduction and there was no change in the type of historical right. The amendment does not have the ability to adversely affect other water users. The amendment to the point of diversion or place of use identified by claims 40N 75485-00, 40N 168232-00, 40N 30143026, and

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<sup>1</sup> See Ch. IX E. reference to irrigation Ch. VII.D.2.a, May 2013 DNRC Water Rights Claim Examination Manual.

40N 30143136 does not have the ability to adversely affect other water users. BLM owns the entirety of the legal land description where each claimed and modified point of diversion or place of use is located, or reduced its legal land description, and no other water users have points of diversion or places of use between the claimed and modified legal land descriptions. No public notice of the amendments is necessary.

Copies of BLM's narrative responses and the Declarations of Melissa Norris are included with this report. Copies of BLM's aerial photography and maps are also included with this report. This report, BLM's narrative responses, the Declarations, and the aerial photography and maps will be placed in the claim files for future reference.

The notice issue remarks appearing on many of the claims in this case instructed claimant and other water users that if no objections were filed to the modifications made by the DNRC or the court, the elements identified by the remark would remain as they appear on the Preliminary Decree abstracts for the claims. No objections were filed against the claims.

Several of the stock claims are existing rights for instream flow. The claims meet the definition of an "exempt claim." Section 85-2-222(1), MCA. In 2013 and 2017, the Montana Legislature amended § 85-2-222, MCA, and provided for the filing of exempt claims subject to specified terms and conditions. The claims are timely filed exempt claims. The claims appeared in the Preliminary Decree with an issue remark providing notice to water users that the claims were not previously decreed. Water users were given the opportunity to review the claims and file an objection. No objections were filed against the claims.

### **Conclusions of law**

Based upon the DNRC's claims examination material, the statements of claim, the agreement of BLM, and evidence provided by BLM to resolve issue remarks, the proposed modifications to the claims are historically accurate and either overcome by a preponderance of evidence the prima facie proof afforded each statement of claim, are reductions within the parameters of the statement of claim, or confirm the historical accuracy of the prima facie statement of claim; support the amendments, where

necessary, to claims 40N 75485-00, 40N 75857-00, 40N 168232-00, 40N 30143026, and 40N 30143136; justify the modifications to each claim; and resolve the issue remarks on each claim.

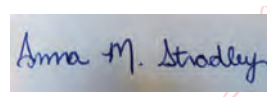
The issue remarks noting elements were modified by the DNRC or the court, or noting the lack of the claims' inclusion in the previous decree, served their notice purpose.

### **Recommendations**

To accurately reflect historical use, the claims identified by findings of fact 1 and 2 should be modified as discussed in those findings of fact.

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state's centralized water right record system.



Digitally signed by Anna  
Stradley  
Date: 2022.11.02 09:10:53  
-06'00'

Anna M. Stradley  
Senior Water Master

### **Service via Electronic Mail**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 75484-00 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:** DECEMBER 14, 1961

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 4.98 GPM

**\*Volume:** 0.62 AC-FT

**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		SENWNW	14	33N	35E	VALLEY

**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			SENWNW	14	33N	35E	VALLEY

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**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.

75484-00      75485-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 75485-00 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:** DECEMBER 14, 1961

**Type of Historical Right:** USE

**Purpose (use):** WILDLIFE

**\*Flow Rate:** 4.98 GPM

**\*Volume:** 7.42 AC-FT

**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		SENWNW	14	33N	35E	VALLEY

**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			SENWNW	14	33N	35E	VALLEY

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**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.

75484-00

75485-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 75852-00 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:** MARCH 5, 1936

**Type of Historical Right:** USE

**Purpose (use):** WILDLIFE

**\*Flow Rate:**  
  
THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

**\*Volume:** 1.31 AC-FT

**Source Name:** UNNAMED TRIBUTARY OF BLUFF 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		W2NENW	12	36N	36E	VALLEY

**\*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			W2NENW	12	36N	36E	VALLEY

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 75857-00 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:** MARCH 5, 1936

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*Volume:** 0.62 AC-FT

**Source Name:** UNNAMED TRIBUTARY OF BLUFF 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		W2NENW	12	36N	36E	VALLEY

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK 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			W2NENW	12	36N	36E	VALLEY



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 168232-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

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

**Priority Date:** DECEMBER 31, 1958

**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:** 12.00 AC-FT

**Source Name:** UNNAMED TRIBUTARY OF CHAMBERS 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		S2NWSE	11	36N	37E	VALLEY

**\*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>
	S2NWSE	11	36N	37E	VALLEY

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** APRIL 1 TO SEPTEMBER 30

**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			S2NWSE	11	36N	37E	VALLEY

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 210829-00 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:** DECEMBER 31, 1895

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** ASH COULEE

**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		SW	33	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		NE	32	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		S2	29	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		SE	30	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		SWSWNE	30	33N	37E	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:**

<b><u>ID</u></b>	<b><u>Acres</u></b>	<b><u>Govt Lot</u></b>	<b><u>Qtr Sec</u></b>	<b><u>Sec</u></b>	<b><u>Twp</u></b>	<b><u>Rge</u></b>	<b><u>County</u></b>
1			SW	33	33N	37E	VALLEY
2			NE	32	33N	37E	VALLEY
3			S2	29	33N	37E	VALLEY
4			SE	30	33N	37E	VALLEY
5			SWSWNE	30	33N	37E	VALLEY

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143026 STATEMENT OF CLAIM  
**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** BLUFF CREEK

**Source Type:** SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF BLUFF CREEK.

**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		S2SE	3	36N	36E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2		E2NE	10	36N	36E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
3		W2NW	11	36N	36E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
4		W2E2	29	37N	36E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
5		W2	29	37N	36E	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			S2SE	3	36N	36E	VALLEY
2			E2NE	10	36N	36E	VALLEY
3			W2NW	11	36N	36E	VALLEY
4			W2E2	29	37N	36E	VALLEY
5			W2	29	37N	36E	VALLEY

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**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3668 AND GRAZING ALLOTMENT MT04008.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143027 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** BLUFF 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		NESE	10	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		SW	11	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		N2	14	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		N2NE	23	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		SWNW	24	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		SW	24	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

7 N2NW 25 36N 36E VALLEY

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK 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			NESE	10	36N	36E	VALLEY
2			SW	11	36N	36E	VALLEY
3			N2	14	36N	36E	VALLEY
4			N2NE	23	36N	36E	VALLEY
5			SWNW	24	36N	36E	VALLEY
6			SW	24	36N	36E	VALLEY
7			N2NW	25	36N	36E	VALLEY

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**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3669 AND GRAZING ALLOTMENT MT04022.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143120 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** STARBUCK 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		E2SE	20	36N	37E	VALLEY

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK 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			E2SE	20	36N	37E	VALLEY

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**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3762 AND GRAZING ALLOTMENT MT04710.



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143136 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** BLUFF CREEK

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF BLUFF 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	2	NE	2	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2	3	NW	2	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
3		NWSE	2	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
4		SWSE	2	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						

5	NESW	2	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK					
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
6	SESW	2	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK					
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
7	NENW	11	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK					
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
8	SENW	11	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK					
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
9	SWNW	11	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK					
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
10	NWSW	11	36N	36E	VALLEY
<b>Source Name:</b> BLUFF CREEK					
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
11	NENW	14	36N	36E	VALLEY
<b>Source Name:</b> UNNAMED TRIBUTARY OF BLUFF CREEK					
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE					
12	NENW	25	36N	36E	VALLEY
<b>Source Name:</b> BLUFF CREEK					
<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		2	NE	2	36N	36E	VALLEY
2		3	NW	2	36N	36E	VALLEY
3			NWSE	2	36N	36E	VALLEY
4			SWSE	2	36N	36E	VALLEY
5			NESW	2	36N	36E	VALLEY
6			SESW	2	36N	36E	VALLEY
7			NENW	11	36N	36E	VALLEY
8			SENW	11	36N	36E	VALLEY

9	SWNW	11	36N	36E	VALLEY
10	NWSW	11	36N	36E	VALLEY
11	NENW	14	36N	36E	VALLEY
12	NENW	25	36N	36E	VALLEY

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**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3778 AND GRAZING ALLOTMENT MT04022.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143146 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 EAGLE 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		SESE	10	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		NENE	15	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		NWNE	15	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		SWNE	17	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		NESE	17	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		NWSE	17	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

7	SESE	17	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
8	SWSE	17	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
9	NESE	19	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
10	NENE	20	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
11	NWNE	20	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
12	NENW	20	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
13	NWNW	20	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
14	SWNW	20	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
15	NWSW	20	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE				
16	NWNW	21	33N	37E	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			SESE	10	33N	37E	VALLEY
2			NENE	15	33N	37E	VALLEY
3			NWNE	15	33N	37E	VALLEY
4			SWNE	17	33N	37E	VALLEY
5			NESE	17	33N	37E	VALLEY
6			NWSE	17	33N	37E	VALLEY
7			SESE	17	33N	37E	VALLEY
8			SWSE	17	33N	37E	VALLEY
9			NESE	19	33N	37E	VALLEY
10			NENE	20	33N	37E	VALLEY

11	NWNE	20	33N	37E	VALLEY
12	NENW	20	33N	37E	VALLEY
13	NWNW	20	33N	37E	VALLEY
14	SWNW	20	33N	37E	VALLEY
15	NWSW	20	33N	37E	VALLEY
16	NWNW	21	33N	37E	VALLEY

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**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3788 AND GRAZING ALLOTMENT MT04726.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143179 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** UPPER ICHPAIR 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		SWNW	26	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		W2SW	26	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		SENE	27	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		SWNE	27	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		NENW	27	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		E2SE	27	36N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

7 NWSE 27 36N 36E VALLEY

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK 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			SWNW	26	36N	36E	VALLEY
2			W2SW	26	36N	36E	VALLEY
3			SENE	27	36N	36E	VALLEY
4			SWNE	27	36N	36E	VALLEY
5			NENW	27	36N	36E	VALLEY
6			E2SE	27	36N	36E	VALLEY
7			NWSE	27	36N	36E	VALLEY

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**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3821 AND GRAZING ALLOTMENT MT04708.



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143186 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** WEST FORK WILLOW 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		E2NE	31	35N	38E	VALLEY

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NESE	31	35N	38E	VALLEY
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK 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			E2NE	31	35N	38E	VALLEY
2			NESE	31	35N	38E	VALLEY

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**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3828 AND GRAZING ALLOTMENT MT04718.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143193 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** WILLOW CREEK

**Source Type:** SURFACE WATER  
ALSO KNOWN AS DEEP CREEK.

**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	1		3	34N	37E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2	2		3	34N	37E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
3		SENE	4	34N	37E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
4		NWSW	4	34N	37E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
5		W2SE	5	34N	37E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
6		SESW	5	34N	37E	VALLEY
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3835 AND GRAZING ALLOTMENT MT04718.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143194 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** WILLOW 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		NENE	13	33N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		SWNE	13	33N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		NWSE	13	33N	36E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		NWNE	7	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		E2NW	7	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6	4		7	33N	37E	VALLEY
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK 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			NENE	13	33N	36E	VALLEY
2			SWNE	13	33N	36E	VALLEY
3			NWSE	13	33N	36E	VALLEY
4			NWNE	7	33N	37E	VALLEY
5			E2NW	7	33N	37E	VALLEY
6		4		7	33N	37E	VALLEY

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**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3836 AND GRAZING ALLOTMENT MT04722.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROCK CREEK, TRIBUTARY TO MILK RIVER**  
**BASIN 40N**

**Water Right Number:** 40N 30143195 STATEMENT OF CLAIM

**Version:** 2 -- 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):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** WILLOW 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		NWNE	35	33N	36E	VALLEY

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SWSW	35	33N	36E	VALLEY
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK 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			NWNE	35	33N	36E	VALLEY
2			SWSW	35	33N	36E	VALLEY

---

**Remarks:**

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3837 AND GRAZING ALLOTMENT MT04725.

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

JESSE LASLOVICH, United States Attorney  
District of Montana

JENNIFER A. NAJJAR, Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
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Washington, D.C. 20044-7611  
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ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management

ELECTRONICALLY FILED

40N-0115-R-2022

June 30, 2022

Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
ROCK CREEK, TRIBUTARY OF THE MILK RIVER – BASIN 40N  
PRELIMINARY DECREE**

\* \* \* \* \*

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

**CASE 40N-0115-R-2022**

40N 75484-00	40N 30143120
40N 75485-00	40N 30143136
40N 75852-00	40N 30143146
40N 75857-00	40N 30143179
40N 168232-00	40N 30143186
40N 210829-00	40N 30143193
40N 30143026	40N 30143194
40N 30143027	40N 30143195

**UNITED STATES' RESPONSE TO ORDER**

The United States, on behalf of the Bureau of Land Management (“United States” or “BLM”), provides this response to the Court’s Order requesting additional information to resolve the issue remarks on Water Right Claim Nos. 40N 75484-00, 40N 75485-00, 40N 75852-00, 40N 75857-00, 40N 168232-00, 40N 210829-00, 40N 30143026, 40N 30143027, 40N 30143120, 40N 30143136, 40N 30143146, 40N 30143179, 40N 30143186, 40N 30143193, 40N 30143194, and 40N 30143195.

## **1. Claims 40N 75484-00 and 40N 75485-00**

Claims 40N 75484-00 and 40N 75485-00 are claims for stock and wildlife use from the same well in the NENE Section 15, Township 33N, Range 35E. *See* Declaration of Melissa Norris, (“Exhibit 1”) at ¶ 5. During its reexamination, the Department of Natural Resources and Conservation (“DNRC”) added an issue remark to claim 40N 75484-00 that indicated that it could not locate the well, but for claim 40N 75485-00 DNRC refined the point of diversion to the SENWNW of Section 14, Township 33, Range 35E (“Section 14”). *Id.* On June 9, 2022, BLM staff from the Glasgow Field Office conducted a field visit and confirmed, via Global Positioning System (“GPS”), that the well is located and used in the SENWNW of Section 14, consistent with the DNRC’s revision. *Id.* The United States agrees with DNRC’s modification, and further requests that the points of diversion and places of use for claims 40N 75484-00 and 40N 75485-00 also be corrected to the **SENWNW Section 14**, Township 33N, Range 35E. *See* Exhibit 1, *see also* Attachment A (Claim 40N 75484-00 proposed abstract), B (Claim 40N 75485-00 proposed abstract), C (aerial map), and D (topographic map).

## **2. Claims 40N 75852-00 and 40N 75857-00**

During its reexamination, the DNRC indicated in an issue remark that claims 40N 75852-00 and 40N 75857-00 are multiple uses of the same pothole lake and may need a multiple use remark. Exhibit 1 at ¶ 6. The United States does not agree that a multiple use remark should be added. As the Court previously recognized, the volumes for each pair of BLM stock and wildlife claims are not intended to be cumulative because the combined volume is equal to one fill of the impoundment. *See e.g.*, April 27, 2022 Master’s Report, Case 40N-0118-R-2022. This combined volume reflects BLM’s historical use of one fill for the combined stock and wildlife purposes. *Id.* at 4. The total amount of water historically appropriated by the water right between each purpose in the multiple use relationship eliminates the need for a multiple use



remark. *See id.* In addition, although BLM has retained the multiple-use remark on paired claims in some basins and adjusted the volumes, in Basin 40N BLM opted to seek removal of the remark. Adding a multiple-use remark to some, but not all, paired stock and wildlife claims in Basin 40N could lead to confusion and complicate future administration. Thus, a multiple use remark should not be added to these claims.

The DNRC also included an issue remark on claim 40N 75852-00 indicating that the priority date may be inaccurate. Exhibit 1 at ¶ 6. The United States agrees with the assessment that there is a priority date error, but the priority date is incorrect on claim 40N 75857-00. *Id.* The priority date for claim 40N 75857-00 should be amended to March 5, 1936 to match the date for claim 40N 75852-00. *Id.*; *see also* Attachment E (claim 40N 75852-00 proposed abstract), F (claim 40N 75857-00 proposed abstract).

### **3. Claim 40N 168232-00**

Claim 40N 168232-00 is a stock right on a reservoir on an unnamed tributary of Chambers Coulee. *See* Exhibit 1 at ¶ 7. During its reexamination, DNRC added an issue remark indicating that it could not identify the reservoir at the claimed location of the impoundment. *Id.* The reservoir historically used for this stock right is located in the S2NWSE Section 11, Township 36N, Range 37E, not the NWSWESE, as shown on the Preliminary Decree. *Id.*; *see also* Attachment G (proposed abstract), H (map). The United States therefore requests that the point of diversion, reservoir record, and place of use legal land descriptions be corrected to the S2NWSE Section 11. *Id.*

### **4. Claim 40N 210829-00**

Claim 40N 210829-00 is a direct-from-source stock right from Ash Coulee. *See* Exhibit 1 at ¶ 8. During its reexamination, DNRC added an issue remark questioning the source for Point of Diversion Id. No. 2. *Id.* Upon review of maps and aerial photographs, BLM personnel

determined that the legal land description for Point of Diversion Id. No. 2 should be corrected to the **W2NW** Section 33, Township 33N, Range 37E. *Id.* Because the place of use and points of diversion must match for direct-from-source claims, the United States requests that Place of Use Id. No. 2 also be corrected to the **W2NW** Section 33, Township 33N, Range 37E. *See* Exhibit 1 at ¶ 8; Attachment I (proposed abstract), J (map).

#### **5. Claim 40N 30143026**

Claim 40N 30143026 is a direct-from-source stock right on portions of Bluff Creek and an unnamed tributary of Bluff Creek within BLM grazing allotment No. MT04008. *See* Exhibit 1 at ¶ 9. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. BLM personnel reviewed the water right file, in addition to topographic maps and aerial imagery, and confirmed that most of the claimed stream portions are described accurately. *Id.* However, the place of use and point of diversion needs to be modified to include Bluff Creek and its tributaries that crosses into the W2E2 of Section 29, Township 37N, Range 36E. *Id.* Accordingly, an additional point of diversion and place of use describing this portion of claimed stream in the **W2E2 Section 29, Township 37N, Range 36E in Valley County** should be added to more accurately reflect historical use. *Id.*; *see also* Attachment K (proposed abstract), L (map). In addition, Place of Use and Point of Diversion Id. No. 3 and Place of Use and Point of Diversion Id. No. 5 should be removed from the water right because they are not within grazing allotment No. MT04008. *Id.*

#### **6. Claim 40N 30143027**

As described on the Preliminary Decree for 40N, claim 40N 30143027 asserts a direct-from-source stock right from portions of Bluff Creek, which is located within BLM grazing allotment No. MT04022. *See* Exhibit 1 at ¶ 10. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. *Id.*

However, BLM personnel reviewed the water right file, in addition to topographic maps and aerial imagery, and determined that the claimed stretches of Bluff Creek were accurately described in the legal land descriptions for the claimed points of diversion and place of use. *Id.* Thus, no changes should be made except the removal of the DNRC's issue remark. *Id.*; *see also* Attachment M (proposed abstract), N (map).

#### **7. Claim 40N 30143120**

Claim 40N 30143120 is a direct-from-source stock right from Starbuck Coulee, which is within BLM grazing allotment No. MT04710. *See* Exhibit 1 at ¶ 11. During its examination, DNRC added an issue remark indicating that multiple sources may be claimed and therefore more than one water right may be involved. *Id.* BLM personnel reviewed the water right file, in addition to topographic maps and aerial imagery, and determined that the claim map inaccurately included a reach of Rock Creek. *Id.* The portion of Rock Creek on the map is covered by stock water claim 40N 168233-00. *Id.*; *see also* Attachment O (proposed abstract), P (map). Accordingly, Point of Diversion Id. No. 2, Place of Use Id. No. 2, and source references to Rock Creek should be removed from the water right to more accurately reflect historical use of this water right. *Id.*

#### **8. Claim 40N 30143136**

Claim 40N 30143136 is a direct-from-source stock right on portions of Bluff Creek and unnamed tributaries of Bluff Creek within BLM grazing allotment No. MT04022. *See* Exhibit 1 at ¶ 12. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. *Id.* BLM reviewed the water right file, in addition to topographic maps and aerial imagery, and determined that the claimed stream portions are described accurately with the exception of Point of Diversion and Place of Use Id. No. 13, which are located outside of the grazing allotment boundary. *Id.*; *see also* Attachment Q (proposed

abstract), R (map). Therefore, the United States requests that Point of Diversion Id. No. 13 and Place of Use Id. No. 13, and the related issue remark be removed. *Id.*

**9. Claim 40N 30143146**

Claim 40N 30143146 is a direct-from-source stock right on portions of unnamed tributaries of Eagle Creek. *See* Exhibit 1 at ¶ 13. During its examination, DNRC added an issue remark indicating that it appeared BLM was also claiming a reservoir located within the SWNE of Section 17, Township 33N, Range 37E. *Id.* Stock use from Horse Ret Reservoir is claimed by BLM claim 40N 75546-00. *Id.*; *see also* Attachment S (proposed abstract). Accordingly, the issue remark should be removed from claim 40N 30143146.

**10. Claim 40N 30143179**

Claim 40N 30143179 is a direct-from-source stock right on portions of Upper Ichpair Creek. *See* Exhibit 1 at ¶ 14. During its examination, DNRC added an issue remark questioning whether BLM intended to also claim a reservoir in the NENW of Section 27, Township 36N, Range 36E. *Id.* The identified reservoir is known as 013853, X-Box Pit, and stock use from this reservoir is covered by stock water permit 40N 30065035. *Id.* Therefore, the issue remark should be removed from the claim. *Id.*; *see also* Attachment T (proposed abstract).

**11. Claim 40N 30143186**

Claim 40N 30143186 asserts a direct-from-source stock right from portions of Willow Creek, West Fork. *See* Exhibit 1 at ¶ 15. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description based on what was in the claim file. *Id.* BLM personnel confirmed from review of the claim file and topographic and aerial imagery that the legal and descriptions for the points of diversion and place of use are accurately described within grazing allotment No. MT04718. *Id.*; Attachment U (proposed

abstract), V (map). Accordingly, no changes should be made to this water right and the issue remark should be removed. *Id.*

### **12. Claim 40N 30143193**

Claim 40N 30143193 is a direct-from-source stock right on portions of Willow Creek,. *See* Exhibit 1 at ¶ 16. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. *Id.* BLM personnel reviewed the water right file, in addition to topographic maps and aerial imagery, and determined that the claimed stream portions for the place of use and points of diversion are described accurately. *Id.* It appears that the DNRC was specifically questioning Point of Diversion and Place of Use Id. No. 6 because it is not a part of the mainstem of Willow Creek. All available resources indicate that an old oxbow of Willow Creek is evident in the area. *Id.* This oxbow was historically accessed by livestock. *Id.* Therefore, no changes should be made to this water right and the issue remark should be removed. *Id.*, Attachment W (proposed abstract), X (map).

### **13. Claim 40N 30143194**

Claim 40N 30143194 is a direct-from-source stock right on portions of Willow Creek. *See* Exhibit 1 at ¶ 17. During its examination, the DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. BLM personnel reviewed the water right file, in addition to topographic maps and aerial imagery, and concluded that the claimed stretches of stream were accurately described within the claimed points of diversion and place of use. *Id.* It appears that the DNRC was specifically questioning the Point of Diversion Id. No. 5 and Place of Use Id. No. 5 because it is not a part of the mainstem of Willow Creek. This oxbow was historically accessed by livestock. *Id.* Therefore, no changes should be made to this water right and the issue remark should be removed. *Id.*; Attachment Y (proposed abstract), Z (map).

#### 14. Claim 40N 30143195

Claim 40N 30143195 is a direct-from-source stock right on portions of Willow Creek that are within BLM grazing allotment No. MT04725. *See* Exhibit 1 at ¶ 18. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. *Id.* BLM personnel reviewed the water right file, in addition to topographic maps and aerial imagery, and concluded that the claimed stretches of stream were accurately described within the claimed points of diversion and place of use. *Id.* It appears that the DNRC was specifically questioning the Point of Diversion Id. No. 2 and Place of Use Id. No. 2 because it is not a part of the mainstem of Willow Creek. All available resources indicate that an old oxbow of Willow Creek is evident in the SESWSW Section 35, Township 33N, Range 36E in Valley County. *Id.* This oxbow was historically accessed by livestock. *Id.* Therefore, no changes should be made to this water right and the issue remark should be removed. *Id.*; Attachment AA (proposed abstract), BB (map).

Dated: June 30, 2022

Respectfully submitted,

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

JESSE LASLOVICH, United States Attorney  
District of Montana

/s/ Jennifer A. Najjar

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ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management

# **Exhibit 1**

**IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
ROCK CREEK, TRIBUTARY OF THE MILK RIVER BASIN (40N)  
PRELIMINARY DECREE**

\*\*\*\*\*

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

**CASE 40N-0115-R-2022**

40N 75484-00	40N 30143120
40N 75485-00	40N 30143136
40N 75852-00	40N 30143146
40N 75857-00	40N 30143179
40N 168232-00	40N 30143186
40N 210829-00	40N 30143193
40N 30143026	40N 30143194
40N 30143027	40N 30143195

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**DECLARATION OF MELISSA NORRIS**

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I, Melissa Norris, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed by the United States Department of Interior, Bureau of Land Management Montana-Dakotas State Office in the Division of Resources, Branch of Planning and Biological Resources as a Water Rights Specialist. I make this declaration with respect to Statement of Claim Nos. 40N 75484-00, 40N 75485-00, 40N 75852-00, 40N 75857-00, 40N 168232-00, 40N 210829-00, 40N 30143026, 40N 30143027, 40N 30143120, 40N 30143136, 40N 30143146, 40N 30143179, 40N 30143186, 40N 30143193, 40N 30143194, and 40N 30143195 (collectively, “the Claims”).

2. As a Bureau of Land Management (“BLM”) Water Rights Specialist, I work on various aspects of the Montana water adjudication. In this capacity, I have participated in defending BLM’s water rights during the Montana General Stream Adjudication by filing objections to other water rights that might improperly affect BLM’s ability to receive the full benefit of its water rights. I have also participated in the resolution of those objections. In this position, I routinely examine aerial photographs, claim files, and other historic materials to



assess historic use of other water rights. I also routinely use GIS software that enables me to calculate and map the approximate number of irrigated acres shown on the aerial photographs.

3. Before my employment with BLM, I was employed by the State of Montana Department of Natural Resources and Conservation (“DNRC”) as a New Appropriations Specialist for the Lewistown Regional Water Resources Office for three years. Prior to my employment as a New Appropriations Specialist for the DNRC, I was an Adjudication Specialist for eleven years. My work as a Specialist for the DNRC familiarized me to how DNRC reviews claims, which includes the identification and assignment of issue and informational remarks. I estimate that I have reviewed thousands of water rights in connection with these duties.

4. I have personally reviewed each of the Claims in this matter. In addition to reviewing the claim file, ownership records, and aerial imagery, among other relevant documentation, I have also spoken with staff from the relevant BLM Field Office about each claim.

5. **Claims 40N 75484-00 and 40N 75485-00.** These two water rights are filed on and share the same well. During its reexamination, DNRC added a point of diversion issue remark to claim 40N 75484-00 indicating that it could not locate the well. DNRC refined the point of diversion for claim 40N 75485-00 from the NENE Section15, Township 33N, Range 35E, Valley County to the SENWNW Section14. On June 9, 2022, BLM field staff from the Glasgow Field Office visited the location of the claimed well and verified, via GPS, that the well is located and used in the SENWNW Section14.<sup>1</sup> The points of diversion and places of use for claims 40N 75484-00 and 40N 75485-00 should be corrected to the **SENWNW Section 14**

---

<sup>1</sup> The well is at N 48.622939°, W -107.115709° which is in the SENWNW of Section 14 Township 33N Range 35E Valley County The tank is next to the well.

Township 33N, Range 35E, Valley County. *See* Attachment A (Claim 40N 75484-00 proposed abstract), B (Claim 40N 75485-00 proposed abstract), C (aerial map), and D (topographic map).

6. **Claims 40N 75852-00 and 40N 75857-00.** These two water rights are filed on and share the same pothole lake. During its reexamination, DNRC added an issue remark to both claims indicating that they appeared to be multiple uses and may need a multiple use remark. Claim 40N 75852-00 received an additional issue remark indicating that it appeared its priority date was incorrect. I reviewed water right records for claims 40N 75852-00 and 40N 75857-00. I found, however, that it is 40N 75857-00 that contains a priority date keypunch error. The claimed priority date, for both claims, is March 5, 1936, not November 23, 1935. The priority date for stock claim 40N 75857-00 should be corrected to **March 5, 1936**. A multiple use remark should not be added to either water right abstract. The volumes for each pair of BLM stock and wildlife claims are not intended to be cumulative because the combined volume is equal to one fill of the impoundment. Therefore, a multiple use remark is not necessary for claims 40N 75852-00 and 40N 75857-00. *See* Attachment E (Claim 40N 75852-00 proposed abstract), F (Claim 40N 75857-00 proposed abstract).

7. **Claim 40N 168232-00.** This claim is for a stock reservoir on an unnamed tributary of Chambers Coulee. During its reexamination, DNRC added an issue remark indicating that it could not identify the location of the claimed impoundment. I reviewed the water right records and aerial photographs, and found the reservoir is claimed to be in the wrong location. The reservoir is not in the NWSWSE Section 11 Township 36N Range 37E Valley County. The reservoir is actually located slightly northeast of the claimed spot—in the S2NWSE Section 11 Township 36N Range 37E Valley County. The reservoir record, point of diversion, and place of

use legal land descriptions should be corrected to the **S2NWSE** Section 11. *See* Attachment G (proposed abstract), H (map).

8. **Claim 40N 210829-00.** This claim is a stock right for livestock drinking directly from Ash Coulee. During its reexamination, DNRC added an issue remark questioning Point of Diversion Id. No. 2 as it did not appear to include the claimed source. I reviewed topographic maps and aerial imagery and agree, the source does not pass through the E2NW Section 33, Township 33N, Range 37E, Valley County. However, the source passes through the W2NW of Section 33. Thus, Point of Diversion Id. No. 2 should be corrected to the **W2NW** Section 33. Since the examination standard is to have the points of diversions and places of use match for livestock direct from source claims, Place of Use Id. No. 2 should also be corrected to the **W2NW** Section 33. *See* Attachment I (proposed abstract), J (map).

9. **Claim 40N 30143026.** This claim is a stock right for livestock drinking directly from portions of Bluff Creek, and unnamed tributaries of Bluff Creek, situated within BLM grazing allotment No. MT04008. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. I reviewed the water right file, as well as topographic maps and aerial imagery, to determine if the claimed stretches of stream were generally described accurately within the claimed points of diversion and places of use. Based on my review of topographic maps and aerial imagery, the claimed stream portions are described accurately with two exceptions. First, a portion of stream contained in Section 29, Township 37N, Range 36E, Valley County. The stream actually crosses into the W2E2 too. Second, segments of stream contained in NESE Section 10 and NWSW Section 11, both in Township 36N, Range 36E, Valley County. Both segments are located in BLM grazing allotment No. MT04022, and were intended to be claimed under claim 40N

30143027. The intent of this claim was to only include portions of Bluff Creek located in BLM grazing allotment No. MT04008. Therefore, an additional point of diversion and place of use describing this portion of claimed stream in the **W2E2 Section 29 Township 37N Range 36E Valley County** should be added to the claim. In addition, the points of diversion and places of use claimed in the NESE Section 10 and NWSW Section 11, all in Township 36N, Range 36E, Valley County should be removed from this claim. After the requested modifications are made, the claim will then accurately describe the stretches of stream located within grazing allotment No. MT04008. *See* Attachment K (proposed abstract), L (map).

10. **Claim 40N 30143027.** This claim is a stock right for livestock drinking directly from portions of Bluff Creek situated within BLM grazing allotment No. MT04022. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. I reviewed the water right file, as well as topographic maps and aerial imagery, to determine if the claimed stretches of stream were accurately described within the claimed points of diversion and places of use. Based on my review of topographic maps and aerial imagery, the claimed stream portions are described accurately. All claimed portions of Bluff Creek are located within grazing allotment No. MT04022. Therefore, the point of diversion issue remark should be removed. *See* Attachment M (proposed abstract), N (map).

11. **Claim 40N 30143120.** This claim is a stock right for livestock drinking directly from Starbuck Coulee situated within BLM grazing allotment No. MT04710. During its examination, DNRC added an issue remark indicating that multiple sources may be claimed therefore more than one water right may be involved. I reviewed the water right file, as well as topographic maps and aerial imagery, to determine if the claimed stretches of stream were accurately described within the claimed points of diversion and places of use. BLM's filing with

DNRC claimed points of diversion and places of use in the NESE and SESE of Section 20 Township 36N, Range 37E, Valley County. The descriptions now depicted in the centralized water right database are E2SE and N2SE of Section 20. The legal land description for Point of Diversion and Place of Use Id. No. 2 are inaccurate. The confusion may have stemmed from the submitted claim map, which incorrectly included a reach of stream to Rock Creek because it appeared to be Starbuck Coulee. The portion of Rock Creek drawn on the map, however, is covered under another stock claim (40N 168233-00). It was not BLM's intention to claim a portion of Rock Creek because it already has an existing stock claim to the overlapping reach of stream. Therefore, Point of Diversion and Place of Use Id. No. 2 and any reference to "Rock Creek" should be removed from the abstract. *See* Attachment O (proposed abstract), P (map).

12. **Claim 40N 30143136.** This claim is a stock right for livestock drinking directly from portions of Bluff Creek, and unnamed tributaries of Bluff Creek, situated within BLM grazing allotment No. MT04022. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. I reviewed the water right file, as well as topographic maps and aerial imagery, to determine if the claimed stretches of stream were accurately described within the claimed points of diversion and places of use. Based on my review of topographic maps and aerial imagery, the claimed stream portions are relatively described accurately with the exception of a portion of stream claimed in the SWSW Section 34 Township 37N Range 36E Valley County. Although the stream passes through the SWSW Section 34, the parcel is just outside of the grazing allotment boundary, and therefore, should be removed. The remainder of the claim accurately describes the stretches of claimed stream located within grazing allotment No. MT04022. The Point of Diversion and

Place of Use Id. No. 13, and the related issue remark should be removed. *See* Attachment Q (proposed abstract), R (map).

13. **Claim 40N 30143146.** This claim is a stock right for livestock drinking directly from portions of unnamed tributaries of Eagle Creek situated within BLM grazing allotment No. MT04726. During its examination, DNRC added an issue remark indicating that it appeared BLM was claiming a reservoir too, which is situated in the SWNE Section 17 Township 33N Range 37E Valley County. BLM did not intend to claim a reservoir; it only intended to claim livestock drinking directly from the claimed source. The reservoir, known as Hose Ret Reservoir, located in the SWNE Section 17 is filed on by separate water rights. Claim 40N 75546 is a stock claim to the reservoir and claim 40N 75547 is a wildlife claim to the same reservoir. BLM is not claiming use to Hose Ret Reservoir in its stock direct claim (40N 30143146). Therefore, the issue remark should be removed. *See* Attachment S (proposed abstract).

14. **Claim 40N 30143179.** This claim is a stock right for livestock drinking directly from portions of Upper Ichpair Creek situated within BLM grazing allotment No. MT04708. During its examination, DNRC added an issue remark indicating that it appeared BLM was claiming a reservoir too, which is situated in the NENW Section 27 Township 36N Range 36E Valley County. IBLM did not intend to claim a reservoir; it only intended to claim livestock drinking directly from the claimed source. The reservoir, known as 013853, X-Box Pit, located in the NENW Section 27 is filed on by a separate water right. Stockwater Permit No. 40N 30065035 is a stock right to the impoundment. Because BLM is not claiming use to X-Box Pit in its stock direct claim (40N 30143179), the issue remark should be removed. *See* Attachment T (proposed abstract).

15. **Claim 40N 30143186.** This claim is a stock right for livestock drinking directly from portions of Willow Creek, West Fork situated within BLM grazing allotment No. MT04718. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. I reviewed the water right file, as well as topographic maps and aerial imagery, to determine if the claimed stretches of stream were accurately described within the claimed points of diversion and places of use. Based on my review of topographic maps and aerial imagery, the claimed stream portions are described accurately. All claimed portions of Willow Creek, West Fork are located within grazing allotment No. MT04718. Therefore, the point of diversion issue remark should be removed. *See* Attachment U (proposed abstract), V (map).

16. **Claim 40N 30143193.** This claim is a stock right for livestock drinking directly from portions of Willow Creek situated within BLM grazing allotment No. MT04718. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. I reviewed the water right, file as well as topographic maps and aerial imagery, to determine if the claimed stretches of stream were accurately described within the claimed points of diversion and places of use. Based on review of topographic maps and aerial imagery, the claimed stream portions are described accurately. My review of available resources indicate that an old oxbow of Willow Creek is evident in the area. It appears that it was once a part of the mainstem of Willow Creek and therefore was historically accessed by livestock contained within the grazing allotment. Based on my review, I have concluded that all of the claimed portions of Willow Creek are located within grazing allotment No. MT04718 and described accurately. The point of diversion issue remark should be removed. *See* Attachment W (proposed abstract), X (map).



17. **Claim 40N 30143194.** This claim is a stock right for livestock drinking directly from portions of Willow Creek situated within BLM grazing allotment No. MT04722. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. I reviewed the water right file, as well as topographic maps and aerial imagery, to determine if the claimed stretches of stream were accurately described within the claimed points of diversion and places of use. Based on my review of topographic maps and aerial imagery, the claimed stream portions are described accurately. My review of available resources indicate that an old oxbow of Willow Creek is evident in the NENW Section 7 Township 33N Range 37E Valley County. It appears that it was once a part of the mainstem of Willow Creek, and therefore, was historically accessed by livestock contained within the grazing allotment. Based on my review, I have concluded that all of the claimed portions of Willow Creek are located within grazing allotment No. MT04722 and described accurately. The point of diversion issue remark should be removed. *See* Attachment Y (proposed abstract), Z (map).

18. **Claim 40N 30143195.** This claim is a stock right for livestock drinking directly from portions of Willow Creek situated within BLM grazing allotment No. MT04725. During its examination, DNRC added an issue remark indicating that it could not refine the point of diversion legal land description. I reviewed the water right file, as well as topographic maps and aerial imagery, to determine if the claimed stretches of stream were accurately described within the claimed points of diversion and places of use. Based on my review of topographic maps and aerial imagery, the claimed stream portions are described accurately. My review of available resources indicate that an old oxbow of Willow Creek is evident in the SESWSW Section 35, Township 33N, Range 36E, Valley County. It appears that it was once a part of the mainstem of Willow Creek and therefore was historically accessed by livestock contained within the grazing



allotment. Based on my review, I have concluded that all of the claimed portions of Willow Creek are located within grazing allotment No. MT04725 and described accurately. The point of diversion issue remark should be removed. *See* Attachment AA (proposed abstract), BB (map).

As required by 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 30th day of June 2022.

**MELISSA**  
**NORRIS**



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MELISSA NORRIS  
Date: 2022.06.30  
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Melissa Norris

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

ELECTRONICALLY FILED

JESSE LASLOVICH, United States Attorney  
District of Montana

40N-0115-R-2022

September 6, 2022

JENNIFER A. NAJJAR, Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
P.O. Box 7611  
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Telephone: (202) 305-0476 (Najjar)

Montana Water Court

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management

**IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
ROCK CREEK, TRIBUTARY OF THE MILK RIVER – BASIN 40N  
PRELIMINARY DECREE**

\*\*\*\*\*

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

**CASE 40N-0115-R-2022**

40N 75484-00	40N 30143120
40N 75485-00	40N 30143136
40N 75852-00	40N 30143146
40N 75857-00	40N 30143179
40N 168232-00	40N 30143186
40N 210829-00	40N 30143193
40N 30143026	40N 30143194
40N 30143027	40N 30143195

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**UNITED STATES' RESPONSE TO COURT ORDER**

The United States, on behalf of the Bureau of Land Management ("United States"), respectfully submits this Response to the Court's August 1, 2022 Order requesting additional evidence in support of the proposed modifications for Water Right Claim Nos. 40N 168232-00 and 40N 21829-00.

## **1. Claim 40N 168232-00**

Claim 40N 168232-00 is a stock right on a reservoir on an unnamed tributary of Chambers Coulee. During its reexamination, the Montana Department of Natural Resources and Conservation (“DNRC”) added an issue remark indicating that it could not identify the reservoir at the claimed location of the impoundment. In response to this Court’s June 30 Order, the United States submitted a 2005 National Agriculture Imagery Program aerial photograph illustrating that the reservoir historically used for this stock right is located in the S2NWSE Section 11, Township 36N, Range 37E, not the NWSWSE of Section 11, as shown on the Preliminary Decree for 40N. *See United States’ June 30, 2022 Response to Court Order* at 3; *see also* Exhibit 1, Decl. Melissa Morris, at 1, Attachment 1. The United States utilized this aerial photograph because it had the best resolution of the impoundment. Exhibit 1 at 1.

To supplement its previous Response to the Court Order, the United States hereby submits an aerial photograph taken on July 24, 1974 to better illustrate the impoundment as it has historically existed. Exhibit 1 at 1, Attachment 2. The 1974 aerial photograph is the oldest aerial photograph available for the place of use on Earth Explorer. *Id.* Due to the poor quality of the aerial photograph, the United States has highlighted the impoundment in a yellow circle. *Id.* There are also two enlarged versions of the 1974 photograph showing the reservoir. Exhibit 1 at 1, Attachment 3-4. Based on this supplemental evidence, the United States requests that the reservoir record, the point of diversion, and the place of use legal land descriptions be corrected to the S2NWSE Section 11. Exhibit 2 (proposed abstract).

## **2. Claim 40N 210829-00**

Claim 40N 210829-00 is a direct-from-source stock right from Ash Coulee. During its reexamination, DNRC added an issue remark questioning the source for Point of Diversion Id.

No. 2. The United States agrees that Place of Use and Point of Diversion Id. No. 2 should be removed from Claim 40N 210829-00. *See* Exhibit 3 (proposed abstract).

For the reasons stated above, in addition to those outlined in the United States' June 30, 2022 Response to the Court Order, the United States requests that its proposed modifications be implemented to the water rights at issue in this case.

Dated: September 6, 2022

Respectfully submitted,

TODD KIM, Assistant Attorney General  
Environment & Natural Resources Division

JESSE LASLOVICH, United States Attorney  
District of Montana

/s/ *Jennifer A. Najjar*

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United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Electronic Service: [MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

ATTORNEYS FOR UNITED STATES OF AMERICA,  
Bureau of Land Management

# **Exhibit 1**

**IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
ROCK CREEK, TRIBUTARY OF THE MILK RIVER BASIN (40N)  
PRELIMINARY DECREE**

\*\*\*\*\*

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

**CASE 40N-0115-R-2022**

40N 75484-00	40N 30143120
40N 75485-00	40N 30143136
40N 75852-00	40N 30143146
40N 75857-00	40N 30143179
40N 168232-00	40N 30143186
40N 210829-00	40N 30143193
40N 30143026	40N 30143194
40N 30143027	40N 30143195

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**DECLARATION OF MELISSA NORRIS**

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I, Melissa Norris, pursuant to 28 U.S.C. § 1746, declare as follows:

1. This declaration is made to provide additional information to the Court as requested in the August 1, 2022 Order Setting Filing Deadline.

2. **Claim 40N 168232-00.** This claim is for a stock reservoir on an unnamed tributary of Chambers Coulee. A map was provided with my declaration, dated June 30, 2022, which included 2005 aerial imagery of the claimed reservoir. *See* Attachment 1. The 2005 National Agriculture Imagery Program aerial imagery was used because it is the best photograph available to show the claimed impoundment in its correct location. During my assessment of Claim 40N 168232-00, I also reviewed an aerial photograph taken on July 24, 1974 that I obtained using Earth Explorer.<sup>1</sup> *See* Attachment 2. This photograph is the oldest photograph available on Earth Explorer for the claimed place of use. Due to the poor quality<sup>2</sup> of the photograph, the claimed

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<sup>1</sup> Earth Explorer is an online aerial photograph resource, which contains a collection of aerial imagery of various years. Available at <https://earthexplorer.usgs.gov/>.

<sup>2</sup> The Earth Explorer photograph is light in contrast and lower in resolution making some of its features difficult to see.

impoundment is only faintly visible. *See id.* (identifying the claimed impoundment in a yellow circle). To better assist the Court, I have also included two enlarged images of the impoundment on the Earth Explorer photograph. *See* Attachment 3-4.

As required by 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 6th day of September 2022.

**MELISSA**  
**NORRIS**

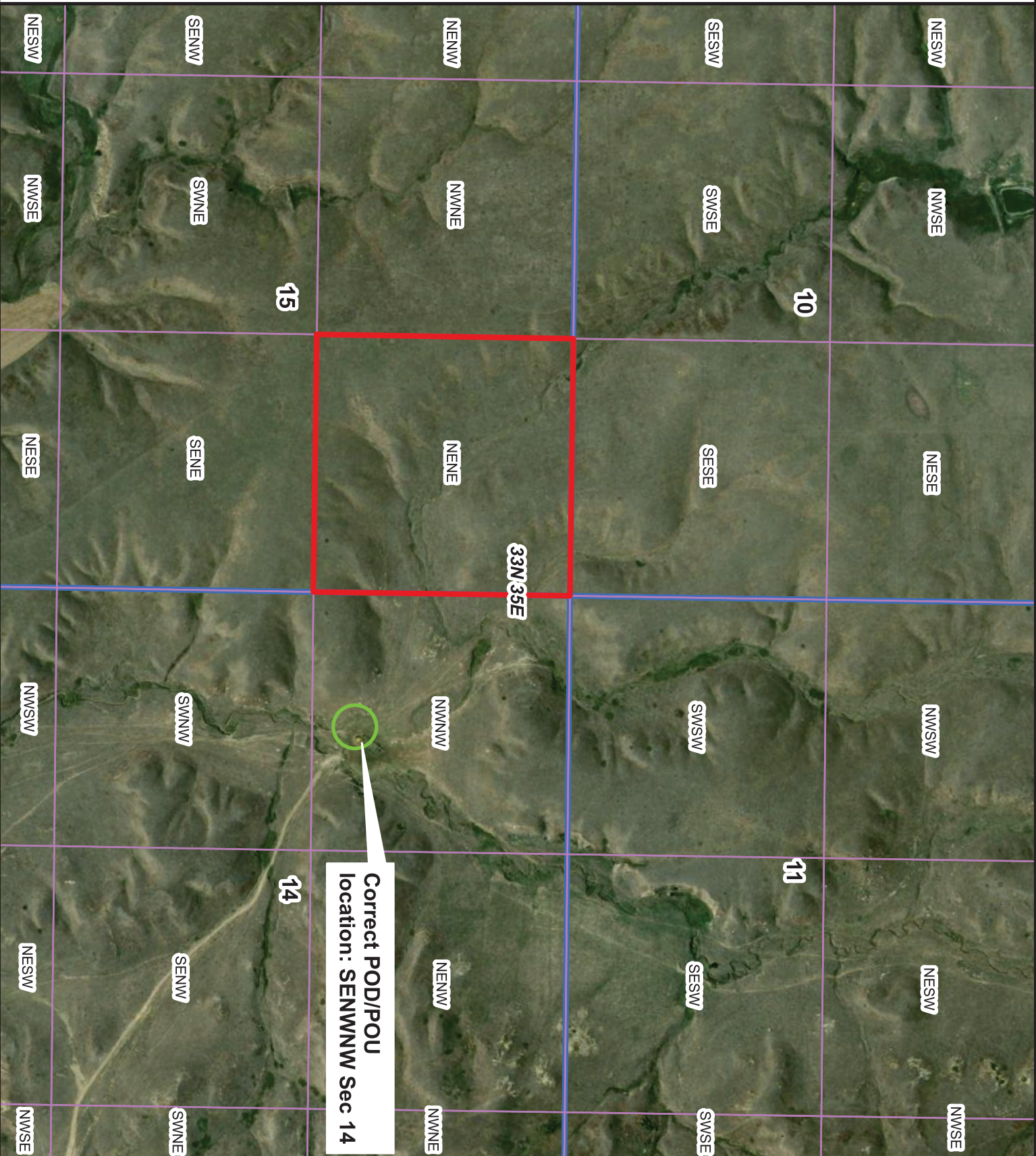


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MELISSA NORRIS  
Date: 2022.09.06  
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Melissa Norris





NOTE TO MAP USERS  
No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of the data layers shown on the map. The official land records should be checked for the current status on any specific tract of land.

**Case 40N-115**

**Statement of  
Claim No.  
40N 75484  
(same well as  
40N 75485)**

**Legend**

 Claimed  
location







**Statement of  
Claim No.  
40N 75484**

(same well as  
40N 75485)

Claimed location







NOTE TO MAP USERS  
No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of the data layers shown on the map. The official land records should be checked for the current status on any specific tract of land.

Case 40N-115

Statement of  
Claim No.  
40N 168232

Legend

 Claimed  
location



2005 FSA MT NAIP  
Imagery

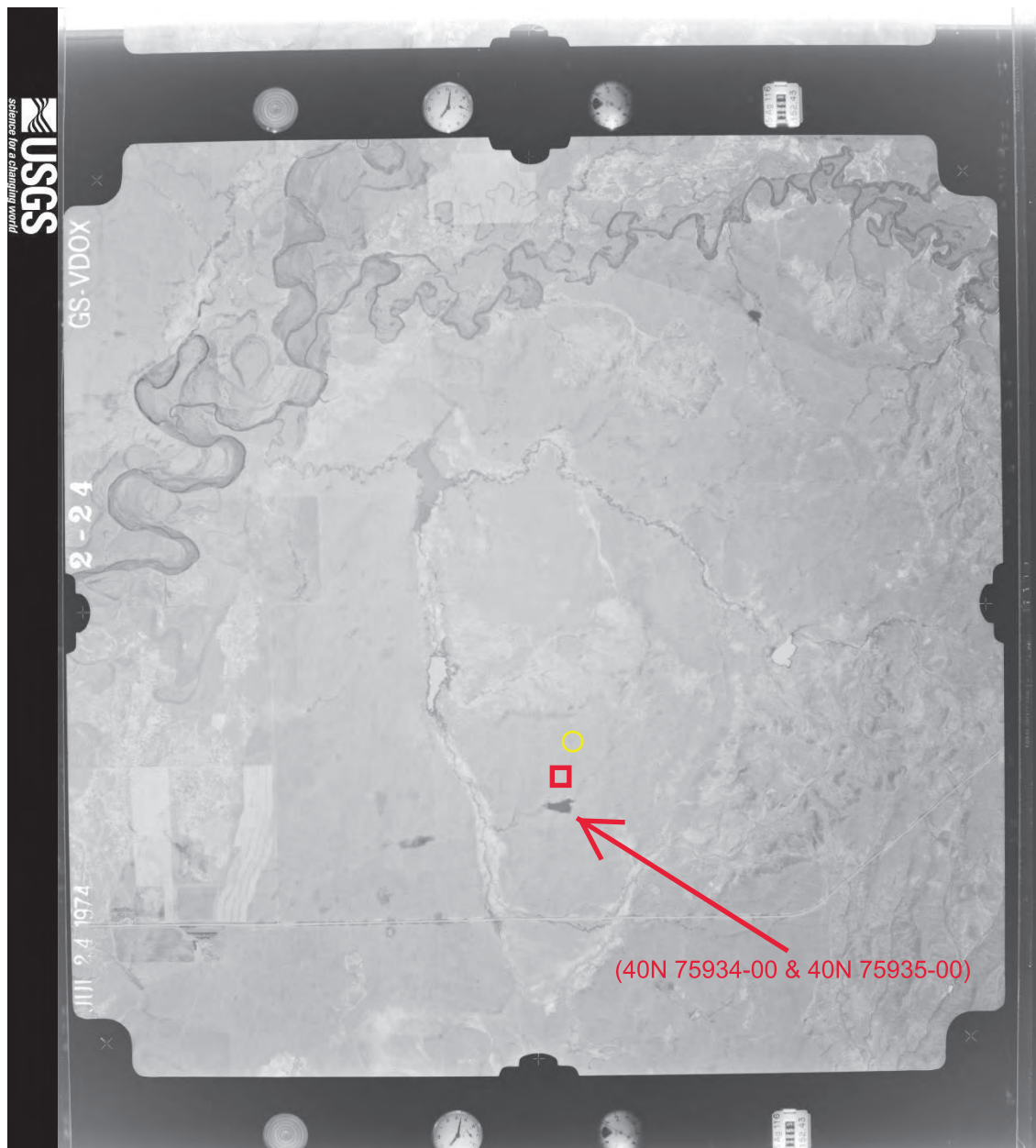
Date Saved: 6/7/2022



40N 168232-00

Earth Explorer Aerial Photograph, dated 07/24/1974

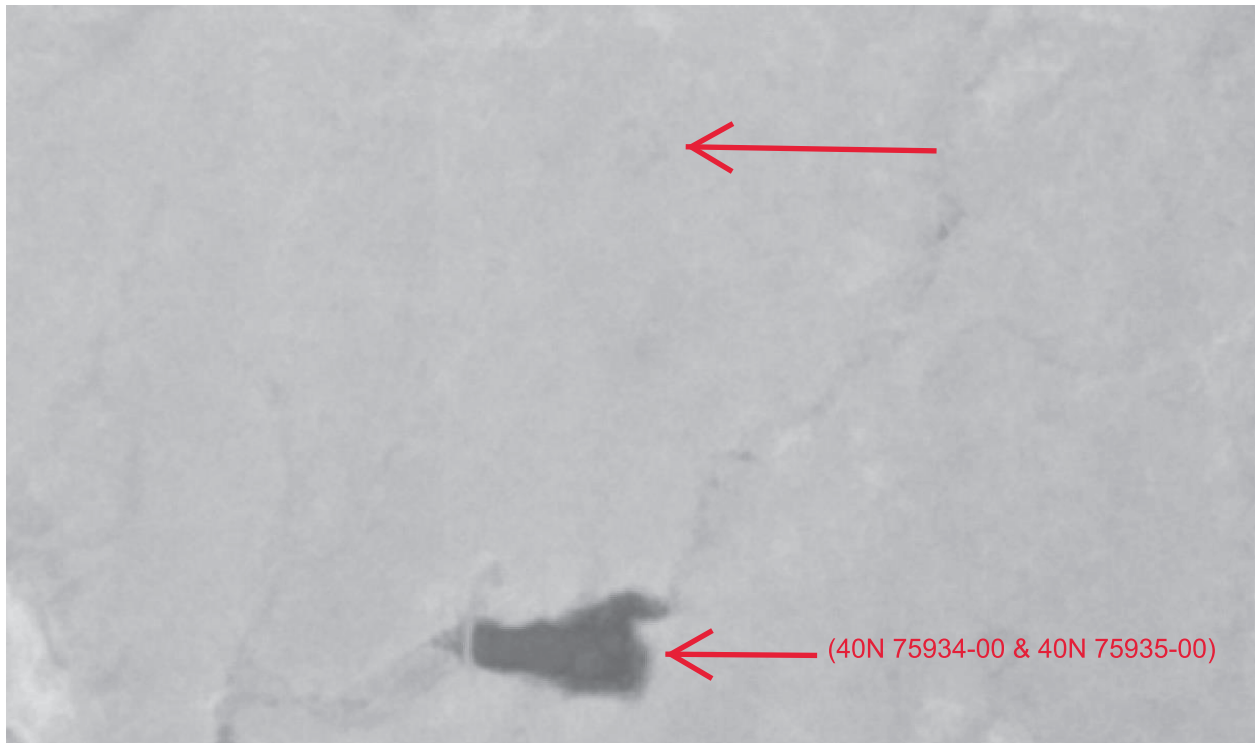
Photo No. AR1VDOX00020024



Zoomed



Zoomed







**40N 30143026**

Date Saved: 6/7/2022





**NOTE TO MAP USERS**

No warrantee is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of the data layers shown on the map. The official land records should be checked for the current status on any specific tract of land.

**Case 40N-115**  
**Statement of**  
**Claim No.**  
**40N 30143027**

### Legend

Decreed  
location

Bluff Creek  
within grazing  
allotment  
MT04022

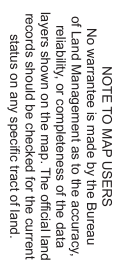


Grazing  
allotment  
MT04022  
boundary



Date Saved: 6/7/2022

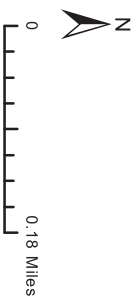




**Statement of  
Claim No.  
40N 30143120**

Decreed  
location

Starbuck Coulee (40N 30143120)	Rock Creek (portion covered under 40N 168233)
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Date Saved: 6/8/2022






NOTE TO MAP USERS:  
No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of the data layers shown on the map. The official land records should be checked for the current status on any specific tract of land.

### Case 40N-115



Statement of  
Claim No.  
40N 30143136

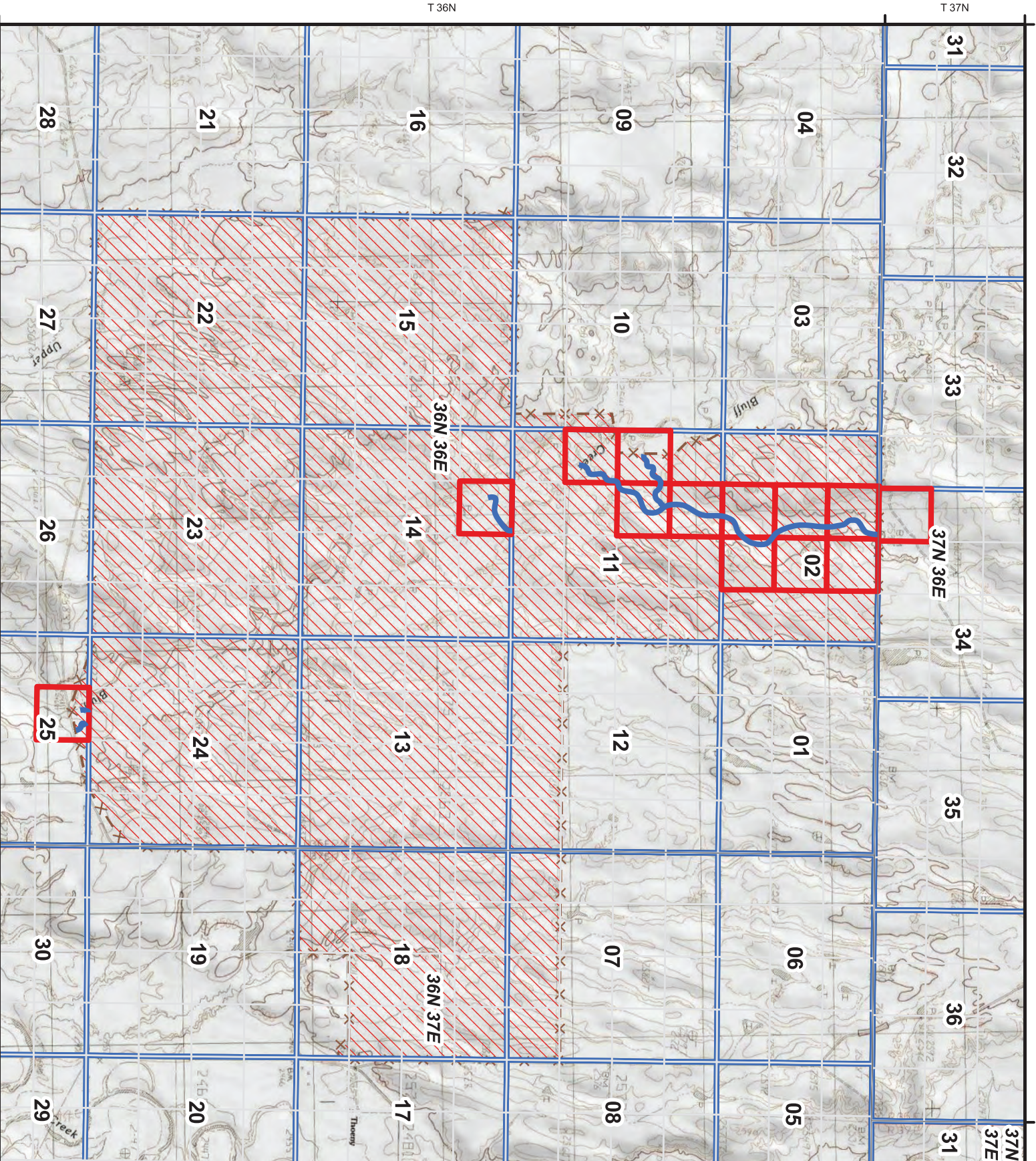
#### Legend

 Decreed location

 Bluff Creek within grazing allotment MT04022

 Grazing allotment MT04022  
 boundary

 N  
 0 0.6 Miles








NOTE TO MAP USERS:  
No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of the data layers shown on the map. The official land records should be checked for the current status on any specific tract of land.

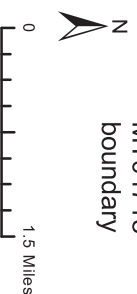
**Case 40N-115**  
**Statement of**  
**Claim No.**  
**40N 30143186**

**Legend**

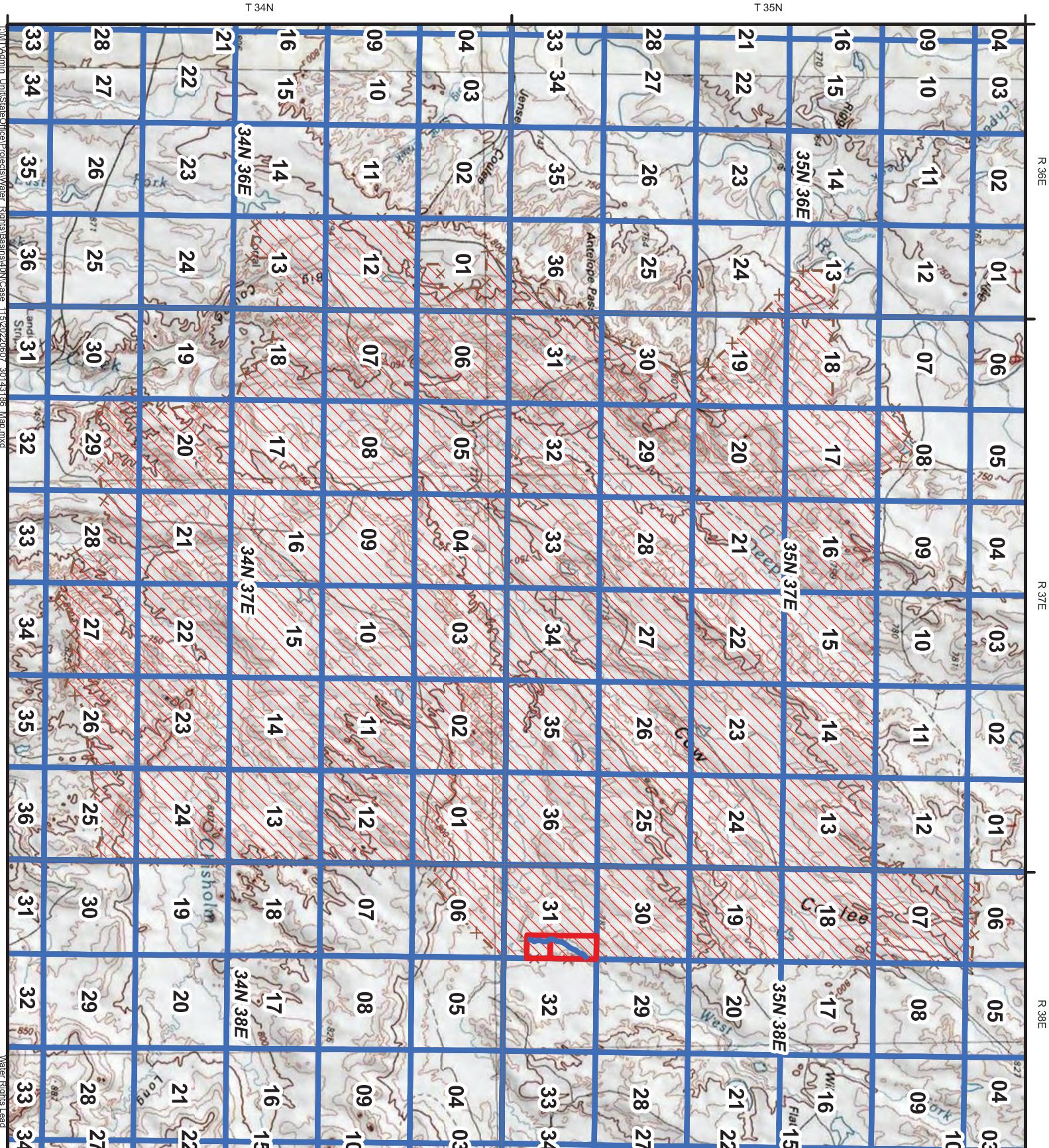
 Decreed location

 Source within grazing allotment MT04718

 Grazing allotment MT04718 boundary



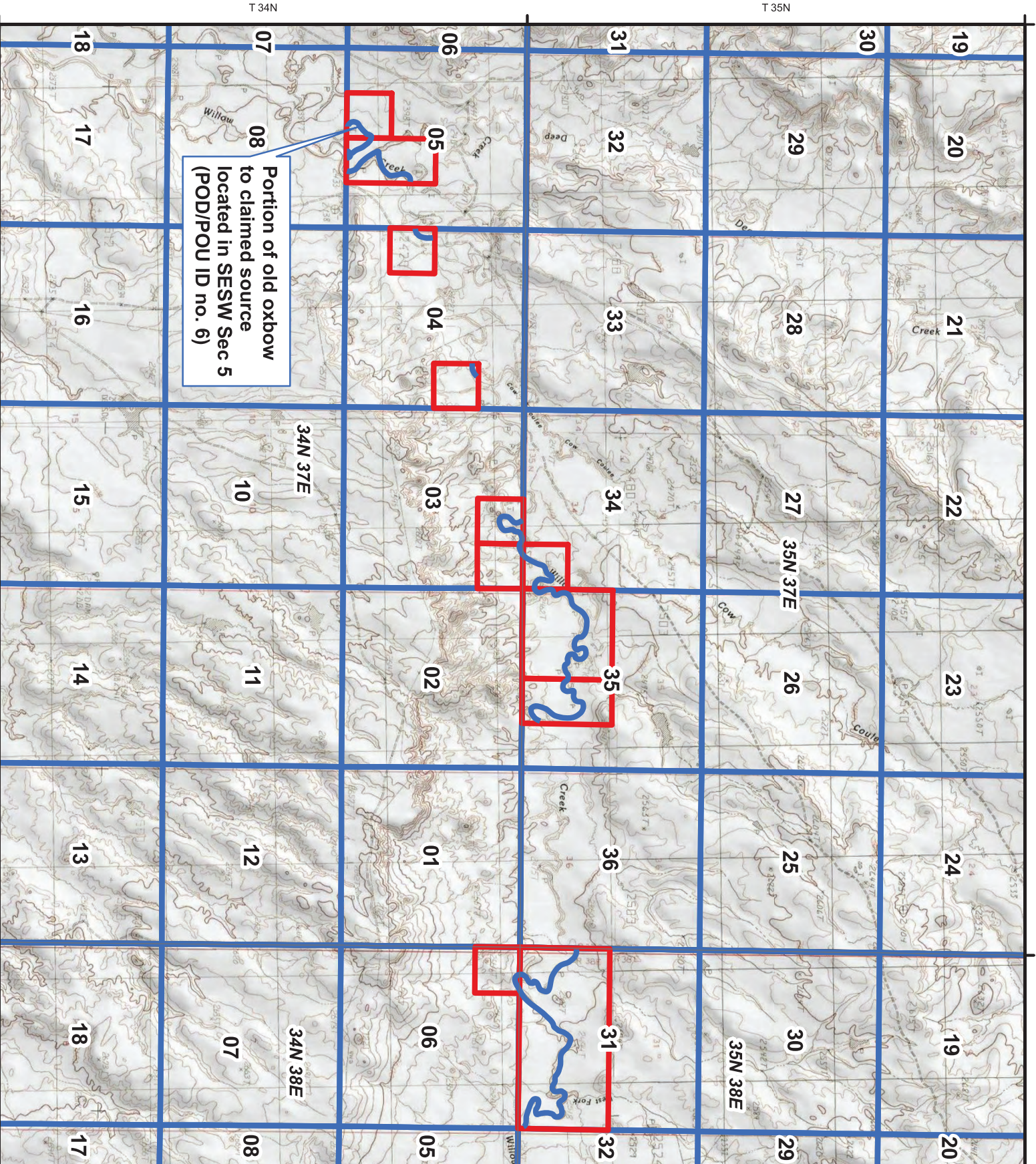
Date Saved: 6/8/2022





R 37E

R 38E



Portion of old oxbow  
to claimed source  
located in SESW Sec 5  
(POD/POU ID no. 6)



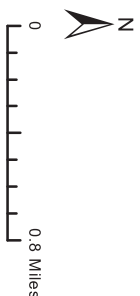
NOTE TO MAP USERS  
No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of the data layers shown on the map. The official land records should be checked for the current status on any specific tract of land.

Case 40N-115  
Statement of  
Claim No.  
40N 30143193

Legend

Decreed  
location

Source  
within grazing  
allotment  
MT04718



Date Saved: 6/8/2022



R 36E

R 37E

01

06

05

Portion of old oxbow  
to claimed source  
located in NENW Sec 7  
(portion of POD/POU ID no. 5)

12

07

08

33N 36E

33N 37E

13

18

17

Creek

Willow



NOTE TO MAP USERS:  
No warranty is made by the Bureau  
of Land Management as to the accuracy,  
reliability, or completeness of the data  
layers shown on the map. The official land  
records should be checked for the current  
status on any specific tract of land.

Case 40N-115

Statement of  
Claim No.  
40N 30143194

Legend



Decreed  
location



Source  
within grazing  
allotment  
MT04722



Date Saved: 6/8/2022



