

Montana Water Court
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**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

* * * * *

CLAIMANTS: Charles P. Hahn; Hahn Ranch

OBJECTORS: United States of America (Bureau of
Reclamation); United States of America (Bureau
of Land Management)

CASE 41I-0110-R-2024

41I 24001-00
41I 24002-00
41I 24003-00
41I 24004-00
41I 24005-00

NOTICE OF FILING OF MASTER’S REPORT

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

CORRECTED MASTER'S REPORT

On June 20, 2024, a Master's report was filed in this matter. On June 28, 2024, the United States objected to the report based on statements relating to the Broadwater County Water Resources Survey. On July 12, 2024, Associated Water Judge Brown recommitted this matter to resolve the objection. This Master's Report is intended to fully replace the prior Master's Report.

FINDINGS OF FACT

41I 24001-00 and 41I 24002-00

1. Claim 41I 24001-00 was decreed as a claim for water from an unnamed tributary of White Horse Creek. Claim 41I 24002-00 was decreed as a claim for water from White Horse Creek. Both claims were decreed for flood irrigation of the same 205.00-acre place of use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	127.00		NE	5	7N	1E	BROADWATER
2	78.00		NW	5	7N	1E	BROADWATER
Total:	205.00						

2. The United States objected to both claims, stating:

Historical data, published in the Water Resources Survey, indicates 0.00 acres irrigated at the time the Survey was published. It appears the date of first beneficial use may be incorrect. 1979 and current aerial photography indicate less acres irrigated than claimed. The priority date, maximum acres, flow rate and place of use may need correction to conform to historic beneficial use.

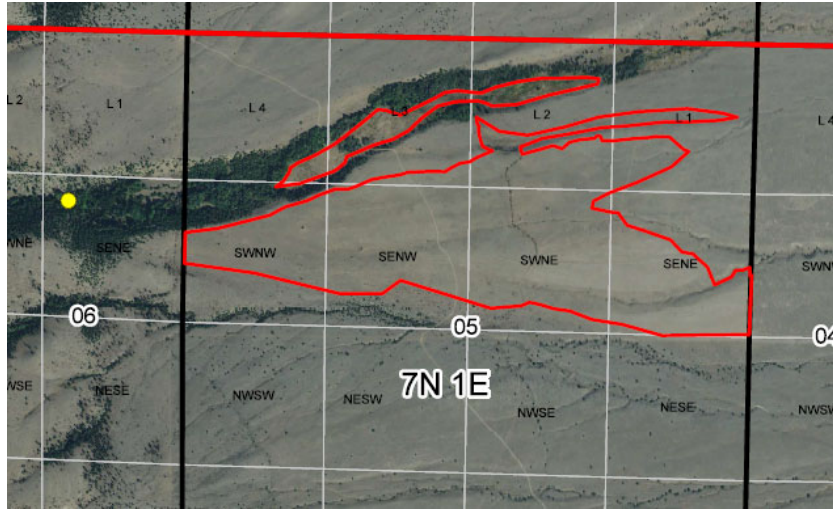
3. The claims also received the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

4. On May 30, 2024, the parties filed a stipulation. (Doc.¹ 4.00).

5. The stipulation requests the place of use and maximum acres for claim 41I 24001-00 and 41I 24002-00 be reduced to 140.00 acres in the N2 of Section 5, T7N, R1E, Broadwater County:

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.



6. The stipulation states that Claimants are able to irrigate 140.00 acres when water is available.

41I 24003-00 and 41I 24004-00

7. Claims 41I 24003-00 and 41I 24004-00 were decreed as claims for water from North Pole Creek. Both claims were decreed for flood irrigation of the same 73.00-acre place of use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	6.00		S2N2NW	10	8N	1W	BROADWATER
2	34.00		S2NW	10	8N	1W	BROADWATER
3	25.00		N2SW	10	8N	1W	BROADWATER
4	8.00		S2SW	10	8N	1W	BROADWATER
Total:	73.00						

8. The United States objected to both claims, stating:

Historical data published in the Water Resources Survey and aerial photography do not support historical or current irrigation occurring as claimed. The claimed water right might not have been perfected, or if it was perfected, it was abandoned. All elements of this water right are questionable.

9. The claims also received the following issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
 THE BROADWATER COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
 USDA AERIAL PHOTOGRAPH NO. 479-53, DATED 8-29-79, SHOWS EVIDENCE OF A DITCH SYSTEM.
 THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE

10. The stipulation requests the place of use and maximum acres for claim 41I 24003-00 and 41I 24004-00 be reduced to 10.00 acres as follows:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	3.00	1	S2NENW	10	8N	1W	BROADWATER
2	3.00	4	S2SE	10	8N	1W	BROADWATER
3	1.00	4	NWSE	10	8N	1W	BROADWATER
4	3.00	5	NWSE	10	8N	1W	BROADWATER
Total:	10.00						

11. The stipulation included a map of the proposed reduced place of use:



12. The stipulation states that Claimants are able to irrigate 10.00 acres when water is available.

13. Claims 41I 24003-00 and 41I 24004-00 also received the following notice-type issue remark:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

14. This remark served its notice purpose.

41I 24005-00

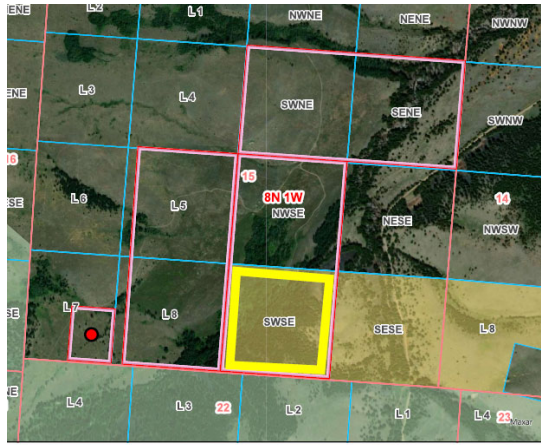
15. Claim 41I 24005-00 was decreed as a claim from South Pole Creek with a 72.00-acre place of use as follows:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	12.00		S2NE	15	8N	1W	BROADWATER
2	17.00		W2SE	15	8N	1W	BROADWATER
3	40.00		E2SW	15	8N	1W	BROADWATER
4	3.00		SESWSW	15	8N	1W	BROADWATER
Total:	72.00						

16. The United States objected to the claim, stating:

The place of use as described includes federal land administered by the Bureau of Land Management (BLM). There is no authorization to irrigate federal land. Place of use ID No. 2 needs to be redefined to remove federal land in SWSE Section 15, Township 8N, Range 1W, Broadwater County. The acreage should also be readjusted appropriately. Removal of federal land from the place of use and readjustment in acreage would resolve BLM's objection.

17. The stipulation proposes modifying the legal land description of the 17.00-acre parcel in the W2SE of Section 15 to the NWSE of Section 15:



PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.
7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

9. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

CONCLUSIONS OF LAW

41I 24001-00 and 41I 24002-00

1. The objection overcomes the prima facie status of claims 41I 24001-00 and 41I 24002-00. The evidence in the claim and case file shows by a preponderance of the evidence that the place of use and maximum acres is 140.00 acres in the N2 of Section 5, T7N, R1E, Broadwater County.

41I 24003-00 and 41I 24004-00

2. The objection overcomes the prima facie status of claims 41I 24003-00 and 41I 24004-00. The evidence in the claim and case file shows by a preponderance of the evidence that the place of use and maximum acres is 10.00 acres in Section 10, T8N, R1W, Broadwater County.

3. The notice-type issue remark on claims 41I 24003-00 and 41I 24004-00 served its notice purpose.

41I 24005-00

4. The objection overcomes the prima facie status of claim 41I 24005-00. The evidence in the claim and case files shows the 17.00-acre parcel in the W2SE of Section 15 should be refined to the NWSE of Section 15.

RECOMMENDATIONS

1. The place of use and maximum acres for claims 41I 24001-00 and 41I 24002-00 should be reduced to 140.00 acres in the N2 of Section 5, T7N, R1E, Broadwater County.

2. The place of use and maximum acres for claims 41I 24003-00 and 41I 24004-00 should be reduced to 10.00 acres as follows:

3. The place of use for claim 41I 24005-00 should be modified as follows:

*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	12.00		S2NE	15	8N	1W	BROADWATER
2	17.00		W2SE	15	8N	1W	BROADWATER
3	40.00		E2SW	15	8N	1W	BROADWATER
4	3.00		SESWSW	15	8N	1W	BROADWATER
Total:	72.00						

4. The issue remarks should be removed from the claims.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Hahn Ranch
7996 US Highway 287
Townsend, MT 59644

Service via Electronic Mail

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(*atty Charles Hahn*)

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 24001-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHARLES P HAHN
7996 US HWY 287
TOWNSEND, MT 59644-9732

HAHN RANCH
7996 US HIGHWAY 287
TOWNSEND, MT 59644-2107

Priority Date: MARCH 8, 1898

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 140.00

Source Name: SPRING, UNNAMED TRIBUTARY OF WHITE HORSE 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		NWSENE	6	7N	1E	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

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	140.00		N2	5	7N	1E	BROADWATER

Total: 140.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 24002-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHARLES P HAHN
7996 US HWY 287
TOWNSEND, MT 59644-9732

HAHN RANCH
7996 US HIGHWAY 287
TOWNSEND, MT 59644-2107

Priority Date: JUNE 25, 1910

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 140.00

Source Name: WHITE HORSE 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		NWSENE	6	7N	1E	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

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	140.00		N2	5	7N	1E	BROADWATER

Total: 140.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 24003-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHARLES P HAHN
7996 US HWY 287
TOWNSEND, MT 59644-9732

HAHN RANCH
7996 US HIGHWAY 287
TOWNSEND, MT 59644-2107

Priority Date: APRIL 21, 1909

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 10.00

Source Name: NORTH POLE 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		NENENE	16	8N	1W	BROADWATER

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: HAHN DITCH

DITCH IS ALSO KNOWN AS PAUL HAHN DITCH.

Period of Use: MAY 15 TO OCTOBER 15

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	3.00	1	S2NENW	10	8N	1W	BROADWATER
2	3.00	4	S2SESW	10	8N	1W	BROADWATER
3	1.00	4	NWSESW	10	8N	1W	BROADWATER
4	3.00	5	NWNESW	10	8N	1W	BROADWATER
Total:	<u>10.00</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

24003-00

24004-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 24004-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CHARLES P HAHN
7996 US HWY 287
TOWNSEND, MT 59644-9732

HAHN RANCH
7996 US HIGHWAY 287
TOWNSEND, MT 59644-2107

Priority Date: MAY 15, 1909

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 10.00

Source Name: NORTH POLE 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		NENENE	16	8N	1W	BROADWATER

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: HAHN DITCH

DITCH IS ALSO KNOWN AS PAUL HAHN DITCH.

Period of Use: MAY 15 TO OCTOBER 15

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	3.00	1	S2NENW	10	8N	1W	BROADWATER
2	3.00	4	S2SESW	10	8N	1W	BROADWATER
3	1.00	4	NWSESW	10	8N	1W	BROADWATER
4	3.00	5	NWNESW	10	8N	1W	BROADWATER
Total:	<u>10.00</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

24003-00

24004-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 24005-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHARLES P HAHN
7996 US HWY 287
TOWNSEND, MT 59644-9732

HAHN RANCH
7996 US HIGHWAY 287
TOWNSEND, MT 59644-2107

***Priority Date:** OCTOBER 24, 1906

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 3.75 CFS

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

Climatic Area: 3 - MODERATE

***Maximum Acres:** 72.00

***Source Name:** SOUTH POLE 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		SESWW	15	8N	1W	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PIPELINE

THE POINT OF DIVERSION IS LOCATED GOVT 7 IN SEC 15 TWP 8N RGE 1W BROADWATER COUNTY.

THE MEANS OF DIVERSION IS GATED PIPE.

Period of Use: APRIL 15 TO OCTOBER 15

***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	12.00		S2NE	15	8N	1W	BROADWATER
2	17.00		NWSE	15	8N	1W	BROADWATER
3	40.00		E2SW	15	8N	1W	BROADWATER
4	3.00		SESWW	15	8N	1W	BROADWATER

Total: 72.00