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MONTANA WATER COURT
UPPER MISSOURI DIVISION
BEAVERHEAD RIVER
BASIN 41B
PRELIMINARY DECREE

CLAIMANT: West Side Canal Co.

OBJECTORS: Montana Dept. of Fish Wildlife & Parks; United States, DOI Bureau of Reclamation; West Side Canal Co.

COUNTEROBJECTOR: Open A Ranch Inc.

NOTICE OF INTENT TO APPEAR: Smith's Elk Meadows Ranch LLC

CASE 41B-0269-P-2016

41B 32454-00

41B 37802-00

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CLOSING CASE

INTRODUCTION

The two claims in this case are held by West Side Canal Co. ("WSCC"). The claims are for multiple uses of the same August 15, 1883 decreed right from the Beaverhead River, conveyed through the West Side Canal. Claim 41B 32454-00 is for irrigation, and claim 41B 37802-00 is for stock watering. The Court enters the following findings of fact, conclusions of law, and order addressing Open A Ranch's ("Open A") counterobjections.

PROCEDURAL BACKGROUND

Claims 41B 32454-00 and 41B 37802-00 are based on an August 15, 1883 right to 4,254 miner's inches of water from the Beaverhead River, decreed to the Beaverhead Canal Co. in Case No. 828, *Staudaher v. Selway*, Montana Fifth Judicial District Court,

Beaverhead County, June 30, 1894. Beaverhead Canal Co.'s 4,254 miner's inch right was confirmed in *Beaverhead Canal v. Dillon Light and Electric*, 34 Mont. 135, 139, 85 P. 880, 881 (1906) and re-decreed in *Morgan v Nyhart*, Montana Fifth Judicial District Court, Beaverhead County, February 7, 1907. The original Statement of Claim for 41B 32454-00 was for 8,387.28 acres irrigated. In 2012, WSCC amended the claim to 7,000 acres irrigated.

Both claims were included in the Preliminary Decree for the Beaverhead River, Basin 41B issued May 9, 2013. The place of use and maximum acres of claim 41B 32454-00 in the Preliminary Decree reflected 7,000 acres as amended in 2012. The United States Bureau of Reclamation ("BOR"); State of Montana Department of Fish, Wildlife and Parks ("FWP"); and WSCC filed objections to claim 41B 32454-00. Gretchen H. Burke and Stephen B. Burke¹, Open A, and R & D Ranch² filed counterobjections. Notices of intent to appear were filed by Smith Elk Meadows Ranch³ and Water Users Irrigation Co.⁴ Additionally, claim 41B 32454-00 was subject to issue remarks indicating a 1965 aerial photograph indicated 5,826 acres irrigated, the 1979 aerial photograph indicated 6,739 acres irrigated, and the claim may not reflect pre-1973 use. Stock claim 41I 37802-00 received counterobjections from Open A and R & D Ranch as well as a notice of intent to appear by Smith Elk Meadows Ranch.

This case was consolidated in 2016 to resolve the objections, counterobjections, NOIA, and issue remarks.⁵ (Doc. 1.00). On June 4, 2024, a Stipulation to Resolve Objections ("Stipulation") between BOR, FWP, and WSCC was filed. (Doc. 111.00). The Court issued an Order Approving Stipulation. (Doc. 112.00). As approved, the claims were modified as follows:

¹ Madison Valley Garden Ranch, LLC assumed the counterobjections of Gretchen H. Burke and Stephen B. Burke and withdrew the counterobjections on March 2, 2021.

² R & D Ranch's counterobjection was withdrawn on November 1, 2019.

³ Other than appearing at a few status conferences, Smith Elk Meadows Ranch LLC did not participate in proceedings in this case, including the September 24 – 26, 2025 evidentiary hearing in Dillon, Montana.

⁴ Water Users Irrigation Co. withdrew its NOIA on July 2, 2020.

⁵ The case was stayed twice during proceedings. The case was first stayed pending a Montana Supreme Court ruling in case 41B-265, which included claims held by Clark Canyon Water Supply Company. The case was stayed again after Chief Water Judge McElyea announced retirement and lifted after a new Associate Water Judge was appointed.

For irrigation claim 41B 32454-00, the volume was quantified at 20,400 acre-feet and the place of use was deemed a service area with irrigation each season limited to a maximum of 6,246 acres.

For stock claim 41B 37802-00, the place of use was modified to match claim 41B 32454-00.

Informational remarks included on the Preliminary Decree abstracts that reference curtailment and Clark Canyon Water Supply Co. (“CCWSC”) shareholder status were removed from the abstracts of both 41B 32454-00 and 41B 37802-00.⁶

Id. This Court’s Order Approving Stipulation stated the issue remarks were likely resolved. However, a final ruling on the issue remarks was not made based on Open A’s outstanding counterobjections. (Doc. 112.00).

An evidentiary hearing was held on September 24-26, 2025 at the Beaverhead County Courthouse in Dillon, Montana to resolve Open A’s remaining counterobjections. Prior to hearing, the Court approved a prehearing order. (Doc. 132.00). WSCC and Open A participated in the hearing and offered testimony from several witnesses. Open A called Robert Van Deren; consultant Tracey Turek of Turek Water Right Research; and president of WSCC, Scott Andersen. WSCC called Scott Andersen; WSCC shareholders Keven Blomquist, Gary Love, Andy Johnson, and Dave Schuett; and consultant Russ Radliff of HydroSolutions, Inc. 108 exhibits were admitted. After the hearing, a written transcript was obtained and filed with the Court. (Docs. 140.00-143.00). WSCC and Open A filed proposed findings of fact and conclusions of law. (Docs. 146.00, 148.00). Pursuant to the Pretrial Order, the Court adopted WSCC and Open A’s Statement of Agreed Facts. (Doc. 132.00). If not already stated below, the Agreed Facts are incorporated as if fully set forth herein.

⁶ In *In re E. Bench Irrigation Dist.* 2021 MT 319, 406 Mont. 502, 501 P.3d 380, the Montana Supreme Court upheld the Water Court’s determination that similar remarks on CCWSC shareholders’ underlying private water rights are not necessary and should be removed from the abstracts.

ISSUES

- I. *Did Open A meet its burden to show WSCC failed to use reasonable diligence to perfect the boundaries of the service area place of use?*
- II. *Did Open A meet its burden to prove 6,246 maximum acres do not reflect historical use?*

FINDINGS OF FACT

General Functions of WSCC

1. WSCC, formerly known as Beaverhead Canal Co., was incorporated in 1923 to “construct, purchase, own, acquire, hold and possess rights of way, canals, ditches, flumes, head gates, dams, reservoirs, and other irrigation equipment. And to acquire, own, possess, hold and appropriate water rights for the purpose of distributing water to its stockholders for irrigation and domestic purposes.” (Ex. KK 002742; Tr. 635:5–636:12 (Andersen)).

2. WSCC provides water from the Beaverhead River through the West Side Canal to its shareholders in the Beaverhead Valley. (Tr. 633:4–6 (Andersen)). The West Side Canal diverts water from the Beaverhead River in the NENWNW of Section 24, Township 7 South, Range 9 West and delivers water “along said canal throughout for irrigating the agricultural lands adjacent thereto belonging to the stockholders and for domestic purposes.” (Ex. KK 002743; Tr. 636:15–21 (Andersen)).

3. A map included with Case No. 1053, *Morgan v. Nyhart et al*, Montana Fifth Judicial District Court, Beaverhead County February 7, 1907, (Ex. O), shows the WSCC headgate, the path of the canal, and ownership of lands within the WSCC. The President of WSCC, Scott Andersen testified that the path of the canal shown on the map is “similar” to today. (Tr. 641:25–643:16 (Andersen)).

Clark Canyon Water Supply Company Shares

4. While WSCC provides water to its own shareholders, WSCC is also a shareholder in CCWSC. Clark Canyon Reservoir is a BOR project. CCWSC contracted with BOR for water from Clark Canyon Reservoir. (Ex. 36). WSCC entered into subscription agreements with CCWSC for 7,959 shares of Class B CCWSC stock and 1,119 shares of Class C CCWSC stock. (Tr. 17:19–18:6 (Andersen)).

5. Water first became available to CCWSC shareholders, including WSCC, in 1965, 40 years after Beaverhead Canal Co., now WSCC, was incorporated and 80 years after the original appropriation. (Tr. 30:17 (Andersen)).

6. Through testimony, primarily of WSCC's President Scott Andersen, Open A and WSCC offered two different interpretations of the effect of CCWSC shares and subscription agreements on WSCC.

7. In Open A's version, the class and number of CCWSC shares are instructive regarding how many acres could be irrigated and what land could be irrigated. (Tr. 28:16–29:11 (Andersen)). Open A pointed to 1975 correspondence from the BOR stating the only way to move CCWSC water from one place of land to another is to “discontinue irrigation on an acreage equal to the acreage of new land to which the transferred water would be applied.” (Ex. HH 001381–001383; KK 02841; Tr. 50: 21–51:8 (Andersen)). Open A contends this is evidence that a water user could not or did not move water from one piece of land to the other.

8. By contrast, in WSCC's version, water was distributed to shareholders in proportion to the number of WSCC shares owned by each shareholder. The CCWSC shares represented an additional block of stored water that was apportioned. (Ex. KK 002753; Tr. 19:24–20:2; 22:11–14; 84:2-6; 629:5–25; 630:1–5 (Andersen)). For example, Scott Andersen testified that the 1923 Articles of Incorporation state that water is delivered in proportion to the number of shares of stock held by each shareholder and that the acres irrigated by shareholders vary year to year and are not fixed to specific parcels. (Tr. 633:4–6 (Andersen); Ex. KK 002753).

Basic Biological Services LLC's 2005 Report and Turek's Analysis

9. In 2005, Basic Biological Services LLC (“BBS”) prepared a report titled “Mapping the Irrigated Acres Serviced by the Westside Canal Company April/May 2005.” (Ex. 9 000204–000208). BBS conducted site visits during the years 2000 through 2004 to measure what was “typically” irrigated. BBS used GIS to map “actual total irrigated acres.” *Id.* BBS determined the acres irrigated within WSCC was 6,855 acres. (*Id.*; Tr. 235:20–236:5; 283:22–23 (Turek)).

10. WSCC shareholder and board member Andy Johnson testified that, when the BBS study was underway, shareholders wanted to map “what was current” and that he was uncertain whether the BBS study mapped pre-1973 acres. (Tr. 403:11–20 (Johnson)).

11. Similarly, Scott Andersen testified that the BBS study was not intended to map pre-1973 irrigation, but “to map out the acres that we thought we could live with...in my mind if...the dam went away, and we went back to...just natural flow.” (Tr. 657:6–25; 658:1–4 (Andersen)).

12. Based on an analysis conducted by Tracy Turek of Turek Water Right Research, Open A contends WSCC is entitled to a maximum of 5,573.48 acres. As explained in Turek’s testimony, the foundation of Turek’s analysis was the BBS report. (Tr. 204:18–205:10 (Turek)). In her analysis for Open A, Turek created polygons around the irrigation mapped by BBS. (Tr. 285:3–12 (Turek)). Turek compared her polygons to other documents by superimposing the polygons over each document. (Tr. 242:14–20; 266:3–7 (Turek)). Turek compared the polygons to 1953, 1954, 1965, and 1973 aerial photographs, the Water Resource Survey Field Notes⁷, a 1951 USDI Bureau of Reclamation Beaverhead River Water Rights Study, CCWSC subscription agreements, and a 2017 report from FWP. For each document, irrigation that fell within the polygons was included in the total number of acres irrigated and irrigation that fell outside the polygons did not count toward the number of acres irrigated. Thus, if irrigation was found within pre-1973 documentation but not found within the polygons that were based on the 2005 BBS study, the irrigation was not counted toward the 5,573.48 total. (Tr. 289:24–290:3; 297:19–298:7 (Turek)).

13. Turek’s analysis did not include a review of land ownership, maps created in the process of developing the CCWSC, the 1979 aerial photograph used by the DNRC, or the prior decrees that form the basis of claim 41B 32454–00. (Tr. 268:1–14; 290:4–19; 299:21–25 (Turek); Ex. 9, 000214).

⁷ The WRS field notes were created in 1973 using the 1965 aerial photographs.

Expansion

14. Analysis of aerial photographs generally documents a trend of increased irrigation within WSCC, most prominently around the mid-1950s through the 1970s. (Ex. 27). The increased acreage was due to a combination of factors.

15. The first factor was the Clark Canyon Dam. Prior to the construction of the Clark Canyon Dam, water availability in the Beaverhead Valley was highly uncertain and unstable. (Ex. 34, 000760). The addition of storage water from CCWSC, which began in 1965, allowed for increased stability and reliability in water availability, leading to increased investment by water users. *Id.*

16. Another factor was the shift from flood to sprinkler, which was spurred by increased stability and investment. Both WSCC and Open A agree sprinklers were added between the late 1950s and 1970s. Irrigation under WSCC began primarily as flood irrigation. Sprinklers allowed for more efficient irrigation and allowed operators to irrigate land that could not otherwise be irrigated. (Tr. 385:14–19 (Johnson); 503:17–25 (Radliff)). With advances in technology, WSCC water users, like many water users across Montana, shifted from flood irrigation to sprinkler irrigation. (Tr. 373:11–20 (Love); 503:17–25; 557: 18–25 (Radliff)).

17. Despite variation and gradual increases in acres irrigated, the volume of water diverted by WSCC stayed fairly consistent. (Tr. 262 (Turek); 462:13–463:11; 480:11–16 (Schuett); 560:2–17 (Radliff)).

18. Testimony elicited by Open A was meant to establish expansion of the acres irrigated by WSCC shareholders. The testimony showed increased acreage over time based on the factors discussed. However, there was little testimony regarding specific areas of expansion. Witness testimony corroborated the notion that from the late 1950s through the 1960s and 1970s, shareholders replaced flood irrigation with pumps and sprinklers to irrigate land not previously able to be irrigated, including land above the canal. (Tr. 369:16–17; 370:17–22; 376:10–16 (Love)).

19. One area of focus during hearing was land in Sections 32 and 33, Township 5 South, Range 8 West. Witness testimony conflicted about when pivots were added to land north of Albers Lane in Sections 32 and 33.

20. Open A's witness, Robert Van Deren, testified that the pivots north of Albers Lane in Sections 32 and 33 were not in existence in May 1973 when Open A added its sprinkler system. (Tr. 146:7–21; 136:16–137:2 (Van Deren)).

21. WSCC's witness, Keven Blomquist, testified the pivots above Albers Lane in Sections 32 and 33 were in place in 1973. The pivots were part of a ranch owned by Blomquist's family. (Tr. 338:20–22 (Blomquist)). Blomquist was born in 1954, grew up on the ranch, and helped with irrigation. (Tr. 337:3–14; 338:20–339:5 (Blomquist)). During the hearing, Blomquist testified that the pivots were put in prior to his high school graduation in 1973. Although his testimony in deposition was less certain about the 1973 date, Blomquist testified at hearing that his recollection is more certain using his graduation as a reference. (Tr. 345:19–346:3; 354:20–355:4 (Blomquist)).

22. WSCC's consultant, Russ Radliff of HydroSolutions, Inc., also testified that the land above Albers Lane in Sections 32 and 33 was irrigated as of 1973. (Tr. 506:20; 508:19–509:15 (Radliff)). On cross examination, Radliff stated that land above Albers Lane could have been dryland farming but it was his belief that it was irrigated. (Tr. 591:20–592:5 (Radliff)).

23. Another area of focus at hearing was land in Section 5, Township 6 South, Range 8 West. Testimony was elicited concerning irrigation of land in Section 5, specifically whether it was irrigated at all, subirrigated prior to 1973, or served by Black Slough rather than water from West Side Canal.

24. Again, the testimony was conflicting. Based on her review of the Water Resource Survey photos (Ex. 19), Turek testified there was subirrigated ground that connected to Black Slough. (Tr. 320:6–14 (Turek)). Andersen, owner of the property, testified the land in Section 5 was irrigated pasture, that subirrigation from Black Slough would be "impossible," and that pivot irrigation replaced flood irrigation in areas identified by Open A as subirrigated. (Tr. 647:23–650:16 (Andersen)).

25. Subirrigation was also a focus of testimony. However, specific evidence of what constituted subirrigation, what specific land should be classified as subirrigated, how many acres were subirrigated, and whether subirrigation should be included in acreage totals was inconsistent. (Tr. 255–256:8 (Turek); 503:23–506:4 (Radliff)).

Summary of Arguments

26. Open A contends that 41B 32454-00 should be split into two claims, both with a service area place of use reflecting Turek's 5,573.48 acres. One claim would retain the August 15, 1883 decreed priority date and be limited to a maximum of 4,964 acres, the number of acres Open A ascribes to WSCC's CCWSC subscription agreements. The other would be a June 30, 1973 use right and be limited to a maximum of 609.48 acres, the difference between 5,573.48 and the 4,964 acres.

27. WSCC contends 41B 32454-00 and 41B 37802-00 should remain limited to irrigation of 6,246 acres, as approved pursuant to the Stipulation.

CONCLUSIONS OF LAW

General Conclusions

1. Claims 41B 32454-00 and 41B 37802-00 reflect "uses of water that would be protected under the law as it existed prior to July 1, 1973" and are "existing rights" as defined in the Water Use Act. Mont. Code Ann. § 85-2-102(13) (2025).

2. The Water Court has exclusive jurisdiction to adjudicate the elements of claims 41B 32454-00 and 41B 37802-00. § 3-7-224(2), MCA.

3. The Water Use Act provides that "a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree." § 85-2-227(1), MCA. The prima facie status of a statement of claim applies until the first decree after the filing period. *Sunset Irrigation Dist. v. United States Fish & Wildlife Serv.*, 2021 MT 25, ¶ 19, 403 Mont. 123, 480 P.3d 214 (upholding prima facie status of claim amended before issuance of the preliminary decree).

4. Rule 17 of the Water Right Adjudication Rules governs settlements filed during adjudication proceedings. Rule 17(a) requires settlements be approved by the Water Court. If a settlement reduces the elements of a claim, the Water Court can approve the settlement without further presentation of evidence. Rule 17(c), W.R.Adj.R.

5. During these case proceedings, the Court approved a Stipulation, a settlement of BOR, FWP, and WSCC's objections. "The Stipulation seeks to reduce the

claims or clarify ambiguous elements. Therefore, the Stipulation is approved.” (Doc. 112 at 7).

6. Open A’s objections were not resolved based on the Stipulation. Therefore, Open A had the burden at hearing to prove by a preponderance of evidence that the Stipulated service area place of use and 6,246 maximum acres does not reflect the beneficial use of the right as it existed prior to July 1, 1973. *See* Rule 19, W.R.Adj.R.

7. The Water Use Act requires the Court to adjudicate “the place of use and a description of the land, if any, to which the right is appurtenant.” § 85-2-234(6)(e), MCA. Generally, a water right is appurtenant to its particular place of use. Water suppliers, such as WSCC, operate under a slightly different rule. *Curry v. Pondera Cnty Canal & Reservoir Co.*, 2016 MT 77, ¶ 31, 383 Mont. 93, 370 P.3d 440. Unlike water right claims that attach to a specific place of use, water suppliers may designate a broader service area within which they may move and adjust water deliveries in response to changing shareholder needs. *Id.* ¶¶ 40–44.

8. When an appropriator distributes water to a third-party water user within a defined area under a contractual, corporate, transactional, or statutory structure, such water supply company may be entitled to a service area. *Bailey v. Tintinger*, 45 Mont. 154, 175-78, 122 P. 575, 582-83 (1912).

9. To determine the boundaries of a service area for a canal company, the Court reviews patterns of historical use, what land was contemplated as irrigated at the outset of the company, and land under "actual or contemplated use." *Parrot Ditch Co. v. Ashcraft*, 2024 MT 272, ¶ 35, 419 Mont. 93, 558 P.3d 1183; *In re E. Bench Irrigation Dist.*, 2021 MT 319, ¶ 58, 406 Mont. 502, 501 P.3d 380. The service area cannot include land that was never intended to be irrigated as of July 1, 1973. *In re Brady Irrigation, Co.*, 2022 Mont. Water LEXIS 475, *18; *Curry*, ¶ 54.

10. WSCC was created for the purpose of selling and distributing water for irrigation and stock to third party shareholders. WSCC does not own the land where it supplies water; rather, it supplies water to land owned by its shareholders. WSCC shareholders’ entitlement to water is based upon an apportionment of the volume rather than a defined parcel of land.

11. In *East Bench*, the Water Court determined that the pattern of historical distribution of water based on share allocation warranted a service area place of use. WSCC's share allocation is analogous to *East Bench* where irrigated acreage fluctuated based on water supply and farming practices. Limiting irrigation based on an acreage number better reflects historical use rather than fixing permanent parcel-specific acreage. *In re E. Bench Irrigation Dist.*, ¶¶ 79–82; *Curry*, ¶¶ 41–44.

Clark Canyon Water Supply Company Shares

12. Open A's position that CCWSC shares operated as a limit on the acres irrigated is unpersuasive and has been previously addressed by this Court. In *Bench Irrigation District*, this Court stated:

One purpose behind creation of different share classes was to allocate water and project costs among irrigators based on the productivity of their land. This process assured project costs could be recovered from landowners based on their ability to pay...because all land served by CCWSC shares was previously irrigated, the holders of these shares also owned private water rights that predated the project. Although these private water rights were not limited to use on lands covered by shares, they were often combined with share water and delivered through the same irrigation systems. Water is fungible and project water delivered for Class A, B, and C lands was combined with private water rights and used where needed. For these reasons, irrigators rarely limited use of project water to the lands for which shares were used.

2020 Mont. Water LEXIS 793, *18–19.

13. WSCC's service area and maximum acres are not limited by the CCWSC shares. CCWSC share agreements were inconsistent concerning the provisions and language and did not expressly limit use of private water rights. *Id.* at *18. "The footprint of lands irrigated by shareholders changed from year to year without oversight by either CCWSC or the United States." *Id.* at *23.

14. In practice, CCWSC shares and subscription agreements reflect limitations on volume not acreage. Moreover, limiting WSCC to acreage figures or specific land identified in CCWSC documentation, such as subscription agreements, does not reflect how shareholders actually used water.

Basic Biological Services LLC's 2005 Report and Turek's Analysis

15. Turek's conclusion that WSCC's maximum acres should be 5,573.48 acres is constrained by the BBS study. Since the BBS study was conducted nearly thirty years after 1973, during a period of significant drought, and it is unclear whether irrigators reported pre-1973 acres irrigated, the BBS study has significant shortcomings in determining pre-1973 irrigation.

16. Turek's 5,573.48-acre total may be helpful in determining acres irrigated between 2000 and 2004 that were also irrigated pre-1973. However, because Turek's starting point was based on post-1973 data and because Turek eliminated irrigation falling outside the post-1973 polygons she created, the analysis is unpersuasive in showing the service area place of use or 6,246 maximum acres does not reflect pre-July 1, 1973 use.

17. As previously acknowledged by this Court, irrigation practices by CCWSC shareholders changed from year to year and "CCWSC delivered water to dozens of independent operators who made their own choices regarding what crops to plant and where and how to irrigate." *Id.* at *26. Turek's analysis did not comport with the notion that land irrigated by shareholders shifted from year to year within the area where water could be delivered by WSCC.

18. Therefore, Open A's conclusion that 5,573.48-acres reflects actual historical beneficial use is insufficient to show, by a preponderance of the evidence, that the place of use and maximum acres are something other than what was approved pursuant to the Stipulation. The analysis is not sufficient to overcome the service area place of use and the 6,246 maximum acre limit.

Expansion

19. Beneficial use of a water right is informed by intent. Intent is determined by "the acts, diligence, and needs of the appropriator." *Toohy v. Campbell*, 24 Mont. 13, 17, 60 P. 396, 397 (1900) (quoting *Power v. Switzer*, 21 Mont. 523, 530, 55 P. 32, 35 (1898)). "Diligence does not require unusual or extraordinary effort, but it does require a steady application of effort – that effort that is usual, ordinary and reasonable under the

circumstances.” *Montana Dep’t of Nat. Res. & Conservation v. Intake Water Co.*, 171 Mont. 416, 434, 558 P.2d 1110, 1120 (1976) (citation omitted).

20. Here, the evidence in the record clearly demonstrates that WSCC and individual WSCC shareholders acted with diligence over time, using CCWSC shares and investing in upgrades to improve irrigation within the system.

21. The evidence in this case also tracks patterns previously confirmed by this Court:

Gradually, the sophistication of irrigation equipment improved. Better sprinklers allowed irrigation of more land, which generated more capital to purchase additional equipment. Hand lines were replaced with wheel lines and eventually pivots. Sprinklers and pumps pushed water into places formerly inaccessible with flood irrigation and lands not counted as irrigable at the start of the project were placed into production.

Bench Irrigation Dist., 2020 Mont. Water LEXIS at *10.

22. The evidence was insufficient to show that the 6,246 maximum acres includes acres not irrigated until after July 1, 1973. Although there was conflicting evidence concerning whether sprinklers north of Albers Lane in Sections 32 and 33, Township 5 South, Range 8 West were added before or after July 1, 1973, the evidence did not rise to the preponderance of the evidence standard necessary to overcome the stipulated service area and maximum 6,246 acres irrigated.

23. Similarly, though there was testimony regarding areas of potential subirrigation included in the 6,246 maximum acres, the testimony was conflicting regarding where, how much, and whether irrigation included a combination of subirrigation and other irrigation methods. Therefore, it was also insufficient to overcome the service area and 6,246 maximum acres.

Summary

24. Open A did not provide sufficient evidence to prove WSCC failed to use reasonable diligence to perfect the boundaries of the service area place of use. The evidence also supported that irrigated acreage fluctuated based on various factors, including availability of stored water.

25. Open A did not provide sufficient evidence to prove 6,246 maximum acres does not reflect historical use. For WSCC, the previously approved 6,246 maximum acre determination provides some flexibility but also operates as a limiting factor.

ORDER

Based on the foregoing, it is ORDERED that:

1. Open A's objections are DISMISSED. Claims 41B 32454-00 and 41B 37802-00 remain as approved pursuant to the Stipulation.
2. The modifications made pursuant to the Stipulation and confirmed in this Order resolve the issue remarks and the issue remarks are removed from the abstract of 41B 32454-00.
3. Proceedings in this case are CLOSED. Abstracts of 41B 32454-00 and 41B 37802-00 are provided with this Order.

ELECTRONICALLY SIGNED AND DATED BELOW.

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BEAVERHEAD RIVER
BASIN 41B**

Water Right Number: 41B 32454-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: WEST SIDE CANAL CO
122 E GLENDALE ST
DILLON, MT 59725-2506

Priority Date: AUGUST 15, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 106.35 CFS

Volume: 20,400.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 6,246.00

Source Name: BEAVERHEAD RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNW	24	7S	9W	BEAVERHEAD

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: WEST SIDE CANAL

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	2.50		S2SWSW	32	5S	8W	BEAVERHEAD
2	2.00		SWSESW	32	5S	8W	BEAVERHEAD
3	10.00		E2SWNE	32	5S	8W	BEAVERHEAD
4	29.00		SENE	32	5S	8W	BEAVERHEAD
5	7.00		NENWSE	32	5S	8W	BEAVERHEAD
6	20.00		N2NESE	32	5S	8W	BEAVERHEAD
7	18.00		S2NESE	32	5S	8W	BEAVERHEAD
8	7.00		SENWSE	32	5S	8W	BEAVERHEAD
9	20.00		SWSE	32	5S	8W	BEAVERHEAD
10	28.00		SESE	32	5S	8W	BEAVERHEAD
11	25.00		NESW	33	5S	8W	BEAVERHEAD
12	20.00		SWNW	33	5S	8W	BEAVERHEAD
13	15.00		N2NWSW	33	5S	8W	BEAVERHEAD

14	8.00		SENWSW	33	5S	8W	BEAVERHEAD
15	15.00		SENE	33	5S	8W	BEAVERHEAD
16	7.00		SWNWSW	33	5S	8W	BEAVERHEAD
17	38.00		SWSW	33	5S	8W	BEAVERHEAD
18	16.00		SESW	33	5S	8W	BEAVERHEAD
19	38.00		NESE	33	5S	8W	BEAVERHEAD
20	31.00		NWSE	33	5S	8W	BEAVERHEAD
21	20.00		N2SWSE	33	5S	8W	BEAVERHEAD
22	13.25		N2SESE	33	5S	8W	BEAVERHEAD
23	69.00		E2NE	4	6S	8W	BEAVERHEAD
24	75.00		W2NE	4	6S	8W	BEAVERHEAD
25	287.25		W2	4	6S	8W	BEAVERHEAD
26	20.00		NESE	4	6S	8W	BEAVERHEAD
27	40.00		NWSE	4	6S	8W	BEAVERHEAD
28	597.00			5	6S	8W	BEAVERHEAD
29	313.00		E2	6	6S	8W	BEAVERHEAD
30	4.00	3	NENW	6	6S	8W	BEAVERHEAD
31	9.50		E2SENW	6	6S	8W	BEAVERHEAD
32	72.00		S2SW	6	6S	8W	BEAVERHEAD
33	543.00			7	6S	8W	BEAVERHEAD
34	291.00		N2	8	6S	8W	BEAVERHEAD
35	139.00		SW	8	6S	8W	BEAVERHEAD
36	2.00		NWNESE	8	6S	8W	BEAVERHEAD
37	24.50		NWSE	8	6S	8W	BEAVERHEAD
38	23.00		SWSE	8	6S	8W	BEAVERHEAD
39	70.00		N2NW	9	6S	8W	BEAVERHEAD
40	4.50		N2S2NW	9	6S	8W	BEAVERHEAD
41	558.00			17	6S	8W	BEAVERHEAD
42	539.00			18	6S	8W	BEAVERHEAD
43	546.00			19	6S	8W	BEAVERHEAD
44	19.00		NENE	20	6S	8W	BEAVERHEAD
45	36.50		NWNE	20	6S	8W	BEAVERHEAD
46	7.50		SWNE	20	6S	8W	BEAVERHEAD
47	151.50		NW	20	6S	8W	BEAVERHEAD
48	11.25		NESW	20	6S	8W	BEAVERHEAD
49	27.75		NWSW	20	6S	8W	BEAVERHEAD
50	24.50		SWSW	20	6S	8W	BEAVERHEAD
51	35.00		SESW	20	6S	8W	BEAVERHEAD
52	8.50		W2NWSE	20	6S	8W	BEAVERHEAD
53	7.00		W2SWSE	20	6S	8W	BEAVERHEAD
54	37.00		SENE	20	6S	8W	BEAVERHEAD
55	16.00		E2SWSE	20	6S	8W	BEAVERHEAD
56	9.00		SESE	20	6S	8W	BEAVERHEAD
57	2.00		W2NWNE	29	6S	8W	BEAVERHEAD
58	26.00		NENW	29	6S	8W	BEAVERHEAD
59	10.00		NWNW	29	6S	8W	BEAVERHEAD
60	37.00		NENE	30	6S	8W	BEAVERHEAD

61	80.00		W2NE	30	6S	8W	BEAVERHEAD
62	17.50		SENE	30	6S	8W	BEAVERHEAD
63	269.50		W2	30	6S	8W	BEAVERHEAD
64	36.00		NWSE	30	6S	8W	BEAVERHEAD
65	7.50		SWSE	30	6S	8W	BEAVERHEAD
66	6.25		NENW	31	6S	8W	BEAVERHEAD
67	27.25	1	NWNW	31	6S	8W	BEAVERHEAD
68	2.00	2	SWNW	31	6S	8W	BEAVERHEAD
69	40.00		SENE	25	6S	9W	BEAVERHEAD
70	40.00		NESE	25	6S	9W	BEAVERHEAD
71	60.00		S2SE	25	6S	9W	BEAVERHEAD
72	270.00		E2	36	6S	9W	BEAVERHEAD
73	13.00		NENW	36	6S	9W	BEAVERHEAD
74	9.50		E2SENW	36	6S	9W	BEAVERHEAD
75	15.00		E2NESW	36	6S	9W	BEAVERHEAD
76	1.50		NESESW	36	6S	9W	BEAVERHEAD
77	10.50	6	NWSW	6	7S	9W	BEAVERHEAD
78	13.00	7	SWSW	6	7S	9W	BEAVERHEAD
79	4.00		W2NENW	7	7S	9W	BEAVERHEAD
80	21.00	1	NWNW	7	7S	9W	BEAVERHEAD
81	17.00	2	SWNW	7	7S	9W	BEAVERHEAD
82	19.00		SENW	7	7S	9W	BEAVERHEAD
83	25.50		NESW	7	7S	9W	BEAVERHEAD
84	9.00	3	NWSW	7	7S	9W	BEAVERHEAD
85	2.50	4	SWSW	7	7S	9W	BEAVERHEAD
86	1.50		N2SESW	7	7S	9W	BEAVERHEAD
87	18.50	1	NENE	1	7S	9W	BEAVERHEAD
88	25.00	2	NWNE	1	7S	9W	BEAVERHEAD
89	9.00		E2SWNE	1	7S	9W	BEAVERHEAD
90	35.00		SENE	1	7S	9W	BEAVERHEAD
91	17.00		NESE	1	7S	9W	BEAVERHEAD
92	7.00		SESE	1	7S	9W	BEAVERHEAD
93	3.50		SESE	12	7S	9W	BEAVERHEAD
94	3.00		W2NENE	12	7S	9W	BEAVERHEAD
95	21.00		NENE	13	7S	9W	BEAVERHEAD
96	3.00		NESWNE	13	7S	9W	BEAVERHEAD
97	4.00		N2SENE	13	7S	9W	BEAVERHEAD
Total:	6246.00						

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.

32454-00 37802-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 10/18/2012: MAXIMUM ACRES, PLACE OF USE.

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

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BEAVERHEAD RIVER
BASIN 41B**

Water Right Number: 41B 37802-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: WEST SIDE CANAL CO
122 E GLENDALE ST
DILLON, MT 59725-2506

IT APPEARS THE OWNER IS A SHAREHOLDER IN THE CLARK CANYON WATER SUPPLY COMPANY.

Priority Date: AUGUST 15, 1883

Type of Historical Right: DECREED

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: BEAVERHEAD RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNW	24	7S	9W	BEAVERHEAD

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: WEST SIDE CANAL

Period of Use: APRIL 1 TO NOVEMBER 1

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			S2SWSW	32	5S	8W	BEAVERHEAD
2			SWSESW	32	5S	8W	BEAVERHEAD
3			E2SWNE	32	5S	8W	BEAVERHEAD
4			SENE	32	5S	8W	BEAVERHEAD
5			NENWSE	32	5S	8W	BEAVERHEAD
6			N2NESE	32	5S	8W	BEAVERHEAD
7			S2NESE	32	5S	8W	BEAVERHEAD
8			SENWSE	32	5S	8W	BEAVERHEAD
9			SWSE	32	5S	8W	BEAVERHEAD
10			SESE	32	5S	8W	BEAVERHEAD

11		NESW	33	5S	8W	BEAVERHEAD
12		SWNW	33	5S	8W	BEAVERHEAD
13		N2NWSW	33	5S	8W	BEAVERHEAD
14		SENWSW	33	5S	8W	BEAVERHEAD
15		SENE	33	5S	8W	BEAVERHEAD
16		SWNWSW	33	5S	8W	BEAVERHEAD
17		SWSW	33	5S	8W	BEAVERHEAD
18		SESW	33	5S	8W	BEAVERHEAD
19		NESE	33	5S	8W	BEAVERHEAD
20		NWSE	33	5S	8W	BEAVERHEAD
21		N2SWSE	33	5S	8W	BEAVERHEAD
22		N2SESE	33	5S	8W	BEAVERHEAD
23		E2NE	4	6S	8W	BEAVERHEAD
24		W2NE	4	6S	8W	BEAVERHEAD
25		W2	4	6S	8W	BEAVERHEAD
26		NESE	4	6S	8W	BEAVERHEAD
27		NWSE	4	6S	8W	BEAVERHEAD
28			5	6S	8W	BEAVERHEAD
29		E2	6	6S	8W	BEAVERHEAD
30	3	NENW	6	6S	8W	BEAVERHEAD
31		E2SENW	6	6S	8W	BEAVERHEAD
32		S2SW	6	6S	8W	BEAVERHEAD
33			7	6S	8W	BEAVERHEAD
34		N2	8	6S	8W	BEAVERHEAD
35		SW	8	6S	8W	BEAVERHEAD
36		NWNESE	8	6S	8W	BEAVERHEAD
37		NWSE	8	6S	8W	BEAVERHEAD
38		SWSE	8	6S	8W	BEAVERHEAD
39		N2NW	9	6S	8W	BEAVERHEAD
40		N2S2NW	9	6S	8W	BEAVERHEAD
41			17	6S	8W	BEAVERHEAD
42			18	6S	8W	BEAVERHEAD
43			19	6S	8W	BEAVERHEAD
44		NENE	20	6S	8W	BEAVERHEAD
45		NWNE	20	6S	8W	BEAVERHEAD
46		SWNE	20	6S	8W	BEAVERHEAD
47		NW	20	6S	8W	BEAVERHEAD
48		NESW	20	6S	8W	BEAVERHEAD
49		NWSW	20	6S	8W	BEAVERHEAD
50		SWSW	20	6S	8W	BEAVERHEAD
51		SESW	20	6S	8W	BEAVERHEAD
52		W2NWSE	20	6S	8W	BEAVERHEAD
53		W2SWSE	20	6S	8W	BEAVERHEAD
54		SENE	20	6S	8W	BEAVERHEAD
55		E2SWSE	20	6S	8W	BEAVERHEAD
56		SESE	20	6S	8W	BEAVERHEAD
57		W2NWNE	29	6S	8W	BEAVERHEAD

58		NENW	29	6S	8W	BEAVERHEAD
59		NWNW	29	6S	8W	BEAVERHEAD
60		NENE	30	6S	8W	BEAVERHEAD
61		W2NE	30	6S	8W	BEAVERHEAD
62		SENE	30	6S	8W	BEAVERHEAD
63		W2	30	6S	8W	BEAVERHEAD
64		NWSE	30	6S	8W	BEAVERHEAD
65		SWSE	30	6S	8W	BEAVERHEAD
66		NENW	31	6S	8W	BEAVERHEAD
67	1	NWNW	31	6S	8W	BEAVERHEAD
68	2	SWNW	31	6S	8W	BEAVERHEAD
69		SENE	25	6S	9W	BEAVERHEAD
70		NESE	25	6S	9W	BEAVERHEAD
71		S2SE	25	6S	9W	BEAVERHEAD
72		E2	36	6S	9W	BEAVERHEAD
73		NENW	36	6S	9W	BEAVERHEAD
74		E2SENW	36	6S	9W	BEAVERHEAD
75		E2NESW	36	6S	9W	BEAVERHEAD
76		NESESW	36	6S	9W	BEAVERHEAD
77	6	NWSW	6	7S	9W	BEAVERHEAD
78	7	SWSW	6	7S	9W	BEAVERHEAD
79		W2NENW	7	7S	9W	BEAVERHEAD
80	1	NWNW	7	7S	9W	BEAVERHEAD
81	2	SWNW	7	7S	9W	BEAVERHEAD
82		SENW	7	7S	9W	BEAVERHEAD
83		NESW	7	7S	9W	BEAVERHEAD
84	3	NWSW	7	7S	9W	BEAVERHEAD
85	4	SWSW	7	7S	9W	BEAVERHEAD
86		N2SESW	7	7S	9W	BEAVERHEAD
87	1	NENE	1	7S	9W	BEAVERHEAD
88	2	NWNE	1	7S	9W	BEAVERHEAD
89		E2SWNE	1	7S	9W	BEAVERHEAD
90		SENE	1	7S	9W	BEAVERHEAD
91		NESE	1	7S	9W	BEAVERHEAD
92		SESE	1	7S	9W	BEAVERHEAD
93		SESE	12	7S	9W	BEAVERHEAD
94		W2NENE	12	7S	9W	BEAVERHEAD
95		NENE	13	7S	9W	BEAVERHEAD
96		NESWNE	13	7S	9W	BEAVERHEAD
97		N2SENE	13	7S	9W	BEAVERHEAD

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