

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

# GENERAL ABSTRACT

**Water Right Number:** 411 166914-00 STATEMENT OF CLAIM  
**Version:** 1 -- ORIGINAL RIGHT

**Version Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF RECLAMATION)  
PO BOX 30137  
BILLINGS, MT 59107-0137

**Priority Date:** DECEMBER 1, 1970

**Enforceable Priority Date:** DECEMBER 1, 1970

**Type of Historical Right:** USE

**Purpose (use):** FISH AND WILDLIFE  
THIS WATER RIGHT IS INCIDENTALLY USED FOR DUST ABATEMENT.

**Maximum Flow Rate:** 50.00 CFS

**Maximum Volume:** 5,167.00 AC-FT

**Source Name:** MISSOURI 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		SWSESE	19	7N	2E	BROADWATER

**Period of Diversion:** MARCH 1 TO NOVEMBER 30

**Diversion Means:** HEADGATE

**Ditch Name:** EASTSIDE CANAL

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**Reservoir:** OFF STREAM **Reservoir Name** POND NO.2

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWSE	33	8N	2E	BROADWATER

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 15.00 FEET

**Surface Area:** 500.00 ACRES

**Current Capacity:** 2,500.00 ACRE-FEET

**Original Capacity:** 2,500.00 ACRE-FEET

THE DAM FOR POND NO. 2 IS LOCATED IN PARTS OF SECTIONS 4 AND 5 TWP 07N RGE 02E AND SECTION 33 TWP 08N RGE 02E BROADWATER COUNTY.

**Period of Use:** MARCH 1 to NOVEMBER 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				4	7N	2E	BROADWATER
2			E2E2	5	7N	2E	BROADWATER
3				33	8N	2E	BROADWATER

THE PLACE OF USE IS THE SURFACE AREA OF POND NO. 2.

**Remarks:**

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

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

40921-00 166914-00

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40921-00 166911-00 166912-00 166913-00 166914-00

THIS CLAIM AND CLAIM NO. W040921-00 MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS THAT ONLY ONE WATER RIGHT IS INVOLVED.

**Remarks:**

WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

THE CLAIMED PRIORITY DATE IS QUESTIONABLE. IT APPEARS THE PRIORITY DATE SHOULD BE THE DATE THE IMPOUNDMENT WAS FIRST PUT TO USE. CONSTRUCTION OF THE EASTSIDE CANAL WAS NOT COMPLETED UNTIL 1978. SEE CLAIM FILE FOR A CONSTRUCTION CHRONOLOGY.

THERE IS A QUESTION AS TO THE VALIDITY OF THIS CLAIMED RIGHT. IN THE MATTER OF THE DEARBORN DRAINAGE AREA, 234 MONT. 343 (1988) (THE BEAN LAKE CASE) THE MONTANA SUPREME COURT STATED: "IT IS CLEAR THEREFORE THAT UNDER MONTANA LAW BEFORE 1973, NO APPROPRIATION RIGHT WAS RECOGNIZED FOR RECREATION, FISH AND WILDLIFE, EXCEPT THROUGH A MURPHY RIGHT STATUTE."

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THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

THE USE OF THIS WATER APPEARS TO BE LARGELY NON-CONSUMPTIVE.