

Understanding Instream Flow Changes in Montana

WATER RIGHTS

- Beneficial Use
- Abandonment
- First in Time, First in Right
- Changes in purpose, place of use, point of diversion
- Water Rights can be severed from the land and sold or leased
- 1989, 1995, instream leases

March 29, 2007
76F 132521-00

Page 1 of 4
General Abstract

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 5TH AVENUE P.O. BOX 208201 HELENA, MONTANA 59620-1621

GENERAL ABSTRACT

Water Right Number: 76F 132521-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Version Status: ACTIVE

Owners: BIGNELL RANCH CO
4801 OVANDO-HELMVILLE RD
HELMVILLE, MT 59843-0121
ALFONSO A ANGELLO
PO BOX 100
OVANDO, MT 59854
TRANSFER PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

Priority Date: MAY 29, 1894
Enforceable Priority Date: MAY 29, 1894

Type of Historical Right: DECREE

Purpose (use): IRRIGATION
Maximum Flow Rate: 3.50 CFS
Maximum Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Maximum Acres: 248.00

Source Name: SPRING CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Cont.Lot	Qtr.Sec	Sec	Twp	Rge	County
1	SE2ENW	16	15N	11W	POWELL	

Period of Diversion: APRIL 1 TO OCTOBER 15
Diversion Means: HEADGATE
Ditch Name: CEDAR FALLS DITCH

Purpose (Use): IRRIGATION
Irrigation Type: FLOOD
Climatic Area: 4 - MODERATELY LOW
Volume: 208.31 AC-FT
Period of Use: APRIL 1 to OCTOBER 15
Place of Use:

ID	Acres	Cont.Lot	Qtr.Sec	Sec	Twp	Rge	County
1	67.00		SW	33	15N	12W	POWELL
2	181.00		W2	4	14N	12W	POWELL
Total:	248.00						

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 OF THE CLAIMANT'S TOTAL ACRES. 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.

132511-00 132512-00 132513-00 132517-00 132518-00 132521-00 98060-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 8/29/92: MAXIMUM ACRES AND PLACE OF USE.

WATER DIVERTED FROM SPRING CREEK IS CONVEYED IN THE MURPHY DITCH THROUGH DONEY LAKE TO HOYT CREEK. HOYT CREEK RUNS INTO WARREN CREEK AND THE WATER IS THEN CONVEYED THROUGH THE MCNALLY DITCH TO THE PLACE OF USE.

USDA AERIAL PHOTOGRAPH NO(S) 178-38 , DATED 08/10/1979 , APPEARS TO INDICATE 175 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

NOTICE OF WATER RIGHT TRANSFER RECEIVED 08/28/92.
NOTICE OF WATER RIGHT TRANSFER RECEIVED 10/05/92.
WATER RIGHT OWNERSHIP UPDATE RECEIVED 03/14/00.

Key Features of an Instream “Lease”

- To DFWP, private entity, or simply convert
- Beneficial use--fishery
- Term Limited-10 years/ 30 years in some
- Priority date remains intact
- Automatic reversion to original purpose, place of use
- Protected from abandonment

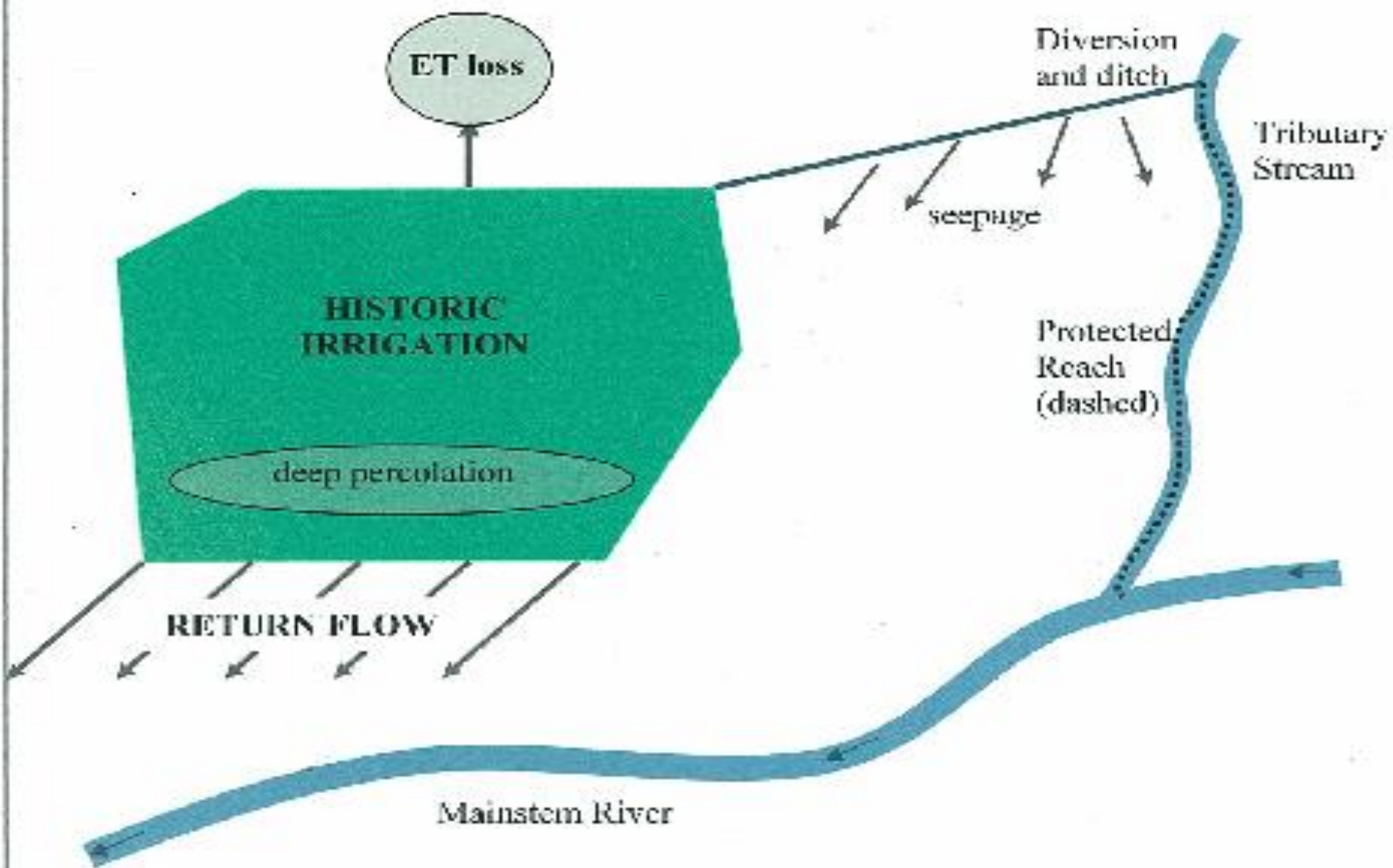
Instream Leases (continued)

- DNRC MUST APPROVE THE CHANGE
- Plan to Monitor Stream Flow

How Much Water Can a Lease Protect?

- The amount historically diverted to the original point of diversion
- Below the original diversion, the amount historically consumed

“Historically Consumed”—the amount lost to the source



Instream Change Process

- Prove, by preponderance of evidence:

**NO ADVERSE EFFECT ON
OTHER WATER USERS**

- Other Water Users Can object

Adverse Effect?

- Something that impedes the ability of a water user to make use of their water
 - Changing the timing and amount of flows available to other users
 - Increasing consumptive use (water taken from the source)
 - Changing the timing of return flows

Proof of No Adverse Effect

- Close examination of history of actual use, *as of July 1, 1973*
 - Aerial photos, Maps, Water Resource Survey
 - Direct irrigator experience, old timer recollection
 - Flow measurements, ditch measurements, Water Commissioner records, crop records, etc.

Bottom Line on Water Rights Changes

Nothing Happens Fast

Due Diligence—Stage 1

- What's in the Stream?
 - Get to know your local fisheries biologist
- What is the scope of habitat impairment?
- What are the chances of fixing it?
- The issue of flow--how much, when, and where?
- Willing Irrigators?

An Assessment of Fish Populations and Riparian Habitat in Tributaries of the Upper Clark Fork River Basin



Prepared by:

Jason Lindstrom, Brad Liermann, and Ryan Kreiner of Montana Fish, Wildlife and Parks

April 2008

Instream Leases as Part of a Watershed-based Strategy

- Works best as a one of a suite of activities that addresses multiple impairments
- Critical question—if you put water back into a stream, will it do any good?

Due Diligence—Stage 2

March 29, 2007
76F 132521-00

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General Abstract

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

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Water Right Number: 76F 132521-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Version Status: ACTIVE

Owners: BIGNELL RANCH CO
4801 OVANDO-HELMVILLE RD
HELMVILLE, MT 59843-9121
ALFONSO A ANGELO
PO BOX 109
OVANDO, MT 59854
TRANSFER PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

Priority Date: MAY 20, 1894
Enforceable Priority Date: MAY 20, 1894

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Maximum Flow Rate: 3.50 CFS

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

Maximum Acres: 248.00

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Source Type: SURFACE WATER

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Irrigation Type: FLOOD

Climatic Area: 4 - MODERATELY LOW

Volume: 208.31 AC-FT

Period of Use: APRIL 1 to OCTOBER 15

Place of Use:

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Total:	248.00						

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WATER RIGHT OWNERSHIP UPDATE RECEIVED 03/14/00.

- Wet Water or Paper Water?
 - Currently used?
 - Evidence of historic use?
 - Pre-1973?
 - Aerial photos, The irrigator, neighbors, local geezers, etc.
 - Flood or sprinkler?

Flood v. Sprinkler?

- Old Conventional Wisdom—Pivots are the silver bullet to increasing stream flows
- Not necessarily
- Divert less, consume more?

Due Diligence—stage 2 (continued)

- Sociology of the Stream?
 - How many water rights on the stream?
 - More users = more complications
 - Is there a water commissioner on the stream?
 - How does the irrigator get along with his neighbors?

PROS AND CONS OF LEASING

September 20, 2006
Change Application #: 76F-30023056

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Change Authorization

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

CHANGE AUTHORIZATION **COPY**

UPON FINDING THE REQUIREMENTS OF SECTION 85-2-402, MCA HAVE BEEN MET, APPLICATION TO CHANGE WATER RIGHT NUMBER 76F-30023056 SUBMITTED ON JULY 6, 2006, IS APPROVED.

Application From: MANNIX BROTHERS INC
83 MANNIX RANCH DR
HELMVILLE, MT 59843 9039

Water Right Number(s) Changed:

Wr #	Ext	Type
76F-98235	00	STATEMENT OF CLAIM
76F-98236	00	STATEMENT OF CLAIM
76F-98237	00	STATEMENT OF CLAIM
76F-98238	00	STATEMENT OF CLAIM

Authorization Limits

Flow Rate: 0.75 CFS
Volume: 295.50 AC-FT

Change Description:
THIS AUTHORIZATION ALLOWS THE APPLICANT TO TEMPORARILY CHANGE THE PLACE OF USE AND PURPOSE OF A PORTION OF FOUR EXISTING IRRIGATION RIGHTS (76F-98235, 76F-98236, 76F-98237, 76F-98238) ON WASSON CREEK IN POWELL COUNTY. THE TEMPORARY CHANGE WILL LAST FOR A PERIOD OF TEN (10) YEARS. A MAXIMUM FLOW RATE OF 0.75 CFS WOULD BE CHANGED TO ENHANCE FISHERY RESOURCES, WHILE A MAXIMUM FLOW RATE OF 5.76 CFS WOULD CONTINUE TO BE USED FOR IRRIGATION OF 189 ACRES IN SEC 7 TWP 13N RGE 10W AND SECS 12, 13, 14, 18 TWP 13N RGE 11W, POWELL COUNTY. THE PERIOD OF USE FOR BOTH PURPOSES WOULD BE APRIL 15 THROUGH OCTOBER 31. THE VOLUME CHANGE FOR INSTREAM FLOWS IS 295.5 ACRE-FEET, WHILE 408.7 ACRE FEET WILL CONTINUE TO BE USED FOR IRRIGATION. THE CHANGED PLACE OF USE AND POINT OF DIVERSION WOULD BE THE REACH OF WASSON CREEK FROM THE SESWSW SEC 7 TWP 13N RGE 11W POWELL COUNTY TO THE CONFLUENCE WITH NEVADA SPRING CREEK IN THE SE SEC 11 TWP 13N RGE 11W POWELL COUNTY.

CONDITIONAL APPROVAL
THIS AUTHORIZATION IS LIMITED TO THE AMOUNT OF THE HISTORIC USE RECOGNIZED BY THE DEPARTMENT IN THIS PROCEEDING AS SUBJECT TO CHANGE, AND WILL THEREAFTER NOT EXCEED THAT AMOUNT. IF THE HISTORIC USE IS REDUCED UNDER ADJUDICATION PROCEEDINGS PURSUANT TO TITLE 85, CHAPTER 2, PART 2, MCA, THIS AUTHORIZATION WILL BE LIMITED TO A LESSER AMOUNT.

TEMPORARY CHANGE/PERMIT OR INTERIM PERMIT EXPIRATION
THIS RIGHT EXPIRES ON **OCTOBER 31, 2017**.

FAILURE TO COMPLY WITH ANY OF THESE TERMS AND CONDITIONS MAY RESULT IN THE LOSS OF THIS CHANGE AUTHORIZATION.

Kathy Anderson
Witness Signature

[Signature]
Water Resources Division

DATE ISSUED: SEPTEMBER 20, 2006

- Pros
 - Surgical approach to flow restoration
 - Flexible tool
- Cons
 - High transaction costs
 - -- Doesn't work everywhere

Talk to us—TU, CFC, DFWP

Useful References

- DNRC New Appropriations Page: <http://dnrc.mt.gov/divisions/water/water-rights/new-appropriations-program>.
- DNRC Water Right Query System: <http://www.nris.mt.gov/dnrc/waterrights/default.aspx>.
- DNRC Water Rights Survey Books: <http://dnrc.mt.gov/divisions/water/water-rights/records-unit/survey-books>.
- Phase 1 Fisheries Assessment: <https://dojmt.gov/wp-content/uploads/2011/06/2009phase1report.pdf>.
- Phase 2 Fisheries Assessment: <https://dojmt.gov/wp-content/uploads/2011/06/2009phase2report.pdf>.

Useful References (cont.)

- Clark Fork tributary habitat assessment:
<https://dojmt.gov/wp-content/uploads/2011/06/2009qualitativeassessment.pdf>.
- Buyer's Guide to Montana Water rights:
http://bbctu.org/uploads/Buyer_s_Guide_to_MT_Water_Rights_Final.pdf.
- Montana Fisheries Information System:
<http://fwp.mt.gov/fishing/mFish/>.
- Stan Bradshaw: sbradshaw@tu.org

END

Working With The Irrigator

- Be thorough and specific about how the process works—Answer all questions
 - Most important answer, “I don’t know, but I’ll find out”
- Be Transparent about the risks and uncertainties of the process
- Respect what the irrigator knows about his ground and his operation
- Don’t oversell the lease