

RESOLUTION NO 3768

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, APPROVING ATTACHMENT OF A REMARK DEFINING THE WATER RIGHT AS NONCONSUMPTIVE TO RESOLVE ISSUES AND CONTENTIONS ABOUT WATER COURT CASE NO 42C 184, AND CONCLUDING LITIGATION CONCERNING THE WATER RIGHT IDENTIFIED AS CLAIM NO. 42C 1735316-00, OWNED BY THE CITY, TO USE THE WATERS OF THE TONGUE RIVER

WHEREAS, the City of Miles City, Montana, has for many years utilized the waters of the Tongue River to provide water to Scanlan Lake and Cook Lake for the City summer recreation program; and

WHEREAS, the water right has also been used for fire department training and equipment testing; and

WHEREAS, the City, in accord with the Montana Water Adjudication Process, filed a Statement of Claim for that water usage as required by law, which claim was assigned the identification number of 42C 735316-00; and

WHEREAS, in due time the water claim was called before the Water Court for Adjudication and that the Montana Department of Natural Resources appended certain remarks to the claims; and

WHEREAS, the U.S. Bureau of Indian Affairs, on behalf of the Cheyenne Tribe, filed an objection to the claim as submitted by the City, and the Cheyenne Tribe itself, filed a Notice of Appearance in the case; and

WHEREAS, the DNRC remarks were resolved by the City providing more detailed and comprehensive descriptions of the City use of the water, which caused the DNRC to remove the remarks from the water right claim; and

WHEREAS, the removal of the DNRC remarks and the factual representations of the City made in Water Case 42CI84 concerning water right Claim No. 42C 1735316-00, satisfied virtually all the objections filed against the water right claim by the U.S. Bureau of Indian Affairs on behalf of the Cheyenne Tribe, and the concerns of the Cheyenne Tribe itself; and

WHEREAS, it has been proposed that the City agree that a remark stating

"THIS IS A NONCONSUMPTIVE WATER RIGHT; THE PURPOSE AND PLACE OF USE CANNOT BE CHANGED. A SMALL PORTION OF THIS WATER RIGHT IS USED FOR EMERGENCY FIRE SUPPRESSION AND FOR FIREFIGHTING TRAINING PURPOSES."

be included in the water right abstract adopted by the court, which remark restates the current practice and character of the use of the water right, and

WHEREAS, it is the determination of the City Council that agreeing to the attachment of such a remark on the Water Right Abstract is in the best interest of the City of Miles City and of its citizens.


NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY sitting at a regular meeting of the City Council this 23rd day of December, 2014, that it is in the best interest of the City of Miles City and of its citizens to agree to and authorized the water court to append a remark stating,

"THIS IS A NONCONSUMPTIVE WATER RIGHT; THE PURPOSE AND PLACE OF USE CANNOT BE CHANGED. A SMALL PORTION OF THIS WATER RIGHT IS USED FOR EMERGENCY FIRE SUPPRESSION AND FOR FIREFIGHTING TRAINING PURPOSES"

on the water right Abstract for Claim No 42C 1735316-00.

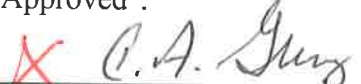
BE IT FURTHER RESOLVED THAT W.O. Gilbert, III, Special Counsel for the City in this Water Court case, be and is hereby authorized to execute and file with the Water Court the Consent to Attachment of Remark, and to deliver the same to the Water Court in resolution of the unresolved issues in this Water Court case.

ADOPTED by the City Council of the City of Miles City at a regular meeting this 23rd day of December, 2014.



President of the City Council

Approved :



C. A. Grenz, Mayor

Number of those voting for adoption of the resolution: 8

Number of those opposing the resolution: 0

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER DIVISION
TONGUE RIVER BELOW HANGING WOMAN CREEK (42C)

1. That the correct point of diversion for Claim No. 42C 175316-00 should entered in the record as located at the NW¼SE¼SW¼ of Section 33, Township 8 North, Range 47 East

M.P.M., all as set out in the affidavit of Samantha Malenovsky attached to this Motion as Exhibit A. This is the location where the inlet pipe to the pump that diverts the water from the Tongue River into the non-traditional, even unusual, water system of the City supplied by this water right. A revised map showing the correct point of diversion is attached to Ms. Malenovsky's Affidavit as Exhibit 1. The pump house itself is located at the NW¼SE¼SW¼ of Section 33, Township 8 North, Range 47 East M.P.M., a short distance from the pipe inlet structure.

2. Claimant City of Miles City respectfully moves the court to amend Claim no 42C 175316-00 to correct the point of diversion in the temporary preliminary decree for Claim No. 42C 175316-00, as set forth herein.

Claim No. 42C 175316-00 – Means of Diversion

1. That the means of conveyance of the diverted water consist of a pipe, two lake-like basins, a ditch, and a culvert. The pipe is twelve (12) inches in diameter and 237 feet in length with one 45° angle in its course. The pipe discharges into the first of two lake-like basins, which in historical times were parts of the channel of the Tongue River. The water flows through the lake-like basins, the first of which is named Scanlan Lake, and then flows into the second lake-like basin, which is named Cook Lake. The water then flows into and through a ditch. The water not lost to evaporation or utilized for various purposes (described later in this motion) returns to the Tongue River. These statements of fact are further set forth in the affidavit of Allen Kelm, Public Utilities Director of the City of Miles City attached hereto as Exhibit B.
2. Claimant City of Miles City respectfully moves the Court to amend Claim No. 42C

175316-00 to supplement the description of the means of diversion in the temporary preliminary decree for Claim No. 42C 175316-00, as set forth herein to state that the means of diversion are a pump, pipe, and flow through two lakes.

Claim No. 42C 175316-00 – Amount of Flow of Water Diverted

1. That the water diverted from the Tongue River into this City water system is all pumped from the Tongue River with a Goulds Turbine single stage model pump type GP rated for a capacity of one thousand two hundred gallons per minute (1,200 gpm) when operated at 1760 RPM, working against a static head of twenty (20) feet. The motor driving the pump is a U.S. Motor Model J146, 1760 RPM, ten horse power, 230 volt, 3-phase motor. This pump is intended to be, and is usually in full operation twenty-four hours per day for a period usually running between April 1 to September 5 of each year. A copy of the pump curve chart accompanies the Affidavit of Allen Kelm, Public Utilities Director of the City of Miles City, attached hereto as Exhibit B.
2. The static head against which the pump operates is 16.75 feet of elevation (not including friction loss), which is the measured comparative elevation difference between the pump outlet and the discharge-end of the 12-inch pipe through which the water is pumped into Lake Scanlan. The pump is rated at 1,200 gallons per minutes pumping against a static head of 20 feet. 16.75 feet of elevation is about 84% of that static head criteria. It is assumed that at 84% of the pump curve, the pump delivers over 1,200 gallons per minute and approximately 1,280 gallons per minute.
3. That the suction distance affecting the pump varies due to the height of the water flow in the Tongue River during various periods of the year, all as set out in the Affidavit of Allen Kelm, Public Utilities Director of the City of Miles City, attached hereto as Exhibit B.

4. Claimant City of Miles City respectfully moves the Court to amend Claim No. 42C 175316-00 to correct the amount of flow of water diverted as adjudicated in the temporary preliminary decree for Claim No. 42C 175316-00, to 1,280 GPM, all as established herein and with the proof provided.

Claim No. 42C 175316-00 – Annual Volume of Water Used

1. That the maximum volume of water used by the City of Miles City from this water right in a year is calculated based on DNRC Form N 615R10/2009 Water Conversion Table and according to the following factually-based assumptions. The assumptions are derived from the affidavits attached to this Motion. Assuming that the pump runs 24 hours a day between April 1st and September 5th of each year, a period of one hundred fifty-eight (158) days; and further assuming that the pump operates at full capacity of one thousand two hundred eighty gallons per minute (1,280 gpm), while ignoring the minimal affect the height of the river water has on the suction lift the pump is required to accomplish, the maximum amount of water diverted would be 892.222 acre-feet of water per year (1,280 gpm / 226.67 = 5.647 acre-feet per day X 158 days).
2. The Montana DNRC has recognized that because the water use is largely non-consumptive, the water right claim examination guideline based on the population of the city is not valid – May 16, 2014 DNRC Memorandum – prepared by Misty Hauer and Laura Hinck, DNRC personnel, page 2, lines 3-4.
3. Claimant City of Miles City respectfully moves the Court to amend Claim No. 42C 175316-00 to correct the acre-feet volume of water diverted annually in the temporary preliminary decree for Claim No. 42C 175316-00, to 892.222 acre-feet per year based on

the pump capacity and operating hours all as established herein and with the proof provided in the documentation attached to this motion.

Claim No. 42C 175316-00 – Purpose of Use

1. Claimant City of Miles City respectfully requests the Court to appropriately modify the remarks about the purpose of use of this water right derived from the application of the DNRC examination and quantity rules and criteria based on the evidence submitted with this motion.
2. The affidavits accompanying this Motion establish without a doubt that the City of Miles City uses this water to address a municipal purpose (i.e as part of its summer parks and recreation program, as well as for fire protection). However, this diversion is not made for the purposes of consumption or insertion into a municipal potable or industrial water supply system. Thus, recommended flow rates, capacity, and annual volume should not be derived from the amounts in the M.W.R.C.E. rules usually applied to municipal uses of water provided for consumption in a municipal potable water delivery system or industrial supply system.
3. The affidavits accompanying this Motion establish without a doubt that the City of Miles City uses this water for a valid and actual municipal purpose, which includes a recreational use (i.e. to fill Lake Scanlan and Cook Lake to provide places for children to go swimming as part of its summer parks and recreation program). Clearly this water is used for a group of different types of uses within the overall category of municipal use. The usual volume guideline for municipal use is based on the population of the city; however, the May 16, 2014 DNRC Memorandum Request for Assistance prepared by Misty Hauer and Laura Hink, pages 3 and 4, establishes that this guideline is

inappropriate.

4. The affidavits accompanying this Motion establish without a doubt that the City of Miles City uses this water for training of its fire department personnel and for fire suppression should the need arise. See Affidavit of Fire Chief Cameron Duffin attached to this motion as Exhibit C. M.W.R.C.E. Rule 27(c)(4) provides that fire protection will be considered an incidental use.
5. The description of the pump testing and training activities conducted by the fire department using water from the lakes in this system indicate that there is little actual consumption of the water all as set out in the affidavits accompanying this Motion. Most of the water is pumped out of the lakes through the fire department equipment during these exercises and returned directly or almost directly into the City lake system from which the water is originally pumped.
6. Claimant City of Miles City respectfully moves the Court to amend Claim No. 42C 175316-00 to correct the stated Purpose of Use of the water diverted for these combined and conjoined purposes as adjudicated in the temporary preliminary decree for Claim No. 42C 175316-00. Claimant submits that perhaps a multiple-use categorization under M.W.R.C.E. Rule 41 with the appropriate remark placed on the abstract of Claim No. 42C 175316-00 would be satisfactory.

Claim No. 42C 175316-00 – Lake and/or Reservoir Capacity


1. The file indicates that efforts were made during the examination of Claim No. 42C 175316-00 to apply the criteria for determining the capacity of Lake Scanlan and Lake Cook as if they were reservoirs in the usual sense. They do in fact reserve water within

their capacity when they are filled, and that water is later then discharged from each of the lakes as the retained water is replaced by incoming flows pumped into the lakes. Yet, unlike a commonly understood reservoir, neither lake removes nor reservoirs water in the usual sense in that all of the water not lost through either evaporation or seepage is returned directly to the source, albeit some short distance, downstream. Both lake-like ponds are fully drained at the end of each summer and all water temporarily detained therein is returned to the Tongue River. It is submitted that the lake or reservoir capacity is not material in the context of this usage. Claimant, however, has no objection to the lake diversion characteristics estimated by the DNRC and placed on the May 16, 2014 proposed general abstract.

2. Thus, it is submitted that the lake or reservoir capacity is not material in the context of this usage. The annual acre-feet of the water right should be based solely on the amount of water piped from the Tongue River. The waters reservoired or within the lakes are constantly being replaced with water diverted from the river, which in fact after it passes through the system returns to the Tongue River virtually in its entirety.
3. Claimant submits that the facts established that the two lake-like ponds and this system are more like on-stream reservoirs and all of the applicable criteria of M.W.R.C.E. Rule 9(c)(1)(ii)(B) have been satisfied by the data contained in the affidavits submitted with this motion.
4. Rule 10 M.W.R.C.E. governs examination of water right claims involving reservoirs. Claimant has endeavored to provide all relevant facts to satisfy the criteria of that rule.
5. Claimant City of Miles City respectfully moves the Court to correct the amount of flow of water diverted for Claim No. 42C 175316-00, as adjudicated in the temporary preliminary

decree as set forth herein.

Respectfully submitted this 15th day of October, 2014.


W.G. Gilbert, III, Attorney for
Claimant City of Miles City

STATE OF MONTANA)
)ss
County of Custer)

I, Allen Kelm, being first duly sworn, deposes and says that I am the Public Utilities Director of the City of Miles City, the owner of the water right described in this Motion. That I am the person most familiar with the information related to the water right and that I have authority on behalf of the City of Miles City to execute this Verified Motion to Amend Claim No. 42C 175316-00. That the matters, facts, and things stated in this motion are true and correct. Should any fact be stated on information and belief, I believe the statement to be true.

DATED at Miles City, Montana this _____ day of October, 2014.

See attached

Allen Kelm

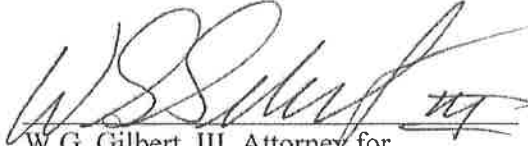
Subscribed and sworn to before me this _____ day of October, 2014.

(Seal)

Notary Public for the State of Montana
Residing at Miles City, Montana
My commission expires: _____

decree as set forth herein.

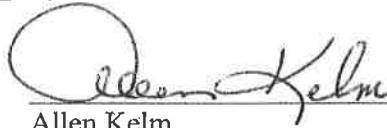
Respectfully submitted this 15th day of October, 2014.


W.G. Gilbert, III, Attorney for
Claimant City of Miles City

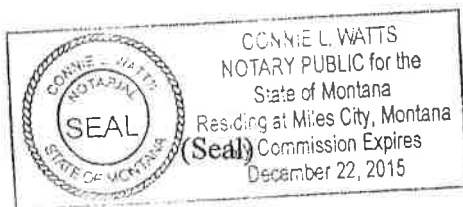
STATE OF MONTANA)
)ss
County of Custer)

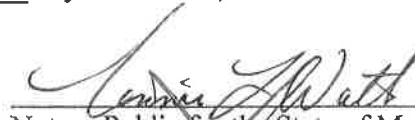
I, Allen Kelm, being first duly sworn, deposes and says that I am the Public Utilities Director of the City of Miles City, the owner of the water right described in this Motion. That I am the person most familiar with the information related to the water right and that I have authority on behalf of the City of Miles City to execute this Verified Motion to Amend Claim No. 42C 175316-00. That the matters, facts, and things stated in this motion are true and correct. Should any fact be stated on information and belief, I believe the statement to be true.

DATED at Miles City, Montana this 15 day of October, 2014.


Allen Kelm

Subscribed and sworn to before me this 15th day of October, 2014.




Notary Public for the State of Montana
Residing at Miles City, Montana
My commission expires: _____

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that on the 15th day of October, 2014, she served the foregoing Verified Motion to Amend Water Claim 42C 175316-00 by depositing a true and correct copy thereof together with attached exhibits and affidavits in support of the motion in the United States mail, at Dillon, Montana, first class postage prepaid, addressed to the following:

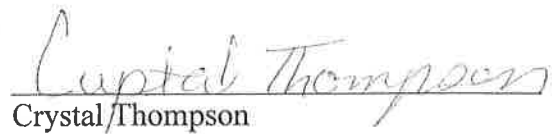
Daniel Z. Rice
Miles City, City Attorney
LUCAS & TONN, P.C.
P.O. Box 728
Miles City, MT 59301

State of Montana
DNRC
1424 9th Avenue
P.O. Box 201601
Helena, MT 59620-1601

Jeanne S. Whiteing
1628 5th Street
Boulder, CO 80302

Patrick Barry, US Attorney
Department of Justice
Indian Resource Section - ENRD
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Hertha L. Lund
Breeann M. Johnson
Lund Law PLLC
662 Ferguson Avenue
Bozeman, MT 59718


Crystal Thompson

W.G. Gilbert, III
W.G. Gilbert, III, P.C.
15 S. Idaho St.
P.O. Box 345
Dillon, MT 59725
(406) 683-6116
Fax: (406) 683-6117
Attorney for Claimant
City of Miles City

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER DIVISION
TONGUE RIVER BELOW HANGING WOMAN CREEK (42C)

CLAIMANT: City of Miles City

OBJECTOR: United States of America
Bureau of Indian Affairs

NOTICE OF INTENT TO APPEAR
Northern Cheyenne Tribe

CASE 42C-184

AFFIDAVIT OF SAMANTHA
MALENOVSKY IN
SUPPORT OF VERIFIED
MOTION TO AMEND
CLAIM NO. 42C 175316-00

STATE OF MONTANA)
County of Custer)

Samantha Malenovsky, being first duly sworn, deposes and says:

That she is employed by the City of Miles City in the position of Flood Plain Administrator, Assistant to the Public Works/Utilities Director, Auto-Cad Technician, and Community Rating System Coordinator. That she makes this affidavit to provide facts in support of the City of Miles City's Verified Motion to Amend Water Right Claim No. 42C 175316-00 to be filed with to the Montana Water Court.

That affiant's education to prepare her for this employment includes assisting the BLM senior engineers with Trimble GPS Units, surveying roads, stake-out pits, reservoirs,



and pipelines. Affiant has a Bachelor's Degree from the Montana State University Bozeman in Mechanical Engineering Technology. From 2006 to 2008, affiant worked for Oftedal Construction as an engineer specializing in GPS software where she trained staff in Agtek Highway 3-D, Earthwork 3-D, Topcon 3-D Office, and 3-DMC. Affiant was the primary person for all Topcon GPS, Agtek software. She developed and interpreted technical field data from state and private companies and transformed information in the Topcon 3-D Office software for use in the field and in 3-DMC software. Affiant researched and reviewed new programs and aided in Best Management Practices.

Since 2009, affiant has worked for the City of Miles City. In 2011 her job description changed to the Floodplain Administrator, Assistant to Public Works/Utilities Director, AutoCad Tech, and Community Rating System Coordinator. Affiant's current work involves reading plans and interpreting and suggesting actions to comply with floodplain regulations. Affiant reads survey reports and interprets current ground elevations with Base Flood Elevations and works with Public Works/Utilities departments mapping, primarily AutoCad, for land uses, water, sanitary sewer, storm drainage, and district administration. Affiant ensures that AutoCad data is current on all infrastructure updates.

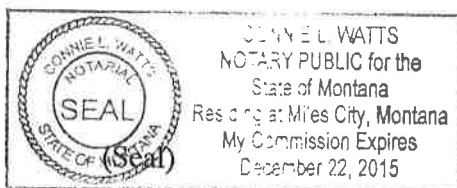
That on August 12, 2014, at the request of Allen Kelm, Public Utilities Director of the City of Miles City, affiant journeyed to the diversion pipe and pump house that diverts the water described in Claim No. 41C 175316-00 located in Section 33, Township 8 North, Range 47 East from the Tongue River. Affiant was accompanied by Allen Kelm, Public Utilities Director of the City of Miles City. That at the location of the aforementioned


diversion pipe and pump house, affiant conducted the necessary location readings using a Magellan SporTrak Pro GPS receiver to establish the locations. That the data collected was downloaded onto All Topo Maps V7 Professional using USGS map software (NAD 27). That a map that shows the location of the diversion pipe and pump house as derived from the data affiant collected and processed with the All Topo Maps V7 Professional using USGS map software (NAD 27) is attached to this affidavit as Exhibit 1. That based upon affiant's examination of the actual inlet pipes and pump house structure and the usage of the global positioning system equipment, the actual location of the pump house is NW¼SE¼SW¼ of Section 33, Township 8 North, Range 47 East M.P.M., latitude 46°24'1.49004"N, longitude 105°51'20.60894"W. The correct location of the diversion pipe is NW¼SE¼SW¼ of Section 33, Township 8 North, Range 47 East M.P.M, latitude 46°24'0.95004"N, longitude 105°51'22.04890"W. The differences in the longitude and latitude describe the actual distance between the suction pipe at the point of diversion and the pump in the pump house, a distance of approximately 90 feet.

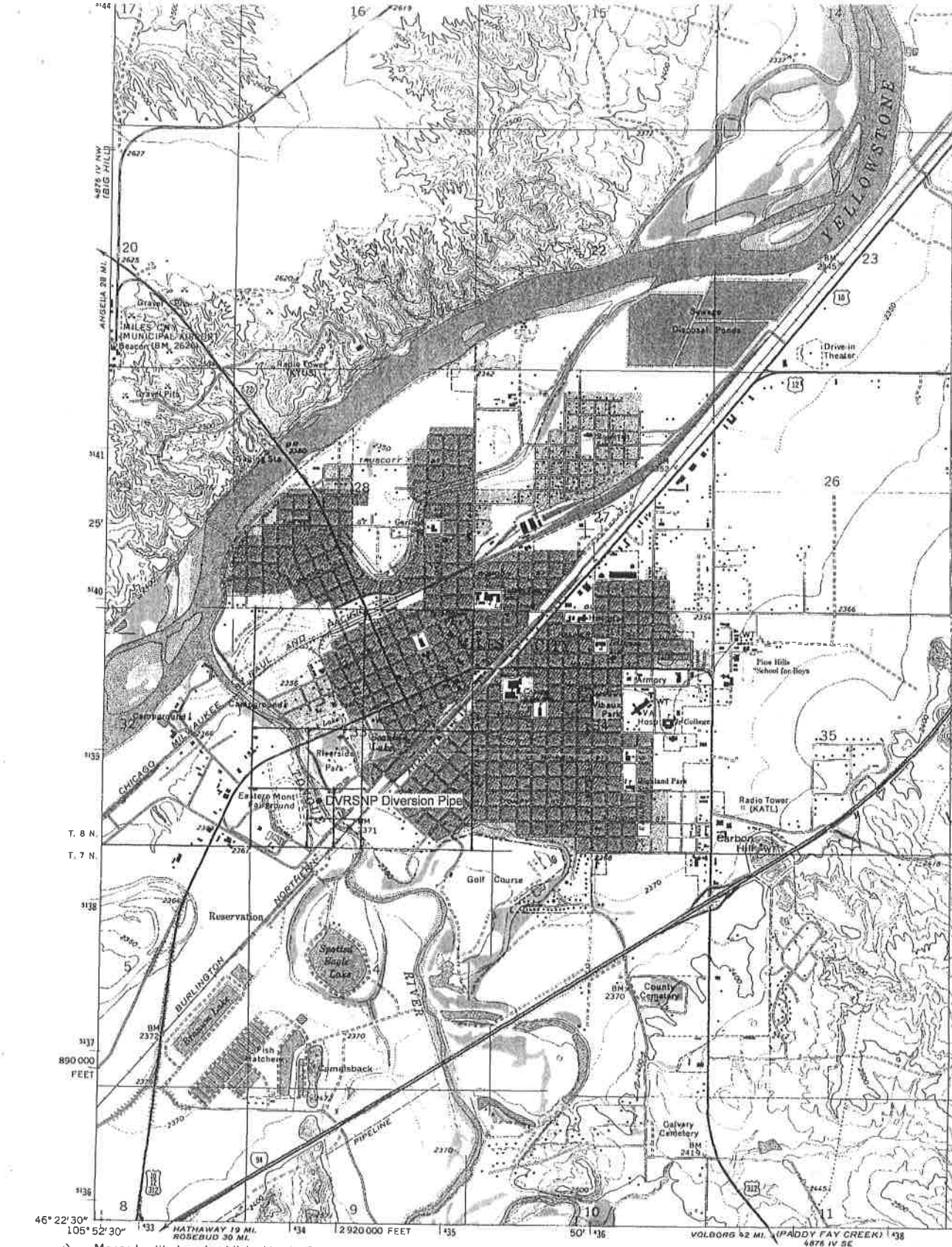
DATED this 30 day of September, 2014.


SAMANTHA MALENOVSKY

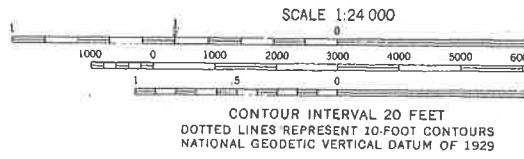
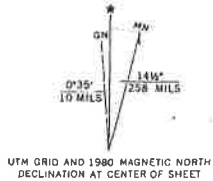
Subscribed and sworn to before me this 30th day of September, 2014.




Notary Public for the State of Montana
Residing at Miles City, Montana
My commission expires: 12/22/2015



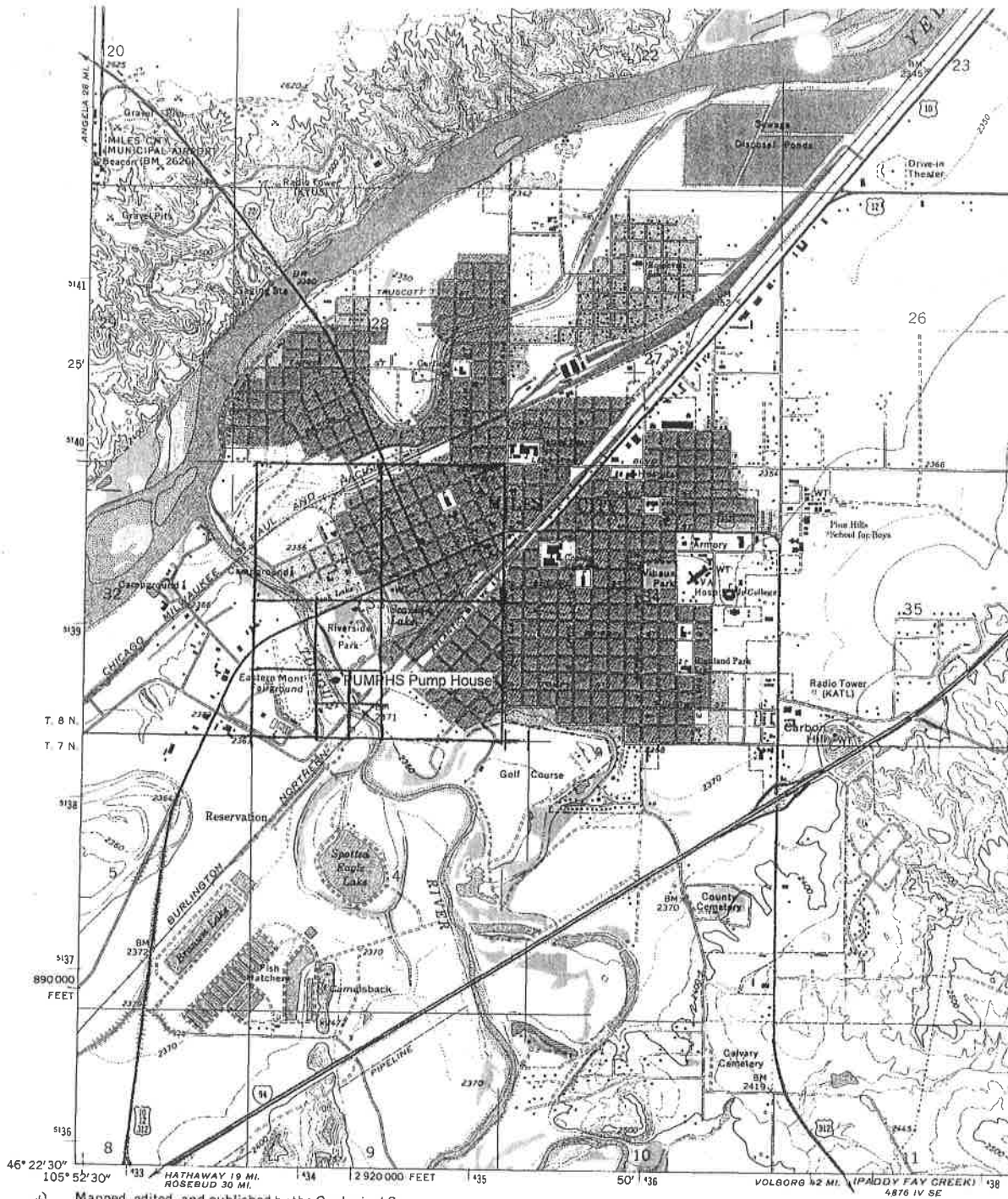
Mapped, edited, and published by the Geological Survey
 Control by USGS and NOS/NOAA
 Topography by photogrammetric methods from aerial
 photographs taken 1966. Field checked 1968
 Polyconic projection. 1927 North American datum
 10,000-foot grid based on Montana coordinate system,
 south zone
 1000-meter Universal Transverse Mercator grid ticks,
 zone 13, shown in blue
 Red tint indicates areas in which only landmark buildings
 are shown
 Fine red dashed lines indicate selected fence lines
 To place on the predicted North American Datum 1983
 move the projection lines 5 meters north and
 45 meters east as shown by dashed corner ticks



THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
 FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR
 A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE

EXHIBIT

1



Mapped, edited, and published by the Geological Survey

Control by USGS and NOS/NBAA

Topography by photogrammetric methods from aerial photographs taken 1966. Field checked 1968

Polyconic projection. 1927 North American datum 10,000-foot grid based on Montana coordinate system, south zone

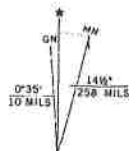
1000-meter Universal Transverse Mercator grid ticks, zone 13, shown in blue

Red tint indicates areas in which only landmark buildings are shown

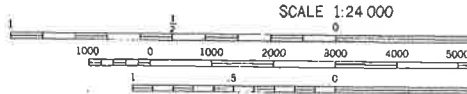
Fine red dashed lines indicate selected fence lines

To place on the predicted North American Datum 1983

move the projection lines 5 meters north and 45 meters east as shown by dashed corner ticks



UTM GRID AND 1980 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET



CONTOUR INTERVAL 20 FEET

DOTTED LINES REPRESENT 10-FOOT CONTOUR

NATIONAL GEODETIC VERTICAL DATUM OF 1

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY :
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225.
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE

W.G. Gilbert, III
W.G. Gilbert, III, P.C.
15 S. Idaho St.
P.O. Box 345
Dillon, MT 59725
(406) 683-6116
Fax: (406) 683-6117
Attorney for Claimant
City of Miles City

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER DIVISION
TONGUE RIVER BELOW HANGING WOMAN CREEK (42C)

CLAIMANT: City of Miles City

OBJECTOR: United States of America
Bureau of Indian Affairs

NOTICE OF INTENT TO APPEAR
Northern Cheyenne Tribe

CASE 42C-184

AFFIDAVIT OF ALLEN
KELM IN SUPPORT OF
VERIFIED MOTION TO
AMEND CLAIM NO. 42C
175316-00

STATE OF MONTANA)

):ss

County of Custer)

Allen Kelm, being first duly sworn, deposes and says:

That he has been an employee of the City of Miles City since 1985. That he has held the position of Public Utilities Director of the City since 2009. That prior to his employment as Public Utilities Director with Miles City, he was employed at Miles City Water and Wastewater Plants as a Water/Wastewater Superintendent.

That affiant makes this affidavit to provide facts in support of the City of Miles City's Verified Motion to Amend Water Right Claim No. 42C 175316-00 to be filed with the Montana Water Court.



That affiant's education to prepare him for this employment includes environmental classes at Northern Montana College; Certified Water/Wastewater Operator's License Class 1; and continuing education classes for water quality.

That on August 12, 2014, at the request of the administration of the City of Miles City, affiant journeyed to the diversion pipe and pump house that diverts the water described in Claim No. 41C 175316-00 from the Tongue River. The pump house and pipe are located in Section 33, Township 8 North, Range 47 East. Affiant was accompanied by Samantha Malenovsky. That at the location of the aforementioned diversion pipe and pump house, Ms. Malenovsky conducted the necessary readings using a GPS receiver to establish the locations. That based upon Ms. Malenovsky's examination and the usage of the global positioning system equipment, the actual location of the pump house is NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 8 North, Range 47 East M.P.M. latitude 46°24'1.49004"N, longitude 105°51'20.60894"W, The correct location of the diversion pipe is NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 8 North, Range 47 East M.P.M. latitude 46°24'0.95004"N, longitude 105°51'22.04890"W. The differences in the longitude and latitude describe the actual distance between the pipe and the pump house, a distance of approximately 90 feet.

That the water being used identified as Claim No. 42C 175316-00 is not in any way connected to the Miles City potable water supply system, nor is any of the water supplied to any industrial facility. The uses of the water are as described in this affidavit and the City of Miles City's Verified Motion to Amend and accompanying affidavits.

The lowest water level in the Tongue River during the usual period of use submerges the inlet of the pump suction pipe by about 2 feet. Normally, in April the inlet is submerged

by about 6-7 feet of water. In May, the water usually rises about 1 foot, increasing the submersion to about 7-8 feet. In July, the water reaches a depth submerging the inlet pipe 9.5-10 feet for a couple of weeks. The water level then begins to drop to August levels.

The pipe from the pump is 12 inches in diameter and is 237 feet long and has one 45° angle in its course. The discharge end of the pipe is 16.75 feet in elevation above the pump discharge. It has a 10 horsepower Goulds Turbine Vertical Bull Pump operating at 1,760 rpms. The pump curve data sheet attached shows that the pump will pump 1,200 gallons per minute against a 20-foot static head. The static head against which the pump works in this installation is 16.75 feet, not including any allowance for friction.

That the period of use of the water varies by a few days depending on the year, but generally begins about April 1 and continues until after Labor Day, or about September 5-8. The pump is running 24 hours a day during the period of use. The water is pumped from the Tongue River through the pipe to a lake-like pond named Scanlan Lake, which is a depression that was historically part of the Tongue River channel. The water flows out of Scanlan Lake into another lake-like depression named Cook Lake, also historically a part of the Tongue River channel. Neither Scanlan Lake nor Cook Lake has any structure associated with them that could be described as a dam. Affiant is informed and believes that both lakes were never constructed but were created when Tongue River moved west from the location of the two lakes many, many years ago. When the water leaves Cook Lake, it then flows into a ditch and culvert under Dike Road and into the Tongue River. The water flows about 2,900 feet from the point of diversion through the system prior to its return to the Tongue River.

Scanlan Lake and Cook Lake are part of Riverside Park operated by the City. The

lakes are used for swimming and other various water-related recreational activities. The Miles City Fire Department conducts pump-testing activities with its fire trucks at Scanlan Lake using the water. The Department also has conducted training exercises for firefighters at the Lake. The training exercises consist of pumper truck testing and operation and hose use and management activities. In all of these activities the water pumped from the lake is essentially directly returned to the lake from the hoses or run into the lake after being sprayed onto the ground adjacent to the lake.

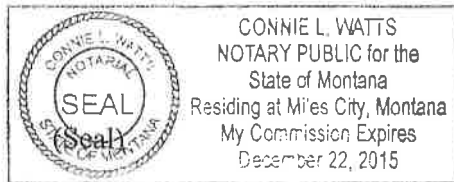
That although the lake-like depressions do, in a sense, reservoir water, they are constantly being filled by the pump and the water is drained back into the Tongue River. No water is held-over in either lake-like depression after the period of use. The water usually drains out in about 60 days after the pump is turned off. No estimation of loss of water to evaporation or seepage into the ground has been attempted, but it does not seem to be significant when comparing the water entering the lake from the pump with the flow of the water back into the Tongue River. Affiant is informed that some of the water at the point of diversion originally would have been diverted from the Yellowstone River by the State of Montana. This water would be conveyed to the Fish Hatchery located in the southwest quarter of Section 4 and the southeast quarter of Section 5, Township 7 North, Range 47 East, M.P.M. The water discharged by the fish hatchery consists of between 1700 and 2400 gpm depending on the time of year. This water is then deposited in the Tongue River just above the location of the Miles City pumping station.

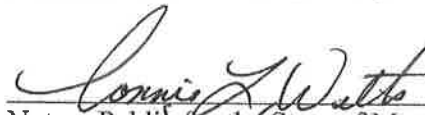
That affiant is informed that the Montana DNRC has estimated that Scanlan Lake is about 5.5 feet deep, has a surface area of approximately 5.97 acres, and a current capacity of

16.42 acre-feet. Affiant is further informed that the DNRC has estimated that Cook Lake has a depth of approximately 5 feet, a surface area of approximately 6.02 acres, and has a capacity of 15.05 acre-feet. Based on affiant's knowledge and information concerning the lake-like depressions, affiant states that he believes these quantifications are reasonably close to the actual measurements of the two reservoirs.


ALLEN KELM

Subscribed and sworn to before me this 8th day of October, 2014.




Notary Public for the State of Montana
Residing at Miles City, Montana
My commission expires: _____

Flow US gpm	Speed rpm	Head ft	Pump %eff	Power bhp	NPSHr ft	Motor %eff	Motor kW	Hrs/yr	Cost /kWh
1200	1760	20	70.7	8.53	20.9				
1000	1760	28.4	78.9	9.08	17				
800	1760	33.7	78.5	8.67	14.2				
600	1760	37	69.6	8.04	12				
400	Flow Rate is Out of Range for this Pump								

W.G. Gilbert, III
W.G. Gilbert, III, P.C.
15 S. Idaho St.
P.O. Box 345
Dillon, MT 59725
(406) 683-6116
Fax: (406) 683-6117
Attorney for Claimant
City of Miles City

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER DIVISION
TONGUE RIVER BELOW HANGING WOMAN CREEK (42C)

CLAIMANT: City of Miles City

OBJECTOR: United States of America
Bureau of Indian Affairs

NOTICE OF INTENT TO APPEAR
Northern Cheyenne Tribe

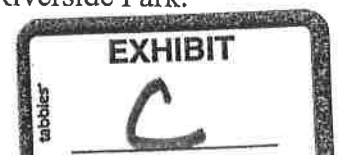
CASE 42C-184

AFFIDAVIT OF CAMERON
DUFFIN IN SUPPORT OF
VERIFIED MOTION TO
AMEND CLAIM NO. 42C
175316-00

STATE OF MONTANA)
County of Custer)

Cameron Duffin, being first duly sworn, deposes and says:

That affiant is the duly appointed Interim Fire Chief of the City of Miles City, Montana. That he has been a part-time member of the Department for 3.5 years, and has been employed full-time by the Department for 16.5 years. Affiant has held the position of Interim Fire Chief since the beginning of August, 2014. That as a member of the Fire Department and as its Interim Chief, he has participated in many Department training exercises over the years. That at least once a year the Department conducts equipment pumping tests on all four of the Department trucks. Also, this summer Department members practiced attaching hoses to the pumper trucks and drawing water from Scanlon Lake in the Miles City Riverside Park.



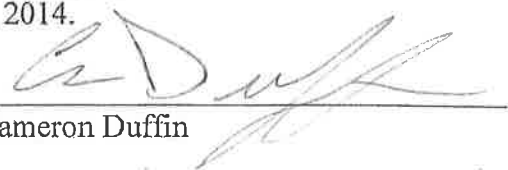
That there may be as many as four pieces of equipment involved in these training sessions.

That Scanlon Lake has two dry hydrant pipes permanently installed at the lake for these purposes.

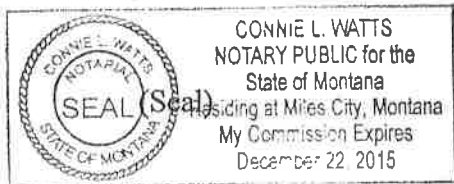
Engine No. 7 has a 1,250 gpm capacity pump. Engine No. 8 has a 1,725 gpm capacity pump. Tender No. 23 has a 1,250 gpm capacity pump. Tower No. 19 has a 1,500 gpm capacity pump. That these practices and/or testing sessions occur at Riverside Park at Lake Scanlon. That the usual practice is for the pumping trucks to be connected to the dry hydrants in the lake by a suction hose. The water is pumped through the truck and through lengths of 3-inch hose, or through a ground monitor nozzle. The hoses are operated by the fire fighters. The scope of the training is for the firefighters to work with the pumper trucks and to utilize, manage, and direct connect and disconnect the hoses. That the water pumped from Scanlon Lake is discharged from the hoses back into the lake. Virtually all the water not lost to evaporation or seepage is directly returned to the lake.

That the Tongue River water withdrawal system is important as a back-up source of water for the Fire Department. That should the City water system be inadequate to provide the sufficient water for firefighting purposes, or be compromised or unworkable in some fashion, the Department would utilize the pumping and delivery system to withdraw water from the lakes. That this usage would occur at any time the lakes contained water should the need arise. The testing and training occurs between April 1 and September 5 each year.

DATED this 1 day of OCT, 2014.


Cameron Duffin

Subscribed and sworn to before me this 1st day of October, 2014.



Connie L. Watts
Notary Public for the State of Montana
Residing at Miles City, Montana
My commission expires: _____